

BILL ANALYSIS

Senate Research Center

C.S.S.B. 190
By: Zaffirini
Health & Human Services
3-20-97
Committee Report (Substituted)

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, C.S.S.B. 190 establishes regulation for nursing homes and similar facilities while providing penalties for violations of those regulations.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas Department of Human Services (department) in SECTION 1.09 (Section 242.037(a), Health and Safety Code), SECTION 1.14 (Section 242.065(e), Health and Safety Code), SECTION 1.22 (Section 242.126(d), Health and Safety Code), and SECTION 1.29 (Sections 242.403(a) and 242.501(a), Health and Safety Code); and to the Texas Board of Human Services in SECTION 1.09 (Section 242.037(d), Health and Safety Code) and SECTION 1.21 (Section 242.1225(a), 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, to define "commissioner," "facility," and "home." Redefines "person." Makes conforming changes.

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

Sec. 242.0021. CONTROLLING PERSON. Sets forth the conditions under which a person is a controlling person of an institution and lists the persons and entities which qualify as controlling persons.

SECTION 1.04. Amends Section 242.005, Health and Safety Code, as follows:

Sec. 242.005. New heading: PERFORMANCE REPORTS. Sets forth the terms by which the department and the attorney general, rather than the department, are each required to annually prepare a report of the operation and administration of their respective responsibilities. Requires the Legislative Budget Board and the state auditor to jointly prescribe the form and contents of the reports. Makes conforming changes.

SECTION 1.05. Amends Chapter 242A, Health and Safety Code, by adding Sections 242.015-242.017, 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 Human Services (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.

Sec. 242.017. FEES AND PENALTIES. Requires a fee or penalty collected by or on behalf of the department to be deposited to the credit of the general revenue fund; and authorizes such fees or penalties to be appropriated only to the department to administer and enforce this chapter, with certain exceptions. Prohibits investigation and attorney's fees from being assessed or collected by or on behalf of the department or other state agency unless the department or other state agency assesses and collects a penalty described under this chapter.

SECTION 1.06. 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 and any other information required by the department to substantiate a satisfactory compliance history. Authorizes the department to require a person described by Subsection (d) to file information relating to the history of the person's financial condition with respect to an institution operated in another state or jurisdiction. Makes conforming changes.

SECTION 1.07. 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 1.08. Amends Section 242.034, Health and Safety Code, to prohibit a license fee from exceeding a set amount. Authorizes the Texas Board of Human Services (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. Deletes the provision regarding the method for depositing license fee collections. Makes conforming changes.

SECTION 1.09. Amends Section 242.037, Health and Safety Code, as amended by Chapters 583

and 1049, Acts of the 74th Legislature, 1995, 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, including those relating to quality of life, quality of care, and residents' rights. 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, including those related to nutritional needs of residents; care and treatment of residents; licensure of institutions; and implementation of this chapter. 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 1.10. Amends Chapter 242B, Health and Safety Code, by amending Section 242.042 and adding Section 242.0421, as follows:

Sec. 242.042. POSTING. Requires each institution to conspicuously post for display in a public and visible area of the institution notice stating that licensing inspection reports and other related reports which show deficiencies cited by the department are available; 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 242.072(b).

Sec. 242.0421. AVAILABILITY OF REPORTS. Sets forth the terms by which a facility is required to make licensing inspection reports and other reports which show deficiencies cited by the department available.

SECTION 1.11. Amends Section 242.061, Health and Safety Code, by amending Subsection (a) and adding Subsection (c), to set forth the terms by which the department is authorized to deny, suspend, or revoke the license of a person described by Section 242.032(d) or of an institution. Makes conforming changes.

SECTION 1.12. Amends Chapter 242C, Health and Safety Code, by adding Section 242.0615, as follows:

Sec. 242.0615. EXCLUSION. Sets forth the terms by which the department is authorized to exclude a person from eligibility for a license.

SECTION 1.13. Amends Section 242.063(a), Health and Safety Code, to authorize the department to petition a district court for a temporary restraining order or an injunction to restrain a person from a violation or threatened violation of certain standards or laws if the health and safety of a resident is threatened. Makes conforming changes.

SECTION 1.14. Amends Section 242.065, Health and Safety Code, to provide that a person who violates or causes a violation of this chapter, or a rule adopted under this chapter, is liable for a civil penalty of not less than \$1,000, rather than \$100, or more than \$25,000, rather than \$10,000, for each violation which threatens the health and safety of a resident. Requires the trier of fact to make certain considerations in determining the amount of the penalty to be awarded. Provides that each resident who suffers directly because of the violation constitutes a separate ground for recovery. Establishes the conditions by which the state is authorized to seek satisfaction if a person who is liable fails to pay the obligated amount. Authorizes the department, by rule, to establish a method for satisfying an obligation from an insurance policy, letter of credit, or other contingency fund. Sets forth the terms by which a payment is not an allowable cost for reimbursement under the state Medicaid program; and a civil penalty is not compensation for actual pecuniary loss.

SECTION 1.15. Amends Section 242.066, Health and Safety Code, by amending Subsections (a) and (b), and adding Subsections (f)-(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 Section 242.072(b) 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 1.16. 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 1.17. Amends Sections 242.067- 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 date on which the institution must file with the department a plan of correction and the deadline for corrective measures. Authorizes the person charged, not later than the 20th day after the date on which the notice is sent, to submit a plan of correction to the department for approval 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 terms by which the commissioner of human services or the commissioner's designee is required to assess the administrative penalty recommended by the department. Deletes the provision requiring the commissioner to order a hearing under certain circumstances. Makes conforming changes.

Sec. 242.068. **HEARING.** Requires an administrative law judge to order and give notice of a hearing if a person charged under this chapter requests a hearing. Deletes the provision requiring the commissioner to order and give notice of a hearing if the commissioner or the commissioner's designee orders a hearing. Requires the hearing to be held before an administrative law judge, rather than by a hearing examiner designated by the commissioner. Requires the administrative law judge to make findings of fact and conclusions of law, rather than requiring the hearing examiner to make findings of fact and issue the commissioner a written decision and recommendation. Requires the judge, by order, to find that a violation has occurred and assess an administrative penalty, or that a violation has not occurred. Deletes the existing provision regarding the commissioner's finding whether or not a violation has occurred.

Sec. 242.069. New heading: **NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; INTEREST; REFUND.** Sets forth the terms by which the commissioner is required to give written notice of the payment and interest rate due for administrative penalties, and is 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 by a certain date. Sets forth the repercussions for a person who fails to pay the penalty by a certain date. Deletes the existing provisions regarding judicial review. Sets forth the terms by which accrued interest on certain amounts are required to be paid. Deletes the provision regarding the deposit of a penalty collected under this section. Makes conforming changes.

Sec. 242.070. **APPLICATION OF OTHER LAW.** Prohibits the department from assessing more than one monetary penalty under this chapter, rather than 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, except as provided by Section 242.0665(c). Provides that this

section does not prohibit the department from assessing a monetary penalty under this chapter and Chapter 32, Human Resources Code, for the same act or failure to act.

SECTION 1.18. Amends Chapter 242C, Health and Safety Code, by adding Sections 242.071-242.073, as follows:

Sec. 242.071. 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.

Sec. 242.072. 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.

Sec. 242.073. LEGAL ACTION BY THE ATTORNEY GENERAL. Requires the department and the attorney general to work in close cooperation throughout any legal proceedings requested by the department. Requires the commissioner to approve any settlement agreement to a suit brought under this chapter or any other law relating to the health and safety of residents in institutions.

SECTION 1.19. Amends Section 242.096(e), Health and Safety Code, to require any unencumbered amount in the nursing and convalescent home trust fund in excess of \$500,000, rather than \$100,000, to be transferred to the general revenue fund. Authorizes the same amount to be appropriated only to the department.

SECTION 1.20. Amends Section 242.097, Health and Safety Code, to require the department, in addition to the license fee provided by Section 242.034, to adopt an annual fee if the amount of the nursing and convalescent home trust fund is less than \$500,000, rather than \$100,000. Makes a conforming change.

SECTION 1.21. Amends Chapter 242E, Health and Safety Code, by adding Section 242.1225, as follows:

Sec. 242.1225. ADDITIONAL REPORTING REQUIREMENT. Sets forth the terms by which the board is required to adopt rules requiring any person required to report abuse or neglect under Section 242.122 to report other conduct or conditions.

SECTION 1.22. Amends Section 242.126, Health and Safety Code, as follows:

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. Requires the department to adopt rules governing the conduct of investigations, including the dissemination of certain information. 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. Sets forth the terms by which the department or a designated agency is required to submit a final report. Makes conforming changes.

SECTION 1.23. Amends Section 242.127, Health and Safety Code, to make conforming changes.

SECTION 1.24. 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, for reporting the abuse or neglect, or for initiating or cooperating in any governmental investigation. Makes conforming changes.

SECTION 1.25. Amends Section 242.1335(a), Health and Safety Code, to prohibit an institution from retaliating or discriminating against a resident for making a complaint or filing a grievance concerning the facility. Makes a conforming change.

SECTION 1.26. Redesignates Chapter 242H, Health and Safety Code, as Chapter 242J, and amends the subchapter heading as follows:

SUBCHAPTER J. ARBITRATION OF CERTAIN DISPUTES

SECTION 1.27. Amends Section 242.253(c), Health and Safety Code, to require the party that elects arbitration, rather than the department, to pay the cost of the arbitration.

SECTION 1.28. Amends Chapter 242H, Health and Safety Code, redesignated as Subchapter J by SECTION 1.26 of this Act, by amending Section 242.267 and 242.268, and adding Section 242.269, 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 admission, or revocation, denial, or suspension of an institution's license or issuance of a closing order under Section 242.062.

Sec. 242.269. NO ARBITRATION OF CIVIL PENALTY UNDER SECTION 242.065 WITHOUT CERTIFICATION OF THE DEPARTMENT AND ATTORNEY GENERAL. Sets forth the terms by which this subchapter does not apply to a civil penalty under Section 242.065 unless the commissioner and the attorney general certify that the material of the findings by the department justify the arbitration. Provides that certification does not imply an election of arbitration by the state.

SECTION 1.29. Amends Chapter 242, Health and Safety Code, by redesignating Subchapter F as Subchapter N and adding new Subchapters F, K, L, M, and O, as follows:

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

Sec. 242.151. PHYSICIAN SERVICES. Requires an institution to have at least one medical director who is licensed as a physician in this state. Provides that the attending physician is responsible for a resident's assessment and comprehensive plan of care, and is required to review, revise, and sign orders relating to any medication or treatment in the plan of care. Authorizes the responsibilities imposed on the attending physician to be performed by an advanced practice nurse or a physician assistant, pursuant to certain protocols. 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, and sets forth the director's responsibilities. Authorizes the department to grant a waiver requested by the facility from the requirement that the director of nursing be a registered nurse.

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 sufficient nursing staff to ensure appropriate resident care.

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 a staff member who has been instructed and has demonstrated competence in the care of children, and consultative pediatric nursing services are available to the staff if the institution has a resident younger than 18 years of age.

Sec. 242.156. REQUIRED MEDICAL EXAMINATION. Requires the department, except as required by federal law, 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 institution 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. 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 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, as well as certain other rights. 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.

SUBCHAPTER M. COMPLAINT INSPECTIONS

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.

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. Deletes the provision authorizing fees received to only be appropriated to the department to defray costs incurred under this section.

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.

SUBCHAPTER O. LEGISLATIVE OVERSIGHT

Sec. 242.651. DEFINITION; SUNSET DATE. Defines "committee." Provides that the committee is subject to Chapter 325, Government Code (Texas Sunset Act), and unless continued in existence as provided by that chapter, will be abolished September 1, 2001.

Sec. 242.652. COMPOSITION OF COMMITTEE; PRESIDING OFFICER. Sets forth the composition of the committee, and the method by which the lieutenant governor and speaker of the house shall appoint the presiding officer for a certain term. Provides that a member of the committee serves at the pleasure of the appointing official.

Sec. 242.653. COMMITTEE POWERS AND DUTIES. Set forth the powers and duties of the committee, including the responsibility to monitor the effectiveness and efficiency of the nursing facility regulatory system of this state. Authorizes the committee to request reports and other information from the department and the attorney general regarding certain issues. Requires the committee to use the existing staff resources of the senate and house of representatives to assist the committee in performing its duties.

Sec. 242.654. REPORT. Sets forth the terms by which the committee is required to report to the governor, lieutenant governor, and speaker of the house of representatives. Sets forth the contents of the report.

SECTION 1.30. Amends Section 222.0255, Health and Safety Code, by adding Subsection (e), to provide 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 1.31. Repealer: Section 242.012, Health and Safety Code (Rights of Residents).

SECTION 1.32. Requires the board to adopt rules as necessary to implement the change in law made by this article not later than January 1, 1998.

SECTION 1.33. 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) and (m), to set forth the terms by which the department is required, rather than authorized, to include penalties for violations in its contracts for the delivery of medical assistance by nursing facilities, provided that the department shall provide for an informal dispute resolution process in the department's central office to perform certain functions. Deletes the provision requiring the establishment of a penalties and sanctions advisory committee. Requires Medicaid nursing facilities to also comply with state licensure rules, which may be more stringent than the requirements for certification. Deletes the provision prohibiting rules adopted by the department for certification of nursing facilities from being different from the standards imposed by federal law. Requires the department to use appropriate civil, administrative, or criminal remedies with respect to a facility that is in violation of a certification or licensing requirement. Deletes the provision requiring rules adopted to provide for an informal dispute resolution process. 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. Prohibits the department from including as a reimbursable item to a nursing facility certain administrative or civil penalties. Sets forth the terms by which the department is required to terminate a nursing facility's provider agreement. Deletes the provision making an assessment of monetary penalties subject to arbitration. Makes conforming changes.

SECTION 2.02. Amends Section 32.034(c), Human Resources Code, to provide that this section does not apply if federal matching funds are not available to pay the facility whose contract is being cancelled. Establishes that if federal matching funds cannot be used, no state funds may be used to pay the facility. Deletes the previous provision regarding the inapplicability of this section.

ARTICLE 3. EFFECTIVE DATE; EMERGENCY

SECTION 3.01. Effective date: September 1, 1997.

SECTION 3.02. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

Amends SECTION 1.02, Section 242.002, Health and Safety Code, to define "facility" and "home." Redefines "person." Deletes the definition for "restraints."

Amends SECTION 1.03, Section 242.0021, Health and Safety Code, to set forth the conditions under which a person is the controlling person of an institution, rather than by which a person controls an institution.

Amends SECTION 1.04, Section 242.005, Health and Safety Code, to set forth the terms by which the department and the attorney general are each required to annually prepare performance reports.

Amends SECTION 1.05, by adding Section 242.017, Health and Safety Code, to establish the method of deposit and appropriation for a fee or penalty collected by the department. Prohibits investigation and attorneys fees from being assessed by the department or other state agency, unless those entities collect a penalty.

Amends SECTION 1.06, Section 242.032, Health and Safety Code, to authorize the department to require an applicant or license holder to file information relating to the history of the person's financial condition regarding an institution operated in another state or jurisdiction.

Amends SECTION 1.07, Section 242.033(a), Health and Safety Code, to delete the provision regarding the deposit and appropriation of license fees.

Amends SECTION 1.09, Section 242.037, Health and Safety Code, to require the department to make and enforce rules regarding quality of life, quality of care, and residents' rights. Requires the board to adopt, publish, and enforce minimum standards relating to care and treatment of residents,

licensure of institutions, and implementation of this chapter.

Amends SECTION 1.10, Section 242.042, Health and Safety Code, to require institutional postings to include a notice regarding licensing inspection reports showing deficiencies in the institution, and deletes the provision regarding a notice required under Section 242.504. Adds Section 242.0421, Health and Safety Code, regarding availability of reports.

Amends SECTION 1.11, Section 242.061, Health and Safety Code, to authorize the department to deny, suspend, or revoke the license of an institution if certain persons have been excluded from holding a license.

Amends SECTION 1.12, by adding Section 242.0615, Health and Safety Code, to authorize the department to exclude certain persons from eligibility for a license.

Amends SECTION 1.13, Section 242.063, Health and Safety Code, to set forth the terms by which the department is authorized to petition a district court for a temporary restraining order or an injunction to restrain a person from a violation of certain standards or laws.

Amends SECTION 1.14, Section 242.065, Health and Safety Code, to provide that a person who violates this chapter or a rule adopted is liable for a civil penalty of not less than \$1,000 or more than \$25,000 for each violation. Raises the civil penalties for all violations under this chapter. Sets forth the procedure for determining a penalty award. Authorizes the state to seek satisfaction from certain other persons or entities if a person found liable fails to pay the obligated amount. Provides that a payment made to satisfy an obligation is not an allowable cost for reimbursement under the state Medicaid program; and a civil penalty is not compensation for actual pecuniary loss.

Amends SECTION 1.15, Section 242.066, Health and Safety Code, to delete the provision authorizing the department to assess an administrative penalty against a person who operates an institution without a valid license. Deletes the provision regarding the penalty for a violation of Section 242.1225, and changes the maximum penalty, with certain exceptions.

Amends SECTION 1.16, Section 242.0665, Health and Safety Code, to delete the provision making a violation of Section 242.1225 an exception to Subsection (a). Changes the maximum penalty for a subsequent violation.

Deletes former SECTION 1.14.

Amends SECTION 1.17, Section 242.067, Health and Safety Code, to require the notice of the report recommending administrative penalty to contain a statement of certain information if the violation is subject to correction. Authorizes a person to consent to the report, request a hearing, or submit a plan of correction not later than the 20th, rather than the 60th, day after the day the notice was sent. Deletes the provision requiring the commissioner to order a hearing on the findings and recommendations in the report under certain circumstances. Deletes the provision requiring the commissioner to assess an administrative penalty if a person fails to correct a violation to the department's satisfaction. Amends Section 242.068, Health and Safety Code, to require an administrative law judge, rather than the commissioner, to order and give notice of a hearing under certain circumstances. Requires the hearing to be held before an administrative law judge, rather than by a hearing examiner designated by the commissioner. Amends Section 242.069, Health and Safety Code, to delete the provision requiring a penalty collected under this section to be deposited to the credit of the nursing and convalescent home trust fund. Deletes the provisions regarding the matters to be contested in a petition for judicial review by a certain date. Deletes the provisions authorizing a person to stay enforcement of a penalty, the department to file a contest to the affidavit, and the court to hold a hearing. Amends Section 242.070, Health and Safety Code, to prohibit the department from assessing more than one monetary penalty under this chapter, with certain exceptions.

Amends SECTION 1.18, by adding Section 242.073, Health and Safety Code, to provide the terms under which the department and the attorney general will work in close cooperation throughout any legal proceedings.

Deletes former SECTIONS 1.18 and 1.19 and SECTION 1.20, Section 242.125.

Amends SECTION 1.19, by adding Section 242.096(e), Health and Safety Code, to require any unencumbered amount in the nursing and convalescent home trust fund in excess of \$500,000, rather than \$100,000, to be transferred to the general revenue fund. Authorizes the amount to be appropriated only to the department.

Amends SECTION 1.20, by adding Section 242.097, Health and Safety Code, to require the department to adopt an annual fee to be charged and collected if the amount of the nursing and convalescent home trust fund is less than \$500,000, rather than \$100,000.

Amends SECTION 1.21, Section 242.1255, Health and Safety Code, to assign a new heading entitled, "ADDITIONAL REPORTING REQUIREMENT." Requires the board to adopt rules requiring any person required to report abuse or neglect under Section 242.122 to report other conduct or conditions specified by the rules. Deletes the provision requiring certain persons or entities to report any suspected violation of state law, department rules, or federal law; or any unsatisfactory conditions.

Amends SECTION 1.22, Section 242.126, Health and Safety Code, to require a designated agency to begin an investigation of abuse or neglect within 24, rather than two, hours of receipt of the report. Requires the department to adopt rules governing the conduct of investigations. Deletes the provisions regarding completion of an initial status report by an investigating agency. Requires preparation of a written report no later than the 30th, rather than the fifth, day after the investigation completion date. Provides an exception to the provision requiring the department to delete the name of any resident from a report.

Amends SECTION 1.24, Section 242.133(a), Health and Safety Code, to provide that a person has a cause of action against an institution that terminates the employment of, or otherwise discriminates or retaliates against, the person for cooperating in a government investigation relating to care, services, or conditions at the institution.

Amends SECTION 1.25, Section 242.1335(a), Health and Safety Code, to prohibit an institution from retaliating or discriminating against a resident who makes a complaint or files a grievance concerning the facility.

Amends SECTION 1.27, by adding Section 242.253, Health and Safety Code, to require the party that elects arbitration, rather than the department, to pay the cost of the arbitration.

Amends SECTION 1.28, by adding Section 242.269, regarding certification of eligibility for arbitration by the department and the attorney general.

Amends SECTION 1.29, as follows:

- Amends Section 242.151, Health and Safety Code, to require an institution to have at least one medical director, rather than one attending physician, who is licensed as a physician in the state. Set forth the terms by which the attending physician has certain responsibilities.
- Amends Section 242.153 to require an institution to have a director of nursing services who is a registered nurse, rather than a registered nurse or advanced registered nurse practitioner, and makes an exception.
- Amends Section 242.154 to require an institution to maintain sufficient nursing staff to ensure appropriate resident care, rather than specifically outlining nurse-patient ratios and daily duty hours.
- Amends Section 242.156 to require the department to require resident medical exams once yearly, except as required by federal law.
- Amends Section 242.157 to replace references to "nursing home or custodial care home" with "institution."
- Amends Section 242.403 to require standards for quality of care and life to address appropriate use of chemical and physical restraints and nutrition services, and to refrain from being overly prescriptive.

- Deletes former Section 242.404, relating to the use of restraints. Amends present Section 242.404, to delete the provision requiring the department to adopt standards governing certain policies and procedures.
- Amends Section 242.501, regarding a resident 's right to be free from chemical and physical restraints.
- Amends Section 242.504 to delete the provision requiring institutions cited for a violation to post a notice of the citation on certain doors.
- Deletes the provision which sets forth the way in which a resident's rights may be restricted.
- Amends the heading for Subchapter M to read, "COMPLAINT INSPECTIONS."
- Deletes Section 242.555, regarding persons who may accompany an inspector during an on-site inspection.
- Amends Section 242.601, regarding administration of medication by nurse or physician assistant's order.
- Amends Section 242.611 to delete the provision providing that fees received under this section may only be appropriated to the department to defray costs incurred.
- Adds Subchapter O, regarding legislative oversight of nursing facility rules and regulations through the long-term care legislative oversight committee.

Amends SECTION 1.30, Section 222.0255, Health and Safety Code, to delete the provisions regarding standards for the licensing of nursing homes.

Amends SECTION 2.01, Section 32.021, Human Resources Code, to replace "contract violations" with "violations." Sets forth the terms by which the department is required to provide for an informal dispute resolution process, and by which Medicaid nursing facilities are required to comply with state licensure rules. Delete the provisions prohibiting department rules from being different from standards imposed by federal law, and regarding the institution of a reimbursement system to compensate nursing facilities for their investment in property.

Adds SECTION 2.02, to amend Section 32.034(c), Human Resources Code, to provide that this section does not apply if federal matching funds are not available to pay the facility whose contract is being cancelled. Establishes that if these funds cannot be used, no state funds may be used to pay the facility.