

BILL ANALYSIS

Senate Research Center

S.B. 84
By: Moncrief
Health and Human Services
3-27-97
As Filed

DIGEST

Currently, the Texas Board of Nursing Facility Administrators is responsible for the licensure and regulation of the nursing facility administrator profession. The board was reconstructed following a 1993 review of the agency by the Sunset Commission and there is a dispute as to whether the board has adequately performed its function. This bill abolishes the board and transfers the authority, duties, obligations, and responsibilities to the Texas Department of Human Services.

PURPOSE

As proposed, S.B. 84 abolishes the Texas Board of Nursing Facility Administrators and transfers all authority, duties, obligations, and responsibility to Texas Department of Human Services.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas Board of Health under SECTION 1 (Sections 242.302(a)-(b), 242.303(a), 242.305(b), 242.306(d), 242.307(d)-(e), 242.310(a), 242.311(c), (e), and (f), 242.312(d), 242.316(a), 316.317, Chapter 242I, Health and Safety Code), of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 242, Health and Safety Code, to include Subchapter I, as follows:

SUBCHAPTER I. NURSING FACILITY ADMINISTRATION

Sec. 242.301. DEFINITIONS. Defines "nursing facility," "nursing facility administrator," and "practice of nursing facility administration."

Sec. 242.302. POWERS AND DUTIES OF DEPARTMENT. Requires the Texas Board of Health (board) to adopt rules consistent with this subchapter.

Sec. 242.303. FEES; FUNDS. Requires the board, by rule, to set reasonable and necessary fees to cover the cost of administering this subchapter. Requires the Texas Department of Human Services (department) to receive and account for funds received under this subchapter. Sets forth the provisions regarding receiving, depositing, and accounting of funds.

Sec. 242.304. PRACTICING WITHOUT A LICENSE. Prohibits any person from acting as a nursing facility administrator or representing to others that the person is a nursing facility administrator unless the person is licensed under this subchapter.

Sec. 242.305. LICENSE APPLICATION; QUALIFICATIONS. Sets forth the conditions for submitting an application. Requires the board to prescribe the form of the application and may, by rule, establish dates by which applications and fees must be received. Sets forth the educational, training, and experience prerequisites for taking the licensing examination. Requires an applicant who has not completed the course of instruction and training to present evidence of having completed sufficient education to enable the applicant to engage in nursing facility administration, prior to taking the examination.

Sec. 242.306. EXAMINATION. Sets forth requirements for licensing examinations

including authorizing the board, by rule, to establish additional educational requirements to be met by an applicant who fails the examination three times.

Sec. 244.307. **LICENSES; TEMPORARY LICENSE; INACTIVE STATUS.** Sets forth the requirements for a license and temporary license under this subchapter. Authorizes the board, by rule, to provide for the issuance of a temporary license. Requires rules adopted under this section to include time limit for practicing under a temporary license. Authorizes the board, by rule, to provide for inactive status.

Sec. 242.308. **PROVISIONAL LICENSE.** Requires the department to grant a provisional license upon application. Sets forth the qualifications for an applicant for provisional license. Requires the department to process the application within a specified time.

Sec. 242.309. **LICENSE RENEWAL.** Sets forth the procedures and requirements for renewing a license.

Sec. 242.310. **MANDATORY CONTINUING EDUCATION.** Requires the board, by rule, to establish a minimum number of hours of continuing education required to renew a license under this subchapter. Authorizes the department to assess the continuing education needs of license holders and to require license holders to attend continuing education courses specified by the board. Requires the board to identify the key factors for the competent performance of a license holder's duties. Requires the department to adopt a procedure to assess a license holder's participation in continuing education programs.

Sec. 242.311. **COMPLAINT RECEIPT, INVESTIGATION, AND DISPOSITION.** Sets forth the requirements for the department regarding complaints and the investigation of complaints. Requires the board, by rule, to establish certain guidelines concerning investigation of complaints filed with the department.

Sec. 242.312. **SANCTIONS.** Establishes the conditions under which the board is authorized to revoke, suspend, or refuse to renew a nursing facility administrator's license, assess an administrative penalty, issue a written reprimand, require participation in continuing education, or place an administrator on probation. Requires the board, by rule, to adopt a broad schedule of sanctions for violations under this subchapter.

Sec. 242.313. **WRITTEN REPRIMAND AND CONTINUING EDUCATION AS SANCTIONS.** Authorizes the department to issue a written reprimand to a license holder who violates this subchapter or require the violator to participate in continuing education programs. Requires the department to specify which continuing education programs may be attended and the number of hours that must be completed.

Sec. 242.314. **ADMINISTRATIVE PENALTY AS SANCTIONS.** Sets forth the requirements for an administrative penalty against a person licensed or regulated under this subchapter, who violated this subchapter or a rule adopted by the board.

Sec. 242.315. **NOTICE AND HEARING.** Requires the department to notify the person who allegedly committed the violation, if the department determines a violation has occurred. Sets forth the requirements for notification of the violation. Sets forth the procedures by which a person can, upon notification, request a hearing or accept the penalty. Requires the department to notify the person and hold a hearing, if the person does not respond to the notice regarding the violation. Sets forth the requirements for notification of the hearing.

Sec. 242.316. **INFORMAL PROCEEDINGS.** Requires the department, by rule, to adopt procedures governing informal proceedings. Requires rules adopted under this section to provide the complainant and license holder an opportunity to be heard.

Sec. 242.317. **MONITORING OF LICENSE HOLDER.** Requires the department, by rule, to develop a system for monitoring a license holder's compliance with the requirements of this

subchapter. Requires rules adopted under this section to include procedures for monitoring a license holder who is ordered by the board to perform certain acts to ascertain that the license holder performs the required acts and to identify and monitor license holders who represent a risk to the public.

Sec. 242.318. CIVIL PENALTY. Requires a person who violates this subchapter to be liable to the state for a civil penalty of \$1,000 for each day of the violation. Requires the attorney general to bring an action to recover a civil penalty, at the request of the department.

Sec. 242.319. ASSISTANCE OF ATTORNEY GENERAL. Requires the attorney general to provide legal assistance as necessary in enforcing the provisions of the subchapter. Provides that this requirement does not relieve a local prosecuting officer of any of the prosecuting officer's duties under the law.

Sec. 242.320. OFFENSE. Provides that a person commits a Class B misdemeanor if the person knowingly or intentionally violated Section 242.304.

SECTION 2. Amends Section 232.002, Family Code, to make conforming and nonsubstantive changes.

SECTION 3. Repealer: Article 4512q, V.T.C.S. (Texas Nursing Facility Administrators Licensure Act).

SECTION 4. Effective date: September 1, 1997.

SECTION 5. Abolishes the Texas Board of Nursing Facility Administrators (TBNFA). Provides that the department assumes all functions, duties, obligations, and responsibilities of TBNFA on the effective date of this Act. Provides that all rulemaking authority previously granted to TBNFA is transferred to the department until superseded by rule of the department.

SECTION 6. Emergency clause.