

## **BILL ANALYSIS**

Senate Research Center  
82R8398 JSC-D

C.S.S.B. 78  
By: Nelson  
Health & Human Services  
3/2/2011  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Currently, a state agency has limited authority to take action against a licensure applicant based on an adverse action from another agency. This situation has allowed individuals who have been disciplined for gross violations by one agency to be licensed to provide services by another agency, endangering the health and safety of the public.

C.S.S.B. 78 requires a health and human services agency to share information about adverse licensing decisions with other health and human services agencies and authorizes a health and human services agency to deny an applicant's initial or renewal application under certain conditions.

C.S.S.B. 78 clarifies that the records of adverse actions maintained by the health and human services agencies are required only to include the license applicant and the controlling person of each facility. The committee substitute changes the rule implementation date to March 1, 2012. The change in the rule implementation date will allow adequate time to establish the system and draft related rules.

As amended, C.S.S.B. 78 amends current law relating to adverse licensing, listing, or registration decisions by certain health and human services agencies.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 (Sections 531.952 and 531.954, Government Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 531, Government Code, by adding Subchapter W, as follows:

#### **SUBCHAPTER W. ADVERSE LICENSING, LISTING, OR REGISTRATION DECISIONS**

Sec. 531.951. **APPLICABILITY.** Provides that this subchapter applies only to the licensing, listing, or registration decisions of a health and human services agency with respect to a person under the law authorizing the agency to regulate the following types of persons:

- (1) a youth camp licensed under Chapter 141 (Youth Camps), Health and Safety Code;
- (2) a home and community support services agency licensed under Chapter 142 (Home and Community Support Services), Health and Safety Code;
- (3) a hospital licensed under Chapter 241 (Hospitals), Health and Safety Code;
- (4) an institution licensed under Chapter 242 (Convalescent and Nursing Homes and Related Institutions), Health and Safety Code;

- (5) an assisted living facility licensed under Chapter 247 (Assisted Living Facilities), Health and Safety Code;
- (6) a special care facility licensed under Chapter 248 (Special Care Facilities), Health and Safety Code;
- (7) an intermediate care facility licensed under Chapter 252 (Intermediate Care Facilities for the Mentally Retarded), Health and Safety Code;
- (8) a chemical dependency treatment facility licensed under Chapter 464 (Facilities Treating Alcoholics and Drug-Dependent Persons), Health and Safety Code;
- (9) a mental hospital or mental health facility licensed under Chapter 577 (Private Mental Hospitals and Other Mental Health Facilities), Health and Safety Code;
- (10) a child-care facility or child-placing agency licensed under or a family home listed or registered under Chapter 42 (Regulation of Certain Facilities, Homes, and Agencies that Provide Child-Care Services), Human Resources Code; or
- (11) an adult day-care facility licensed under Chapter 103 (Adult Day Care), Human Resources Code.

Sec. 531.952 RECORD OF DECISION. (a) Requires each health and human services agency that regulates a person as described by Section 531.951 in accordance with this section and executive commissioner of the Health and Human Services Commission (executive commissioner) rule to maintain a record of:

- (1) each application for a license, including a renewal license or a license that does not expire, a listing, or a registration that is denied by the agency under the law authorizing the agency to regulate the person; and
- (2) each license, listing, or registration that is revoked, suspended, or terminated by the agency under the applicable law.

(b) Requires that the record of an application required by Subsection (a)(1) be maintained until the 10th anniversary of the date the application is denied. Requires that the record of the license, listing, or registration required by Subsection (a)(2) be maintained until the 10th anniversary of the date of the revocation, suspension, or termination.

(c) Requires that the record required under Subsection (a) include:

- (1) the name and address of the applicant for a license, listing, or registration that is denied as described by Subsection (a)(1);
- (2) the name and address of each person listed in the application for a license, listing, or registration that is denied as described by Subsection (a)(1);
- (3) the name of each person determined by the applicable regulatory agency to be a controlling person of an entity for which an application, license, listing, or registration is denied, revoked, suspended, or terminated as described by Subsection (a);
- (4) the specific type of license, listing, or registration that was denied, revoked, suspended, or terminated by the agency;
- (5) a summary of the terms of the denial, revocation, suspension, or termination; and

(6) the period the denial, revocation, suspension, or termination was effective.

(d) Requires each health and human services agency that regulates a person described by Section 531.951 to provide a copy each month of the records maintained under this section to each other health and human services agency that regulates a person described by Section 531.951.

Sec. 531.953. DENIAL OF APPLICATION BASED ON ADVERSE AGENCY DECISION. Authorizes a health and human services agency that regulates a person described by Section 531.951 to deny an application for a license, including a renewal license or a license that does not expire, a listing, or a registration included in that section if:

(1) any of the following persons are listed in a record maintained under Section 531.952:

(A) the applicant;

(B) a person listed on the application; or

(C) a person determined by the applicable regulating agency to be a controlling person of an entity for which the license, including a renewal license or a license that does not expire, the listing, or the registration is sought; and

(2) the agency's action that resulted in the person being listed in a record maintained under Section 531.952 is based on:

(A) an act or omission that resulted in physical or mental harm to an individual in the care of the applicant or person;

(B) a threat to the health, safety, or well-being of an individual in the care of the applicant or person;

(C) the physical, mental, or financial exploitation of an individual in the care of the applicant or person; or

(D) a determination by the agency that the applicant or person has committed an act or omission that renders the applicant unqualified or unfit to fulfill the obligations of the license, listing, or registration.

Sec. 531.954. REQUIRED APPLICATION INFORMATION. Requires an applicant submitting an initial or renewal application for a license, including a renewal license or a license that does not expire, a listing, or a registration described under Section 531.951 to include with the application a written statement of the name of any person who is or will be a controlling person, as determined by the applicable agency regulating the person, of the entity for which the license, listing, or registration is sought; and any other relevant information required by executive commissioner rule.

SECTION 2. (a) Requires the executive commissioner, not later than March 1, 2012, to adopt the rules necessary to implement Subchapter W, Chapter 531, Government Code, as added by this Act.

(b) Provides that a health and human services agency, notwithstanding Section 531.952, Government Code, as added by this Act, is not required to maintain the records as required under that section until March 1, 2012.

SECTION 3. Effective date: September 1, 2011.