

## **BILL ANALYSIS**

Senate Research Center  
87R5872 MCF-F

S.B. 493  
By: Johnson; Schwertner  
Health & Human Services  
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As Filed

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

In 2017, AARP concluded that Texas was 46th out of 50 states regarding the “quality of life and care” for nursing home residents. According to Families for Better Care, a national nursing home resident advocacy group found that the quality of care in Texas nursing homes is the worst in the nation for the third year in a row. As documented in the group's report card, Texas nursing homes failed to score a single above-average grade in any quality measure. The report also found that fewer than 10 percent of Texas nursing homes were staffed at above-average professional nursing levels, and almost 90 percent hired at or below the minimum number of caregivers required to meet the residents’ needs. Additionally, the percentage of nursing homes with severe deficiencies has increased to 1 in 5 now being cited for the abuse, neglect, and mistreatment of residents.

With this ongoing crisis in care, the ability to hold nursing homes financially responsible and accountable for negligent care is especially important. S.B. 493 seeks to address this issue by ensuring families are able to hold these facilities financially responsible for the negligent care and harm experienced by the residents by requiring the facilities to maintain professional liability insurance. S.B. 493 would amend the Health and Safety Code to require a nursing facility to maintain professional liability insurance and that the coverage has minimum annual limits of \$300,000 per occurrence and \$1 million aggregate. This bill also requires that coverage be issued by an insurer authorized to write professional liability insurance in Texas, the Texas Medical Liability Insurance Underwriting Association, or an eligible surplus lines insurer. S.B. 493 prevents including the cost of defense of a claim in the coverage's liability amount and allows the cost of coverage to be reimbursed under the state Medicaid program.

As proposed, S.B. 493 amends current law relating to health care liability insurance for certain nursing facilities.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter B, Chapter 242, Health and Safety Code, by adding Section 242.0337, as follows:

Sec. 242.0337. LIABILITY INSURANCE COVERAGE REQUIRED. (a) Defines "governmental unit" and "health care liability claim."

(b) Requires a nursing facility licensed under Chapter 242 (Convalescent and Nursing Facilities and Related Institutions) to maintain professional liability insurance coverage against the liability of the facility or the facility's employees for a health care liability claim.

(c) Provides that the insurance coverage maintained by a nursing facility under this section:

(1) is required to provide coverage with minimum annual limits of \$300,000 per occurrence and \$1 million aggregate, except as provided by Subsection (d);

(2) is required to be written on an occurrence basis;

(3) is required to be issued by an insurer authorized to write professional liability insurance in this state, by the Texas Medical Liability Insurance Underwriting Association established under Chapter 2203 (Medical Liability Insurance Joint Underwriting Association), Insurance Code, or by an eligible surplus lines insurer in accordance with Chapter 981 (Surplus Lines Insurance), Insurance Code;

(4) is prohibited from including the cost of defense of a claim under the coverage in the coverage's liability limit; and

(5) is required to be in a form acceptable to the Health and Human Services Commission.

(d) Requires a nursing facility owned and operated by a governmental unit to maintain insurance coverage only to the extent of the governmental unit's liability under Section 101.023 (Limitation on Amount of Liability), Civil Practice and Remedies Code.

(e) Requires a management company that manages a nursing facility owned by a governmental unit to maintain professional liability insurance coverage against the liability of the management company or the company's employees for a health care liability claim covered as described by Subsection (c). Provides that the coverage required by this subsection is in addition to the insurance coverage maintained by the facility under Subsection (b).

(f) Provides that, to the extent permitted by federal law and applicable state and federal rules, the cost of insurance coverage required under this section is an allowable cost for reimbursement under the state Medicaid program.

SECTION 2. Effective date: September 1, 2021.