

BILL ANALYSIS

S.B. 421
By: Carona
Insurance
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Currently, a number of health care providers, including nursing homes, are able to acquire liability coverage through the Texas Medical Liability Insurance Underwriting Association (JUA). The JUA was created to provide a means for health care providers to obtain medical liability insurance when such coverage is not available in the admitted market. Many assisted living facilities report problems arising from the lack of available and affordable medical liability coverage. The rise in medical malpractice settlements and verdicts against nursing homes and assisted living facilities, by association, is one factor thought to contribute to this problem. S.B. 421 relates to the coverage of assisted living facilities under the Texas Medical Liability Underwriting Association and professional liability insurance.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

Senate Bill 421 amends the Insurance Code to provide for the eligibility of assisted living facilities for coverage under the Medical Liability Insurance Underwriting Association (association). The bill applies certain procedures of the association to assisted living facilities and includes assisted living facilities under certain provisions relating to participation in the association.

The bill applies provisions relating to a stabilization reserve fund for nursing homes to assisted living facilities and excludes assisted living facilities from the stabilization reserve fund for physicians and certain health care providers. The bill deletes a provision authorizing the commissioner to direct the initiation or continuation of the stabilization reserve fund charge for physicians or that category of health care provider, if certain losses and expenses result in a net underwriting loss and exceed 25% of the fund. The bill deletes the requirement that the stabilization reserve fund be credited with all stabilization reserve fund charges collected from policyholders and be charged with any deficit from the prior year's operation. The bill includes assisted living facilities in the groups for whom the Texas Public Finance Authority, on behalf of the association, is required to issue revenue bonds to fund the stabilization reserve fund.

The bill provides that the association is not liable for exemplary damages under a professional liability insurance policy that covers assisted living facilities and excludes certain exemplary damages, but does not prohibit an assisted living facility from purchasing a policy to cover exemplary damages. The bill adds assisted living facilities to the groups for whom the Commissioner of Insurance (Commissioner) is authorized to approve an endorsement form that provides for coverage for exemplary damages to be used on a policy of medical professional liability insurance.

The bill repeals the requirement that the Commissioner adopt minimum rating standards, promoting high quality level of care, for for-profit nursing homes that must be met before a for-profit nursing home may obtain coverage through the association.

The bill authorizes the Commissioner to determine that appropriate liability insurance coverage written by authorized insurers is not reasonably available to a type of health care practitioner or facility and to designate by order that a practitioner or facility be eligible for coverage from the association. The bill authorizes the order to indicate whether a practitioner or facility is included under the policyholder's stabilization reserve fund or whether a separate fund is created.

EFFECTIVE DATE

September 1, 2003.