

BILL ANALYSIS

C.S.H.B. 1715
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Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under current law, the Department of Aging and Disability Services (DADS) must terminate a Medicaid contract with a nursing facility if the department has imposed specific remedies on the facility three times within a 24 month period. C.S.H.B. 1715 would allow DADS to consider mitigating factors and the welfare of consumers in determining whether to terminate a Medicaid contract. Due to federal law, this provision would only apply to the nine percent of nursing facilities that are Medicaid certified only. The substitute grants ombudsmen access to clinical records in assisted living facilities to be consistent with the access they are currently granted in nursing facilities.

The substitute standardizes a two year licensing cycle. Currently, intermediate care facilities for persons with mental retardation and nursing facilities have licenses that are valid for two years. The substitute validates licenses for adult day care facilities, assisted living facilities, and home and community support service agencies for two years and subsequently alters their licensing fees. All facilities would continue to undergo annual inspections, as with current law.

The substitute also standardizes the submittal of renewal applications across providers and establishes a late fee for all provider types. It conforms across all provider types administrative penalties for which there is no right to correct. It adds a no-right-to-correct provision for home and community support service agencies and expands the current no-right-to-correct provisions for intermediate care facilities to include the same list of violations as other providers.

It establishes confidentiality of information related to financial condition, which provides nursing facilities protection for the sensitive and proprietary financial information they are required to submit to DADS, consistent with confidentiality provisions currently in place for home and community support service agencies.

The substitute also establishes an administrative penalty for nursing facilities and assisted living facilities for failure to notify DADS of a change of ownership prior to the effective date of ownership change. If a facility changes owners and DADS is not notified until the new operator submits an application for a license, the new operator may have been operating without a license. Currently, the only option DADS has is to deny licensing, an administrative penalty may be more appropriate.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1, SECTION 3, SECTION 5, and SECTION 13 of this bill.

ANALYSIS

C.S.H.B. 1715 amends the Human Resources Code. It grants the executive commissioner of the Health and Human Services Commission rulemaking authority to establish criteria under which termination decisions of certain facilities may be made. The committee substitute redefines "long-term care facility" to be under the regulation of the Department of Aging and Disability Services under Chapter 242 or 247 of the Health and Safety Code.

The substitute changes the length of time certain licenses are valid from one to two years and raises the cost of defined licensing fees, which are subject to a late fine.

C.S.H.B. 1715 80(R)

The substitute grants the executive commissioner of the Health and Human Services Commission rulemaking authority to adopt a system under which certain licenses expire and requires license holders to pay certain fees for licenses at certain times. It authorizes the Department of Aging and Disability Services to issue an initial license for a shorter term to conform expiration dates for a locality or an applicant and to issue a temporary license to an applicant for an initial license.

C.S.H.B. 1715 requires certain applications to be filed not later than the 45th day before the expiration date; applications submitted later than the 45th day are subject to a late fee.

C.S.H.B. 1715 also amends the Health and Safety Code. It grants the executive commissioner of the Health and Human Services Commission rulemaking authority to adopt a system under which certain licenses expire and requires license holders to pay certain fees for licenses at certain times.

The substitute removes the ability to renew a license that has been expired for 90 days or fewer by paying a higher renewal fee and changes the number of days before expiration that the department shall send a written notice, which must include application for renewal and instructions for completing the application. The substitute adds certain violations for which an administrative penalty may be collected. C.S.H.B. 1715 establishes confidentiality of information related to financial condition, regulates notification of a facility's change of ownership, adds to the list of violations with no right to correct, and defines applicability of certain violations.

C.S.H.B. 1715 updates the Health and Safety Code to require the Department of Aging and Disability Services to set license fees for home and community support services agencies and doubles the cost of the fees that are reasonable to meet the costs of administering licenses to provide home health, hospice, or personal assistance services. C.S.H.B. 1715 updates the Health and Safety Code to require the Department of Aging and Disability Services to set license fees for assisted living facilities in amounts not to exceed \$1,500.

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

This substitute amends language from “may be subject to” to “is subject to” in order to conform language in SECTION 4, SECTION 7, SECTION 10, SECTION 14, and SECTION 17.

The substitute adds language in SECTION 1 that grants the executive commissioner of the Health and Human Services Commission rulemaking authority to establish criteria under which termination decisions of certain facilities may be made. The substitute deletes language in the original relating to good cause waiving requirements and removes the change from "shall" to "may."