

BILL ANALYSIS

C.S.H.B. 3513
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Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

More than 100 nursing homes change hands in Texas each year. When a change of ownership occurs, the state has an interest in two issues:

- The license to operate the facility
- The Medicaid contract that pays for resident services

Addressing these interests allows the state to focus on the primary interests of quality of care and accountability.

In terms of the license, CSHB 3513 prohibits The Department of Aging and Disability Services (DADS) from issuing a temporary license sooner than 31 days after receipt of an application for license. This timeframe would give the department time to determine whether the applicant meets the licensing requirements. However, since there may be extenuating circumstances and it may be in the best interest of the residents in the nursing facility to transfer ownership and operations sooner than 30 days, the bill also requires DADS to develop criteria under which this prohibition could be waived.

The second issue is the Medicaid contract. The state has an interest in the prior owner as the Medicaid contractor to ensure there has been no overpayment. To be able to recuperate any money the prior owner might owe the state, DADS currently can place a hold on vendor payments. However, the state's ability to withhold payments is limited by the prior owner's notification of DADS of the change of ownership. In order to hold an amount equal to an average month's payments, DADS must receive notice of a change of ownership at least a month before the effective date of the change. From 2004 to date, 46 percent of prior owners have given the state 30 days or more of notice, 35 percent between 6 and 16 days notice, and 19 percent have given fewer than 6 days notice. CSHB 3513 assures that the prior owner will give DADS 30 days' notice of a change of ownership.

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 (Sec. 242.0336) and SECTION 2 of this bill.

ANALYSIS

The substitute clarifies for the purposes of section 1 of the substitute, that a temporary change of ownership license is a temporary 90-day license. The substitute prohibits the Department of Aging and Disability Services (department) from issuing a temporary change of ownership license (license) before the 31st day after the department has received both an application for the license and written notification of intent from the institution's existing license holder to transfer operation of the institution to the applicant. The substitute requires the department establish criteria under which the department may waive the 30-day requirement or the written notification requirement and states authorized criteria to be utilized by the department in that establishment.

The substitute authorizes the department to place a hold on payments to the existing license holder. The department is required to release the withheld funds not later than the 120th day after the date on which final reporting requirements are met and resulting reviews and appeals are resolved. The department is authorized to deduct amounts owed to the department or the Health and Human Services Commission under the previous license holder's Medicaid contract or license.

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The substitute requires the executive commissioner to adopt rules for the department that define a change of ownership and puts into statute guidelines required to be considered by the executive commissioner in adopting the rules. The substitute authorizes the executive commissioner to adopt rules for the department that require a license holder to notify the department of any changes, including a change that is not a change of ownership.

The substitute requires the department issue or deny a temporary change of ownership license not later than the 31st day after the date of receipt of the completed application. The effective date of the temporary change of ownership license is the date specified in the application. This date may not be before the 31st day after the date the department receives both the application and the notification unless eligible for a waiver under a previous section of the substitute.

The substitute requires that after a temporary change of ownership license is issued, the department conduct an inspection or survey of the nursing facility, the substitute provides for the possibility of a desk review. The substitute prohibits the department from placing a hold on vendor payments to the temporary license holder during the period between the issuance of the temporary license and the inspection or survey of the nursing facility or desk review.

The substitute requires the department establish criteria under which a desk review may be substituted for an on-site inspection or survey. Upon successful passing of the desk review, inspection, or survey, and the applicant meeting the requirements of section 242.033, the department is required to issue a non-temporary license to the temporary license holder effective on the date the department determines. If the nursing facility fails to pass the desk review, inspection, or survey or the applicant fails to meet the requirements of section 242.033, the department is authorized to place a hold on vendor payments to the temporary change of ownership license holder and take any other action authorized under the chapter.

A temporary change of ownership license expires on the 90th day after the effective date established. The executive commissioner is required to adopt the rules required by section 242.0336, Health and Safety Code, as amended by this act as soon as practicable after the effective date of this act. This act applies only to temporary change of ownership license applications received by the Department of Aging and Disability Services on or after September 1, 2007, before which the former law is continued in effect.

EFFECTIVE DATE

September 1, 2007

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute requires the department establish criteria under which the 30-day requirement or the notification requirement may be waived and lists circumstances the criteria is authorized to include. The bill as filed only allows a waiver for the 30-day requirement if the department finds the requirement impractical under the circumstances, including those involving legal proceedings or other events that affect the ownership of the institution.

The substitute requires the department release payments from vendors to the existing license holder being held not later than the 120th day and authorizes the department to reduce the amount of the funds released by the amount owed to the department or the Health and Human Services Commission under the previous license holder's Medicaid contract or license. The bill as filed authorizes a 30-day hold on vendor payments to the existing license holder and does not authorize the department to reduce the amount released for money owed to the department or the Health and Human Services Commission.

The substitute contains the requirement of the executive commissioner to adopt rules that define a change of ownership and lists requirements to be considered by the executive commissioner in adopting those rules. The substitute also authorizes the executive commissioner to adopt rules requiring a license holder to report to the department any change, including a change that is not a

change of ownership. The bill as filed does not contain the requirement or the authorization, respectively, in regard to either case of rulemaking authority.

The substitute states that if the department does not receive the application and written notification at least 30 days before the requested effective date and a waiver does not apply, that the effective date of the temporary change of ownership license is the 31st day after the date the department receives both the application and the notification. The bill as filed authorizes the department to issue the temporary change of ownership license effective on a date that allows the department to place a 30-day hold on vendor payments to the existing license holder and does not contain language applying the waiver authorized in subsection b-2 to the determination by the department of an effective date for the temporary change of ownership license.

The substitute includes reference to a desk review in Subsection d, whereas the bill as filed does not. Upon meeting the requirements of Section 242.033 and the nursing facility passing a desk review, initial inspection, or subsequent inspection in both the bill as filed and the substitute, the substitute considers the license issued effective on the date the department determines under Subsection (c) or (c-1) of the substitute, the bill as filed considers the license effective on the date the department determines under subsection (c-2) in the bill as filed.

The substitute expires a temporary change of ownership license on the 90th day after the effective date established under Subsection (c) or (c-1) of the substitute. The bill as filed expires the temporary change of ownership license on the 91st day after the effective date established under subsection (c-2) of the bill as filed.

The substitute contains Section 2 requiring the executive commissioner to adopt rules required by Section 242.0336, Health and Safety Code, as amended by this act, and renumbers following Sections which are found in the bill as filed.