

## **BILL ANALYSIS**

S.B. 1649  
By: Janek  
Human Services  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

More than 100 nursing homes change hands each year in Texas. When a change of ownership occurs the state has an interest in both the license to operate the facility and the Medicaid contract that finances resident services. Addressing these interests allows the state to focus on the primary interests of quality of care and accountability.

The state retains an interest in the prior owner who is the Medicaid contractor to ensure that there has been no overpayment. In order to recoup any money the prior owner might owe the state, the Department of Assistive and Disability Services (DADS) is currently authorized to place a hold on vendor payments. However, the state's ability to withhold payments is limited when the prior owner notifies DADS of a change in ownership. As a requirement for holding an amount equal to an average month's payments, DADS must receive notice of a change of ownership at least one month prior to the effective date of the change. Between 2004 and the present, 46 percent of prior owners have provided the state with at least 30 days notice; 35 percent provided the state with six to 16 days notice; and 19 percent provided less than six days notice.

S.B. 1649 prohibits a temporary license from being issued within 31 days of an application for a license to provide DADS time to determine whether an applicant meets licensing requirements. Prohibiting DADS from issuing a temporary license to the new owner before the 31st day after receipt of both the application for license and the written consent of the existing license holder assures that the prior owner will provide DADS 30 days notice of a change of ownership, thereby allowing a vendor to hold the equivalent of an average of 30 days of payments. Extenuating circumstances may necessitate the transfer of ownership and operations in a period less than 30 days; therefore, DADS is required to develop criteria in which this prohibition could be waived. DADS is also required to establish criteria to allow DADS to complete a desk review rather than on-site inspection before issuing a license to a new owner; allowing for the efficient use of state resources in certain instances.

### **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 of this bill.

### **ANALYSIS**

[While the statutory reference in this bill is to the Texas Department of Human Services (DHS), the following amendments affect the Department of Aging and Disability Services (DADS), as the successor agency to DHS.]

The bill amends Section 242.0336, Health and Safety Code, by amending Subsections (a) and (c)-(g) and by adding Subsections (b-1)-(b-5), (c-1), and (d-1), as follows:

The bill provides that a temporary change of ownership license is a temporary 90-day license, rather than temporary license, issued to an applicant who proposes to become the new operator of an institution existing on the date the application is filed.

The bill prohibits the Texas Department of Human Services (DHS) from issuing a temporary change of ownership license before the 31st day after the date DHS has received both the application for the license and notification, in writing, of the intent of the institution's existing

license holder to transfer operation of the institution to the applicant beginning on a date specified by the applicant, except as provided by Subsection (b-2).

The bill requires DHS to establish criteria under which DHS is authorized to waive the 30-day requirement or the notification requirement of Subsection (b-1). Authorizes certain criteria to be included.

The bill authorizes DHS, after receipt of an application or written notification described by Subsection (b-1), to place a hold on payments to the existing license holder in an amount not to exceed the average of the monthly vendor payments paid to the facility, as determined by DHS. Requires DHS to release funds to the previous license holder not later than the 120th day after the date on which the final reporting requirements are met and any resulting informal reviews or formal appeals are resolved. Authorizes DHS to reduce the amount of funds released to the previous license holder by the amount owed to DHS or the Health and Human Services Commission (HHSC) under the previous license holder's Medicaid contract or license.

The bill requires the executive commissioner of HHSC (executive commissioner) to adopt rules for DHS that define a change of ownership. Requires the executive commissioner to consider certain issues in adopting the rules.

The bill authorizes the executive commissioner to adopt rules for DHS that require a license holder to notify DHS of any change, including a change that is not a change of ownership, as that term is defined by rules adopted under Subsection (b-4). Provides that nothing in this section prevents DHS from acting under Section 242.061 (Denial, Suspension, or Revocation of License) or any other provision of this chapter (Convalescent and Nursing Homes and Related Institutions).

The bill requires DHS to issue or deny a temporary change of ownership license not later than the 31st, rather than the 30th, day after the date of receipt of the completed application. Provides that the effective date of a temporary change of ownership license issued under this section is the date requested in the application unless DHS does not receive the application and written consent described by Subsection (b-1) at least 30 days before that date and no waiver under Subsection (b-2) applies.

The bill provides that if DHS does not receive the application and written notification required by Subsection (b-1) at least 30 days before the effective date requested in the application and Subsection (b-2) does not apply, the effective date of the temporary change of ownership license is the 31st day after the date DHS receives both the application and the notification.

The bill prohibits DHS from placing a hold on vendor payments to the temporary license holder during the period between the issuance of the temporary license and the desk review under Subsection (d-1). Makes a conforming change.

The bill requires DHS to establish criteria under which a desk review of the facility's compliance with applicable requirements is authorized to be substituted for the on-site inspection or survey under Subsection (d).

Subsection (e) of the bill makes conforming changes.

Subsection (f) of the bill makes conforming changes.

The bill provides that a temporary change of ownership license issued under Subsection (b) expires on the 90th, rather than 91st, day after the effective date established under Subsection (c) or (c-1), rather than the date the license was issued. Makes conforming and nonsubstantive changes.

The bill requires the executive commissioner 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.

The application of this Act is prospective.

S.B. 1649 80(R)

**EFFECTIVE DATE**

September 1, 2007