

BILL ANALYSIS

S.B. 1415
By: Hegar
Public Health
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The 80th Legislature, Regular Session, 2007, enacted S.B. 993, authored by Senator Nelson and sponsored by Representative McReynolds, to promote a less punitive regulatory environment for nurses who have committed minor violations and to have the Texas Board of Nursing focus its disciplinary efforts and resources on nurses whose continued practice poses a risk of harm to patients. Such legislation is in keeping with the recommendations of the Institute of Medicine's report, *To Err Is Human and Keeping Patients Safe: Transforming the Work Environment of Nurses*, which concluded that patient safety is best promoted by a regulatory environment which focuses more on system issues and less on individual blame for minor infractions.

Deferred disciplinary action is a decision made by the board to defer taking final disciplinary action against a nurse and, allows the board, if the nurse meets certain conditions, to dismiss the complaint. This bill would build on S.B. 993 by directing the board to determine the feasibility of conducting a pilot program to evaluate a model of deferred disciplinary action for minor violations, and if determined to be feasible, to conduct such a program.

S.B. 1415 amends current law relating to certain corrective actions by the Texas Board of Nursing, including the establishment of a pilot program on deferred disciplinary action and providing for corrective actions.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Board of Nursing in SECTION 2 of this bill.

ANALYSIS

S.B. 1415 amends the Occupations Code to require the Texas Board of Nursing, not later than February 1, 2010, to determine the feasibility of conducting a pilot program designed to evaluate the efficacy and effect on the public's protection of board deferral of disciplinary action against a person licensed or regulated under the Nursing Practice Act in cases in which the board proposes to impose a sanction other than a reprimand or a denial, suspension, or revocation of a license. The bill requires the board to develop and implement the pilot program not later than February 1, 2011, if the board determines the pilot program is feasible, and requires the pilot program to conclude not later than January 1, 2014. The bill prohibits the pilot program from including cases in which the board proposes to issue a reprimand or to deny, suspend, or revoke a license. The bill authorizes the board, during the time the pilot program is implemented and for any action or complaint for which the board proposes to impose a sanction other than a reprimand or a denial, suspension, or revocation of a license, to defer final disciplinary action proposed against a person licensed or regulated under the Nursing Practice Act if the person conforms to conditions imposed by the board, including any condition the board could impose as a condition of probation and, if the person successfully meets the imposed conditions, to dismiss the complaint. The bill specifies that a deferred disciplinary action by the board under the pilot program is not confidential and is subject to disclosure in accordance with public information

laws, but if the person successfully meets the conditions imposed by the board in deferring final disciplinary action and the board dismisses the action or complaint, the board's action is confidential to the same extent as a complaint filed under the disciplinary action provisions. The bill authorizes the board to treat a deferred disciplinary action taken against a nurse as a prior disciplinary action when considering the imposition of a sanction for a subsequent violation.

S.B. 1415 authorizes the board to contract with a third party to evaluate the pilot program and requires the board to appoint an advisory committee to assist in overseeing the pilot program and its evaluation. The bill requires the committee to include representatives of public advocacy organizations. The bill specifies that provisions relating to the pilot program expire September 1, 2014.

S.B. 1415 authorizes the board to impose a corrective action on a person licensed or regulated under the Nursing Practice Act who violates its provisions or a rule or order adopted under its provisions. The bill specifies that the corrective action may be a fine, remedial education, or any combination thereof; is not a disciplinary action under disciplinary provisions of the Nursing Practice Act; and is subject to disclosure only to the extent a complaint is subject to disclosure under the confidentiality provisions relating to disciplinary actions. The bill requires the board by rule to adopt guidelines for the types of violations for which a corrective action may be imposed.

S.B. 1415 authorizes the executive director of the board, if the executive director determines that a person has committed a violation for which corrective action may be imposed under the adopted guidelines, to give written notice of the determination and recommendation for corrective action to the person subject to the corrective action and authorizes the notice to be given by certified mail. The bill requires the notice to include a brief summary of the alleged violation, state the recommended corrective action, and inform the person of the person's options in responding to the notice.

S.B. 1415 authorizes a person, not later than the 20th day after the date the person receives such written notice, to accept in writing the executive director's determination and recommended corrective action or reject the executive director's determination and recommended corrective action. The bill specifies that if the person accepts the executive director's determination and satisfies the recommended corrective action, the case is closed. The bill requires the executive director to terminate the corrective action proceedings and dispose of the matter as a complaint under the disciplinary action provisions if the person does not accept the executive director's determination and recommended corrective action as originally proposed or as modified by the board or fails to respond in a timely manner to the notice. The bill requires the executive director to report periodically to the board on the corrective actions imposed under the bill's provisions, including the number of corrective actions imposed, the types of violations for which corrective actions were imposed, and whether affected nurses accepted the corrective actions.

S.B. 1415 specifies that, except as otherwise provided, a person's acceptance of a recommended corrective action does not constitute an admission of a violation, but does constitute a plea of nolo contendere. The bill authorizes the board to treat a person's acceptance of a corrective action as an admission of a violation if the board imposes a sanction on the person for a subsequent violation.

S.B. 1415 makes its provisions applicable to actions for violations under the Nursing Practice Act pending on the effective date of the bill or commenced on or after the effective date of the bill.

S.B. 1415 defines "corrective action" and "deferred disciplinary action."

EFFECTIVE DATE

September 1, 2009.