

## **BILL ANALYSIS**

C.S.S.B. 1521  
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Human Services  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Local municipal and county authorities have different issues and concerns in how best to ensure the safety and interests of those individuals vulnerable to exploitation and of the community as a whole.

C.S.S.B. 1521 establishes provisions relating to the regulation of boarding home facilities and assisted living facilities and requires the executive commissioner of the Health and Human Services Commission to develop model standards for the operation of a boarding home facility.

### **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**

C.S.S.B. 1521 amends the Health and Safety Code to establish provisions relating to the regulation of boarding home facilities and assisted living facilities. The bill establishes an exemption from boarding home facility permit requirements for a person who is required to be licensed under home and community support services licensing requirements, convalescent and nursing homes and related institutions licensing requirements, the Texas Continuing Care Facility Disclosure and Rehabilitation Act, the Assisted Living Facility Licensing Act, or intermediate care facilities for the mentally retarded licensing requirements; a person who is otherwise exempt from certain of those licensing requirements; a hotel; a retirement community; a monastery or convent; a child-care facility; a family violence shelter center; or a sorority or fraternity house or other dormitory affiliated with an institution of higher education. The bill requires the executive commissioner of the Health and Human Services Commission (HHSC) to develop and publish in the Texas Register model standards for the operation of a boarding home facility relating to:

- the construction or remodeling of a boarding home facility, including plumbing, heating, lighting, ventilation, and other housing conditions, to ensure the residents' health, safety, comfort, and protection from fire hazard;
- sanitary and related conditions in a boarding home facility and its surroundings, including insect and rodent control, water supply, sewage disposal, food handling, and general hygiene to ensure the residents' health, safety, and comfort;
- the reporting and investigation of injuries, incidents, and unusual accidents and the establishment of other policies and procedures necessary to ensure resident health and safety;
- assistance with self-administering medication;
- requirements for in-service education of the facility's staff;
- criminal history record checks; and
- assessment and period monitoring to ensure that a resident does not require the boarding home facility to provide personal care, nursing, or the services not included within the statutory definition of a boarding home facility and is capable of self-administering

medication or is aware of what the resident's medication look like and knows when the medications should be taken but requires assistance with self-administering medication.

C.S.S.B. 1521 authorizes a county or municipality to require a person to obtain a permit from the county or municipality to operate a boarding home facility within the county's or municipality's jurisdiction. The bill authorizes the county or municipality to adopt the standards developed by the executive commissioner and to require a boarding home facility to comply with those standards. The bill authorizes a county or municipality that requires a person to obtain a boarding home facility permit to establish procedures for the submission of a boarding home facility permit application and for the issuance, denial, renewal, suspension, and revocation of the permit. The bill authorizes a county or municipality to set reasonable fees for issuance of a permit, renewal of the permit, and inspections and to impose fines for noncompliance with the county or municipal regulations. The bill requires the fees and fines imposed to be used to administer the county or municipal permitting program or for other purposes directly related to providing boarding home facility or other assisted living services to elderly persons and persons with disabilities. The bill requires a person required to obtain a permit to pay any fees required or fines imposed by the county or municipality.

C.S.S.B. 1521 requires a boarding home facility that holds a permit issued by a county or municipality to prominently and conspicuously post for display in a public area of the boarding home facility that is readily available to residents, the operator, employees, and visitors the issued permit, a sign specifying how complaints may be registered, a notice stating that inspection and related reports are available at the facility for public inspection and providing a telephone number to obtain the information, a concise summary of the facility's most recent inspection report, and a notice that lists the name, location, and contact information for the closest local public health services agency and a local organization or entity that represents, advocates, or serves elderly persons or persons with disabilities.

C.S.S.B. 1521 authorizes a county or municipality to conduct any inspection, survey, or investigation that it considers necessary and to enter the premises of a boarding home facility at reasonable times to make an inspection, survey, or investigation. The bill entitles a county or municipality to access books, records, and other documents maintained by or on behalf of a boarding home facility to the extent necessary to enforce the standards adopted by the county or municipality. The bill authorizes two or more counties or municipalities to cooperate and contract with each other for the purpose of inspecting and permitting boarding home facilities.

C.S.S.B. 1521 requires a person, including an owner, operator, or employee of a boarding home facility, to report suspected abuse, neglect, or exploitation of an elderly or disabled resident to the Department of Family and Protective Services for investigation. The bill requires each permitted boarding home facility to require each employee of the facility as a condition of employment to sign an acknowledgement that the employee may be criminally liable for failure to report abuse, neglect, or exploitation. The bill prohibits an owner, operator, or employee of a boarding home facility from retaliating against an employee who in good faith makes a complaint to the office of the inspector general of HHSC, cooperates with the office in an investigation, or makes such a report.

C.S.S.B. 1521 requires each county or municipality that requires a person to obtain a boarding home facility permit, not later than September 30 of each year following the establishment of the permitting requirement, to submit to HHSC a report and sets forth the information required to be included in the report. The bill requires HHSC to establish and maintain a standardized compilation of the information required to be reported and to provide to the legislature a report of this information not later than January 1 of each odd-numbered year.

C.S.S.B. 1521 prohibits an entity that meets the established boarding home facility requirements of a county or municipality from being excluded from a residential area by zoning ordinances or similar regulations.

C.S.S.B. 1521 revises the definition of the term "assisted living facility" to include an establishment that provides administration of medication by a person licensed or otherwise authorized in the state to administer the medication and an establishment that may provide assistance with or supervision of the administration of medication. The bill redefines "board," "department," and "commissioner." The bill revises the definition of "personal care services" by removing from its meaning the administration of medication by a person licensed to administer medication or the assistance with or supervision of medication. The bill makes conforming changes to provisions relating to assisted living facilities to incorporate the new definitions. The bill clarifies that a boarding home facility is exempt from licensing requirements relating to assisted living facilities.

C.S.S.B. 1521 defines "assistance with self-administering medication" to mean assisting a resident by reminding the resident to take medication, opening and removing medications from a container, or reminding the resident when a prescription medication needs to be refilled. The bill defines "boarding home facility" to mean an establishment that furnishes, in one or more buildings, lodging to three or more persons with disabilities or elderly persons who are unrelated to the owner of the establishment by blood or marriage; and provides community meals, light housework, meal preparation, transportation, grocery shopping, money management, laundry services, or assistance with self-administration of medication but does not provide personal care services to those persons. The bill defines "commission," "elderly person," "executive commissioner," "person with a disability," and "resident."

C.S.S.B. 1521 repeals Section 247.030, Health and Safety Code, relating to facilities for supervision of medication and general welfare.

C.S.S.B. 1521 establishes that it is the intent of the legislature that the passage by the 81st Legislature, Regular Session, 2009, of another bill that amends Subtitle B, Title 4, Health and Safety Code, and Chapter 247, Health and Safety Code, and the amendments made by the bill are to be harmonized, if possible, as provided by provisions relating to irreconcilable statutes and amendments, so that effect may be given to each. The bill clarifies that if amendments made by its provisions and by any other bill are irreconcilable, it is the intent of the legislature that C.S.S.B. 1521 prevail, regardless of the relative dates of enactment of the bill and the other bill or bills, but only to the extent that differences are irreconcilable.

C.S.S.B. 1521 requires the executive commissioner of HHSC, not later than September 1, 2010, to adopt the required model standards.

C.S.S.B. 1521 makes its provisions relating to county or municipal boarding home facility permit requirements, permit procedures, fees, fines, posting, inspections, and interlocal cooperation take effect September 1, 2010.

#### **EFFECTIVE DATE**

Except as otherwise provided, September 1, 2009.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.S.B. 1521 reorganizes provisions added by the original providing for the registration of boarding houses with the Department of State Health Services (DSHS) into provisions providing for the permitting of boarding home facilities by a county or municipality. The substitute omits a provision included in the original requiring the executive commissioner of the Health and Human Services Commission (HHSC) to adopt rules related to the administration and implementation of boarding house registration requirements.

C.S.S.B. 1521 adds provisions not included in the original relating to county and municipal boarding home facility permit requirements; permit procedures, fees, and fines; interlocal cooperation, and annual reporting requirements for a county or municipality issuing a boarding home permit and the commission.

C.S.S.B. 1521 omits provisions included in the original relating to consultation and coordination by DSHS with local public health officials; boarding house initial registration, registration renewal, fee, and inspection requirements; boarding house registry; education and outreach; reporting violations; notification of closure; denial, suspension, or revocation of a certificate or registration; emergency suspension or closing order; injunction; and criminal, civil, and administrative penalties.

C.S.S.B. 1521 differs from the original by requiring the executive commissioner of HHSC to develop and publish in the Texas Register model standards for the operation of a boarding home facility, whereas the original authorizes the executive commissioner to adopt, publish, and enforce minimum standards for boarding houses. The substitute differs from the original by including among the model standards to be adopted by the executive commissioner standards relating to assistance with self-administering medication, criminal history record checks, and assessment and periodic monitoring for certain purposes. The substitute omits provisions included in the original authorizing the executive commissioner to adopt minimum standards relating to the equipment essential to the residents' health and welfare, policies and procedures for the control of communicable diseases, specialized nutrition support, the regulation of the number of employees and the qualifications of the operator and each employee responsible for providing any part of a service to residents, and the quality of life. The substitute differs from the original by requiring the model standards to include standards relating to requirements for in-service education of a facility's staff, whereas the original requires the minimum standards to include standards relating to requirements for in-service education of the operator and each employee who has any contact with residents.

C.S.S.B. 1521 differs from the original by conforming the posting requirements to the fact that the boarding home facility permit is issued by a county or municipality rather than a certificate of registration issued by DSHS as in the original. The substitute adds posting requirements not included in the original to require a boarding home facility to post a notice that lists the name, location, and contact information for the closest local public health services agency and a local organization that represents, advocates, or serves elderly persons or persons with disabilities.

C.S.S.B. 1521 differs from the original by conforming the inspection requirements to the fact that the boarding home facility permit is issued by a county or municipality rather than being a certificate of registration issued by DSHS as in the original. The substitute omits provisions included in the original relating to consent to entry by a representative of DSHS and procedures to preserve evidence found during an inspection, survey, or investigation.

C.S.S.B. 1521 adds provisions not included in the original prohibiting a boarding home facility owner, operator, or employee from retaliating against an employee cooperating with an investigation of abuse, neglect, or exploitation. The substitute adds a provision not included in the original requiring each county or municipality to report annually to HHSC and setting forth the information included in the report. The substitute adds a provision not included in the original requiring HHSC to compile information from the reports and submit a report of the information to the legislature not later than January 1 of each odd-numbered year. The substitute adds a provision not included in the original prohibiting an entity that meets the permit requirements established by a county or municipality from being excluded from a residential area by zoning ordinances or similar regulations.

C.S.S.B. 1521 differs from the original by revising the definitions for "assisted living facility," "board," "department," "personal care services," and "commissioner" making conforming changes to incorporate those definitions, whereas the original does not. The substitute differs

from the original by adding the definitions for "boarding home facility" and "assistance with self-administering medication" and redefines "commission," "elderly person," "executive commissioner," "person with a disability," and "resident." The substitute differs from the original by omitting the definition for the term "department."

C.S.S.B 1521 omits provisions included in the original relating to the adoption of rules by the executive commissioner of HHSC to require local mental health authorities to direct clients to available assisted living facilities and other establishments; the development by DSHS of a communications plan to educate municipalities about municipal enforcement provisions and create outreach and training materials for that plan; and criminal penalties for operating an unlicensed assisted living facility in a manner that creates an immediate threat to the health or safety of a resident. The substitute omits provisions included in the original requiring HHSC to establish a stakeholder work group and evaluate certain state-federal programs, requiring the executive commissioner of HHSC to adopt rules to implement the bill's provisions, and specifying that the bill does not make an appropriation. The substitute adds provisions not in the original relating to legislative intent and the prevalence of the substitute over another bill the provisions of which are irreconcilable with the intent of the substitute.

C.S.S.B. 1521 differs from the original by making provisions relating to county or municipal boarding home facility permitting procedures take effect September 1, 2010, whereas the original makes boarding house registration provisions take effect September 1, 2011.