

BILL ANALYSIS

Senate Research Center
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S.B. 2260
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Health & Human Services
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Post-acute providers operate as assisted living facilities, a designation intended only to provide room and board with minimal therapeutic services. Post-acute providers offer a more complex continuum of specialized services than offered at what is referred to as assisted living facilities. A facility must obtain an assisted living license from Department of Aging and Disability Services in order to operate in Texas.

The current assisted living licensure system has low standards, which allows some license holders to operate unsafely without adequate staff levels, without appropriate professional, staff and without adequate training. Current licensing requirements do not reflect the evolution of the rehabilitation industry.

This bill will establish a new post-acute license and regulation of post-acute care traumatic brain injury rehabilitation facilities administered through the Department of State Health Services. The purpose of establishing licensing and regulation specific to the post acute brain injury rehabilitation industry is to raise the standard of care for persons with brain injuries. This bill will bring licensing standards in line with current industry practices and decrease or eliminate the barrier some insurance carriers raise because such facilities are now licensed as assisted living facilities.

As proposed, S.B. 2260 relates to the licensing and regulation of post-acute care traumatic brain injury rehabilitation facilities and provides penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 (Sections 257.052, 257.053, and 257.056, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle B, Title 4, Health and Safety Code, by adding Chapter 257, as follows:

CHAPTER 257. POST-ACUTE CARE TRAUMATIC BRAIN INJURY REHABILITATION FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 257.001. **SHORT TITLE.** Authorizes this chapter to be cited as the Post-Acute Care Traumatic Brain Injury Rehabilitation Facility Licensing Act.

Sec. 257.002. **DEFINITIONS.** Defines "commissioner," "department," "executive commissioner," "facility," "medical care," "nursing care," "patient," and "services."

Sec. 257.003. **EXEMPTIONS.** Sets forth certain licensed entities to which this chapter does not apply.

[Reserves Sections 257.004-257.050 for expansion.]

SUBCHAPTER B. LICENSING, FEES, AND INSPECTIONS

Sec. 257.051. LICENSE REQUIRED; QUALIFICATIONS. (a) Prohibits a person from establishing or operating a post-acute care traumatic brain injury rehabilitation facility unless the person holds a license issued under this chapter.

(b) Requires the executive commissioner of the Health and Human Services Commission (executive commissioner), to protect the public health and safety, to establish qualifications for holding a license under this chapter. Requires that the qualifications require the facility to hold an accreditation for post-acute providers from the Commission on Accreditation of Rehabilitation Facilities or another nationally recognized accreditation organization approved by the executive commissioner.

Sec. 257.052. APPLICATION. (a) Requires an applicant for a license to submit an application to the Department of State Health Services (DSHS) on a form prescribed by DSHS and in accordance with executive commissioner rules.

(b) Requires that each application be accompanied by a nonrefundable license fee in an amount set by the executive commissioner.

(c) Authorizes DSHS to require that an application be approved by the local health authority or other local official for compliance with municipal ordinances on building construction, fire prevention, and sanitation.

Sec. 257.053. ISSUANCE AND RENEWAL OF LICENSE. (a) Requires DSHS to issue a license to an applicant if on inspection and investigation it finds that the applicant meets the requirements of this chapter and the rules adopted by the executive commissioner.

(b) Requires that a license be renewed at the times and in accordance with the rules established by the executive commissioner.

Sec. 257.054. FEES. (a) Requires the executive commissioner to establish a license application fee in the amount reasonable and necessary to cover the cost of administering this chapter.

(b) Authorizes the executive commissioner to establish other reasonable and necessary fees in amounts that are adequate, with the license application and license renewal fees, to collect sufficient revenue to meet the expenses necessary to administer this chapter. Authorizes the fees to include construction plan review and inspection fees.

(c) Provides that all fees collected under this chapter are nonrefundable.

(d) Provides that all fees received by DSHS are required to be deposited to the credit of the general revenue fund and are authorized to be appropriated only to DSHS to administer this chapter.

Sec. 257.055. NONTRANSFERABILITY; POSTING. (a) Provides that a license issued under this chapter is not transferable or assignable.

(b) Requires a facility to post in plain sight the license issued under this chapter.

Sec. 257.056. DUTIES OF EXECUTIVE COMMISSIONER. (a) Requires the executive commissioner to adopt rules necessary to implement this chapter. Requires that the rules establish minimum standards for facilities relating to certain facility matters.

(b) Provides that Subsection (a) does not authorize the executive commissioner to establish the qualifications of licensed health care providers or permit the

executive commissioner to authorize persons to provide health care services who are not authorized to provide those services under other state law.

Sec. 257.057. CONSTRUCTION STANDARDS. (a) Requires that the facility's construction, if there are no local regulations in effect or enforced in the area in which a facility is located, conform to the minimum standards established by the executive commissioner.

(b) Provides that construction of a facility is subject to construction plan approval by DSHS.

Sec. 257.058. INSPECTIONS; INVESTIGATIONS. (a) Authorizes DSHS to inspect a facility and its records at reasonable times as necessary to ensure compliance with this chapter.

(b) Requires DSHS to investigate each complaint received regarding a facility.

[Reserves Sections 257.059-257.100 for expansion.]

SUBCHAPTER C. GENERAL ENFORCEMENT

Sec. 257.101. LICENSE DENIAL, SUSPENSION, PROBATION, OR REVOCATION.

(a) Authorizes DSHS to deny, revoke, or suspend a license issued under this chapter for a violation of this chapter or the rules adopted under this chapter.

(b) Provides that, except as provided by Section 257.102, the procedures by which DSHS denies, revokes, or suspends a license and by which those actions are appealed are governed by DSHS's rules for a contested case hearing and by Chapter 2001 (Administrative Procedure), Government Code.

(c) Authorizes DSHS, if DSHS finds that a facility is in repeated noncompliance with this chapter or rules adopted under this chapter but that the noncompliance does not endanger the public health and safety, to schedule the facility for probation rather than suspending or revoking the facility's license. Requires DSHS to provide notice to the facility of the probation and of the items of noncompliance not later than the 10th day before the date the probation period begins. Requires DSHS to designate a period of not less than 30 days during which the facility will remain under probation. Requires the facility to correct the items that were in noncompliance and report the corrections to DSHS for approval during the probation period.

(d) Authorizes DSHS to suspend or revoke the license of a facility that does not correct items that were in noncompliance or that does not comply with this chapter or the rules adopted under this chapter within the applicable probation period.

Sec. 257.102. EMERGENCY SUSPENSION. (a) Authorizes DSHS to issue an emergency order to suspend any license issued under this chapter if DSHS has reasonable cause to believe that the conduct of a license holder creates an immediate danger to the public health and safety.

(b) Provides that an emergency suspension is effective immediately without a hearing on notice to the license holder.

(c) Requires DSHS, on written request of the license holder, to conduct a hearing not earlier than the 10th day or later than the 30th day after the date the hearing request is received to determine if the emergency suspension is to be continued, modified, or rescinded.

(d) Provides that the hearing and any appeal are governed by DSHS rules for a contested case hearing and by Chapter 2001, Government Code.

Sec. 257.103. INJUNCTION. (a) Authorizes DSHS to request that the attorney general petition a district court to restrain a license holder or other person from continuing to violate this chapter or any rule adopted by the executive commissioner under this chapter. Provides that venue for a suit for injunctive relief is in Travis County.

(b) Requires the district court, on application for injunctive relief and a finding that a license holder or other person has violated this chapter or executive commissioner rules, to grant the injunctive relief that the facts warrant.

Sec. 257.104. CIVIL PENALTY. Provides that a license holder or person who violates this chapter or a rule adopted by the executive commissioner under this chapter is liable for a civil penalty, to be imposed by a district court, of not more than \$1,000 for each day of violation. Requires that all penalties collected under this section be deposited to the credit of the general revenue fund.

Sec. 257.105. CRIMINAL PENALTY. (a) Provides that a person who knowingly establishes or violates a facility without a license issued under this chapter commits an offense.

(b) Provides that an offense under this section is a Class B misdemeanor.

(c) Provides that each day of a continuing violation constitutes a separate offense.

[Reserves Sections 257.106-257.150 for expansion.]

SUBCHAPTER D. ADMINISTRATIVE PENALTY

Sec. 257.151. IMPOSITION OF PENALTY. (a) Authorizes the commissioner of state health services to impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter.

(b) Requires that a penalty collected under this subchapter be deposited in the state treasury in the general revenue fund.

Sec. 257.152. AMOUNT OF PENALTY. (a) Prohibits the amount of penalty from exceeding \$1,000 for each violation, and each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. Prohibits the total amount of the penalty assessed for a violation continuing or occurring on separate days under this subsection from exceeding \$5,000.

(b) Requires that the amount be based on the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation; the threat to health or safety caused by the violation; the history of previous violations; the amount necessary to deter a future violation; whether the violator demonstrated good faith, including when applicable whether the violator made good faith efforts to correct the violation; and any other matter that justice may require.

Sec. 257.153. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) Requires DSHS, if DSHS initially determines that a violation occurred, to give written notice of the report by certified mail to the person.

(b) Requires that the notice include a brief summary of the alleged violation, state the amount of the recommended penalty, and inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Sec. 257.154. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Authorizes the person who receives the notice sent under Section 257.153, not later than the 20th day after the date the person receives the notice, in writing to accept the determination and

recommend penalty of DSHS, or make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) Requires the commissioner of state health services by order, if the person accepts the determination and recommended penalty or if the person fails to respond to the notice, to approve the determination and impose the recommended penalty.

Sec. 257.155. HEARING. (a) Requires the commissioner of state health services, if the person requests a hearing, to refer the matter to the State Office of Administrative Hearings (SOAH), which is required to promptly set a hearing date and give written notice of the time and place of the hearing to the person. Requires an administrative law judge of SOAH to conduct the hearing.

(b) Requires the administrative law judge to make findings of fact and conclusions of law and promptly issue to the commissioner of state health services a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

Sec. 257.156. DECISION BY COMMISSIONER. (a) Authorizes the commissioner of state health services by order, based on the findings of fact, conclusions of law, and proposal for a decision, to find that a violation occurred and impose a penalty, or find that a violation did not occur.

(b) Requires that the notice of the commissioner of state health services' order under Subsection (a) that is sent to the person in accordance with Chapter 2001, Government Code, include a statement of the right of the person to judicial review of the order.

Sec. 257.157. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Requires the person, not later than the 30th day after the date the order of the commissioner of state health services under Section 257.156 that imposes an administrative penalty becomes final, to pay the penalty, or file a petition for judicial review of the commissioner of state health services' order contesting the occurrence of the violation, the amount of the penalty, or both.

Sec. 257.158. STAY OF ENFORCEMENT OF PENALTY. (a) Authorizes a person who files a petition for judicial review, within the 30-day period prescribed by Section 257.157, to:

(1) stay enforcement of the penalty by paying the penalty to the court for placement in an escrow account, or giving the court a supersedeas bond approved by the court that is for the amount of the penalty, and is effective until all judicial review of the commissioner of state health services' order is final; or

(2) request the court to stay enforcement of the penalty by filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond, and sending a copy of the affidavit to the commissioner of state health services by certified mail.

(b) Authorizes the commissioner of state health services, if the commissioner receives a copy of the affidavit under Subsection (a)(2), to file with the court, within five days after the date the copy is received, a contest to the affidavit. Requires the court to hold a hearing on the facts alleged in the affidavit as soon as practicable and to stay the enforcement of the penalty on finding that the alleged facts are true. Provides that the person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

Sec. 257.159. COLLECTION OF PENALTY. (a) Authorizes the penalty to be collected if the person does not pay the penalty and the enforcement of the penalty is not stayed.

(b) Authorizes the attorney general to sue to collect the penalty.

Sec. 257.160. DECISION BY COURT. (a) Authorizes the court, if the court sustains the finding that a violation occurred, to uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(b) Requires the court to order that a penalty is not owed if the court does not sustain the finding that a violation occurred.

Sec. 257.161. REMITTANCE OF PENALTY AND INTEREST. (a) Requires the court, if the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, to order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person not later than the 30th day after the date that the judgment of the court becomes final.

(b) Provides that the interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) Requires that the interest be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Sec. 257.162. RELEASE OF BOND. (a) Requires the court, if the person gave a supersedeas bond and the penalty is not upheld by the court, to order, when the court's judgment becomes final, the release of the bond.

(b) Requires the court, if the person gave a supersedeas bond and the amount of the penalty is reduced, to order the release of the bond after the person pays the reduced amount.

Sec. 257.163. ADMINISTRATIVE PROCEDURE. Provides that a proceeding to impose the penalty is considered to be a contested cause under Chapter 2001, Government Code.

SECTION 2. (a) Requires the executive commissioner to adopt the rules and standards required by Chapter 257, Health and Safety Code, as added by this Act, not later than March 1, 2010.

(b) Provides that a post-acute care traumatic brain injury rehabilitation facility, notwithstanding Section 257.051, Health and Safety Code, as added by this Act, is not required to hold a license under Chapter 257 until May 1, 2010.

SECTION 3. (a) Effective date, except as provided by Subsection (b) of this section: September 1, 2009.

(b) Effective date, Subchapters C and D, Chapter 257, Health and Safety Code, as added by this Act: May 1, 2010.