LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

March 25, 2009

TO: Honorable Patrick M. Rose, Chair, House Committee on Human Services

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB216** by Menendez (Relating to licensing and regulation of certain facilities providing personal care to elderly or disabled persons; providing penalties.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB216, As Introduced: a negative impact of ($5,991,152) through the biennium ending August 31, 2011.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2010	($225,089)
2011	($5,766,063)
2012	($6,270,819)
2013	($6,254,313)
2014	($6,748,387)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/ (Cost) from *General Revenue Fund* 1	Probable Savings/ (Cost) from *GR Match For Medicaid* 758	Probable Savings/ (Cost) from *Federal Funds* 555	Probable Revenue Gain/(Loss) from *New General Revenue Dedicated-Elderly and Disabled Persons Account*
2010	($225,089)	$0	($600,907)	$4,518,500
2011	($208,693)	($5,557,370)	($9,025,870)	$3,468,500
2012	($208,693)	($6,062,126)	($9,565,626)	$3,503,500
2013	($208,693)	($6,045,620)	($10,046,120)	$4,000,500
2014	($208,693)	($6,539,694)	($10,618,944)	$4,079,250

Fiscal Year	Probable Savings/ (Cost) from *New General Revenue Dedicated-Elderly and Disabled Persons Account*
2010	($600,907)
2011	($3,468,500)
2012	($3,503,500)
2013	($4,000,500)
2014	($4,079,250)

Fiscal Year	Change in Number of State Employees from FY 2009
2010	8.0
2011	223.0
2012	240.0
2013	255.0
2014	273.0

Fiscal Analysis

The bill would amend the Health and Safety Code as it relates to licensing and regulation of certain facilities providing personal care to elderly or disabled persons and would provide penalties.

The bill would create the Elderly and Disabled Persons Account in the General Revenue Fund. The account would be funded from appropriations for the implementation and administration of the regulation of group home facilities; interest earned from the account; fees; and penalties established under the provisions of the bill. Money in the account could be appropriated for the enforcement of the licensing and regulation of group home facilities; programs and services for elderly persons or disabled persons; or transitional housing and case management services.

The bill would also require persons, acting severally or jointly with any other persons, to obtain a license from the Department of Aging and Disability Services (DADS) in order to establish, conduct, or maintain a group home facility for elderly persons or disabled persons, as defined by the bill. The executive commissioner of the Health and Human Services Commission (HHSC) is authorized to adopt by rule a fee for this license in an amount reasonable and necessary to recover the costs of administering the provisions of the bill (licensing and regulation of group home facilities for elderly persons or disabled persons). A person that operates a group home facility without a license would commit an offense, punishable by fines, as described by the bill.

The bill would establish criminal penalties, civil penalties, and administrative penalties for violating certain provisions of the bill.

Facilities required by the bill to be licensed would have until January 1, 2010 to be licensed.

The bill would take effect September 1, 2009.

The bill would create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either within or outside the Treasury, or create a dedicated revenue source; therefore, the fund, account, or revenue dedication included in the bill would be subject to funds consolidation review by the current Legislature.

Methodology

The Office of the Attorney General (OAG) indicated that the bill would result in additional cases filed by the OAG’s Consumer Protection and Public Health Division. The OAG last year received 9 referrals for enforcement action related to licensed and/or unlicensed assisted living facilities. The OAG is assuming a higher number of referrals with the new population (group homes) added to the regulated arena for which the OAG’s Consumer Protection and Public Health division is responsible. As a result of the anticipated legal work associated with the provisions of the bill, the OAG estimates that an additional 2 FTEs would be needed. The OAG estimated the fiscal impact in fiscal year 2010 to be $225,089 and $208,693 each fiscal year thereafter from the General Revenue Fund.

To estimate the current number of group homes that would need to be licensed under the provisions of the bill, DADS considered three types of establishments for which numbers are available: 1) group homes identified in the study conducted by Health Management Associates (HMA) pursuant to House Bill 1168, 80th Legislature, Regular Session, 2007 (845); 2) group homes and foster homes serving consumers in the Home and Community-based Services (HCS) waiver program (2,498); and 3) adult foster care homes that contract with DADS to serve consumers in the Community Care for the Aging and Disabled program and the Community-based Alternatives (CBA) waiver program (100). To project growth in the number of locations that would need to be licensed as group home facilities for FY 2011 - 2014, DADS applied a 3.7% multiplier to the number of boarding homes identified by HMA. Based on historical data, an 8.8% multiplier was applied to HCS group homes and foster homes by DADS.

DADS assumed a need for 6 FTEs in fiscal year 2010 to implement the program, increasing to 221 in fiscal year 2011 with the addition of regulatory surveyors and other supporting staff; FTEs are assumed to further increase in future years as the number of facilities regulated increases. DADS estimated the total cost to be $1,201,813 in FY10; $18,051,740 in FY11; $19,131,252 in FY12; $20,092,239 in FY13; and $21,237,887 in FY14.

DADS also assumed that the fee schedule would mirror what is currently used in the HCS program at $1,750 per facility. It is assumed that half of facilities licensed in fiscal year 2010 would be issued a one-year license at a cost of $875 in order to stagger the number of renewals in future years. This would result in revenue of $4,518,500 for FY10; $3,468,500 for FY11; $3,503,500 for FY12; $4,000,500 for FY13; and $4,079,250 for FY14.

Technology

DADS indicated that the bill would require the creation of at least two new reports in Compliance Assessment, Regulatory & Enforcement Systems (CARES) and an update of the reporting application for existing reports at an assumed cost of $231,240. DADS assumed modifications to the Web Accessible Facility Enrollment (WAFER) of $276,340 and other automation needs.

Local Government Impact

Section 254.004(b) of the bill would require the Department of Aging and Disability Services to cooperate with local public health officials of a municipality or county to carry out the provisions of the chapter, and would delegate to local officials the power to make inspections and recommendations to the department. The executive commissioner would be required to develop a memorandum of understanding with a municipality or a county to ensure the availability of emergency placements for residents if a facility was closed due to a license suspension, and would provide partial or full remuneration for costs associated with emergency placements. The fiscal impact to local entities to implement the provisions of the bill is not anticipated to be significant.

Source Agencies: 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 539 Aging and Disability Services, Department of

LBB Staff: JOB, CL, SJ, LR, ML, TP