

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

March 30, 2009

TO: Honorable Jane Nelson, Chair, Senate Committee on Health & Human Services

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

IN RE: SB785 by Nelson (Relating to the employee misconduct registry and employee certification posting requirements for certain facilities.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for SB785, As Introduced: a negative impact of (\$1,000,000) 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	(\$1,000,000)
2011	\$0
2012	\$0
2013	\$0
2014	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from General Revenue Fund 1
2010	(\$1,000,000)
2011	\$0
2012	\$0
2013	\$0
2014	\$0

Fiscal Analysis

The bill would implement recommendations in the Legislative Budget Board *Government Effectiveness and Efficiency Report to the Eighty-first Legislature* entitled "Improve Screening of Long Term Care Workers." The bill would require certain long term care facilities to publicly display the certificate of registration of each certified nurse aide working in the facility.

The bill would also expand the scope of the Employee Misconduct Registry (EMR) maintained by the Department of Aging and Disability Services (DADS). The bill would add the following program types to the list of providers that must report employee misconduct related to abuse, neglect, or exploitation (ANE) of persons served for inclusion in the registry: community mental health-mental retardation (MHMR) center providers; state schools operated by DADS; state hospitals operated by the Department of State Health Services (DSHS). The EMR would be made available to the public.

The bill would require each health and human services agency that regulates or administers a program in which any of the listed providers participates to investigate suspected ANE that occurs in its regulated or contracted programs, facilities, and agencies.

The bill would add a requirement that a department, after investigation and determination that a reportable conduct occurred, to immediately forward a record of the conduct to DADS for inclusion in the employee misconduct registry with a notation that the finding is pending final decision. If the person accepts the determination or does not timely respond to a notice, a department must order the reportable conduct be recorded and immediately forward the record of conduct to DADS to include the final determination in the registry. A department that regulates a facility and is subject to Human Resources Code chapter 48, subchapter I (Employee Misconduct Registry), must comply with the procedures established in subchapter I.

The bill would amend Health and Safety Code, § 253.008 to add language allowing a facility to employ a person with a pending determination in the registry and language requiring a facility to annually check the misconduct registry and nurse aide registry.

The bill would require annual checks of a provider's current employees against the EMR and the Nurse Aide Registry after the initial pre-employment check. The bill would provide each employee who is placed on the EMR an opportunity for an administrative hearing on the reported misconduct by the agency responsible for the EMR investigation and judicial review.

The bill would be effective immediately if it receives the requisite two-thirds vote of each house; otherwise, it would be effective September 1, 2009.

Methodology

According to DADS, the EMR database is 10 years old and cannot be readily updated or modified. Due to the addition of new employee groups (state school workers, state hospital workers, community mental health / mental retardation center workers), upgrading the EMR hardware and software would be necessary. Improving the EMR to provide additional functionality would allow DADS to have improved capabilities such as different search screens for the public and internal use and the ability to generate different types of reports based on varying search criteria.

A grievance system currently exists for state employees working in state schools and state hospitals to grieve any disciplinary action that is recommended against them. This analysis assumes that the same personnel at DADS and DSHS who oversee this grievance process would also track, notify, and process information related to a state employee's placement on the Employee Misconduct Registry.

Technology

The cost shown in the table above includes a one-time cost for fiscal year 2010 for updating the hardware (dedicated server) and software of the EMR is estimated to be \$1.0 million of General Revenue Funds. Database conversion, making it web-accessible, and additional storage space to accommodate the new employee groups is included in the cost.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 529 Health and Human Services Commission, 530 Family and Protective Services, Department of, 537 State Health Services, Department of, 539 Aging and Disability Services, Department of

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