

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

April 13, 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.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for SB785, Committee Report 1st House, Substituted: a negative impact of (\$2,464,580) 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 | (\$1,762,485) |
| 2011 | (\$702,095) |
| 2012 | (\$703,139) |
| 2013 | (\$704,219) |
| 2014 | (\$705,335) |

All Funds, Five-Year Impact:

| Fiscal Year | Probable Savings/(Cost) from General Revenue Fund 1 | Change in Number of State Employees from FY 2009 |
|--------------------|--|---|
| 2010 | (\$1,762,485) | 9.0 |
| 2011 | (\$702,095) | 9.0 |
| 2012 | (\$703,139) | 9.0 |
| 2013 | (\$704,219) | 9.0 |
| 2014 | (\$705,335) | 9.0 |

Fiscal Analysis

The bill would implement recommendations in the Legislative Budget Board's *Government Effectiveness and Efficiency Report* to the Eighty-first Legislature entitled "Improve Screening of Long Term Care Workers."

SECTION 1: The bill would require that nursing facilities would have to make available upon request the certificates of nurse aides who work at the facility.

SECTION 3: The bill would require the following facilities to search the Employee Misconduct Registry (EMR) and the Nurse Aide Registry (NAR) annually to ensure no employee has a finding of abuse, neglect, or exploitation (A/N/E): nursing homes and related institutions; assisted living facilities; home and community support service agencies; adult day care facilities; adult foster care

providers; local mental health and mental retardation authorities; home health, hospice, or personal assistance services provided only to persons enrolled in a program funded wholly or partly and monitored by Department of Aging and Disability Services (DADS) or Department of State Health Services (DSHS) respectively or its designated local authority; intermediate care facilities for mental retardation; and mental health facilities operated or contracted with DSHS. This search is in addition to the currently required initial verification of employability.

SECTION 4: The bill would change the definitions in Health and Safety Code section 253.001 to the following: commissioner would mean the commissioner of DADS, department would mean DADS, and executive commissioner would mean the Health and Human Services (HHSC) commissioner.

SECTION 5: The bill would require DADS to record a confirmed finding of A/N/E in the EMR after an investigation has been completed and note that the finding is pending final determination.

SECTION 12: The bill would add that a facility as defined in Health and Safety Code Chapter 253 and a home and community support services agency and a person who provides home health, hospice, or personal assistance services only to persons enrolled in a program funded wholly or partly and monitored by DADS or DSHS respectively or its designated local authority may not hire an applicant until the employer has verified upon initial employment and annually thereafter that the applicant does not have a finding of A/N/E on the EMR or NAR. The bill would allow a facility to employ or continue to employ a person whose only finding of A/N/E is pending final determination.

SECTION 13: The bill would require each facility to notify its employees about the EMR and that an employee may not be listed on it to remain employed; however, an employee may remain employed or be hired if his only listing on the EMR is pending final determination.

SECTION 14: The bill would add the following providers for inclusion on the EMR: state hospitals, state schools, community mental health and mental retardation centers, and mental retardation authority-operated facilities. DFPS would conduct the EMR investigations, hearings, and notifications of employees for these providers. The term commissioner is also defined as the commissioner of the Department of Family and Protective Services (DFPS).

SECTION 15: The bill would require DFPS to immediately forward a confirmed finding of A/N/E to DADS to record in the EMR.

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, upgrading the EMR hardware and software would be necessary at an assumed cost of \$1.0 million in General Revenue Funds. Improving the EMR to provide additional functionality would allow DADS to provide 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.

The bill's requirements would result in 9 new Full-time Equivalents (FTEs) at the Department of Family and Protective Services (DFPS) at an annual salary and benefits cost of \$575,095 of General Revenue Funds. DFPS would be responsible for investigating abuse, neglect, exploitation (A/N/E) incidents with providers to be added to the EMR. DFPS would also be responsible for notifying the employee of the investigation findings and conducting any administrative hearings associated with a confirmed finding of A/N/E. As a result, DFPS would have an increase in the number of administrative hearings needed due to adding the additional employee groups to the EMR. According to DFPS, an additional 209 hearings (184 for state employees and 25 for other providers) would be conducted. Six attorneys and one administrative assistant would be needed to process these EMR cases. Each attorney would handle 35 cases per year.

DFPS estimates that an additional 559 referrals (444 state employees and 115 other providers) would be made to the EMR. As a result, 2 program specialists would also be needed according to the agency. The program specialists would handle the processing and tracking of EMR referrals for all the new employee groups that would be added to the EMR.

Other overhead costs including initial start-up costs such as furniture, telephone, and computers, along with supplies, travel, training, postage, telephone, and utility/square footage are estimated to be \$187,390 of General Revenue Funds in fiscal year 2010, decreasing to \$127,000 of General Revenue Funds in fiscal year 2011 and beyond.

HHSC estimates it could absorb any costs related to implementation of this bill using existing resources.

Technology

The cost in the table above includes a one-time cost for DADS 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 new employee groups is included in the cost.

The remainder of the technology cost includes the rental cost, programming, software, service, and technical support of computers and Internet access for DFPS personnel. These costs are estimated to be \$16,392 for fiscal year 2010 and \$12,855 for fiscal year 2011.

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

LBB Staff: JOB, CL, JI, AFe