

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 28, 2009

TO: Honorable David Dewhurst, Lieutenant Governor, Senate

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

IN RE: SB806 by Nelson (Relating to the imposition of a disciplinary action on a licensed nursing facility administrator; providing a penalty.), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for SB806, As Passed 2nd House: a negative impact of (\$2,853,006) 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	(\$1,956,698)
2011	(\$896,308)
2012	(\$897,352)
2013	(\$898,432)
2014	(\$899,548)

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	(\$1,956,698)	9.0
2011	(\$896,308)	9.0
2012	(\$897,352)	9.0
2013	(\$898,432)	9.0
2014	(\$899,548)	9.0

Fiscal Analysis

The bill would amend the Health and Safety Code and Human Resources Code as it relates to the imposition of a disciplinary action on a licensed nursing facility administrator and provides a penalty.

SECTION 2 and 4 of the bill add provisions to revoke, suspend, or refuse to renew a nursing facility administrator's license, assess an administrative penalty, issue a written reprimand, require participation in continuing education, or place an administrator on probation, if the license holder has been convicted in a court of competent jurisdiction of an offense listed in Section 250.006 of the Health and Safety Code (Convictions Barring Employment).

SECTION 3 of the bill would allow a penalty to be imposed, rather than requiring the Department of Aging and Disability Services (DADS) to set a hearing, if a person fails to timely respond to the

notice.

SECTION 5 of the bill would allow DADS to impose a penalty if a person fails to timely respond to the notice.

SECTIONS 1-5 of the bill would apply only to a disciplinary action imposed on or after the effective date of the bill. A disciplinary action imposed before that date would be governed by the law in effect at the time the action was initiated.

House Floor Amendment #1 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."

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 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. Facilities would be required to maintain a copy of the EMR/NAR search results in each employee's personnel file.

The bill would require that if a finding of A/N/E is overturned and removed in the NAR and it is the basis for an entry in the EMR, then the entry in the EMR would also be removed.

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).

The bill would take effect immediately if it received a vote of two-thirds of all the members elected to each house. If the bill does not receive the vote necessary for immediate effect, the bill would take effect September 1, 2009.

Methodology

It is assumed that any cost related to sections 1-5 of the bill can be absorbed by DADS.

House Floor Amendment #1:

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 DFPS at an annual salary and benefits cost of \$769,308 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, two 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.

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

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