

BILL ANALYSIS

C.S.H.B. 2109
By: Truitt
Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Recent legislation established both the state's policy of permitting residents of an assisted living facility to age in place and procedures to allow a resident of such a facility to remain in that facility upon a determination by the Department of Aging and Disability Services (DADS) that the resident can safely remain in the facility.

Recently, confusion surrounding the placement process has resulted in some residents being unnecessarily removed from assisted living facilities. Additionally, some employees of these facilities fear that they or the facility's residents will be targeted by DADS if they disagree with a placement or attempt to enforce resident rights.

C.S.H.B. 2109 seeks to clarify the role of DADS in the placement process and to protect residents and employees of assisted living facilities from retaliation resulting from a disagreement with DADS or an attempt to enforce a resident's rights.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 2109 amends the Health and Safety Code to establish that an assisted living facility that identifies a resident whom the facility believes is inappropriately placed at the facility is not required to move the resident if the facility obtains the written statements and waiver required for the resident to remain in the facility. The bill removes a prohibition against the Department of Aging and Disability Services (DADS) assessing an administrative penalty against a facility because of the inappropriate placement of a resident. The bill makes the provision of law establishing requirements for a facility on a determination that a resident is inappropriately placed at a facility apply to such a determination made by DADS, rather than by a DADS inspector.

C.S.H.B. 2109 authorizes DADS, if a facility is required to discharge the resident because the facility has not obtained the required written statements or DADS does not approve a waiver based on the written statements submitted, to assess an administrative penalty against the facility if the facility intentionally or repeatedly disregards DADS criteria for obtaining a waiver for inappropriate placement of a resident, seek an emergency suspension or closing order against the facility if DADS determines there is a significant risk to the residents of the facility and an immediate threat to the health and safety of the residents, or seek other sanctions against the facility in lieu of an emergency suspension or closing order if DADS determines there is a significant risk to a resident of the facility and an immediate threat to the health and safety of a resident. The bill requires the executive commissioner of the Health and Human Services Commission by rule to develop criteria under which DADS may determine when a facility has intentionally or repeatedly disregarded the waiver process.

C.S.H.B. 2109 requires DADS to ensure that each facility and resident is aware of the waiver process for aging in place. The bill requires a facility to include with the facility disclosure statement required to be provided to each prospective resident or a prospective resident's representative, information regarding the policies and procedure for aging in place. The bill requires DADS, in cooperation with assisted living service providers, to develop cost-effective training regarding aging in place, retaliation, and other issues determined by DADS. The bill requires DADS to require surveyors, facility supervisors, and other staff, as appropriate, to complete such training annually. The bill makes conforming and nonsubstantive changes.

C.S.H.B. 2109 prohibits a DADS employee from retaliating against an assisted living facility, an employee of an assisted living facility, or a person in control of an assisted living facility for complaining about the conduct of a DADS employee, disagreeing with a DADS employee about the existence of a violation or rule, or asserting a right under state or federal law.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2109 contains a provision not included in the original establishing the circumstances under which an assisted living facility that identifies a resident whom the facility believes is inappropriately placed at the facility is not required to move the resident. The substitute differs from the original by amending provisions of law establishing requirements for a facility on a determination that a resident is inappropriately placed at a facility to make those provisions apply to such a determination made by DADS, whereas the original retains statutory language making those provisions apply to a determination made by a DADS inspector. The substitute differs from the original by removing a provision of law prohibiting DADS from assessing an administrative penalty against a facility because of the inappropriate placement of a resident, whereas the original retains current law.

C.S.H.B. 2109 differs from the original by authorizing DADS to assess an administrative penalty against the facility, or seek an emergency suspension or closing order or other sanctions against the facility, under certain circumstances if a facility is required to discharge the resident because the facility has not obtained the required written statements or DADS does not approve a waiver based on the written statements submitted, whereas the original authorizes DADS to assess an administrative penalty against a facility only if the facility intentionally or repeatedly disregarded the department's guidelines for appropriate placement and specifies that the process described by provisions of law relating to appropriate placement determinations is the sole remedy for requiring the discharge of a resident from an assisted living facility if a DADS inspector determines that the resident is inappropriately placed.

C.S.H.B. 2109 contains a provision not included in the original requiring the executive commissioner of the Health and Human Services Commission by rule to develop criteria under which DADS may determine when a facility has intentionally or repeatedly disregarded the waiver process. The substitute contains a provision not included in the original requiring DADS to ensure that each facility and resident is aware of the waiver process. The substitute contains a provision not included in the original requiring a facility to include information relating to the policies and procedures for aging in place with a required facility disclosure statement. The substitute contains provisions not included in the original requiring DADS, in cooperation with assisted living service providers, to develop cost-effective training regarding aging in place, retaliation, and other issues determined by DADS and requiring DADS to require certain facility staff members to complete such training annually. The substitute differs from the original in nonsubstantive ways.