

## **BILL ANALYSIS**

C.S.H.B. 3196  
By: Price  
Human Services  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Recent legislation extended the certification period for convalescent and nursing facilities to three years. The legislation did not, however, impact the survey period for such facilities or revise the required licensing fees. Because the Department of Aging and Disability Services (DADS) continues to survey these facilities for compliance with state and federal requirements annually, interested parties assert that the licensing fees need to be adjusted to account for the extended certification period to cover the expenses of regulating these facilities. The legislation also did not extend the certification period for facilities that are certified to care for people with Alzheimer's disease and related disorders, which currently must renew annually. The parties assert that this certification period should be adjusted so that the licensing renewal cycles are consistent.

In addition, there is concern that applicants for additional Medicaid beds in a nursing facility who obtain certain waivers relating to the construction, licensing, and certification of new facilities are not being held accountable after a waiver is granted. According to industry data, the number of waivers granted in the past 10 years significantly outnumbers the facilities that were actually constructed, licensed, and certified within the required time frames. Because additional Medicaid beds are usually allocated due to an immediate community need, delays in this process can leave the communities that have expressed a need for more beds struggling to provide necessary care. Interested parties suggest that requiring applicants for additional Medicaid beds to provide a performance bond that would be forfeited to DADS if the applicant does not follow through with construction of a new nursing facility within the required time frames would help ensure that a waiver applicant actually intends and has the financial ability to construct the nursing facility. C.S.H.B. 3196 seeks to address these issues to improve the regulation of convalescent and nursing facilities in Texas.

### **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 SECTIONS 2 and 3 of this bill.

### **ANALYSIS**

Section 531.0055, Government Code, as amended by Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, expressly grants to the executive commissioner of the Health and Human Services Commission all rulemaking authority for the operation of and provision of services by the health and human services agencies. Similarly, Sections 1.16-1.29, Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, provide for the transfer of a power, duty, function, program, or activity from a health and human services agency abolished by that act to the corresponding legacy agency. To the extent practical, this bill analysis is written to reflect any transfer of rulemaking authority and to update references as necessary to an agency's authority with respect to a particular health and human services program.

C.S.H.B. 3196 amends the Health and Safety Code to increase from \$250 to \$375 the maximum

amount of a fee for a license to establish, conduct, or maintain a convalescent and nursing home or a related institution and increases from \$10 to \$15 the maximum amount of the fee for each unit of capacity or bed space for which a license is sought. The bill extends the annual certification period for an institution that cares for persons with Alzheimer's disease and related disorders to a three-year certification period. The bill requires the executive commissioner of the Health and Human Services Commission (HHSC) by rule to adopt a system under which an appropriate number of certifications issued by the Department of Aging and Disability Services (DADS) expire on staggered dates occurring in each three-year period. The bill requires DADS, if the expiration date of a certification changes as a result of the bill's provisions, to prorate the certification fee relating to that certification as appropriate.

C.S.H.B. 3196 amends the Human Resources Code to authorize the executive commissioner by rule to require an applicant for Medicaid beds in a nursing facility that is to be constructed to provide a performance bond payable to HHSC in the amount of \$500,000 conditioned on the applicant obtaining certification of the Medicaid beds granted to the applicant within the time frame required by HHSC. The bill requires the performance bond to be executed by a corporate entity in accordance with certain Insurance Code provisions, be in a form approved by HHSC, and clearly and prominently display on the face of the bond or on an attachment to the bond the name, mailing address, physical address, and telephone number, including the area code, of the surety company to which any notice of claim should be sent or the toll-free telephone number maintained by the Texas Department of Insurance (TDI) for information and complaints and a statement that the address of the surety company to which any notice of claim should be sent may be obtained from TDI by calling the toll-free telephone number. The bill prohibits HHSC from requiring an applicant for Medicaid beds in a nursing facility that is to be constructed to obtain a performance bond from a specific insurance or surety agency, agent, or broker.

#### **EFFECTIVE DATE**

September 1, 2013.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 3196 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

##### INTRODUCED

SECTION 1. Section 242.034(a), Health and Safety Code, is amended to read as follows:

(a) The board may establish by rule license fees for institutions licensed by the department under this chapter. The license fee may not exceed \$375 [~~\$250~~] plus:

- (1) \$15 [~~\$10~~] for each unit of capacity or bed space for which a license is sought; and
- (2) a background examination fee imposed under Subsection (d).

SECTION 2. Section 242.040, Health and Safety Code, is amended by amending Subsection (c) and adding Subsection (f) to read as follows:

##### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

SECTION 2. Same as introduced version.

(c) The board by rule may adopt standards for the specialized care and treatment of persons with Alzheimer's disease and related disorders and provide procedures for institutions applying for certification under this section. The rules must provide for a three-year certification period [~~annual certification~~].

(f) The executive commissioner by rule shall adopt a system under which an appropriate number of certifications issued by the department expire on staggered dates occurring in each three-year period. If the expiration date of a certification changes as a result of this subsection, the department shall prorate the certification fee relating to that certification as appropriate.

SECTION 3. Section 242.252(a), Health and Safety Code, is amended to read as follows:

(a) Except as provided by Subsection (d), an affected institution or the department may elect binding arbitration of any dispute to which this subchapter applies. Arbitration under this subchapter is an alternative to a contested case hearing or to a judicial proceeding relating to the assessment of a civil penalty.

SECTION 4. Section 32.0213, Human Resources Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) The department by rule may require an applicant for ~~additional~~ Medicaid beds in a nursing facility to provide a performance bond payable to the department in the amount of \$500,000 conditioned on the applicant ~~providing~~ the Medicaid beds granted to the applicant within the time frame required by the department. The performance bond must:

(1) be executed by a corporate entity in accordance with Subchapter A, Chapter 3503, Insurance Code;

(2) be in a form approved by the ~~attorney general~~; and

(3) clearly and prominently display on the face of the bond or on an attachment to the bond;

(A) the name, mailing address, physical address, and telephone number, including

**No equivalent provision.**

SECTION 3. Section 32.0213, Human Resources Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) The department by rule may require an applicant for Medicaid beds in a nursing facility ~~that is to be constructed~~ to provide a performance bond payable to the department in the amount of \$500,000 conditioned on the applicant ~~obtaining certification of~~ the Medicaid beds granted to the applicant within the time frame required by the department. The performance bond must:

(1) be executed by a corporate entity in accordance with Subchapter A, Chapter 3503, Insurance Code;

(2) be in a form approved by the ~~department~~; and

(3) clearly and prominently display on the face of the bond or on an attachment to the bond;

(A) the name, mailing address, physical address, and telephone number, including

the area code, of the surety company to which any notice of claim should be sent; or (B) the toll-free telephone number maintained by the Texas Department of Insurance under Subchapter B, Chapter 521, Insurance Code, and a statement that the address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the toll-free telephone number.

(e) The department may not require an applicant for additional Medicaid beds in a nursing home to obtain a performance bond from a specific insurance or surety agency, agent, or broker.

SECTION 5. (a) Section 242.034(a), Health and Safety Code, as amended by this Act, applies only to a license application, including a renewal application, filed on or after the effective date of this Act. A license application, including a renewal application, filed before the effective date of this Act is governed by the law in effect when the application was filed, and the former law is continued in effect for that purpose.

(b) Sections 32.0213(d) and (e), Human Resources Code, as added by this Act, apply only to an application for additional nursing home beds filed on or after the effective date of this Act. An application filed before that date is governed by the law in effect on the date the application is filed, and that law is continued in effect for that purpose.

SECTION 6. This Act takes effect September 1, 2013.

the area code, of the surety company to which any notice of claim should be sent; or (B) the toll-free telephone number maintained by the Texas Department of Insurance under Subchapter B, Chapter 521, Insurance Code, and a statement that the address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the toll-free telephone number.

(e) The department may not require an applicant for Medicaid beds in a nursing facility that is to be constructed to obtain a performance bond from a specific insurance or surety agency, agent, or broker.

SECTION 4. (a) Section 242.034(a), Health and Safety Code, as amended by this Act, applies only to a license application, including a renewal application, filed on or after the effective date of this Act. A license application, including a renewal application, filed before that date is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

(b) Sections 32.0213(d) and (e), Human Resources Code, as added by this Act, apply only to an application filed on or after the effective date of this Act for Medicaid beds in a nursing facility that is to be constructed. An application filed before that date is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

SECTION 5. Same as introduced version.