

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 553  
By: Schwertner  
Health and Human Services  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Federal regulations require states to offer nursing facilities an informal dispute resolution (IDR) process, at a facility's request, to dispute survey findings. Facilities can dispute any deficiency or violation for which they receive an official statement of deficiencies or violations from the Department of Disability Services (DADS) (known as 2567/3724). IDR is intended to provide facilities with an informal opportunity to refute cited deficiencies or violations. IDR is not a formal or evidentiary hearing and is not an initial determination that gives rise to appeal rights.

In Texas, DADS licenses nursing facilities and skilled nursing facilities, which bars them from conducting IDR. According to federal rules, the IDR process must be performed by entities that are independent and organizationally separate of the survey agency. As a result, DADS contracts with the Health and Human Services Commission (HHSC) to conduct IDRs for facilities and is reimbursed by the Center for Medicare and Medicaid Services (CMS).

Some nursing facilities allege that today's system, with DADS conducting surveys and HHSC conducting the IDR process, is too intertwined and results in potential bias at IDR proceedings. To create a more equitable system for nursing facilities to contest deficiencies and violations, these facilities contend that the IDR process should be removed from HHSC and contracted out to an independent third party.

S.B. 553 requires HHSC to contract with an independent third party for informal dispute resolution between nursing facilities and DADS. This independent informal dispute resolution process applies to a statement of violations prepared by DADS in connection with a survey conducted by DADS.

Current requirements under Section 531.058 (Informal Dispute Resolution for Certain Long-Term Care Facilities), Government Code, remain in effect: a nursing facility must request informal dispute resolution not later than the 10th calendar day after notification by DADS of a violation and the IDR process must be completed no later than 30 days after receipt of a facility's request.

As proposed, S.B. 553 amends current law relating to the informal dispute resolution process for certain disputes between the Department of Aging and Disability Services and certain long-term care facilities.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the executive commissioner of Health and Human Services in SECTION 2 of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 531.058, Government Code, by adding Subsection (a-1), as follows:

(a-1) Requires the Health and Human Services Commission (HHSC), as part of the informal dispute resolution process established under this section, to contract with an appropriate disinterested person who is a private nonprofit organization to adjudicate

disputes between an institution or facility licensed under Chapter 242 (Convalescent and Nursing Homes and Related Institutions), Health and Safety Code, and the Department of Aging and Disability Services (DADS) concerning a statement of violations prepared by DADS in connection with a survey conducted by DADS of the institution or facility. Provides that Section 2009.053 (Impartial Third Parties) does not apply to the selection of an appropriate disinterested person under this subsection. Requires the person with whom HHSC contracts to adjudicate all disputes described by this subsection.

SECTION 2. (a) Requires DADS or HHSC, as soon as possible after the effective date of this Act, to apply for any waiver or other authorization from a federal agency and authorizes delay of implementation until such a waiver or authorization is granted.

(b) Provides that as soon as practicable after the effective date of this Act:

(1) the executive commission of HHSC is required to adopt rules necessary to implement Section 531.058(a-1), Government Code, as added by this Act; and

(2) DADS and HHSC are required, as appropriate, to revise or enter into a memorandum of understanding as required by a federal agency that is necessary to implement Section 531.058(a-1), Government Code, as added by this Act.

SECTION 3. Effective date: upon passage or September 1, 2015.