

BILL ANALYSIS

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C.S.H.B. 3193
By: Hinojosa et al. (Johnson)
Health & Human Services
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Home and community support services agencies (HCSSAs) provide home health, hospice or personal assistance services to people in a residence or independent-living environment. Approximately 6,300 HCSSAs are licensed in Texas by the Health and Human Services Commission (HHSC). HCSSA providers currently hold a two-year license and must receive a statutorily required inspection 18 months into the licensure period.

H.B. 2025, enacted by the 85th Legislature, moved all other long-term care provider types to a three-year license period. Additionally, the federal Centers for Medicare and Medicaid Services (CMS) requires that home health agencies be surveyed every three years to get certified as Medicare and Medicaid providers.

Varied licensing and renewal time frames for different providers and home health agencies create significant workload challenges and inefficiencies for HHSC staff who process applications and conduct onsite surveys and complaint investigations, including allegations of abuse and neglect, in long-term care facilities and HCSSAs.

The current problem with inefficiency and backlog will increase if nothing is done. With the end of the CMS moratorium and other resource challenges, HHSC is at risk of not meeting required time frames. Providers will therefore have to wait longer for licensure and licensure renewal.

The purpose of H.B. 3193 is to also extend the licensure for the HCSSAs from two to three years to alleviate confusion, workload backlog, and inefficiencies for HHSC. (Original Author's/Sponsor's Statement of Intent)

C.S.H.B. 3193 amends current law relating to the licensing of, the executive commissioner of the Health and Human Services Commission's duties with respect to, and the administrative penalties for home and community support services agencies.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission (executive commissioner) in SECTION 4 of this bill.

Rulemaking authority previously granted to the executive commissioner is modified in SECTION 1 (Section 142.006, Health and Safety Code), SECTION 2 (Section 142.010, Health and Safety Code), and SECTION 3 (SECTION 142.017, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 142.006(a), (b), and (c), Health and Safety Code, as follows:

- (a) Requires the Health and Human Services Commission (HHSC), rather than the Department of State Health Services (DSHS), to issue a home and community support services agency license to provide home health, hospice, habilitation, or personal assistance services for each place of business to an applicant if the applicant meets certain criteria.

(b) Provides that a license issued under this chapter (Home and Community Support Services) expires three years, rather than two years, after the date of issuance. Requires the executive commissioner of HHSC (executive commissioner) by rule to adopt a system under which licenses expire on staggered dates during each three-year period, rather than authorizing the executive commissioner by rule to adopt a system under which licenses expire on various dates during the two-year period. Requires HHSC to prorate the license fee as appropriate if the expiration date of a license changes as a result of this subsection. Removes existing text requiring that DSHS, for the year in which a license expiration date is changed, prorate the license fee on a monthly basis. Deletes existing text requiring that each license holder pay only that portion of the license fee allocable to the number of months for which the license is valid. Deletes existing text requiring that a license holder pay the total license renewal fee at the time of the renewal. Deletes existing text authorizing DSHS to issue an initial license for a shorter term to conform expiration dates for a locality or an applicant. Deletes existing text authorizing DSHS to issue a temporary license to an applicant for an initial license.

(c) Replaces references to DSHS with references to HHSC and makes no further changes to this subsection.

SECTION 2. Amends Sections 142.010(a) and (b), Health and Safety Code, as follows:

(a) Requires the executive commissioner by rule to set license fees for home and community support services agencies in amounts that are reasonable to meet the costs of administering this chapter, except that the fees are prohibited from being less than \$600 or more than \$2,625, rather than less than \$600 or more than \$2,000, for a license to provide home health, hospice, habilitation, or personal assistance services.

(b) Replaces a reference to DSHS with a reference to HHSC and makes no further changes to this subsection.

SECTION 3. Amends Section 142.017, Health and Safety Code, by amending Subsections (a), (b), (c), (e), (i), and (j) and adding Subsections (k) and (l), as follows:

(a) Replaces a reference to DSHS with a reference to HHSC and makes no further changes.

(b) Requires the penalty to be not less than \$100 or more than \$1,000 for each violation, except that the penalty is prohibited from being less than \$100 or more than \$5,000 for each violation that results in actual harm or that constitutes an immediate threat to the health or safety of a client. Replaces references to DSHS with references to HHSC.

(c) Replaces a reference to DSHS with a reference to HHSC and makes no further changes.

(e) Replaces a reference to DSHS with a reference to HHSC and makes no further changes.

(i) Replaces a reference to DSHS with a reference to HHSC and makes no further changes.

(j) Redesignates existing Subdivisions (2)–(6) as Subdivisions (4)–(8). Authorizes HHSC to assess an administrative penalty without providing a reasonable period of time to a home and community support services agency, rather than authorizing DSHS to assess an administrative penalty without providing a reasonable period of time to the agency, to correct the violation if the violation:

(1) represents a pattern of violation that results in actual harm, rather than results in serious harm or death;

(2) is widespread in scope and results in actual harm;

- (3) is widespread in scope and constitutes a potential for actual harm;
- (4) constitutes an immediate threat to the health or safety of a client, rather than constitutes a serious threat to health or safety;
- (5) makes no further changes to this subdivision;
- (6) replaces references to DSHS with references to HHSC and makes no further changes; or
- (7)–(8) makes no further changes to these subdivisions.

(k) Requires HHSC to develop and use a system to record and track the scope and severity of each violation of this chapter (Home and Community Support Services) for the purpose of assessing an administrative penalty for the violation or taking some other enforcement action against the appropriate home and community support services agency to deter future violations. Provides that the system:

- (1) is required to be comparable to the system used by the Centers for Medicare and Medicaid Services to categorize the scope and severity of violations for nursing homes; and
- (2) is authorized to be modified, as appropriate, to reflect changes in industry practice or changes made to the system used by the Centers for Medicare and Medicaid Services.

(l) Defines "actual harm," "immediate threat to the health or safety of a client," "pattern of violation," and "widespread in scope" for purposes of this section.

SECTION 4. Requires the executive commissioner, as soon as practicable after the effective date of this Act and after consulting with appropriate interested persons, to adopt rules necessary to implement the changes in law made by this Act.

SECTION 5. Makes application of this Act regarding the actions taken by HHSC and license holders under Chapter 142, Health and Safety Code, prospective.

SECTION 6. Effective date: September 1, 2019.