

## **BILL ANALYSIS**

Senate Research Center  
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C.S.S.B. 1847  
By: Powell  
Health & Human Services  
4/28/2021  
Committee Report (Substituted)

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

Throughout the COVID-19 pandemic, many of those in training to become certified nurse aides (CNAs) were able to work on the frontlines in nursing homes. This was only possible because the Centers for Medicare and Medicaid Services (CMS) waived federal requirements, allowing these temporary nurse aides (TNAs) to work on the front lines in nursing homes in the same capacity as a CNA could.

The waiver and additional support staff were invaluable. Even before the COVID-19 pandemic, Texas was aware of the dwindling workforce pipeline for nursing homes, with an estimated shortage of over 60,000 CNAs by 2030. The need for more workers has only increased since the progression of this pandemic, as the Centers for Disease Control & Prevention (CDC) found that those over 65 who had contracted COVID-19 were 90-630x more likely to die from the illness than their younger 18-29 year-old counterparts — with the risk for complications and death increasing significantly as age and pre-existing health conditions increase, making those in nursing homes especially vulnerable. With over 3.9 million Americans receiving care in nursing homes and over 1.2 million healthcare personnel and support staff providing that care, the need to prioritize and support this industry could not be more emphasized.

Without any legislation or rule changes, nearly 200,000 TNAs in the United States will be forced to return to the classroom to complete their certifications, even though they have been working in their positions for a year now. This is a huge disincentive, putting unnecessary strain on an already overwhelmed unemployment system and nursing home workforce. These TNAs have been working on the frontlines, and their experience should hold the same weight, if not more, as learning how to do the same thing in a classroom setting.

The Health and Human Services Commission (HHSC) recognizes the impact this will have on nursing home infrastructure, and in November, they submitted a proposal to CMS to waive certain certification requirements for these TNAs who have worked throughout the pandemic. This bill seeks to codify and support that effort.

C.S.S.B. 1847 seeks to allow TNAs who were hired under the emergency CMS waiver to put those hours towards their certification. This will be done either by a waiver proposed from HHSC to CMS, or by an expedited certification program created by HHSC.

C.S.S.B. 1847 also grants a 60-day buffer, within the State's authority, after the emergency CMS waiver expires, to allow time for:

1. nursing facilities to adjust for any lost staffing for TNAs who do not meet certification requirements (current or proposed from HHSC); and
2. the TNAs described in this bill to use the developed or waived certification requirements outlined in the first portion of this bill.

C.S.S.B. 1847 amends current law relating to training requirements for certain individuals for inclusion in the nurse aide registry.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 3 (Section 250.00351, Health and Safety Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 250.001, Health and Safety Code, by adding Subdivisions (6), (7), and (8) to define "commission," "executive commissioner," and "nurse aide training program."

SECTION 2. Amends Section 250.0035(a), Health and Safety Code, to require an applicant, to be listed on the nurse aide registry, to complete a nurse aide training program approved by the Health and Human Services Commission (HHSC), rather than a training program approved by the Department of Aging and Disability Services, that includes certain requirements.

SECTION 3. Amends Chapter 250, Health and Safety Code, by adding Section 250.00351, as follows:

Sec. 250.00351. TRAINING REQUIREMENTS FOR CERTAIN INDIVIDUALS; EXPEDITED TRAINING PROGRAM. (a) Defines "temporary nurse aide."

(b) Requires HHSC to develop a process that allows a temporary nurse aide to complete in an expedited manner a required nurse aide training program. Requires HHSC, in developing the process, to either seek a waiver from the Centers for Medicare and Medicaid Services (CMS) under Subsection (c), or develop an expedited nurse aide training program under Subsection (i).

(c) Authorizes the executive commissioner of HHSC (executive commissioner) to seek a waiver from CMS that allows an individual in accordance with this section to partly or wholly satisfy the classroom training and clinical training hours required for completion of a nurse aide training program with classroom and clinical hours completed as a temporary nurse aide at a nursing facility licensed under Chapter 242 (Convalescent and Nursing Facilities and Related Institutions).

(d) Authorizes an individual who works as a temporary nurse aide to substitute one hour of training accrued as a temporary nurse aide at a nursing facility for one hour of required classroom training through a nurse aide training program, two hours of work experience accrued as a temporary nurse aide at a nursing facility for one hour of required classroom training through a nurse aide training program, and one hour of work experience accrued as a temporary nurse aide at a nursing facility for one hour of required clinical training through a nurse aide training program.

(e) Requires a nursing facility to document the number of hours of nurse aide training and work experience accrued by a temporary nurse aide at the facility and provide the documentation to that individual on request.

(f) Requires a nurse aide training program to accept a nursing facility's documentation of the number of hours of training and work experience accrued by a temporary nurse aide at the facility and apply the documented hours toward the classroom training and clinical training hours required by the training program in accordance with Subsection (d).

(g) Requires an individual, if the individual does not accrue a sufficient number of training or work experience hours as a temporary nurse aide under Subsection (d) to satisfy the total number of classroom training and clinical training hours required to successfully complete the nurse aide training program, to complete the remaining number of required hours through a nurse aide training program.

(h) Requires a nurse aide training program, if an individual satisfies the total number of classroom training and clinical training hours prescribed by

Section 250.0035(a)(1) (relating to training requirements for nurse aides) through training and work experience as a temporary nurse aide under Subsection (d) and any training and clinical hours completed under a nurse aide training program, to allow the individual to sit for the competency evaluation required by Section 250.0035(a)(2) (relating to a competency evaluation on completion of a nurse aide training program). Requires HHSC to list in the nurse aide registry under Section 250.0035 (Training Requirements; Continuing Education) each individual who passes the evaluation.

(i) Authorizes the executive commissioner, in lieu of seeking a waiver from CMS as provided by Subsection (c), by rule to develop and implement a nurse aide training program that allows a temporary nurse aide to complete in an expedited manner a required nurse aide training program.

SECTION 4. Authorizes a nursing facility licensed under Chapter 242, Health and Safety Code, to the extent allowed by federal law, to continue to employ an individual who performed nurse aide services under a waiver issued by CMS during the coronavirus disease (COVID-19) pandemic on or before the effective date of this Act until the 60th day after the date the waiver expires.

SECTION 5. Effective date: upon passage or September 1, 2021.