

SUBJECT: Revoking licenses of nursing homes for serious, repeated violations

COMMITTEE: Human Services — committee substitute recommended

VOTE: 8 ayes — Raymond, Rose, Keough, S. King, Klick, Naishtat, Peña, Price
0 nays
1 absent — Spitzer

SENATE VOTE: On final passage, March 30 — 30-0

WITNESSES: For — (*Registered, but did not testify:* Amanda Fredriksen, AARP; Alyse Meyer, LeadingAge Texas)

Against — (*Registered, but did not testify:* Stephen Raines, Preferred Care Partners Management Group; Eric Wright, Senior Care Centers)

On — Gavin Gadberry, Texas Health Care Association; (*Registered, but did not testify:* Chris Adams, Texas Department of Aging and Disability Services)

DIGEST: CSSB 304 would require the executive commissioner of the Health and Human Services Commission (HHSC) to revoke the license of a convalescent or nursing home or related institution if the license holder committed three high-level health and safety violations that met specific criteria.

License revocation for serious, repeated violations. The executive commissioner would be required to revoke the license of a facility if:

- the license holder had committed three violations related to neglect or abuse of a resident that posed an immediate threat to the resident's health and safety;
- the violations occurred in a 24-month period; and
- each violation was reported in connection with a separate survey,

inspection, or investigation visit that occurred on separate entrance and exit dates.

An “immediate threat to health and safety” would be defined as a situation in which immediate corrective action was necessary because a facility’s noncompliance with one or more requirements had caused or was likely to cause serious injury, harm, impairment, or death to a resident.

The executive commissioner could not revoke a facility’s license if the violation and determination of immediate threat to health and safety were not included on the written list of violations left with the facility at the initial exit conference for a survey, inspection, or investigation or the violation was not included on the final statement of violations. A facility’s license also could not be revoked if the violation had been reviewed under an informal dispute resolution process and a determination was made that the violation should be removed from the license holder’s record or that the violation was reduced in severity such that it no longer was considered an immediate threat to health and safety.

If a license was revoked, the Department of Aging and Disability Services (DADS) could:

- request the appointment of a trustee to operate the institution;
- assist with obtaining a new operator for the institution; or
- assist with the relocation of residents to another institution.

The executive commissioner could stay a license revocation if it was determined that the stay would not jeopardize the health and safety of residents or place them at risk of abuse or neglect. The executive commissioner would establish by rule criteria under which a license revocation could be stayed, following negotiated rulemaking procedures prescribed by current law. The criteria would have to allow the executive commissioner to stay the license revocation of a nursing facility for which the DADS had deployed a rapid response team under Health and Safety Code, sec. 255.004, if the facility had cooperated with the team and demonstrated improvement in quality of care.

The executive commissioner could stay the license revocation for a veterans home if the Veteran's Land Board contracted with a different entity than the one that operated the home when the violations leading to the revocation occurred.

Monitoring visits. CSSB 304 would require that monitoring visits be made to long-term care facilities that had been identified as medium risk through the department's early warning system. A long-term care facility also could request a monitoring visit. A quality-of-care monitor would have to assess conditions identified through the long-term care facility's quality measure reports based on Minimum Data Set Resident Assessments. DADS would be required to schedule a follow-up visit not later than 45 days after the initial monitoring visit. Conditions observed by a quality-of-care monitor that created an immediate threat to health or safety would have to be reported to the long-term care facility administrator, in addition to other parties specified under current law.

Rapid response team visits. The bill would expand circumstances under which rapid response teams could visit long-term care facilities. The rapid response teams could visit a long-term care facility that was identified as high risk by DADS through its early warning system or that had committed three violations within a 24-month period that constituted an immediate threat to health and safety related to the abuse or neglect of residents. Long-term care facilities would be required to cooperate with a rapid response team that was deployed to improve the quality of care they provided.

Informal dispute resolution. CSSB 304 would add requirements to an existing informal dispute resolution process for certain long-term care facilities. HHSC would contract with an appropriate disinterested nonprofit organization to adjudicate certain disputes between an institution or facility licensed under Health and Safety Code, ch. 242 and DADS. This resolution process would concern disputes regarding a statement of violations as prepared by the department in connection with a survey of the institution or facility.

Implementation. As soon as practicable after the bill’s effective date, DADS or HHSC, as appropriate, would apply for any waiver or other authorization from a federal agency necessary to implement this bill. The department and commission could delay implementing the bill until the waiver or authorization was granted.

The executive commissioner of HHSC would adopt the rules necessary to implement the informal dispute resolution provision of the bill as soon as practicable after the bill’s effective date. DADS and HHSC also would, as appropriate, revise or enter into any memorandum of understanding required by a federal agency that was necessary to implement this provision.

Effective date. Except as otherwise provided, the bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015. The sections of the bill governing license revocation for repeated health and safety violations would take effect September 1, 2016, and would apply only to a violation committed on or after that date.

**SUPPORTERS
SAY:**

CSSB 304 would implement a “three-strikes” policy to address concerns that relatively few sanctions are issued for serious and repeated nursing home violations.

The Department of Aging and Disability Services (DADS) underwent Sunset review as part of the 2014-15 review cycle. The Sunset Advisory Commission found that few long-term care providers face enforcement action for violations. This bill would create a strong state response to facilities with serious, repeated health and safety violations that would include revoking their licenses to operate, if warranted. It would protect vulnerable Texans from potential abuse or neglect or being placed at significant risk of abuse and neglect.

At the same time, the bill would be fair to institutions by allowing them to pursue corrective action after first and second violations before facing

license revocation. In addition, the bill would preserve the discretion of the executive commissioner of HHSC to stay a license revocation under certain circumstances, including those in which the stay would not jeopardize the health or safety of residents. The informal dispute resolution provision, which would include a component to ensure the independence of the adjudicator, would provide a way for facilities to dispute unfair claims of violations. All of these provisions of the bill would help to ensure that only bad actors were affected. The bill also would place reasonable parameters on what would constitute “three strikes” for the purpose of taking away a facility’s license.

CSSB 304 would help facilities that wanted to improve. The bill contains provisions to strengthen the department’s quality monitoring program, which could improve quality of care through means other than enforcement action.

OPPONENTS
SAY:

While intending to help nursing home residents, CSSB 304 could lead to the closure of nursing homes or other long-term care facilities, which can be difficult for residents and their families. The goal should be to improve quality and maintain access to care, rather than shut down facilities. This course of action could be particularly problematic in rural parts of the state where there are not many nursing homes or other long-term care facilities. In some areas, these facilities are important employers. Shutting down a facility can punish residents, family members, and staff, when most of them have done no wrong.

Evaluation teams that conduct surveys of nursing homes and other long-term care facilities are not always consistent in applying standards and in what they consider serious or severe. In particular, violations of “immediate jeopardy to health and safety” can be subjective. Survey team members may not always have appropriate clinical knowledge and experience to properly evaluate a nursing home. The bill would not necessarily ensure that standards were applied fairly and consistently, even though a facility’s license could be at stake.

The state already has the ability to revoke a license if warranted, and this

bill could push more facilities in that direction, rather than helping them improve. Instead of implementing additional punitive measures, the state should provide more funding to help struggling facilities restricted by low Medicaid reimbursement rates to attract and retain high-quality staff.

NOTES:

CSSB 304 differs from the Senate's engrossed version of the bill in that the House substitute would:

- require the revocation of a facility's license and certain other actions be performed by the executive commissioner of HHSC rather than DADS;
- allow the executive commissioner to *stay* rather than *wave* license revocation in certain situations; and
- include requirements related to rulemaking regarding a license revocation that was stayed by the executive commissioner.