

SB 270 (Perry) & HB 1593 (Leach) Preventing Financial Abuse of Nursing Facility Residents by Responsible Third Parties

Many nursing home residents' funds are managed by "responsible third parties" – usually their children – because the residents lack the cognitive ability to manage their own financial affairs. This arrangement exposes residents to abuse and exploitation, as some responsible third parties improperly divert or steal residents' funds that are needed to pay for their long-term care.

"Each year, an estimated 5 million older adults are abused, neglected, or exploited. Older Americans lose an estimated \$2.6 billion or more annually due to elder financial abuse and exploitation, funds that could be used to pay for basic needs such as housing, food, and medical care."¹ To make matters worse, "almost half of that money is lost due to tactics that – while deceptive in nature – are technically legal."² **"One survey found that two-thirds of financial crimes against the elderly are carried out by family, friends or other trusted individuals."**³

Under federal law, nursing homes cannot require responsible third parties to commit their own personal funds to pay for the resident's care but may request that the third party "sign a contract [...] to provide facility payment from the resident's income or resources."⁴

Unfortunately, certain Texas laws concerning legal standing and contractual privity undermine these agreements and render them unenforceable. The resulting loophole allows perpetrators of elder abuse to escape legal responsibility for their unlawful actions. **It is very difficult – often impossible – for nursing homes to hold third parties accountable for misappropriating a resident's funds, even in clear cases of elder abuse involving theft or embezzlement.**

EXAMPLE: Susan is a nursing home resident and has Alzheimer's. Because she is unable to manage her own financial affairs, her son, Bob, assumes the role of "Responsible Third Party" and is tasked with coordinating payment for her care. Bob signs a contract with the nursing home and commits to applying Susan's financial resources toward her care, but he embezzles Susan's Social Security and retirement funds instead of paying the nursing home. Due to her declining health, Susan is unlikely to notice, and even if she did notice, she would likely be unable to take corrective action. Unfortunately, because existing law prevents the nursing home from pursuing the misappropriated funds needed to pay for Susan's care and services, Susan is discharged.

SB 270 and HB 1593 prevents financial abuse of nursing home residents by allowing nursing facilities to: (1) pursue debts against a third party who has improperly diverted a resident's funds – leaving them unable to pay for their long-term care and susceptible to discharge and lawsuits; and (2) seek injunctive relief from a court to stop a responsible third party from continuing to misappropriate a nursing home resident's funds.

SB 270 and HB 1593 applies only to instances where: 1) a resident has the financial resources to pay for care; 2) a third party contractually commits those funds to the resident's care; and 3) the third party misappropriates the resident's funds and breaches his or her contract with the nursing home.

Closing this loophole will protect aging Texans from financial abuse and exploitation.

¹ Available at: <https://acl.gov/news-and-events/events-and-observances/world-elder-abuse-awareness-day> (emphasis added).

² Available at: www.medicareadvantage.com/complete-guide-to-elder-financial-abuse

³ Available at: www.medicareadvantage.com/complete-guide-to-elder-financial-abuse (emphasis added).

⁴ 42 CFR § 483.15

BILL FAQs

Who does the bill label as a “Responsible Party”?

The bill defines “Responsible Party” as “a resident representative who has legal access to a resident’s income or resources available to pay for nursing facility care and who has signed an admission agreement or other contract with a nursing facility agreeing to provide facility payment from the resident’s income or resources.” In plain language, many nursing home residents’ funds are managed by third parties – usually their children – because the residents lack the cognitive ability to manage their own financial affairs. Often, the Responsible Party is the resident’s power of attorney holder, which means they have a fiduciary duty to make decisions in the best interests of the resident. This concept of a Responsible Party is recognized in both federal and state law.

Does this bill create a new crime?

No. “Misappropriating” a resident’s funds is already a criminal act in many cases. But this bill is not concerned with criminal liability and does not criminalize any behavior. It merely closes a loophole that allows third parties to escape civil liability when they steal from a vulnerable resident and breach their contract with a nursing home.

Isn’t the true purpose of this bill to help nursing homes make more money?

No. This bill is designed to **prevent** elder financial abuse and **protect** nursing home residents who are unable to vigorously assert their own legal rights.

When a Responsible Party misappropriates a resident’s funds and breaches their contract with a nursing home, the loophole in current law leaves the nursing home with a terrible choice: either discharge the resident or file suit for nonpayment. And if the nursing home decides to file suit, they are forced to pursue the resident (*the victim*) instead of the Responsible Party who actually misappropriated the funds.

This bill authorizes the nursing home to seek an injunction from a court to **prevent** the Responsible Party from further misappropriating funds and closes the legal loophole that prohibits a nursing home from bringing a legal action against a Responsible Party to **protect** residents who have been financially abused from being discharged and disconnected from vital services.

How can it be determined whether a Responsible Party has misappropriated a resident’s funds?

Our judicial system is very robust. Courts routinely handle complex civil cases involving questions of fact (such as whether a resident’s funds have been embezzled or stolen). Every day across Texas, courts are resolving civil cases that are much more complicated than the kind of case at issue here.

Will this bill unfairly hold Responsible Parties financially liable when the resident they are assisting is unable to pay for care?

No. Federal law prohibits nursing homes from requiring Responsible Parties to commit their own personal funds to pay for a resident’s care, and this bill does not make Responsible Parties liable for unpaid nursing home bills. But it does – in limited cases – allow a nursing home to recover *a resident’s funds* that were stolen or embezzled by a Responsible Party. It does not subject Responsible Parties to legal jeopardy simply because a resident is unable to pay their bill.

If this bill becomes law, will it lead to a sharp increase in litigation?

This bill places a steep legal burden on a nursing home attempting to recover misappropriated funds. A nursing home must prove that the resident had the financial resources to pay for care (and that it verified the existence of those funds when the resident was admitted), that the Responsible Party contractually agreed to apply those funds toward the resident’s care, and that the funds were misappropriated by the Responsible Party. Because this is a tough case to make, a nursing home would only initiate this kind of action if they truly believed they were likely to succeed in court. For this reason, it is unlikely that we will see a noticeable increase in litigation as a result of this bill.



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Have any other states done this?

Yes. This approach, specifically the injunctive piece, is modeled after legislation passed in Florida to protect seniors from financial abuse.

Is this bill the same as the bill that the Senate unanimously passed last session?

This bill is very similar to the bill from last session, but it is different. The language preventing financial abuse of nursing home residents by allowing facilities to pursue debts against Responsible Parties who have improperly diverted a resident's funds is the same as the bill that unanimously passed the Senate last session. The language authorizing a nursing home to seek injunction relief against a Responsible Party is new to the bill. This language is modeled after legislation that passed in Florida aimed at protecting seniors from financial abuse.