

By: Menendez

H.B. No. 216

A BILL TO BE ENTITLED

AN ACT

relating to licensing and regulation of certain facilities providing personal care to elderly or disabled persons; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle B, Title 4, Health and Safety Code, is amended by adding Chapter 254 to read as follows:

CHAPTER 254. GROUP HOME FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 254.001. DEFINITIONS. In this chapter:

(1) "Department" means the Department of Aging and Disability Services.

(2) "Designee" means a state agency or entity with which the department contracts to perform specific, identified duties related to the fulfillment of a responsibility prescribed by this chapter.

(3) "Disabled person" has the meaning assigned by Section 48.002, Human Resources Code.

(4) "Elderly person" has the meaning assigned by Section 48.002, Human Resources Code.

(5) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(6) "Facility" means an establishment that provides services, including community meals, light housework, meal

1 preparation, transportation, grocery shopping, money management,
2 or laundry services to three or more elderly persons or disabled
3 persons residing in the facility who are unrelated to the owner or
4 proprietor of the establishment and that is not required to be
5 licensed under Chapter 142, 242, 246, 247, or 252.

6 (7) "Governmental unit" means the state or a political
7 subdivision of the state, including a county or municipality.

8 (8) "Person" means an individual, firm, partnership,
9 corporation, association, or joint stock company and includes a
10 legal successor of those entities.

11 (9) "Resident" means an individual who is residing in
12 a facility licensed under this chapter.

13 Sec. 254.002. RIGHTS OF RESIDENTS. Each facility shall
14 implement and enforce Chapter 102, Human Resources Code.

15 Sec. 254.003. RULES GENERALLY. The executive commissioner
16 shall adopt rules related to the administration and implementation
17 of this chapter.

18 Sec. 254.004. CONSULTATION AND COORDINATION. (a) Whenever
19 possible, the department shall:

20 (1) use the services of and consult with state and
21 local agencies in carrying out the department's functions under
22 this chapter; and

23 (2) use the facilities of the department or a designee
24 of the department, particularly in establishing and maintaining
25 standards relating to the humane treatment of residents.

26 (b) The department may cooperate with local public health
27 officials of a municipality or county in carrying out this chapter

1 and may delegate to those officials the power to make inspections
2 and recommendations to the department under this chapter.

3 (c) The department may coordinate its personnel and
4 facilities with a local agency of a municipality or county and may
5 provide advice to the municipality or county if the municipality or
6 county decides to supplement the state program with additional
7 rules required to meet local conditions.

8 Sec. 254.005. PROHIBITION OF REMUNERATION. (a) A facility
9 may not receive monetary or other remuneration from a person or
10 agency that furnishes services or materials to the facility or
11 residents for a fee.

12 (b) The department may revoke the license of a facility that
13 violates Subsection (a).

14 Sec. 254.006. REPORT OF REFERRALS TO DEPARTMENT. (a) A
15 state agency, political subdivision, or a public or private
16 provider of health care services shall report to the department the
17 referral of an elderly person or disabled person to a facility.

18 (b) A state agency, political subdivision, or a public or
19 private provider of health care services or behavioral health care
20 services may not refer an elderly person or disabled person to a
21 facility that is not licensed by the state as provided by this
22 chapter or licensed under other state law.

23 Sec. 254.007. ELDERLY AND DISABLED PERSONS ACCOUNT. (a)
24 The elderly and disabled persons account is established as an
25 account in the general revenue fund.

26 (b) The following amounts shall be deposited in the account:

27 (1) appropriations for the implementation and

1 administration of this subchapter;

2 (2) interest paid on money in the account;

3 (3) fees charged under this chapter; and

4 (4) penalties charged under this chapter.

5 (c) Money in the account may be appropriated only:

6 (1) for the enforcement of this chapter;

7 (2) to provide programs and services for elderly
8 persons or disabled persons; or

9 (3) for transitional housing and case management
10 services.

11 (d) Section 403.095, Government Code, does not apply to the
12 account.

13 [Sections 254.008-254.030 reserved for expansion]

14 SUBCHAPTER B. LICENSING, FEES, AND INSPECTIONS

15 Sec. 254.031. LICENSE REQUIRED. A person, acting severally
16 or jointly with any other person, may not establish, conduct, or
17 maintain in this state a facility without a license issued under
18 this chapter.

19 Sec. 254.032. LICENSE APPLICATION. (a) An application for
20 a license is made to the department on a form provided by the
21 department and must be accompanied by the license fee adopted under
22 Section 254.034.

23 (b) The application must contain information that the
24 department requires. The department may require affirmative
25 evidence of ability to comply with the standards and rules adopted
26 under this chapter.

27 Sec. 254.033. ISSUANCE AND RENEWAL OF LICENSE. (a) After

1 receiving the application, the department shall issue a license if,
2 after inspection and investigation, it finds that the applicant and
3 facility meet the requirements established under this chapter.

4 (b) The department may issue a license only for:

5 (1) the premises and persons named in the application;
6 and

7 (2) the maximum number of residents specified in the
8 application.

9 (c) A license may not be transferred or assigned.

10 (d) A license is renewable on the second anniversary of
11 issuance or renewal of the license after:

12 (1) an inspection;

13 (2) filing and approval of a renewal report; and

14 (3) payment of the renewal fee.

15 (e) The renewal report required under Subsection (d)(2)
16 must be filed in accordance with rules adopted by the executive
17 commissioner that specify the form of the report, the date it must
18 be submitted, and the information it must contain.

19 (f) The executive commissioner by rule shall define
20 specific, appropriate, and objective criteria on which the
21 department may deny an initial license application or license
22 renewal or revoke a license.

23 Sec. 254.034. LICENSE FEES. (a) The executive
24 commissioner by rule may adopt a fee for a license issued under this
25 chapter in an amount reasonable and necessary to recover the costs
26 of administering this chapter.

27 (b) The license fee must be paid with each application for

1 an initial license or for a renewal or change of ownership of a
2 license.

3 (c) The executive commissioner may adopt an additional fee
4 for the approval of an increase in number of residents.

5 Sec. 254.035. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.

6 (a) The department, after providing notice and opportunity for a
7 hearing to the applicant or license holder, may deny, suspend, or
8 revoke a license if the department finds that the applicant or
9 license holder has substantially failed to comply with the
10 requirements established under this chapter.

11 (b) The status of an applicant for a license or of a license
12 holder is preserved until final disposition of the contested
13 matter, except as the court having jurisdiction of a judicial
14 review of the matter may order in the public interest for the
15 welfare and safety of the residents.

16 Sec. 254.036. MINIMUM STANDARDS. The executive
17 commissioner may adopt, publish, and enforce minimum standards
18 relating to:

19 (1) the construction or remodeling of a facility,
20 including plumbing, heating, lighting, ventilation, and other
21 housing conditions, to ensure the residents' health, safety,
22 comfort, and protection from fire hazard;

23 (2) sanitary and related conditions in a facility and
24 its surroundings, including water supply, sewage disposal, food
25 handling, and general hygiene to ensure the residents' health,
26 safety, and comfort;

27 (3) equipment essential to the residents' health and

1 welfare;

2 (4) the reporting and investigation of injuries,
3 incidents, and unusual accidents and the establishment of other
4 policies and procedures necessary to ensure resident safety;

5 (5) policies and procedures for the control of
6 communicable diseases;

7 (6) specialized nutrition support;

8 (7) requirements for in-service education of the
9 operator and each employee who has any contact with residents;

10 (8) the regulation of the number and qualifications of
11 operators and employees responsible for providing any part of a
12 service to residents; and

13 (9) the quality of life.

14 Sec. 254.037. REASONABLE TIME TO COMPLY. The executive
15 commissioner by rule shall give a facility that is in operation when
16 a rule or standard is adopted under this chapter a reasonable time
17 to comply with the rule or standard, not to exceed 12 months after
18 the date the rule or standard is adopted.

19 Sec. 254.038. EARLY COMPLIANCE REVIEW. (a) The executive
20 commissioner by rule shall adopt a procedure under which a person
21 proposing to construct or modify a facility may submit building
22 plans to the department for review for compliance with
23 architectural requirements before beginning construction or
24 modification. In adopting the procedure, the department shall set
25 reasonable deadlines by which the department must complete review
26 of submitted plans.

27 (b) The department shall, within 30 days, review plans

1 submitted under this section for compliance with architectural
2 requirements and inform the person in writing of the results of the
3 review. If the plans comply with the architectural requirements,
4 the architectural requirements applicable to the project may not
5 subsequently be changed unless:

6 (1) the change is required by federal law; or

7 (2) the person fails to complete the project within a
8 reasonable time.

9 (c) The department may charge a reasonable fee for
10 conducting a review under this section.

11 (d) A fee collected under this section shall be deposited in
12 the elderly and disabled persons account under Section 254.007 and
13 may be appropriated only to the department to conduct reviews under
14 this section.

15 (e) The review procedure provided by this section must
16 include a review of building plans for compliance with the Texas
17 Accessibility Standards as administered and enforced.

18 Sec. 254.039. FIRE SAFETY REQUIREMENTS. (a) A facility
19 shall comply with fire safety requirements established under this
20 section.

21 (b) The executive commissioner by rule shall adopt the fire
22 safety standards applicable to the facility. The fire safety
23 standards must be the same as the fire safety standards established
24 by an edition of the Life Safety Code of the National Fire
25 Protection Association. If required by federal law or regulation,
26 the edition selected may be different for facilities or portions of
27 facilities operated or approved for construction at different

1 times.

2 (c) The rules adopted under this section do not prevent a
3 facility licensed under this chapter from voluntarily conforming to
4 fire safety standards that are compatible with, equal to, or more
5 stringent than those adopted by the executive commissioner.

6 (d) Notwithstanding any other provision of this section, a
7 municipality may enact additional and more stringent fire safety
8 standards applicable to new construction begun on or after
9 September 1, 2009.

10 Sec. 254.040. POSTING. Each facility shall prominently and
11 conspicuously post for display in a public area of the facility that
12 is readily available to residents, the operator, any employees, and
13 visitors:

14 (1) the license issued under this chapter;

15 (2) a sign prescribed by the executive commissioner
16 that specifies complaint procedures established under this chapter
17 or rules adopted under this chapter and that specifies how
18 complaints may be registered with the department;

19 (3) a notice in a form prescribed by the executive
20 commissioner stating that inspection and related reports are
21 available at the facility for public inspection and providing the
22 department's toll-free telephone number that may be used to obtain
23 information concerning the facility;

24 (4) a concise summary of the most recent inspection
25 report relating to the facility;

26 (5) a notice that the operator, any employees, other
27 staff, residents, volunteers, and family members and guardians of

1 residents are protected from discrimination or retaliation as
2 provided by Sections 254.131 and 254.132; and

3 (6) a notice in a form prescribed by the executive
4 commissioner that lists the name, location, and contact information
5 for:

6 (A) the closest local public health services
7 agency in the proximity of the facility; and

8 (B) a local organization or entity that
9 represents, advocates, or serves elderly persons or disabled
10 persons, including any related toll-free contact information for
11 reporting emergencies to the organization or entity.

12 Sec. 254.041. INSPECTIONS. (a) The department or the
13 department's designee may make any inspection, survey, or
14 investigation that it considers necessary and may enter the
15 premises of a facility at reasonable times to make an inspection,
16 survey, or investigation in accordance with rules of the executive
17 commissioner.

18 (b) The department is entitled to access to books, records,
19 and other documents maintained by or on behalf of a facility to the
20 extent necessary to enforce this chapter and the rules adopted
21 under this chapter.

22 (c) A license holder or an applicant for a license is
23 considered to have consented to entry and inspection of the
24 facility by a representative of the department in accordance with
25 this chapter.

26 (d) The department shall establish procedures to preserve
27 all relevant evidence of conditions the department finds during an

1 inspection, survey, or investigation that the department
2 reasonably believes threaten the health and safety of a resident.
3 The procedures may include photography or photocopying of relevant
4 documents, such as license holder's notes, physician's orders, and
5 pharmacy records, for use in any legal proceeding.

6 (e) When photographing a resident, the department:

7 (1) shall respect the privacy of the resident to the
8 greatest extent possible;

9 (2) shall obtain the resident's permission to the
10 greatest extent possible before taking a photograph that will allow
11 the resident to be identified; and

12 (3) may not make public the identity of the resident.

13 (f) A facility, the operator, an employee of a facility, and
14 a resident's attending physician are not civilly liable for
15 surrendering confidential or private material under this section,
16 including physician's orders, pharmacy records, notes and
17 memoranda of a state office, and resident files.

18 (g) The department shall establish in clear and concise
19 language a form to summarize each inspection report and complaint
20 investigation report.

21 (h) The department shall establish proper procedures to
22 ensure that copies of all forms and reports under this section are
23 made available to consumers, residents, and the relatives of
24 residents as the department considers proper.

25 (i) The department shall have specialized staff conduct
26 inspections, surveys, or investigations of facilities under this
27 section.

1 Sec. 254.042. UNANNOUNCED INSPECTIONS. (a) Each licensing
2 period, the department shall conduct at least two unannounced
3 inspections of each facility.

4 (b) In order to ensure continuous compliance, the
5 department shall randomly select a sufficient percentage of
6 facilities for unannounced inspections to be conducted between 5
7 p.m. and 8 a.m. Those inspections must be cursory to avoid to the
8 greatest extent feasible any disruption of the residents.

9 (c) The department may require additional unannounced
10 inspections.

11 (d) As considered appropriate and necessary by the
12 department, the department may invite a citizen advocate to
13 participate in inspections. An invited advocate must be an
14 individual who has an interest in or who is employed by or
15 affiliated with an organization or entity that represents,
16 advocates for, or serves elderly persons or disabled persons.

17 Sec. 254.043. DISCLOSURE OF UNANNOUNCED INSPECTIONS;
18 CRIMINAL PENALTY. (a) Except as expressly provided by this
19 chapter, a person commits an offense if the person intentionally,
20 knowingly, or recklessly discloses to an unauthorized person the
21 date, time, or any other fact about an unannounced inspection of a
22 facility before the inspection occurs.

23 (b) In this section, "unauthorized person" does not
24 include:

- 25 (1) the department;
26 (2) the office of the attorney general; or
27 (3) any other person or entity authorized by law to

1 make an inspection or to accompany an inspector.

2 (c) An offense under this section is a Class B misdemeanor.

3 (d) A person convicted under this section is not eligible
4 for state employment.

5 Sec. 254.044. LICENSING SURVEYS. The department shall
6 provide a team to conduct surveys to validate findings of licensing
7 surveys. The purpose of a validation survey is to assure that
8 survey teams throughout the state survey in a fair and consistent
9 manner. A facility subjected to a validation survey must correct
10 deficiencies cited by the validation team but is not subject to
11 punitive action for those deficiencies.

12 Sec. 254.045. REPORTING VIOLATIONS. (a) The department or
13 the department's representative conducting an inspection, survey,
14 or investigation under this chapter shall:

15 (1) list each violation of a law or rule on a form
16 designed by the department for inspections; and

17 (2) identify the specific law or rule the facility
18 violates.

19 (b) At the conclusion of an inspection, survey, or
20 investigation under this chapter, the department or the
21 department's representative conducting the inspection, survey, or
22 investigation shall discuss the violations with the facility's
23 management in an exit conference. The department or the
24 department's representative shall leave a written list of the
25 violations with the facility and the person designated by the
26 facility to receive notice of the imposition of an administrative
27 penalty at the time of the exit conference. If the department or

1 the department's representative discovers any additional
2 violations during the review of field notes or preparation of the
3 official final list, the department or the department's
4 representative shall give the facility an additional exit
5 conference regarding the additional violations.

6 (c) The facility shall submit a plan to correct the
7 violations to the department not later than the 10th day after the
8 date the facility receives the final statement of violations.

9 [Sections 254.046-254.060 reserved for expansion]

10 SUBCHAPTER C. GENERAL ENFORCEMENT

11 Sec. 254.061. EMERGENCY SUSPENSION OR CLOSING ORDER. (a)
12 The department shall suspend a facility's license or order an
13 immediate closing of part of the facility if:

14 (1) the department finds the facility is operating in
15 violation of the standards prescribed by this chapter; and

16 (2) the violation creates an immediate threat to the
17 health and safety of a resident.

18 (b) The executive commissioner by rule shall provide for the
19 placement of residents during the facility's suspension or closing
20 to ensure their health and safety.

21 (c) To ensure the availability of emergency placements
22 under Subsection (b), the executive commissioner shall develop a
23 memorandum of understanding with appropriate counties or municipal
24 agencies that:

25 (1) establishes an emergency placement capability for
26 the area served by the county or municipal agency; and

27 (2) may provide for partial or full remuneration by

1 the facility of the costs associated with emergency placements
2 provided by the county or municipal agency if the emergency
3 placements resulted from a department order suspending the
4 facility's license or closing the facility.

5 (d) An order suspending a license or closing a part of a
6 facility under this section is immediately effective on the date on
7 which the license holder receives written notice or a later date
8 specified in the order.

9 (e) An order suspending a license or ordering an immediate
10 closing of a part of a facility is valid for 10 days after the
11 effective date of the order.

12 Sec. 254.062. INJUNCTION. (a) The department may petition
13 a district court for a temporary restraining order to restrain a
14 person from continuing a violation of the standards prescribed by
15 this chapter if the department finds that the violation creates an
16 immediate threat to the health and safety of the facility's
17 residents.

18 (b) A district court, on petition of the department, may by
19 injunction:

20 (1) prohibit a person from continuing a violation of
21 the standards or licensing requirements prescribed by this chapter;

22 (2) restrain or prevent the establishment, conduct,
23 management, or operation of a facility without a license issued
24 under this chapter; or

25 (3) grant the injunctive relief warranted by the facts
26 on a finding by the court that a person is violating the standards
27 or licensing requirements prescribed by this chapter.

1 (c) The attorney general, on request by the department,
2 shall bring and conduct on behalf of the state a suit authorized by
3 this section.

4 (d) A suit for a temporary restraining order or other
5 injunctive relief must be brought in the county in which the alleged
6 violation occurs or in Travis County.

7 Sec. 254.063. LICENSE REQUIREMENTS; CRIMINAL PENALTY. (a)
8 A person commits an offense if the person violates Section 254.031.

9 (b) An offense under this section is punishable by a fine of
10 not more than \$1,000 for the first offense and not more than \$500
11 for each subsequent offense.

12 (c) Each day of a continuing violation after conviction is a
13 separate offense.

14 Sec. 254.064. CIVIL PENALTY. (a) A person who violates
15 this chapter or a rule adopted or order issued under this chapter is
16 liable for a civil penalty of not less than \$100 or more than
17 \$10,000 for each violation if the department determines the
18 violation threatens the health and safety of a resident.

19 (b) Each day of a continuing violation constitutes a
20 separate ground for recovery.

21 (c) On request of the department, the attorney general may
22 institute an action in a district court to collect a civil penalty
23 under this section. Any amount collected shall be remitted to the
24 comptroller for deposit to the credit of the elderly and disabled
25 persons account.

26 Sec. 254.065. ADMINISTRATIVE PENALTY. (a) The department
27 may impose an administrative penalty against a facility that

1 violates this chapter or a rule adopted or order issued under this
2 chapter.

3 (b) The penalty for a facility may not be less than \$100 or
4 more than \$1,000 for each violation. The total amount of the
5 penalty assessed for a violation continuing or occurring on
6 separate days under this subsection may not exceed \$5,000. Each day
7 a violation occurs and each day of a continuing violation is a
8 separate violation for purposes of imposing a penalty.

9 (c) The executive commissioner by rule shall specify each
10 violation for which an administrative penalty may be assessed. In
11 determining which violations warrant penalties, the department
12 shall consider:

13 (1) the seriousness of the violation, including the
14 nature, circumstances, extent, and gravity of the violation and the
15 hazard of the violation to the health or safety of residents; and

16 (2) whether the affected facility had identified the
17 violation as a part of its internal quality assurance process and
18 had made appropriate progress on correction.

19 (d) The executive commissioner by rule shall establish a
20 specific and detailed schedule of appropriate and graduated
21 penalties for each violation based on:

22 (1) the seriousness of the violation, including the
23 nature, circumstances, extent, and gravity of the violation and the
24 hazard of the violation to the health or safety of residents;

25 (2) the history of previous violations;

26 (3) whether the affected facility had identified the
27 violation as a part of its internal quality assurance process and

1 had made appropriate progress on correction;

2 (4) the amount necessary to deter future violations;

3 (5) efforts made to correct the violation;

4 (6) the size of the facility; and

5 (7) any other matters that justice may require.

6 (e) The executive commissioner by rule shall provide the
7 facility with a reasonable period of time, not less than 45 days,
8 following the first day of a violation to correct the violation
9 before assessing an administrative penalty if a plan of correction
10 has been implemented. This subsection does not apply to a violation
11 that the department determines has resulted in serious harm to or
12 the death of a resident or constitutes a serious threat to the
13 health or safety of a resident.

14 (f) The department may not assess an administrative penalty
15 for a minor violation if the person corrects the violation not later
16 than the 46th day after the date the person receives notice of the
17 violation.

18 (g) The department shall establish a system to ensure
19 standard and consistent application of penalties regardless of the
20 facility location.

21 (h) All proceedings for the assessment of an administrative
22 penalty under this chapter are subject to Chapter 2001, Government
23 Code.

24 (i) Notwithstanding any other provision of this section, an
25 administrative penalty ceases to be incurred on the date a
26 violation is corrected. The administrative penalty ceases to be
27 incurred only if the facility:

1 (1) notifies the department in writing of the
2 correction of the violation and of the date the violation was
3 corrected; and

4 (2) shows later that the violation was corrected.

5 (j) Rules adopted under this section shall include
6 specific, appropriate, and objective criteria that describe the
7 scope and severity of a violation that results in a recommendation
8 for each specific penalty.

9 (k) Sections 252.0651, 252.066, 252.067, 252.068, and
10 252.070, Health and Safety Code, apply to an administrative penalty
11 imposed under this section.

12 Sec. 254.066. AMELIORATION OF VIOLATION. (a) In this
13 section, "immediate jeopardy to health and safety" means a
14 situation in which there is a high probability that serious harm or
15 injury to a resident could occur at any time or already has occurred
16 and may occur again if the resident is not protected from the harm
17 or if the threat is not removed.

18 (b) In lieu of demanding payment of an administrative
19 penalty authorized by this subchapter, the department may allow a
20 person subject to the penalty to use, under the supervision of the
21 department, all or part of the amount of the penalty to ameliorate
22 the violation or to improve services, other than administrative
23 services, in the facility affected by the violation.

24 (c) The department shall offer amelioration to a person for
25 a charged violation if the department determines that the violation
26 does not result in an immediate jeopardy to the health and safety of
27 a facility resident.

1 (d) The department may not offer amelioration to a person if
2 the department determines that the charged violation constitutes
3 immediate jeopardy to the health and safety of a facility resident.

4 (e) The department shall offer amelioration to a person
5 under this section not later than the 10th day after the date the
6 person receives from the department a final notification of
7 assessment of administrative penalty that is sent to the person
8 after an informal dispute resolution process but before an
9 administrative hearing under Section 254.065.

10 (f) A person to whom amelioration has been offered must file
11 a plan for amelioration not later than the 45th day after the date
12 the person receives the offer of amelioration from the department.
13 In submitting the plan, the person must agree to waive the person's
14 right to an administrative hearing under Section 254.065 if the
15 department approves the plan.

16 (g) At a minimum, a plan for amelioration must:

17 (1) propose changes to the management or operation of
18 the facility that will improve services to or quality of care of
19 residents of the facility;

20 (2) identify, through measurable outcomes, the ways in
21 which and the extent to which the proposed changes will improve
22 services to or quality of care of residents of the facility;

23 (3) establish clear goals to be achieved through the
24 proposed changes;

25 (4) establish a timeline for implementing the proposed
26 changes; and

27 (5) identify specific actions necessary to implement

1 the proposed changes.

2 (h) A plan for amelioration may include proposed changes to
3 improve the overall quality of life for residents.

4 (i) The department may require that an amelioration plan
5 propose changes that would result in conditions that exceed the
6 requirements of this chapter or the rules adopted under this
7 chapter.

8 (j) The department shall approve or deny an amelioration
9 plan not later than the 45th day after the date the department
10 receives the plan. On approval of a person's plan, the department
11 shall deny a pending request for a hearing submitted by the person
12 on the occurrence of the violation, the amount of the penalty, or
13 both the occurrence of the violation and the amount of the penalty.

14 (k) The department may not offer amelioration to a person:
15 (1) more than three times in a two-year period; or
16 (2) more than one time in a two-year period for the
17 same or similar violation.

18 [Sections 254.067-254.090 reserved for expansion]

19 SUBCHAPTER D. NOTIFICATION OF CLOSURE

20 Sec. 254.091. NOTIFICATION OF CLOSURE. (a) A facility that
21 is closing temporarily or permanently, voluntarily or
22 involuntarily, shall:

23 (1) provide written notice of the closure of the
24 facility to each resident, the local mental health authority, and
25 the department; and

26 (2) make reasonable efforts to provide the same
27 written notice, within a reasonable time before closure, to the

1 nearest relative of each resident or to a person responsible for the
2 resident's support.

3 (b) If the closure of the facility is for a temporary
4 period, the notice required by Subsection (a) must include:

5 (1) the date that the facility is estimated to reopen;
6 and

7 (2) the name and contact information of the person
8 responsible for the reopening of the facility.

9 (c) If the department orders a facility to close or the
10 facility's closure is in any other way involuntary, the facility
11 shall make the notification, orally or in writing, immediately on
12 receiving notice of the closing.

13 (d) If the facility's closure is voluntary, the facility
14 shall make the notification not later than one week after the date
15 on which the decision to close is made.

16 (e) On or after the date on which a facility ceases to
17 provide services to a resident, a facility may not continue to:

18 (1) charge a fee, other than a fee for services
19 previously provided to the resident; or

20 (2) collect money from a former resident under a
21 financial assignment agreement.

22 Sec. 254.092. CRIMINAL PENALTY FOR FAILURE TO NOTIFY. (a)
23 A facility commits an offense if the facility knowingly fails to
24 comply with Section 254.091.

25 (b) An offense under this section is a Class A misdemeanor.

26 Sec. 254.093. CLOSURE REPORT. (a) A facility required to
27 provide notice of the facility's closure under Section 254.091(a)

1 also shall provide a closure report regarding each resident to the
2 department in accordance with this section.

3 (b) The report must include a summary of the actions taken
4 by the facility to:

5 (1) relocate the resident, including the name,
6 address, and contact information of a licensed facility or other
7 location to which the resident was transferred;

8 (2) secure the personal property of the resident if
9 the resident's personal property did not accompany the resident to
10 the resident's new location; and

11 (3) finalize any outstanding financial arrangements
12 with the resident, including presenting the resident with a final
13 statement of account with the facility containing all charges and
14 fees for services, discontinuing any financial assignment
15 arrangement, and refunding any excess fees or charges.

16 [Sections 254.094-254.120 reserved for expansion]

17 SUBCHAPTER E. REPORTS OF ABUSE, NEGLECT, OR EXPLOITATION

18 Sec. 254.121. REPORTING OF ABUSE, NEGLECT, OR EXPLOITATION.

19 (a) A person, including an owner, operator, or employee of a
20 facility, who has cause to believe that a resident has been abused,
21 neglected, or exploited or may be adversely affected by abuse,
22 neglect, or exploitation caused by another person shall report the
23 abuse, neglect, or exploitation as required by Section 48.051,
24 Human Resources Code.

25 (b) Each facility shall require each employee of the
26 facility, as a condition of employment with the facility, to sign a
27 statement that the employee realizes that the employee may be

1 criminally liable under Section 48.052, Human Resources Code, for
2 failure to report abuse, neglect, or exploitation.

3 [Sections 254.122-254.130 reserved for expansion]

4 SUBCHAPTER F. PROHIBITION OF RETALIATION

5 Sec. 254.131. SUIT FOR RETALIATION. (a) In this section,
6 "employee" means a person who is an employee of a facility or any
7 other person who provides services for a facility for compensation,
8 including a contract laborer for the facility.

9 (b) An employee has a cause of action against a facility,
10 the owner or operator of the facility, or another employee of the
11 facility that suspends or terminates the employment of the employee
12 or otherwise disciplines, discriminates against, or retaliates
13 against the employee for:

14 (1) reporting to the employee's supervisor, the
15 facility owner or operator, a state regulatory agency, or a law
16 enforcement agency a violation of law, including a violation of
17 this chapter or a rule adopted under this chapter; or

18 (2) initiating or cooperating in any investigation or
19 proceeding of a governmental entity relating to the services or
20 conditions at the facility.

21 (c) A plaintiff who prevails in a suit under this section
22 may recover:

23 (1) the greater of \$1,000 or actual damages, including
24 damages for:

25 (A) mental anguish, even if an injury other than
26 mental anguish is not shown; and

27 (B) lost wages, if the petitioner's employment

1 was suspended or terminated;

2 (2) exemplary damages;

3 (3) court costs; and

4 (4) reasonable attorney's fees.

5 (d) In addition to the amounts that may be recovered under
6 Subsection (c), a person whose employment is suspended or
7 terminated is entitled to appropriate injunctive relief,
8 including, if applicable:

9 (1) reinstatement in the person's former position; and

10 (2) reinstatement of lost fringe benefits or seniority
11 rights.

12 (e) The petitioner, not later than the 90th day after the
13 date on which the person's employment is suspended or terminated,
14 must bring suit or notify the Texas Workforce Commission of the
15 petitioner's intent to sue under this section. A petitioner who
16 notifies the Texas Workforce Commission under this subsection must
17 bring suit not later than the 90th day after the date of the
18 delivery of the notice to the commission. On receipt of the notice,
19 the commission shall notify the facility of the petitioner's intent
20 to bring suit under this section.

21 (f) The petitioner has the burden of proof, except that
22 there is a rebuttable presumption that the person's employment was
23 suspended or terminated for reporting abuse or neglect if the
24 person is suspended or terminated within 60 days after the date on
25 which the person reported in good faith.

26 (g) A suit under this section may be brought in the district
27 court of the county in which:

- 1 (1) the plaintiff resides;
- 2 (2) the plaintiff was employed by the defendant; or
- 3 (3) the defendant conducts business.

4 (h) Each facility shall require each employee of the
5 facility, as a condition of employment with the facility, to sign a
6 statement that the employee understands the employee's rights under
7 this section. The statement must be part of the statement required
8 under Section 254.121(b).

9 Sec. 254.132. SUIT FOR RETALIATION AGAINST VOLUNTEER,
10 RESIDENT, OR FAMILY MEMBER OR GUARDIAN OF RESIDENT. (a) A facility
11 may not retaliate or discriminate against a volunteer, a resident,
12 or a family member or guardian of a resident because the volunteer,
13 the resident, the resident's family member or guardian, or any
14 other person:

15 (1) makes a complaint or files a grievance concerning
16 the facility;

17 (2) reports a violation of law, including a violation
18 of this chapter or a rule adopted under this chapter; or

19 (3) initiates or cooperates in an investigation or
20 proceeding of a governmental entity relating to the services or
21 conditions at the facility.

22 (b) A volunteer, a resident, or a family member or guardian
23 of a resident against whom a facility retaliates or discriminates
24 in violation of Subsection (a) is entitled to sue for:

25 (1) injunctive relief;

26 (2) the greater of \$1,000 or actual damages, including
27 damages for mental anguish, even if an injury other than mental

1 anguish is not shown;

2 (3) exemplary damages;

3 (4) court costs; and

4 (5) reasonable attorney's fees.

5 (c) A volunteer, a resident, or a family member or guardian
6 of a resident who seeks relief under this section must report the
7 alleged violation not later than the 180th day after the date on
8 which the alleged violation of this section occurred or was
9 discovered by the volunteer, the resident, or the family member or
10 guardian of the resident through reasonable diligence.

11 (d) A suit under this section may be brought in the district
12 court of the county in which the facility is located or in a
13 district court of Travis County.

14 [Sections 254.133-254.150 reserved for expansion]

15 SUBCHAPTER G. REPORTING RESIDENT DEATHS

16 Sec. 254.151. REPORTS RELATING TO RESIDENT DEATHS;
17 STATISTICAL INFORMATION. (a) A facility licensed under this
18 chapter shall submit a report to the department concerning the
19 death of:

20 (1) a facility resident; and

21 (2) a former resident that occurs 24 hours or less
22 after the former resident is transferred from the facility to a
23 hospital.

24 (b) The report must be submitted not later than the 10th
25 working day after the last day of each month in which a resident
26 dies. The facility must make the report on a form prescribed by the
27 department. The report must contain the name and social security

1 number of the deceased.

2 (c) The department shall correlate reports under this
3 section with death certificate information to develop data relating
4 to the:

5 (1) name and age of the deceased;

6 (2) official cause of death listed on the death
7 certificate;

8 (3) date, time, and place of death; and

9 (4) name and address of the facility in which the
10 deceased resided.

11 (d) Unless specified by executive commissioner rule, a
12 record under this section is confidential and not subject to the
13 provisions of Chapter 552, Government Code.

14 (e) The department shall develop statistical information on
15 official causes of death to determine patterns and trends of
16 incidents of death among elderly persons and disabled persons and
17 related conditions and in specific facilities. Information
18 developed under this subsection is not confidential.

19 (f) A licensed facility shall make available on the request
20 of an applicant or an applicant's representative historical
21 statistics on all required information.

22 [Sections 254.152-254.170 reserved for expansion]

23 SUBCHAPTER H. MEDICAL CARE

24 Sec. 254.171. ADMINISTRATION OF MEDICATION. (a) A
25 facility may not administer medication to a resident of the
26 facility, except that a facility may provide assistance to a
27 resident in self-administering medication, including the provision

1 of:

2 (1) a secure and safe means of storage for the
3 medication;

4 (2) scheduled times and doses for self-administration
5 of medication; and

6 (3) assistance in requesting and obtaining new or
7 refilled prescriptions from an authorized health care provider.

8 (b) As a part of the facility's initial and renewal license
9 application, the facility shall submit a description of the type of
10 assistance with self-administration of medication provided by the
11 facility to residents. A facility may not provide any assistance
12 with self-administration of medication that has not been approved
13 by the department during the licensing or renewal process.

14 (c) The facility shall provide the description of the type
15 of assistance with self-administration of medication provided by
16 the facility to residents to a person performing an inspection of
17 the facility under this chapter.

18 [Sections 254.172-254.180 reserved for expansion]

19 SUBCHAPTER I. REQUIRED REPORTING

20 Sec. 254.181. LEGISLATIVE REPORT. The department shall
21 include in the department's biennial report to the legislature
22 information regarding:

23 (1) the number of:

24 (A) license applications received under this
25 chapter;

26 (B) license applications granted under this
27 chapter;

1 (C) facility closures, including closures
2 required by the department because of violations of this chapter
3 and voluntary closures; and

4 (D) investigations of facilities licensed under
5 this chapter related to alleged abuse, neglect, or exploitation of
6 a resident; and

7 (2) a description of any penalties against a facility
8 licensed under this chapter resulting from a department
9 investigation.

10 SECTION 2. This Act takes effect September 1, 2009.

11 SECTION 3. Notwithstanding Sections 254.031 and 254.063,
12 Health and Safety Code, as added by this Act, a facility is not
13 required to be licensed under Chapter 254, Health and Safety Code,
14 as added by this Act, before January 1, 2010.