

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Menendez, Naishtat, Davis of Dallas,  
Kent, Leibowitz

H.B. No. 216

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the regulation of boarding home facilities for persons  
3 with disabilities or elderly persons and assisted living  
4 facilities.

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

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

8 CHAPTER 254. BOARDING HOME FACILITIES

9 Sec. 254.001. DEFINITIONS. In this chapter:

10 (1) "Assistance with self-administering medication"  
11 means assisting a resident by reminding the resident to take  
12 medication, opening and removing medications from a container, or  
13 reminding the resident when a prescription medication needs to be  
14 refilled.

15 (2) "Boarding home facility" means an establishment  
16 that:

17 (A) furnishes, in one or more buildings, lodging  
18 to three or more persons with disabilities or elderly persons who  
19 are unrelated to the owner of the establishment by blood or  
20 marriage; and

21 (B) provides community meals, light housework,  
22 meal preparation, transportation, grocery shopping, money  
23 management, laundry services, or assistance with  
24 self-administration of medication but does not provide personal

1 care services as defined by Section 247.002 to those persons.

2 (3) "Commission" means the Health and Human Services  
3 Commission.

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

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

8 (6) "Person with a disability" means a disabled person  
9 as defined by Section 48.002, Human Resources Code.

10 (7) "Resident" means a person who is residing in a  
11 boarding home facility.

12 Sec. 254.002. EXEMPTIONS. This chapter does not apply to:

13 (1) a person that is required to be licensed under  
14 Chapter 142, 242, 246, 247, or 252;

15 (2) a person that is exempt from licensing under  
16 Section 142.003(a)(19), 242.003(3), or 247.004(4);

17 (3) a hotel as defined by Section 156.001, Tax Code;

18 (4) a retirement community;

19 (5) a monastery or convent;

20 (6) a child-care facility as defined by Section  
21 42.002, Human Resources Code;

22 (7) a family violence shelter center as defined by  
23 Section 51.002, Human Resources Code; or

24 (8) a sorority or fraternity house or other dormitory  
25 associated with an institution of higher education.

26 Sec. 254.003. MODEL STANDARDS. The executive commissioner  
27 shall develop and publish in the Texas Register model standards for

1 the operation of a boarding home facility relating to:

2 (1) the construction or remodeling of a boarding home  
3 facility, including plumbing, heating, lighting, ventilation, and  
4 other housing conditions, to ensure the residents' health, safety,  
5 comfort, and protection from fire hazard;

6 (2) sanitary and related conditions in a boarding home  
7 facility and its surroundings, including insect and rodent control,  
8 water supply, sewage disposal, food handling, and general hygiene  
9 to ensure the residents' health, safety, and comfort;

10 (3) the reporting and investigation of injuries,  
11 incidents, and unusual accidents and the establishment of other  
12 policies and procedures necessary to ensure resident health and  
13 safety;

14 (4) assistance with self-administering medication;

15 (5) requirements for in-service education of the  
16 facility's staff;

17 (6) criminal history record checks; and

18 (7) assessment and periodic monitoring to ensure that  
19 a resident:

20 (A) does not require the boarding home facility  
21 to provide personal care, nursing, or other services not listed in  
22 Section 254.001(2); and

23 (B) is capable of self-administering medication  
24 or is aware of what the resident's medications look like and knows  
25 when the medications should be taken but requires assistance with  
26 self-administering medication.

27 Sec. 254.004. LOCAL REGULATION. A county or municipality

1 may require a person to obtain a permit from the county or  
2 municipality to operate a boarding home facility within the  
3 county's or municipality's jurisdiction. A county or municipality  
4 may adopt the standards developed by the executive commissioner  
5 under Section 254.003 and require a boarding home facility that  
6 holds a permit issued by the county or municipality to comply with  
7 the adopted standards.

8 Sec. 254.005. PERMIT PROCEDURES; FEES; FINES. (a) A county  
9 or municipality that requires a person to obtain a boarding home  
10 facility permit as authorized by Section 254.004 may establish  
11 procedures for the submission of a boarding home facility permit  
12 application and for the issuance, denial, renewal, suspension, and  
13 revocation of the permit.

14 (b) A county or municipality that requires a person to  
15 obtain a boarding home facility permit as authorized under Section  
16 254.004 may set reasonable fees for issuance of the permit, renewal  
17 of the permit, and inspections and may impose fines for  
18 noncompliance with the county or municipal boarding home facility  
19 regulations. The fees collected and fines imposed by the county or  
20 municipality must be used to administer the county or municipal  
21 permitting program, as a source of local matching funds for state  
22 grants, or for other purposes directly related to providing  
23 boarding home facility or other assisted living services to elderly  
24 persons and persons with disabilities.

25 (c) A person required to obtain a boarding home facility  
26 permit from a county or municipality as authorized under Section  
27 254.004 shall pay any fees required or fines imposed by the county

1 or municipality.

2 Sec. 254.006. POSTING. A boarding home facility that holds  
3 a permit issued by a county or municipality shall prominently and  
4 conspicuously post for display in a public area of the boarding home  
5 facility that is readily available to residents, the operator,  
6 employees, and visitors:

7 (1) the permit issued by a county or municipality;

8 (2) a sign prescribed by the county or municipality  
9 that issued the permit that specifies how complaints may be  
10 registered with the county or municipality;

11 (3) a notice in a form prescribed by the county or  
12 municipality that issued the permit stating that inspection and  
13 related reports are available at the boarding home facility for  
14 public inspection and providing a telephone number that may be used  
15 to obtain information concerning the boarding home facility;

16 (4) a concise summary of the most recent inspection  
17 report relating to the boarding home facility; and

18 (5) a notice in a form prescribed by the county or  
19 municipality that issued the permit that lists the name, location,  
20 and contact information for:

21 (A) the closest local public health services  
22 agency in the proximity of the boarding home facility; and

23 (B) a local organization or entity that  
24 represents, advocates, or serves elderly persons or persons with  
25 disabilities, including any related toll-free contact information  
26 for reporting emergencies to the organization or entity.

27 Sec. 254.007. INSPECTIONS. (a) A county or municipality

1 may conduct any inspection, survey, or investigation that it  
2 considers necessary and may enter the premises of a boarding home  
3 facility at reasonable times to make an inspection, survey, or  
4 investigation.

5 (b) A county or municipality is entitled to access to books,  
6 records, and other documents maintained by or on behalf of a  
7 boarding home facility to the extent necessary to enforce the  
8 standards adopted by the county or municipality.

9 Sec. 254.008. INTERLOCAL COOPERATION. Two or more counties  
10 or municipalities may cooperate and contract with each other for  
11 the purpose of inspecting and permitting boarding home facilities.

12 Sec. 254.009. REPORTING OF ABUSE, NEGLECT, OR EXPLOITATION.

13 (a) A person, including an owner, operator, or employee of a  
14 boarding home facility that holds a permit issued by a county or  
15 municipality, who has cause to believe that a resident who is an  
16 elderly person or a person with a disability has been abused,  
17 neglected, or exploited or may be adversely affected by abuse,  
18 neglect, or exploitation caused by another person shall report the  
19 abuse, neglect, or exploitation to the Department of Family and  
20 Protective Services for investigation by that agency.

21 (b) Each boarding home facility that holds a permit issued  
22 by a county or municipality shall require each employee of the  
23 boarding home facility, as a condition of employment with the  
24 boarding home facility, to sign a statement that the employee  
25 acknowledges that the employee may be criminally liable under  
26 Section 48.052, Human Resources Code, for failure to report abuse,  
27 neglect, or exploitation.

1        (c) An owner, operator, or employee of a boarding home  
2 facility that holds a permit issued by a county or municipality may  
3 not retaliate against an employee of the facility who in good faith  
4 makes a complaint to the office of the inspector general of the  
5 Health and Human Services Commission, cooperates with the office of  
6 the inspector general in an investigation, or reports abuse,  
7 neglect, or exploitation of a resident to the Department of Family  
8 and Protective Services.

9        Sec. 254.010. COMPETITIVE GRANT PROGRAM. (a) The  
10 commission shall establish a competitive grant program that  
11 promotes innovation and effectiveness in the local regulation of  
12 boarding home facilities.

13        (b) A grant awarded by the commission under this section  
14 shall be used to support creative and innovative approaches to  
15 local regulation, including:

- 16                (1) public-private initiatives;  
17                (2) cooperative arrangements among local agencies and  
18 governmental entities;  
19                (3) use of mental health or social services personnel;  
20                (4) public awareness and education campaigns; and  
21                (5) other activities that improve local regulation and  
22 quality of life of residents.

23        (c) The commission shall request proposals for the award of  
24 a grant under the program. The commission shall evaluate each  
25 proposal and award a grant based on the proposal's quantifiable  
26 effectiveness and potentially positive impact on the regulation of  
27 boarding home facilities.

1       (d) The commission may require a county or municipality to  
2 spend local matching funds as a condition for the award of a grant  
3 under this section. The commission may not collect any additional  
4 money from the county or municipality that is derived from fees  
5 collected or fines imposed for the administration of a boarding  
6 home facility permitting program authorized under this chapter.

7       (e) The commission may award a grant under the program only  
8 to a county, a municipality, or two or more counties or  
9 municipalities that have entered into an interlocal cooperation  
10 agreement. A grant recipient may use the grant money received under  
11 this section only to pay for activities directly related to the  
12 purpose of the grant program as described by Subsection (b).

13       (f) The commission shall establish procedures to administer  
14 the grant program, including a procedure for the submission of a  
15 proposal and a procedure to be used by the commission to evaluate a  
16 proposal.

17       (g) The commission shall enter into a contract that includes  
18 performance requirements with each grant recipient. The commission  
19 shall monitor and enforce the terms of the contract. The contract  
20 must authorize the commission to recoup grant money from a grant  
21 recipient for failure of the grant recipient to comply with the  
22 terms of the contract.

23       (h) The commission shall post on its Internet website a  
24 summary of each grant awarded under this section.

25       Sec. 254.011. EXCLUSION PROHIBITED. If an entity meets the  
26 requirements established by a county or municipality under this  
27 chapter, the entity may not be excluded from a residential area by



1 zoning ordinances or similar regulations.

2 SECTION 2. Sections 247.002(1), (2), (4), (5), and (7),  
3 Health and Safety Code, are amended to read as follows:

4 (1) "Assisted living facility" means an establishment  
5 that:

6 (A) furnishes, in one or more facilities, food  
7 and shelter to four or more persons who are unrelated to the  
8 proprietor of the establishment; ~~and~~

9 (B) provides:

10 (i) personal care services; or

11 (ii) administration of medication by a  
12 person licensed in this state to administer the medication; and

13 (C) may provide assistance with or supervision of  
14 the administration of medication.

15 (2) "Board" means the executive commissioner of the  
16 Health and ~~Texas Board of~~ Human Services Commission.

17 (4) "Department" means the ~~[Texas]~~ Department of Aging  
18 and Disability ~~[Human]~~ Services.

19 (5) "Personal care services" means:

20 (A) assistance with feeding ~~[meals]~~, dressing,  
21 moving ~~[movement]~~, bathing, or other personal needs or maintenance;  
22 or

23 (B) ~~[the administration of medication by a person~~  
24 ~~licensed to administer medication or the assistance with or~~  
25 ~~supervision of medication; or~~

26 ~~[(C)]~~ general supervision or oversight of the  
27 physical and mental well-being of a person who needs assistance to

1 maintain a private and independent residence in an assisted living  
2 facility or who needs assistance to manage the person's personal  
3 life, regardless of whether a guardian has been appointed for the  
4 person.

5 (7) "Commissioner" means the commissioner of the  
6 department [~~human services~~].

7 SECTION 3. Section 247.004, Health and Safety Code, is  
8 amended to read as follows:

9 Sec. 247.004. EXEMPTIONS. This chapter does not apply to:

10 (1) a boarding home facility as defined by Section  
11 254.001 [~~that has rooms for rent and that may offer community meals,~~  
12 ~~light housework, meal preparation, transportation, grocery~~  
13 ~~shopping, money management, or laundry services but that does not~~  
14 ~~provide personal care services~~];

15 (2) an establishment conducted by or for the adherents  
16 of the Church of Christ, Scientist, for the purpose of providing  
17 facilities for the care or treatment of the sick who depend  
18 exclusively on prayer or spiritual means for healing without the  
19 use of any drug or material remedy if the establishment complies  
20 with local safety, sanitary, and quarantine ordinances and  
21 regulations;

22 (3) a facility conducted by or for the adherents of a  
23 qualified religious society classified as a tax-exempt  
24 organization under an Internal Revenue Service group exemption  
25 ruling for the purpose of providing personal care services without  
26 charge solely for the society's professed members or ministers in  
27 retirement, if the facility complies with local safety, sanitation,

1 and quarantine ordinances and regulations; or

2 (4) a facility that provides personal care services  
3 only to persons enrolled in a program that is funded in whole or in  
4 part by the department [~~Texas Department of Mental Health and~~  
5 ~~Mental Retardation~~] and that is monitored by the department [~~Texas~~  
6 ~~Department of Mental Health and Mental Retardation~~] or its  
7 designated local mental retardation authority in accordance with  
8 standards set by the department [~~Texas Department of Mental Health~~  
9 ~~and Mental Retardation~~].

10 SECTION 4. Section 247.030, Health and Safety Code, is  
11 repealed.

12 SECTION 5. It is the intent of the legislature that the  
13 passage by the 81st Legislature, Regular Session, 2009, of another  
14 bill that amends Subtitle B, Title 4, Health and Safety Code, and  
15 Chapter 247, Health and Safety Code, and the amendments made by this  
16 Act shall be harmonized, if possible, as provided by Section  
17 311.025(b), Government Code, so that effect may be given to each.  
18 If the amendments made by this Act to Subtitle B, Title 4, Health  
19 and Safety Code, and Chapter 247, Health and Safety Code, and the  
20 amendments made to Subtitle B, Title 4, Health and Safety Code, and  
21 Chapter 247, Health and Safety Code, by any other bill are  
22 irreconcilable, it is the intent of the legislature that this Act  
23 prevail, regardless of the relative dates of enactment of this Act  
24 and the other bill or bills, but only to the extent that differences  
25 are irreconcilable.

26 SECTION 6. Not later than September 1, 2010, the executive  
27 commissioner of the Health and Human Services Commission shall

1 adopt the model standards required by Section 254.003, Health and  
2 Safety Code, as added by this Act.

3 SECTION 7. (a) Except as provided by Subsection (b) of this  
4 section, this Act takes effect September 1, 2009.

5 (b) Sections 254.004 through 254.008, Health and Safety  
6 Code, as added by this Act, and Section 4 of this Act take effect  
7 September 1, 2010.

ADOPTED

MAY 20 2009

*Atty. Gen.*  
Secretary of the Senate

By: Elit Shapleigh

H.B. No. 216

Substitute the following for H.B. No. 216 :

By: Shapleigh

C.S. H.B. No. 216

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the regulation of certain boarding houses and assisted  
3 living facilities; providing penalties.

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

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

7 CHAPTER 254. BOARDING HOUSES

8 SUBCHAPTER A. GENERAL PROVISIONS

9 Sec. 254.001. DEFINITIONS. In this chapter:

10 (1) "Boarding house" means an establishment that:

11 (A) has rooms for rent to four or more persons who  
12 are persons with disabilities or elderly persons and who are  
13 unrelated to the owner by blood or consanguinity;

14 (B) provides to the persons described by  
15 Paragraph (A) community meals, light housework, meal preparation,  
16 transportation, grocery shopping, money management, or laundry  
17 services; and

18 (C) does not provide to the persons described by  
19 Paragraph (A) personal care services, as that term is defined by  
20 Section 247.002.

21 (2) "Department" means the Department of State Health  
22 Services.

23 (3) "Executive commissioner" means the executive  
24 commissioner of the Health and Human Services Commission.

1           (4) "Resident" means an individual who is residing in  
2 a boarding house that holds a certificate of registration under  
3 this chapter.

4           Sec. 254.002. EXEMPTIONS. This chapter does not apply to:

5           (1) a facility that is required to be licensed under  
6 Chapter 142, 242, 246, 247, or 252;

7           (2) a facility that is exempt from licensing under  
8 Section 142.003(a)(19) or 247.004(4);

9           (3) a hotel as defined by Section 156.001, Tax Code;

10           (4) a retirement community;

11           (5) a monastery or convent;

12           (6) a child-care facility;

13           (7) a facility that provides shelter to victims of  
14 domestic violence; or

15           (8) a sorority or fraternity house or other dormitory  
16 affiliated with an institution of higher education.

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

20           Sec. 254.004. CONSULTATION AND COORDINATION. (a) The  
21 department may cooperate with local public health officials of a  
22 municipality or county in carrying out this chapter and may  
23 delegate to those officials the power to make inspections and  
24 recommendations to the department under this chapter.

25           (b) The department may coordinate its personnel and  
26 facilities with a local agency of a municipality or county and may  
27 provide advice to the municipality or county if the municipality or

1 county supplements the state regulatory program established under  
2 this chapter with additional rules required to meet local  
3 conditions.

4 [Sections 254.005-254.050 reserved for expansion]

5 SUBCHAPTER B. REGISTRATION, FEES, AND INSPECTIONS

6 Sec. 254.051. REGISTRATION REQUIRED. A person, acting  
7 severally or jointly with any other person, may not establish,  
8 conduct, or maintain in this state a boarding house unless the  
9 person holds a certificate of registration issued under this  
10 chapter.

11 Sec. 254.052. APPLICATION. (a) A person may apply for  
12 registration under this chapter by submitting an application to the  
13 department on a form prescribed by the department and the required  
14 registration fee.

15 (b) The application must contain information that the  
16 department requires. The department may require affirmative  
17 evidence of ability to comply with the standards and rules adopted  
18 under this chapter.

19 Sec. 254.053. ISSUANCE AND RENEWAL OF CERTIFICATE OF  
20 REGISTRATION. (a) After receiving the application, the  
21 department shall issue a certificate of registration to the  
22 applicant if, after inspection and investigation, it finds that the  
23 applicant and boarding house meet the requirements established  
24 under this chapter and department rule.

25 (b) The department may issue a certificate of registration  
26 only for:

27 (1) the premises and persons named in the application;

1 and

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

4 (c) A certificate of registration may not be transferred or  
5 assigned.

6 (d) A person may renew a certificate of registration by:

7 (1) submitting a renewal application on the form  
8 prescribed by the department; and

9 (2) paying the renewal fee.

10 (e) The executive commissioner by rule shall define  
11 specific, appropriate, and objective criteria on which the  
12 department may deny an initial certificate of registration  
13 application or certificate of registration renewal or revoke a  
14 certificate of registration.

15 Sec. 254.054. FEES. (a) The executive commissioner by  
16 rule may adopt a fee for a certificate of registration issued under  
17 this chapter in an amount reasonable and necessary to recover the  
18 costs of administering this chapter.

19 (b) The certificate of registration fee must be paid with  
20 each application for an initial certificate of registration or for  
21 a renewal or change of ownership of a certificate of registration.

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

24 Sec. 254.055. REGISTRY. The department shall establish a  
25 registry of boarding houses registered under this chapter and make  
26 the registry available to the public, certificate of registration  
27 holders, and appropriate state agencies.



1           Sec. 254.056. MINIMUM STANDARDS.           The executive  
2 commissioner may adopt, publish, and enforce minimum standards  
3 relating to:

4           (1) the construction or remodeling of a boarding  
5 house, including plumbing, heating, lighting, ventilation, and  
6 other housing conditions, to ensure the residents' health, safety,  
7 comfort, and protection from fire hazard;

8           (2) sanitary and related conditions in a boarding  
9 house and its surroundings, including water supply, sewage  
10 disposal, food handling, and general hygiene, to ensure the  
11 residents' health, safety, and comfort;

12           (3) equipment essential to the residents' health and  
13 welfare;

14           (4) the reporting and investigation of injuries,  
15 incidents, and unusual accidents and the establishment of other  
16 policies and procedures necessary to ensure the residents' safety;

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

19           (6) specialized nutrition support;

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

22           (8) the regulation of the number of employees and the  
23 qualifications of the operator and each employee responsible for  
24 providing any part of a service to residents; and

25           (9) the quality of life.

26           Sec. 254.057. POSTING.           Each boarding house shall  
27 prominently and conspicuously post for display in a public area of

1 the boarding house that is readily available to residents, the  
2 operator, any employees, and visitors:

3 (1) the certificate of registration issued under this  
4 chapter;

5 (2) a sign prescribed by the executive commissioner  
6 that specifies complaint procedures established under this chapter  
7 or rules adopted under this chapter and that specifies how  
8 complaints may be registered with the department;

9 (3) a notice in a form prescribed by the executive  
10 commissioner stating that inspection and related reports are  
11 available at the boarding house for public inspection and providing  
12 the department's toll-free telephone number that may be used to  
13 obtain information concerning the boarding house; and

14 (4) a concise summary of the most recent inspection  
15 report relating to the boarding house.

16 Sec. 254.058. INSPECTIONS. (a) The department or the  
17 department's representative may make any inspection, survey, or  
18 investigation that it considers necessary and may enter the  
19 premises of a boarding house at reasonable times to make an  
20 inspection, survey, or investigation in accordance with rules of  
21 the executive commissioner.

22 (b) The department is entitled to access to books, records,  
23 and other documents maintained by or on behalf of a boarding house  
24 to the extent necessary to enforce this chapter and the rules  
25 adopted under this chapter.

26 (c) A certificate of registration holder or an applicant for  
27 a certificate of registration is considered to have consented to

1 entry and inspection of the boarding house by a representative of  
2 the department in accordance with this chapter.

3 (d) The department shall establish procedures to preserve  
4 all relevant evidence of conditions the department finds during an  
5 inspection, survey, or investigation that the department  
6 reasonably believes threaten the health and safety of a resident.  
7 The procedures may include photography or photocopying of relevant  
8 documents, such as a certificate of registration holder's notes,  
9 for use in any legal proceeding.

10 Sec. 254.059. UNANNOUNCED INSPECTIONS. (a) Each  
11 registration period, the department shall conduct at least one  
12 unannounced inspection of each boarding house.

13 (b) The department may require additional inspections.

14 Sec. 254.060. EDUCATION AND OUTREACH. The department and  
15 the Health and Human Services Commission shall provide to the owner  
16 or operator of a boarding house information on:

17 (1) the circumstances, including the provision of  
18 personal care, that require the facility to be licensed under  
19 Chapter 247 and the requirements for licensing under that chapter;

20 (2) the services the boarding house may provide;

21 (3) registration under this chapter; and

22 (4) health and safety requirements and staff training  
23 requirements.

24 Sec. 254.061. REPORTING VIOLATIONS. (a) The department or  
25 the department's representative conducting an inspection or  
26 investigation under this chapter shall:

27 (1) list each violation of a law or rule on a form

1 designed by the department for inspections; and

2 (2) identify the specific law or rule the boarding  
3 house violates.

4 (b) At the conclusion of an inspection or investigation  
5 under this chapter, the department or the department's  
6 representative conducting the inspection or investigation shall  
7 discuss the violations with the boarding house's management in an  
8 exit conference. The department or the department's representative  
9 shall leave a written list of the violations with the boarding house  
10 and the person designated by the boarding house to receive notice of  
11 the imposition of an administrative penalty at the time of the exit  
12 conference. If the department or the department's representative  
13 discovers any additional violations during the review of field  
14 notes or preparation of the official final list, the department or  
15 the department's representative shall give the boarding house an  
16 additional exit conference regarding the additional violations.

17 (c) The boarding house shall submit a plan to correct the  
18 violations to the department not later than the 10th day after the  
19 date the boarding house receives the final statement of violations.

20 Sec. 254.062. REPORTING OF ABUSE, NEGLECT, OR EXPLOITATION.

21 (a) A person, including an owner, operator, or employee of a  
22 boarding house, who has cause to believe that a resident has been  
23 abused, neglected, or exploited or may be adversely affected by  
24 abuse, neglect, or exploitation caused by another person shall  
25 report the abuse, neglect, or exploitation as required by Section  
26 48.051, Human Resources Code, or other applicable law.

27 (b) Each boarding house shall require each employee of the

1 boarding house, as a condition of employment with the boarding  
2 house, to sign a statement that the employee realizes that the  
3 employee may be criminally liable under Section 48.052, Human  
4 Resources Code, for failure to report abuse, neglect, or  
5 exploitation.

6 Sec. 254.063. NOTIFICATION OF CLOSURE. (a) A boarding  
7 house that is closing temporarily or permanently, voluntarily or  
8 involuntarily, shall notify the residents of the closing, if  
9 applicable, within a reasonable time before the boarding house  
10 closes.

11 (b) If the department orders a boarding house to close or  
12 the boarding house's closure is in any other way involuntary, the  
13 boarding house shall make the notification, orally or in writing,  
14 immediately on receiving notice of the closing.

15 (c) If the boarding house's closure is voluntary, the  
16 boarding house shall make the notification not later than one week  
17 after the date on which the decision to close is made.

18 [Sections 254.064-254.100 reserved for expansion]

19 SUBCHAPTER C. GENERAL ENFORCEMENT

20 Sec. 254.101. DENIAL, SUSPENSION, OR REVOCATION OF  
21 CERTIFICATE OF REGISTRATION. (a) The department, after providing  
22 notice and opportunity for a hearing to an applicant for a  
23 certificate of registration or a certificate of registration  
24 holder, may deny, suspend, or revoke a certificate of registration  
25 if the department finds that the applicant or certificate holder  
26 has substantially failed to comply with the requirements  
27 established under this chapter.

1           (b) The status of an applicant for a certificate of  
2 registration or of a certificate of registration holder is  
3 preserved until final disposition of the contested matter, except  
4 as the court having jurisdiction of a judicial review of the matter  
5 may order in the public interest for the welfare and safety of the  
6 residents.

7           Sec. 254.102. EMERGENCY SUSPENSION OR CLOSING ORDER.

8           (a) The department shall suspend a boarding house's certificate of  
9 registration or order an immediate closing of part of the boarding  
10 house if:

11                 (1) the department finds the boarding house is  
12 operating in violation of the standards prescribed by this chapter;  
13 and

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

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

19           (c) An order suspending a certificate of registration or  
20 closing a part of a boarding house under this section is immediately  
21 effective on the date on which the certificate of registration  
22 holder receives written notice or a later date specified in the  
23 order.

24           (d) An order suspending a certificate of registration or  
25 ordering an immediate closing of a part of a boarding house is valid  
26 for 10 days after the effective date of the order.

27           Sec. 254.103. INJUNCTION. (a) The department may petition

1 a district court for a temporary restraining order to restrain a  
2 person from continuing a violation of the standards prescribed by  
3 this chapter if the department finds that the violation creates an  
4 immediate threat to the health and safety of the boarding house's  
5 residents.

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

8 (1) prohibit a person from continuing a violation of  
9 the standards or registration requirements prescribed by this  
10 chapter;

11 (2) restrain or prevent the establishment, conduct,  
12 management, or operation of a boarding house without a certificate  
13 of registration issued under this chapter; or

14 (3) grant the injunctive relief warranted by the facts  
15 on a finding by the court that a person is violating the standards  
16 or registration requirements prescribed by this chapter.

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

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

23 Sec. 254.104. CRIMINAL PENALTY. (a) In this section,  
24 "immediate threat to the health or safety" means a situation in  
25 which there is a high probability that serious harm or injury to a  
26 resident could occur at any time or already has occurred and may  
27 occur again if the resident is not protected from the harm or if the

1 threat is not removed.

2 (b) A person who knowingly operates a boarding house that is  
3 required to be registered under this chapter in a manner that  
4 creates an immediate threat to the health or safety of a resident of  
5 the boarding house commits an offense.

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

7 Sec. 254.105. CIVIL PENALTY. (a) A person who violates  
8 this chapter or a rule adopted or order issued under this chapter is  
9 liable for a civil penalty of not less than \$200 for each violation  
10 if the department determines the violation threatens the health or  
11 safety of a resident.

12 (b) Each day of a violation constitutes a separate ground  
13 for recovery.

14 (c) On request of the department, the attorney general may  
15 institute an action in a district court to collect a civil penalty  
16 under this section. Any amount collected shall be remitted to the  
17 comptroller for deposit in the general revenue fund.

18 Sec. 254.106. ADMINISTRATIVE PENALTY. (a) The department  
19 may impose an administrative penalty against a boarding house that  
20 violates this chapter or a rule adopted or order issued under this  
21 chapter.

22 (b) The penalty for a boarding house may not be less than  
23 \$200 for each violation. Each day a violation occurs is a separate  
24 violation for purposes of imposing a penalty.

25 (c) The executive commissioner by rule shall specify each  
26 violation for which an administrative penalty may be assessed. In  
27 determining which violations warrant penalties, the department



1 shall consider:

2 (1) the seriousness of the violation, including the  
3 nature, circumstances, extent, and gravity of the violation and the  
4 hazard of the violation to the health or safety of residents; and

5 (2) whether the affected boarding house had identified  
6 the violation as a part of its internal quality assurance process  
7 and had made appropriate progress on correction.

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

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

14 (2) the history of previous violations;

15 (3) whether the affected boarding house had identified  
16 the violation as a part of its internal quality assurance process  
17 and had made appropriate progress on correction;

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

19 (5) efforts made to correct the violation;

20 (6) the size of the boarding house; and

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

22 (e) The executive commissioner by rule shall provide the  
23 boarding house with a reasonable period of time, not less than 45  
24 days, following the first day of a violation to correct the  
25 violation before assessing an administrative penalty if a plan of  
26 correction has been implemented. This subsection does not apply to  
27 a violation that the department determines has resulted in serious

1 harm to or the death of a resident or constitutes a serious threat  
2 to the health or safety of a resident.

3 (f) The department may not assess an administrative penalty  
4 for a minor violation if the person corrects the violation not later  
5 than the 46th day after the date the person receives notice of the  
6 violation.

7 (g) The department shall establish a system to ensure  
8 standard and consistent application of penalties regardless of the  
9 boarding house location.

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

13 (i) Notwithstanding any other provision of this section, an  
14 administrative penalty ceases to be incurred on the date a  
15 violation is corrected. The administrative penalty ceases to be  
16 incurred only if the boarding house:

17 (1) notifies the department in writing of the  
18 correction of the violation and of the date the violation was  
19 corrected; and

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

21 (j) Rules adopted under this section shall include  
22 specific, appropriate, and objective criteria that describe the  
23 scope and severity of a violation that results in a recommendation  
24 for each specific penalty.

25 (k) The imposition and collection of an administrative  
26 penalty imposed under this section shall be conducted in the manner  
27 provided by Sections 252.0651, 252.066, 252.067, 252.068, and

1 252.070.

2 SECTION 2. Section 247.004, Health and Safety Code, is  
3 amended to read as follows:

4 Sec. 247.004. EXEMPTIONS. This chapter does not apply to:

5 (1) a boarding house registered under Chapter 254  
6 ~~[facility that has rooms for rent and that may offer community~~  
7 ~~meals, light housework, meal preparation, transportation, grocery~~  
8 ~~shopping, money management, or laundry services but that does not~~  
9 ~~provide personal care services];~~

10 (2) an establishment conducted by or for the adherents  
11 of the Church of Christ, Scientist, for the purpose of providing  
12 facilities for the care or treatment of the sick who depend  
13 exclusively on prayer or spiritual means for healing without the  
14 use of any drug or material remedy if the establishment complies  
15 with local safety, sanitary, and quarantine ordinances and  
16 regulations;

17 (3) a facility conducted by or for the adherents of a  
18 qualified religious society classified as a tax-exempt  
19 organization under an Internal Revenue Service group exemption  
20 ruling for the purpose of providing personal care services without  
21 charge solely for the society's professed members or ministers in  
22 retirement, if the facility complies with local safety, sanitation,  
23 and quarantine ordinances and regulations; or

24 (4) a facility that provides personal care services  
25 only to persons enrolled in a program that is funded in whole or in  
26 part by the ~~[Texas]~~ Department of State ~~[Mental]~~ Health Services or  
27 the Department of Aging and Disability Services ~~[and Mental]~~

1 ~~Retardation~~] and that is monitored by the [~~Texas~~] Department of  
2 State [~~Mental~~] Health Services or the Department of Aging and  
3 Disability Services [~~and Mental Retardation~~] or its designated  
4 local authority, as applicable, in accordance with standards set by  
5 the applicable department [~~Texas Department of Mental Health and~~  
6 ~~Mental Retardation~~].

7 SECTION 3. Section 247.025, Health and Safety Code, is  
8 amended to read as follows:

9 Sec. 247.025. ADOPTION OF RULES. The executive  
10 commissioner of the Health and Human Services Commission [~~board~~]  
11 shall adopt rules necessary to implement this chapter, including:

12 (1) requirements for the issuance, renewal, denial,  
13 suspension, and revocation of a license to operate an assisted  
14 living facility; and

15 (2) rules to require local mental health authorities  
16 to work with clients to secure safe, appropriate housing to assist  
17 clients in achieving their treatment goals by directing clients to  
18 available assisted living facilities licensed under this chapter  
19 and other establishments that are not required to be licensed under  
20 this chapter that may be an appropriate referral option.

21 SECTION 4. Section 247.031, Health and Safety Code, is  
22 amended to read as follows:

23 Sec. 247.031. MUNICIPAL ENFORCEMENT. (a) The governing  
24 body of a municipality by ordinance may:

25 (1) prohibit a person who does not hold a license  
26 issued under this chapter from establishing or operating an  
27 assisted living facility within the municipality; and

1 (2) establish a procedure for emergency closure of a  
2 facility in circumstances in which:

3 (A) the facility is established or operating in  
4 violation of Section 247.021; and

5 (B) the continued operation of the facility  
6 creates an immediate threat to the health and safety of a resident  
7 of the facility.

8 (b) The department shall:

9 (1) develop a communications plan, which may include  
10 regional meetings, to educate municipalities about this section;  
11 and

12 (2) create outreach and training materials and  
13 distribute the materials in accordance with the communications  
14 plan.

15 SECTION 5. Chapter 247, Health and Safety Code, is amended  
16 by adding Subchapter E to read as follows:

17 SUBCHAPTER E. CRIMINAL PENALTY

18 Sec. 247.101. CRIMINAL PENALTY. (a) In this section,  
19 "immediate threat to the health or safety" means a situation in  
20 which there is a high probability that serious harm or injury to a  
21 resident could occur at any time or already has occurred and may  
22 occur again if the resident is not protected from the harm or if the  
23 threat is not removed.

24 (b) A person who knowingly operates without a license an  
25 assisted living facility that is required to be licensed under this  
26 chapter in a manner that creates an immediate threat to the health  
27 or safety of a resident of the facility commits an offense.

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

2           SECTION 6. The heading to Title 4, Health and Safety Code,  
3 is amended to read as follows:

4           TITLE 4. CERTAIN RESIDENTIAL AND HEALTH FACILITIES

5           SECTION 7. The heading to Subtitle B, Title 4, Health and  
6 Safety Code, is amended to read as follows:

7           SUBTITLE B. LICENSING OF [~~HEALTH~~] FACILITIES

8           SECTION 8. (a) Not later than October 1, 2009, the Health  
9 and Human Services Commission, or a health and human services  
10 agency designated by the commission, shall establish a stakeholder  
11 workgroup to solicit input and make recommendations for revision of  
12 the existing rules on Type E facilities as defined by rules of the  
13 Department of Aging and Disability Services. Members of the  
14 workgroup must include:

- 15           (1) currently licensed Type E facility operators;  
16           (2) unlicensed boarding house operators;  
17           (3) local mental health authority staff;  
18           (4) area agencies on aging representatives;  
19           (5) regional staff of the Department of Aging and  
20 Disability Services;  
21           (6) staff of the Department of State Health Services  
22 with responsibility for mental health services; and  
23           (7) mental health advocates.

24           (b) The workgroup shall:

- 25           (1) examine basic supervision, resident well-being,  
26 nutritional quality, and medication monitoring related to Type E  
27 facilities;

1           (2) recommend rules to encourage more boarding house  
2 operators to be licensed as Type E facilities; and

3           (3) examine regulatory oversight of Type E facilities  
4 and recommend either the Department of Aging and Disability  
5 Services or the Department of State Health Services to regulate  
6 facilities considering the purpose for which the Type E  
7 classification was created, the services currently regulated by  
8 each agency, and cost.

9           (c) Not later than January 1, 2011, based on the  
10 recommendations of the workgroup, the executive commissioner of the  
11 Health and Human Services Commission shall adopt rules relating to  
12 the licensing of Type E assisted living facilities.

13           (d) Not later than March 1, 2011, the Health and Human  
14 Services Commission, or a health and human services agency  
15 designated by the commission, shall:

16           (1) provide copies of the rules adopted under  
17 Subsection (c) of this section to the members of the workgroup and  
18 other interested parties;

19           (2) provide training and information to regional state  
20 regulatory staff and local staff on the adopted rules; and

21           (3) provide information on the adopted rules to  
22 boarding houses, state and regional staff employed by the  
23 Department of Aging and Disability Services, state and regional  
24 staff employed by the Department of State Health Services, and  
25 local mental health authorities.

26           SECTION 9. Not later than September 1, 2010, the Health and  
27 Human Services Commission shall evaluate the Section 1915(i) state

1 plan amendment option of the Social Security Act (42 U.S.C. Section  
2 1396n(i)) available under the Deficit Reduction Act of 2005 (Pub.  
3 L. No. 109-171) and the waiver program under Section 1915(c),  
4 Social Security Act (42 U.S.C. Section 1396n(c)), to determine if  
5 either would provide a feasible means for funding personal care  
6 services for people with mental illness under the state Medicaid  
7 program.

8 SECTION 10. (a) Not later than January 1, 2011, the  
9 executive commissioner of the Health and Human Services Commission  
10 shall adopt the rules necessary to implement Chapter 254, Health  
11 and Safety Code, as added by this Act, and Chapter 247, Health and  
12 Safety Code, as amended by this Act.

13 (b) Not later than June 1, 2011, the Department of State  
14 Health Services shall develop the registry and provide the  
15 education and outreach as required under Chapter 254, Health and  
16 Safety Code, as added by this Act.

17 (c) Notwithstanding Chapter 254, Health and Safety Code, as  
18 added by this Act, a person who owns or operates a boarding house is  
19 not required to hold a certificate of registration on the effective  
20 date of this Act but must hold a certificate of registration under  
21 that chapter not later than September 1, 2011.

22 SECTION 11. This Act does not make an appropriation. A  
23 provision in this Act that creates a new governmental program,  
24 creates a new entitlement, or imposes a new duty on a governmental  
25 entity is not mandatory during a fiscal period for which the  
26 legislature has not made a specific appropriation to implement the  
27 provision.



1           SECTION 12. (a) Except as provided by Subsection (b) of  
2 this section, this Act takes effect September 1, 2009.

3           (b) Subchapter C, Chapter 254, Health and Safety Code, as  
4 added by this Act, takes effect September 1, 2011.

# ADOPTED

MAY 20 2009

FLOOR AMENDMENT NO. 1

*Leta Spaw* BY: Elit Shepleigh  
Secretary of the Senate

1 Amend C.S.H.B. No. 216 (senate committee printing) by  
2 striking all below the enacting clause and substituting the  
3 following:

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

6 CHAPTER 254. BOARDING HOME FACILITIES

7 Sec. 254.001. DEFINITIONS. In this chapter:

8 (1) "Assistance with self-administering medication"  
9 means assisting a resident by reminding the resident to take  
10 medication, opening and removing medications from a container,  
11 or reminding the resident when a prescription medication needs  
12 to be refilled.

13 (2) "Boarding home facility" means an establishment  
14 that:

15 (A) furnishes, in one or more buildings, lodging  
16 to three or more persons with disabilities or elderly persons  
17 who are unrelated to the owner of the establishment by blood or  
18 marriage; and

19 (B) provides community meals, light housework,  
20 meal preparation, transportation, grocery shopping, money  
21 management, laundry services, or assistance with self-  
22 administration of medication but does not provide personal care  
23 services as defined by Section 247.002 to those persons.

24 (3) "Commission" means the Health and Human Services  
25 Commission.

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

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

1           (6) "Person with a disability" means a disabled  
2 person as defined by Section 48.002, Human Resources Code.

3           (7) "Resident" means a person who is residing in a  
4 boarding home facility.

5           Sec. 254.002. EXEMPTIONS. This chapter does not apply to:

6           (1) a person that is required to be licensed under  
7 Chapter 142, 242, 246, 247, or 252;

8           (2) a person that is exempt from licensing under  
9 Section 142.003(a)(19), 242.003(3), or 247.004(4);

10           (3) a hotel as defined by Section 156.001, Tax Code;

11           (4) a retirement community;

12           (5) a monastery or convent;

13           (6) a child-care facility as defined by Section  
14 42.002, Human Resources Code;

15           (7) a family violence shelter center as defined by  
16 Section 51.002, Human Resources Code; or

17           (8) a sorority or fraternity house or other dormitory  
18 associated with an institution of higher education.

19           Sec. 254.003. MODEL STANDARDS. The executive commissioner  
20 shall develop and publish in the Texas Register model standards  
21 for the operation of a boarding home facility relating to:

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

26           (2) sanitary and related conditions in a boarding  
27 home facility and its surroundings, including insect and rodent  
28 control, water supply, sewage disposal, food handling, and  
29 general hygiene to ensure the residents' health, safety, and  
30 comfort;

31           (3) the reporting and investigation of injuries,  
32 incidents, and unusual accidents and the establishment of other

1 policies and procedures necessary to ensure resident health and  
2 safety;

3 (4) assistance with self-administering medication;

4 (5) requirements for in-service education of the  
5 facility's staff;

6 (6) criminal history record checks; and

7 (7) assessment and periodic monitoring to ensure that  
8 a resident:

9 (A) does not require the boarding home facility  
10 to provide personal care, nursing, or other services not listed  
11 in Section 254.001(2); and

12 (B) is capable of self-administering medication  
13 or is aware of what the resident's medications look like and  
14 knows when the medications should be taken but requires  
15 assistance with self-administering medication.

16 Sec. 254.004. LOCAL REGULATION. A county or municipality  
17 may require a person to obtain a permit from the county or  
18 municipality to operate a boarding home facility within the  
19 county's or municipality's jurisdiction. A county or  
20 municipality may adopt the standards developed by the executive  
21 commissioner under Section 254.003 and require a boarding home  
22 facility that holds a permit issued by the county or  
23 municipality to comply with the adopted standards.

24 Sec. 254.005. PERMIT PROCEDURES; FEES; FINES. (a) A  
25 county or municipality that requires a person to obtain a  
26 boarding home facility permit as authorized by Section 254.004  
27 may establish procedures for the submission of a boarding home  
28 facility permit application and for the issuance, denial,  
29 renewal, suspension, and revocation of the permit.

30 (b) A county or municipality that requires a person to  
31 obtain a boarding home facility permit as authorized under  
32 Section 254.004 may set reasonable fees for issuance of the

1 permit, renewal of the permit, and inspections and may impose  
2 finest for noncompliance with the county or municipal boarding  
3 home facility regulations. The fees collected and fines imposed  
4 by the county or municipality must be used to administer the  
5 county or municipal permitting program or for other purposes  
6 directly related to providing boarding home facility or other  
7 assisted living services to elderly persons and persons with  
8 disabilities.

9 (c) A person required to obtain a boarding home facility  
10 permit from a county or municipality as authorized under Section  
11 254.004 shall pay any fees required or fines imposed by the  
12 county or municipality.

13 Sec. 254.006. POSTING. A boarding home facility that  
14 holds a permit issued by a county or municipality shall  
15 prominently and conspicuously post for display in a public area  
16 of the boarding home facility that is readily available to  
17 residents, the operator, employees, and visitors:

18 (1) the permit issued by a county or municipality;

19 (2) a sign prescribed by the county or municipality  
20 that issued the permit that specifies how complaints may be  
21 registered with the county or municipality;

22 (3) a notice in a form prescribed by the county or  
23 municipality that issued the permit stating that inspection and  
24 related reports are available at the boarding home facility for  
25 public inspection and providing a telephone number that may be  
26 used to obtain information concerning the boarding home  
27 facility;

28 (4) a concise summary of the most recent inspection  
29 report relating to the boarding home facility; and

30 (5) a notice in a form prescribed by the county or  
31 municipality that issued the permit that lists the name,  
32 location, and contact information for:

1           (A) the closest local public health services  
2 agency in the proximity of the boarding home facility; and

3           (B) a local organization or entity that  
4 represents, advocates, or serves elderly persons or persons with  
5 disabilities, including any related toll-free contact  
6 information for reporting emergencies to the organization or  
7 entity.

8           Sec. 254.007. INSPECTIONS. (a) A county or municipality  
9 may conduct any inspection, survey, or investigation that it  
10 considers necessary and may enter the premises of a boarding  
11 home facility at reasonable times to make an inspection, survey,  
12 or investigation.

13           (b) A county or municipality is entitled to access to  
14 books, records, and other documents maintained by or on behalf  
15 of a boarding home facility to the extent necessary to enforce  
16 the standards adopted by the county or municipality.

17           Sec. 254.008. INTERLOCAL COOPERATION. Two or more  
18 counties or municipalities may cooperate and contract with each  
19 other for the purpose of inspecting and permitting boarding home  
20 facilities.

21           Sec. 254.009. REPORTING AND INVESTIGATION OF ABUSE,  
22 NEGLECT, OR EXPLOITATION. (a) A person, including an owner,  
23 operator, or employee of a boarding home facility that holds a  
24 permit issued by a county or municipality, who has cause to  
25 believe that a resident who is an elderly person or a person  
26 with a disability is being or has been abused, neglected, or  
27 exploited shall report the abuse, neglect, or exploitation to  
28 the Department of Family and Protective Services for  
29 investigation by that agency. The Department of Family and  
30 Protective Services shall investigate the allegation of abuse,  
31 neglect, or exploitation as authorized and in the manner  
32 provided by Chapter 48, Human Resources Code.

1        (b) Each boarding home facility that holds a permit issued  
2 by a county or municipality shall require each employee of the  
3 boarding home facility, as a condition of employment with the  
4 boarding home facility, to sign a statement that the employee  
5 acknowledges that the employee may be criminally liable under  
6 Section 48.052, Human Resources Code, for failure to report  
7 abuse, neglect, or exploitation.

8        (c) An owner, operator, or employee of a boarding home  
9 facility that holds a permit issued by a county or municipality  
10 may not retaliate against an employee of the facility who in  
11 good faith makes a complaint to the office of the inspector  
12 general of the Health and Human Services Commission, cooperates  
13 with the office of the inspector general in an investigation, or  
14 reports abuse, neglect, or exploitation of a resident to the  
15 Department of Family and Protective Services.

16        Sec. 254.010. ANNUAL REPORT TO COMMISSION; LEGISLATIVE  
17 REPORT. (a) Not later than September 30 of each year following  
18 the establishment of a county or municipal permitting  
19 requirement under this chapter, each county or municipality that  
20 requires a person to obtain a boarding home facility permit  
21 under Section 254.004 shall submit to the commission a report.  
22 The report must include:

23            (1) the total number of:

24                    (A) boarding home facilities permitted during  
25 the preceding state fiscal year;

26                    (B) boarding home facility applications denied  
27 permitting, including a summary of cause for denial; and

28                    (C) boarding home facility permits active on  
29 August 31 of the preceding state fiscal year;

30            (2) the total number of residents reported housed in  
31 each boarding home facility reported;

1           (3) the total number of inspections conducted at each  
2 boarding home facility by the county or municipality that  
3 requires the permit; and

4           (4) the total number of permits revoked or suspended  
5 as a result of an inspection described by Subdivision (3) and a  
6 summary of the outcome for the residents displaced by revocation  
7 or suspension of a permit.

8           (b) The commission shall establish and maintain a  
9 standardized compilation of information reported under this  
10 section and provide to the legislature a report of this  
11 information not later than January 1 of each odd-numbered year.

12           Sec. 254.011. EXCLUSION PROHIBITED. If an entity meets  
13 the requirements established by a county or municipality under  
14 this chapter, the entity may not be excluded from a residential  
15 area by zoning ordinances or similar regulations.

16           SECTION 2. Sections 247.002(1), (2), (4), (5), and (7),  
17 Health and Safety Code, are amended to read as follows:

18           (1) "Assisted living facility" means an establishment  
19 that:

20                   (A) furnishes, in one or more facilities, food  
21 and shelter to four or more persons who are unrelated to the  
22 proprietor of the establishment; ~~and~~

23                   (B) provides:

24                           (i) personal care services; or

25                           (ii) administration of medication by a  
26 person licensed or otherwise authorized in this state to  
27 administer the medication; and

28                   (C) may provide assistance with or supervision  
29 of the administration of medication.

30           (2) "Board" means the executive commissioner of the  
31 Health and ~~Texas Board of~~ Human Services Commission.



1 (4) "Department" means the [~~Texas~~] Department of  
2 Aging and Disability [~~Human~~] Services.

3 (5) "Personal care services" means:

4 (A) assistance with feeding [~~meals~~], dressing,  
5 moving [~~movement~~], bathing, or other personal needs or  
6 maintenance; or

7 (B) [~~the administration of medication by a~~  
8 ~~person licensed to administer medication or the assistance with~~  
9 ~~or supervision of medication; or~~

10 [~~(C)~~] general supervision or oversight of the  
11 physical and mental well-being of a person who needs assistance  
12 to maintain a private and independent residence in an assisted  
13 living facility or who needs assistance to manage the person's  
14 personal life, regardless of whether a guardian has been  
15 appointed for the person.

16 (7) "Commissioner" means the commissioner of the  
17 department [~~human services~~].

18 SECTION 3. Section 247.004, Health and Safety Code, is  
19 amended to read as follows:

20 Sec. 247.004. EXEMPTIONS. This chapter does not apply to:

21 (1) a boarding home facility as defined by Section  
22 254.001 [~~that has rooms for rent and that may offer community~~  
23 ~~meals, light housework, meal preparation, transportation,~~  
24 ~~grocery shopping, money management, or laundry services but that~~  
25 ~~does not provide personal care services];~~

26 (2) an establishment conducted by or for the  
27 adherents of the Church of Christ, Scientist, for the purpose of  
28 providing facilities for the care or treatment of the sick who  
29 depend exclusively on prayer or spiritual means for healing  
30 without the use of any drug or material remedy if the  
31 establishment complies with local safety, sanitary, and  
32 quarantine ordinances and regulations;

1 (3) a facility conducted by or for the adherents of a  
2 qualified religious society classified as a tax-exempt  
3 organization under an Internal Revenue Service group exemption  
4 ruling for the purpose of providing personal care services  
5 without charge solely for the society's professed members or  
6 ministers in retirement, if the facility complies with local  
7 safety, sanitation, and quarantine ordinances and regulations;  
8 or

9 (4) a facility that provides personal care services  
10 only to persons enrolled in a program that is funded in whole or  
11 in part by the department [~~Texas Department of Mental Health and~~  
12 ~~Mental Retardation~~] and that is monitored by the department  
13 [~~Texas Department of Mental Health and Mental Retardation~~] or  
14 its designated local mental retardation authority in accordance  
15 with standards set by the department [~~Texas Department of Mental~~  
16 ~~Health and Mental Retardation~~].

17 SECTION 4. Section 247.030, Health and Safety Code, is  
18 repealed.

19 SECTION 5. It is the intent of the legislature that the  
20 passage by the 81st Legislature, Regular Session, 2009, of  
21 another bill that amends Subtitle B, Title 4, Health and Safety  
22 Code, and Chapter 247, Health and Safety Code, and the  
23 amendments made by this Act shall be harmonized, if possible, as  
24 provided by Section 311.025(b), Government Code, so that effect  
25 may be given to each. If the amendments made by this Act to  
26 Subtitle B, Title 4, Health and Safety Code, and Chapter 247,  
27 Health and Safety Code, and the amendments made to Subtitle B,  
28 Title 4, Health and Safety Code, and Chapter 247, Health and  
29 Safety Code, by any other bill are irreconcilable, it is the  
30 intent of the legislature that this Act prevail, regardless of  
31 the relative dates of enactment of this Act and the other bill

1 or bills, but only to the extent that differences are  
2 irreconcilable.

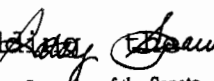
3 SECTION 6. Not later than September 1, 2010, the executive  
4 commissioner of the Health and Human Services Commission shall  
5 adopt the model standards required by Section 254.003, Health  
6 and Safety Code, as added by this Act.

7 SECTION 7. (a) Except as provided by Subsection (b) of  
8 this section, this Act takes effect September 1, 2009.

9 (b) Sections 254.004 through 254.008, Health and Safety  
10 Code, as added by this Act, and Section 4 of this Act take  
11 effect September 1, 2010.

FLOOR AMENDMENT NO. 2 **ADOPTED** BY: 

MAY 20 2009

1 Amend CSHB 216 by adding  following appropriately  
2 numbered SECTION to the bill and renumbering subsequent SECTIONS  
3 of the bill appropriately:

4 SECTION \_\_\_\_\_. This Act does not make an appropriation.  
5 A provision in this Act that creates a new governmental program,  
6 creates a new entitlement, or imposes a new duty on a  
7 governmental entity is not mandatory during a fiscal period for  
8 which the legislature has not made a specific appropriation to  
9 implement the provision.

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**May 21, 2009**

**TO:** Honorable Joe Straus, Speaker of the House, House of Representatives

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB216** by Menendez (Relating to the regulation of certain boarding houses and assisted living facilities; providing penalties. ), **As Passed 2nd House**

**No significant fiscal implication to the State is anticipated.**

The bill would add Chapter 254 to the Health and Safety Code to authorize a county or municipality to establish regulations and to require a person to obtain a permit from the county or municipality to operate a boarding home facility (as defined in the bill) within the county's or municipality's jurisdiction. A county or municipality that requires a facility to obtain a permit would be authorized to establish permit procedures and to set reasonable fees associated with the permit process.

A county or municipality that implements a permitting process would also be authorized to conduct inspections of boarding home facilities and to enforce requirements set forth in the provisions of the bill. The county or municipality could also impose fines for noncompliance with county or municipal regulations.

Two or more counties or municipalities could enter into an interlocal agreement for the purpose of inspecting and permitting boarding home facilities.

A county or municipality that establishes a permitting process for boarding home facilities would be required to submit an annual report to the Health and Human Services Commission (HHSC) not later than September 30 of each year regarding boarding home facilities regulated by the county or municipality. The bill stipulates the information that must be included in the report. HHSC would be required to establish and maintain a standardized compilation of the information reported to the agency and provide a report of the information to the Legislature not later than January 1 of each odd-numbered year.

The bill would repeal Section 247.030, Health and Safety Code, to conform with other provisions of the bill regarding licensing of facilities regarding medication supervision.

HHSC would also be required to develop, adopt, and publish by not later than September 1, 2010, model standards for the operation of a boarding home facility. Provisions of the bill regarding local regulation; permit procedures, fees, and fines; posting requirements within a permitted facility; inspections; and interlocal cooperation agreements would take effect September 1, 2010.

Except as noted, the bill would take effect September 1, 2009.

Based on analysis by the Health and Human Services Commission, it is assumed that costs associated with implementing provisions of the bill could be absorbed within existing resources.

**Local Government Impact**

According to information provided by the Texas Association of Counties and the Texas Municipal League, if a county or a municipality chose to regulate boarding home facilities, the costs associated with enforcing regulations could be significant. The fiscal impact would vary depending on the number of facilities within the jurisdiction of a participating county or municipality. According to



estimates from Harris County, where there are about 170 facilities that fit the definition of a boarding home facility, the county would need to average at least \$450,000 annually in permit revenue to cover the costs of permitting and enforcing regulations.

**Source Agencies:** 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 529 Health and Human Services Commission, 530 Family and Protective Services, Department of, 539 Aging and Disability Services, Department of

**LBB Staff:** JOB, CL, SJ, LR





**LEGISLATIVE BUDGET BOARD**  
Austin, Texas

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**May 14, 2009**

**TO:** Honorable Jane Nelson, Chair, Senate Committee on Health & Human Services

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB216** by Menendez (Relating to the regulation of certain boarding houses and assisted living facilities; providing penalties.), **Committee Report 2nd House, Substituted**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB216, Committee Report 2nd House, Substituted: a negative impact of (\$1,747,661) through the biennium ending August 31, 2011.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2010	(\$318,984)
2011	(\$1,428,677)
2012	(\$3,797)
2013	\$23,609
2014	\$26,909

**All Funds, Five-Year Impact:**

Fiscal Year	Probable Revenue Gain from <i>General Revenue Fund</i> 1	Probable (Cost) from <i>General Revenue Fund</i> 1	Change in Number of State Employees from FY 2009
2010	\$0	(\$318,984)	5.0
2011	\$1,976,250	(\$3,404,927)	59.0
2012	\$1,414,995	(\$1,418,792)	23.0
2013	\$1,418,602	(\$1,394,993)	23.0
2014	\$1,422,343	(\$1,395,434)	23.0

**Fiscal Analysis**

The bill would amend the Health and Safety Code as it relates to the regulation of certain boarding houses and assisted living facilities and providing penalties.

Section 1 of the bill would add a new chapter to the Health and Safety Code requiring that certain boarding houses hold certificates of registration to be developed and issued by the Department of State Health Services (DSHS). DSHS would be required to inspect and investigate each boarding house before issuing a certificate of registration or renewal. DSHS would be required to maintain a registry of the boarding houses. The bill would require DSHS to inspect a registered boarding house at least once during each registration period. The bill would authorize a reasonable fee for a certificate of registration that would cover the costs of administering the chapter. DSHS and the Health and Human



Services Commission (HHSC) would be required to provide education and outreach to owners and operators of boarding houses.

A person who violated the chapter or a rule adopted under the chapter would be subject to a civil penalty of not less than \$200 for each violation. Section 1 authorizes the Office of the Attorney General to institute an action in a district court to collect a civil penalty. Section 1 would also provide for an administrative penalty against a boarding house of not less than \$200 for each violation of the chapter or a rule adopted under the chapter.

Section 4 of the bill would amend Chapter 247, Health and Safety Code, to require that the Department of Aging and Disability Services (DADS) develop a communications plan for municipalities relating to assisted living facilities, which would include the creation of outreach and training materials.

Adoption of rules to implement the provisions of Section 1 of the bill would be required no later than January 1, 2011. DSHS would be required to develop the registry of boarding houses and education and outreach as required by Section 1 no later than June 1, 2011. Owners and operators of boarding houses would be required to hold a certificate of registration by September 1, 2011. Otherwise, the bill would take effect September 1, 2009.

### **Methodology**

Based on a report to the Legislature required by HB 1168, Eightieth Legislature, DSHS estimates that 850 boarding houses would need to be issued a certificate of registration in fiscal year 2011 and that the number of registrations would increase by 3.7% per fiscal year. Calculations assume the issuance of one-year and two-year certificates in the first year to allow for staggered renewals in the following years. Fees would be \$1,550 and \$3,100, respectively.

The Health and Human Services Commission indicates that implementing the provisions of the bill could be absorbed within existing resources.

Additional funding and FTEs would need to be appropriated to DSHS and the Office of the Attorney General (OAG) to implement the provisions of the bill. Costs listed below for both agencies in fiscal years 2012-2014 are assumed to be offset by fees (deposited to the General Revenue Fund) authorized by the new chapter to cover administration and enforcement of the chapter. However, due to the initial licensing of all 850 facilities in fiscal year 2011, operating costs are estimated to exceed fee revenue in that year by \$1.4 million.

Based on reported 2009 costs for similar operations related to assisted living facilities, it is estimated that costs would be \$318,984 in All Funds for fiscal year 2010, \$3,404,927 for fiscal year 2011, \$1,151,446 for fiscal year 2012, \$1,149,240 for fiscal year 2013, and \$1,149,681 for fiscal year 2014. Full-time-equivalent (FTE) needs are estimated at 5.0 in fiscal year 2010, 59.0 in fiscal year 2011, and 20.0 in each fiscal year thereafter.

OAG indicates a need for three additional FTEs starting in fiscal year 2012 due to the increased number of referrals for enforcement action related to boarding houses. Total cost would be \$267,346 in All Funds for fiscal year 2012 and \$245,753 in fiscal years 2013 and 2014.

### **Technology**

Technology costs at DSHS total \$30,000 in fiscal year 2010 for reconfiguration of software, data storage, and equipment. These amounts are included in the total costs for DSHS shown above. OAG indicates there would be a technology impact of \$7,311 in fiscal year 2012 for equipment.

### **Local Government Impact**

If DSHS delegates to local government officials power to make inspections or to make additional rules related to boarding houses, those entities would incur associated costs. Costs to local governments would depend on the number of boarding houses in the local government's jurisdiction and the number



and frequency of inspections performed.

Local mental health authorities may incur costs related to implementing rules imposed by the Health and Human Services Commission, depending on what those rules may be; however, it is anticipated that those costs could be absorbed within existing resources.

Local governments would experience a revenue gain if violations under the provisions of the bill were to occur. The revenue would depend on the number of offenses and the amount of the fine imposed; however, the fiscal impact is not expected to be significant. Conversely, counties would incur costs associated with a jail sentence imposed as part of the punishment for the Class B misdemeanor offenses under the provisions of the bill; however, those costs are not expected to be significant unless there are an unusually high number of offenses.

**Source Agencies:** 304 Comptroller of Public Accounts, 530 Family and Protective Services, Department of, 539 Aging and Disability Services, Department of, 302 Office of the Attorney General, 529 Health and Human Services Commission, 537 State Health Services, Department of

**LBB Staff:** JOB, SJ, CL, VJC, MB, DB



**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**May 11, 2009**

**TO:** Honorable Jane Nelson, Chair, Senate Committee on Health & Human Services

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB216** by Menendez (Relating to the regulation of boarding home facilities for persons with disabilities or elderly persons and assisted living facilities.), **As Engrossed**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB216, As Engrossed: a negative impact of (\$1,000,000) through the biennium ending August 31, 2011.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2010	(\$500,000)
2011	(\$500,000)
2012	(\$500,000)
2013	(\$500,000)
2014	(\$500,000)

**All Funds, Five-Year Impact:**

Fiscal Year	Probable Savings/(Cost) from <i>General Revenue Fund</i> 1
2010	(\$500,000)
2011	(\$500,000)
2012	(\$500,000)
2013	(\$500,000)
2014	(\$500,000)

**Fiscal Analysis**

The bill would amend the Health and Safety Code as it relates to the regulation of boarding home facilities for persons with disabilities or elderly persons and assisted living facilities. Included in the provisions of the bill is the requirement for the executive commissioner of the Health and Human Services Commission (HHSC), not later than September 1, 2010, to develop and publish in the *Texas Register* model standards for the operation of a boarding home facility relating to certain requirements specified in the bill.

The bill would authorize a county or a municipality to require a person to obtain a permit from the county or the municipality to operate a boarding home facility within the entity's jurisdiction. A county or municipality would be authorized to adopt the standards developed by the executive commissioner of HHSC and require a facility that is issued a permit to comply with those standards. A





county or municipality would be authorized to establish procedures for submission of a permit application and for issuing, denying, renewing, suspending, or revoking the permit. A county or municipality would be authorized to set reasonable fees for issuing and renewing a permit and for conducting inspections, which would also be authorized under provisions of the bill. The entities would also be allowed to impose fines for noncompliance with regulations. Money collected from fees and fines must be used to administer the county or municipal permitting program, as a source of local matching funds for state grants, or for other purposes directly related to providing boarding home facility or other assisted living services to the elderly and persons with disabilities.

Reports of abuse, neglect, or exploitation of residents of a boarding home facility that holds a permit issued by a county or a municipality would be required to be reported to the Department of Family and Protective Services (DFPS) for investigation by that agency. An owner, operator, or employee of a boarding home facility that holds a permit issued by a county or municipality may not retaliate against an employee of the facility who makes a complaint to the office of the inspector general (OIG), cooperates with the OIG in an investigation, or reports abuse, neglect, or exploitation of a resident to DFPS.

HHSC would be required to establish a competitive grant program that promotes innovation and effectiveness in the local regulation of boarding home facilities. Provisions of the bill specify how the grants must be used and to which entities grants may be awarded. HHSC would be required to request proposals for the award of a grant under the program and to evaluate each proposal and award a grant based on the proposal's quantifiable effectiveness and potentially positive impact on the regulation of boarding home facilities.

HHSC would be authorized to require a county or municipality to spend local matching funds as a condition for the award of a grant. HHSC would be prohibited from collecting additional money from the county or municipality that is derived from fees collected or fines imposed for the administration of the permitting program authorized by the bill. The agency would be required to establish procedures to administer the grant program.

HHSC would be required to enter into a contract that includes performance requirements with each grant recipient. The agency would be required to monitor and enforce the terms of the contract. The contract must authorize the agency to recoup grant money from a grant recipient for failure of the recipient to comply with terms of the contract. The agency would be required to post on its Internet website a summary of each grant awarded. If an entity meets the requirements established by a county or municipality under this chapter, the entity may not be excluded from a residential area by zoning ordinances or similar regulations.

Except for the model standards required by Section 254.003, Health and Safety Code, the bill would take effect September 1, 2009. Section 254.003, Health and Safety Code, and SECTION 4 of the bill would take effect September 1, 2010.

## Methodology

According to HHSC, Section 254.010 (Competitive Grant Program) would be delegated to the Department of Aging and Disability Services (DADS) and DADS assumes it would award five grants per fiscal year at an average of \$100,000 per grant for a total cost of \$500,000 per fiscal year in General Revenue Funds. HHSC also indicated that the OIG does not have the authority to investigate the entities identified in Section 254.009 (Reporting of Abuse, Neglect, or Exploitation). It is assumed that any costs associated with the other provisions of the bill could be absorbed within existing resources.



**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

It is assumed that a county or a municipality that chooses to establish a permit program would establish a sufficient level of fees and fines and would seek state matching grants to offset costs associated with operating the program.

**Source Agencies:** 529 Health and Human Services Commission, 530 Family and Protective Services, Department of, 539 Aging and Disability Services, Department of, 302 Office of the Attorney General, 304 Comptroller of Public Accounts

**LBB Staff:** JOB, CL, SJ, LR, ML, TP, DB



**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**April 6, 2009**

**TO:** Honorable Patrick M. Rose, Chair, House Committee on Human Services

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB216** by Menendez (Relating to the regulation of boarding home facilities for persons with disabilities or elderly persons and assisted living facilities.), **Committee Report 1st House, Substituted**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB216, Committee Report 1st House, Substituted: a negative impact of (\$1,000,000) through the biennium ending August 31, 2011.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2010	(\$500,000)
2011	(\$500,000)
2012	(\$500,000)
2013	(\$500,000)
2014	(\$500,000)

**All Funds, Five-Year Impact:**

Fiscal Year	Probable Savings/(Cost) from <i>General Revenue Fund</i> 1
2010	(\$500,000)
2011	(\$500,000)
2012	(\$500,000)
2013	(\$500,000)
2014	(\$500,000)

**Fiscal Analysis**

The bill would amend the Health and Safety Code regarding regulation of boarding home facilities for persons with disabilities or elderly persons and assisted living facilities. Included in the provisions of the bill is the requirement for the executive commissioner of the Health and Human Services Commission (HHSC), not later than September 1, 2010, to develop and publish in the *Texas Register* model standards for the operation of a boarding home facility relating to certain requirements specified in the bill.

The bill would authorize a county or a municipality to require a person to obtain a permit from the county or the municipality to operate a boarding home facility within the entity's jurisdiction. A county or municipality would be authorized to adopt the standards developed by the executive



commissioner of HHSC and require a facility that is issued a permit to comply with those standards. A county or municipality would be authorized to establish procedures for submission of a permit application and for issuing, denying, renewing, suspending, or revoking the permit. A county or municipality would be authorized to set reasonable fees for issuing and renewing a permit and for conducting inspections, which would also be authorized under provisions of the bill. The entities would also be allowed to impose fines for noncompliance with regulations. Money collected from fees and fines must be used to administer the county or municipal permitting program, as a source of local matching funds for state grants, or for other purposes directly related to providing boarding home facility or other assisted living services to the elderly and persons with disabilities.

Reports of abuse, neglect, or exploitation of residents of a boarding home facility that holds a permit issued by a county or a municipality would be required to be reported to the Department of Family and Protective Services for investigation by that agency.

HHSC would be required to establish a competitive grant program that promotes innovation and effectiveness in the local regulation of boarding home facilities. Provisions of the bill specify how the grants must be used and to which entities grants may be awarded. HHSC would be required to request proposals for the award of a grant under the program and to evaluate each proposal and award a grant based on the proposal's quantifiable effectiveness and potentially positive impact on the regulation of boarding home facilities.

HHSC would be authorized to require a county or municipality to spend local matching funds as a condition for the award of a grant. HHSC would be prohibited from collecting additional money from the county or municipality that is derived from fees collected or fines imposed for the administration of the permitting program authorized by the bill. The agency would be required to establish procedures to administer the grant program.

HHSC would be required to enter into a contract that includes performance requirements with each grant recipient. The agency would be required to monitor and enforce the terms of the contract. The contract must authorize the agency to recoup grant money from a grant recipient for failure of the recipient to comply with terms of the contract. The agency would be required to post on its Internet website a summary of each grant awarded.

Except for the model standards required by Section 254.003, Health and Safety Code, the bill would take effect September 1, 2009. Section 254.003, Health and Safety Code, and SECTION 4 of the bill would take effect September 1, 2010.

### **Methodology**

According to HHSC, Section 254.010 (Competitive Grant Program) would be delegated to the Department of Aging and Disability Services (DADS) and DADS assumes it would award five grants per fiscal year at an average of \$100,000 per grant for a total cost of \$500,000 per fiscal year in General Revenue Funds. It is assumed that any costs associated with the other provisions of the bill could be absorbed within existing resources.

### **Local Government Impact**

It is assumed that a county or a municipality that chooses to establish a permit program would establish a sufficient level of fees and fines and would seek state matching grants to offset costs associated with operating the program. Therefore, it is anticipated that there would be no significant fiscal impact to units of local government.

**Source Agencies:** 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 529 Health and Human Services Commission, 530 Family and Protective Services, Department of, 539 Aging and Disability Services, Department of

**LBB Staff:** JOB, CL, DB, LR, SJ





**LEGISLATIVE BUDGET BOARD**  
Austin, Texas

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**March 25, 2009**

**TO:** Honorable Patrick M. Rose, Chair, House Committee on Human Services

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB216** by Menendez (Relating to licensing and regulation of certain facilities providing personal care to elderly or disabled persons; providing penalties.), **As Introduced**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB216, As Introduced: a negative impact of (\$5,991,152) through the biennium ending August 31, 2011.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2010	(\$225,089)
2011	(\$5,766,063)
2012	(\$6,270,819)
2013	(\$6,254,313)
2014	(\$6,748,387)

**All Funds, Five-Year Impact:**

Fiscal Year	Probable Savings/ (Cost) from <i>General Revenue Fund</i> 1	Probable Savings/ (Cost) from <i>GR Match For Medicaid</i> 758	Probable Savings/ (Cost) from <i>Federal Funds</i> 555	Probable Revenue Gain/(Loss) from <i>New General Revenue Dedicated-Elderly and Disabled Persons Account</i>
2010	(\$225,089)	\$0	(\$600,907)	\$4,518,500
2011	(\$208,693)	(\$5,557,370)	(\$9,025,870)	\$3,468,500
2012	(\$208,693)	(\$6,062,126)	(\$9,565,626)	\$3,503,500
2013	(\$208,693)	(\$6,045,620)	(\$10,046,120)	\$4,000,500
2014	(\$208,693)	(\$6,539,694)	(\$10,618,944)	\$4,079,250

Fiscal Year	Probable Savings/ (Cost) from <i>New General Revenue Dedicated- Elderly and Disabled Persons Account</i>
2010	(\$600,907)
2011	(\$3,468,500)
2012	(\$3,503,500)
2013	(\$4,000,500)
2014	(\$4,079,250)



Fiscal Year	Change in Number of State Employees from FY 2009
2010	8.0
2011	223.0
2012	240.0
2013	255.0
2014	273.0

## Fiscal Analysis

The bill would amend the Health and Safety Code as it relates to licensing and regulation of certain facilities providing personal care to elderly or disabled persons and would provide penalties.

The bill would create the Elderly and Disabled Persons Account in the General Revenue Fund. The account would be funded from appropriations for the implementation and administration of the regulation of group home facilities; interest earned from the account; fees; and penalties established under the provisions of the bill. Money in the account could be appropriated for the enforcement of the licensing and regulation of group home facilities; programs and services for elderly persons or disabled persons; or transitional housing and case management services.

The bill would also require persons, acting severally or jointly with any other persons, to obtain a license from the Department of Aging and Disability Services (DADS) in order to establish, conduct, or maintain a group home facility for elderly persons or disabled persons, as defined by the bill. The executive commissioner of the Health and Human Services Commission (HHSC) is authorized to adopt by rule a fee for this license in an amount reasonable and necessary to recover the costs of administering the provisions of the bill (licensing and regulation of group home facilities for elderly persons or disabled persons). A person that operates a group home facility without a license would commit an offense, punishable by fines, as described by the bill.

The bill would establish criminal penalties, civil penalties, and administrative penalties for violating certain provisions of the bill.

Facilities required by the bill to be licensed would have until January 1, 2010 to be licensed.

The bill would take effect September 1, 2009.

The bill would create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either within or outside the Treasury, or create a dedicated revenue source; therefore, the fund, account, or revenue dedication included in the bill would be subject to funds consolidation review by the current Legislature.

## Methodology

The Office of the Attorney General (OAG) indicated that the bill would result in additional cases filed by the OAG's Consumer Protection and Public Health Division. The OAG last year received 9 referrals for enforcement action related to licensed and/or unlicensed assisted living facilities. The OAG is assuming a higher number of referrals with the new population (group homes) added to the regulated arena for which the OAG's Consumer Protection and Public Health division is responsible. As a result of the anticipated legal work associated with the provisions of the bill, the OAG estimates that an additional 2 FTEs would be needed. The OAG estimated the fiscal impact in fiscal year 2010 to be \$225,089 and \$208,693 each fiscal year thereafter from the General Revenue Fund.

To estimate the current number of group homes that would need to be licensed under the provisions of the bill, DADS considered three types of establishments for which numbers are available: 1) group homes identified in the study conducted by Health Management Associates (HMA) pursuant to House Bill 1168, 80th Legislature, Regular Session, 2007 (845); 2) group homes and foster homes serving consumers in the Home and Community-based Services (HCS) waiver program (2,498); and 3) adult



foster care homes that contract with DADS to serve consumers in the Community Care for the Aging and Disabled program and the Community-based Alternatives (CBA) waiver program (100). To project growth in the number of locations that would need to be licensed as group home facilities for FY 2011 - 2014, DADS applied a 3.7% multiplier to the number of boarding homes identified by HMA. Based on historical data, an 8.8% multiplier was applied to HCS group homes and foster homes by DADS.

DADS assumed a need for 6 FTEs in fiscal year 2010 to implement the program, increasing to 221 in fiscal year 2011 with the addition of regulatory surveyors and other supporting staff; FTEs are assumed to further increase in future years as the number of facilities regulated increases. DADS estimated the total cost to be \$1,201,813 in FY10; \$18,051,740 in FY11; \$19,131,252 in FY12; \$20,092,239 in FY13; and \$21,237,887 in FY14.

DADS also assumed that the fee schedule would mirror what is currently used in the HCS program at \$1,750 per facility. It is assumed that half of facilities licensed in fiscal year 2010 would be issued a one-year license at a cost of \$875 in order to stagger the number of renewals in future years. This would result in revenue of \$4,518,500 for FY10; \$3,468,500 for FY11; \$3,503,500 for FY12; \$4,000,500 for FY13; and \$4,079,250 for FY14.

### **Technology**

DADS indicated that the bill would require the creation of at least two new reports in Compliance Assessment, Regulatory & Enforcement Systems (CARES) and an update of the reporting application for existing reports at an assumed cost of \$231,240. DADS assumed modifications to the Web Accessible Facility Enrollment (WAFER) of \$276,340 and other automation needs.

### **Local Government Impact**

Section 254.004(b) of the bill would require the Department of Aging and Disability Services to cooperate with local public health officials of a municipality or county to carry out the provisions of the chapter, and would delegate to local officials the power to make inspections and recommendations to the department. The executive commissioner would be required to develop a memorandum of understanding with a municipality or a county to ensure the availability of emergency placements for residents if a facility was closed due to a license suspension, and would provide partial or full remuneration for costs associated with emergency placements. The fiscal impact to local entities to implement the provisions of the bill is not anticipated to be significant.

**Source Agencies:** 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 539 Aging and Disability Services, Department of

**LBB Staff:** JOB, CL, SJ, LR, ML, TP

