

By: Menéndez
(Coleman)

S.B. No. 1999

Substitute the following for S.B. No. 1999:

By: Raymond

C.S.S.B. No. 1999

A BILL TO BE ENTITLED

AN ACT

relating to adult day services facilities.

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

SECTION 1. Section 531.951(a), Government Code, is amended to read as follows:

(a) This subchapter applies only to the final licensing, listing, or registration decisions of a health and human services agency with respect to a person under the law authorizing the agency to regulate the following types of persons:

(1) a youth camp licensed under Chapter 141, Health and Safety Code;

(2) a home and community support services agency licensed under Chapter 142, Health and Safety Code;

(3) a hospital licensed under Chapter 241, Health and Safety Code;

(4) an institution licensed under Chapter 242, Health and Safety Code;

(5) an assisted living facility licensed under Chapter 247, Health and Safety Code;

(6) a special care facility licensed under Chapter 248, Health and Safety Code;

(7) an intermediate care facility licensed under Chapter 252, Health and Safety Code;

(8) a chemical dependency treatment facility licensed

1 under Chapter 464, Health and Safety Code;

2 (9) a mental hospital or mental health facility
3 licensed under Chapter 577, Health and Safety Code;

4 (10) a child-care facility or child-placing agency
5 licensed under or a family home listed or registered under Chapter
6 42, Human Resources Code; or

7 (11) an adult day services [~~day-care~~] facility
8 licensed under Chapter 103, Human Resources Code.

9 SECTION 2. Section 81.042(e), Health and Safety Code, is
10 amended to read as follows:

11 (e) The following persons shall report to the local health
12 authority or the department a suspected case of a reportable
13 disease and all information known concerning the person who has or
14 is suspected of having the disease if a report is not made as
15 required by Subsections (a)-(d):

16 (1) a professional registered nurse;

17 (2) an administrator or director of a public or
18 private temporary or permanent child-care facility;

19 (3) an administrator or director of a nursing home,
20 personal care home, adult respite care center, or adult day
21 services facility [~~day-care center~~];

22 (4) an administrator of a home health agency;

23 (5) an administrator or health official of a public or
24 private institution of higher education;

25 (6) an owner or manager of a restaurant, dairy, or
26 other food handling or processing establishment or outlet;

27 (7) a superintendent, manager, or health official of a

1 public or private camp, home, or institution;

2 (8) a parent, guardian, or householder;

3 (9) a health professional;

4 (10) an administrator or health official of a penal or
5 correctional institution; or

6 (11) emergency medical service personnel, a peace
7 officer, or a firefighter.

8 SECTION 3. Section 164.003(5), Health and Safety Code, as
9 amended by S.B. No. 219, Acts of the 84th Legislature, Regular
10 Session, 2015, is amended to read as follows:

11 (5) "Mental health facility" means:

12 (A) a "mental health facility" as defined by
13 Section 571.003;

14 (B) a residential treatment facility, other than
15 a mental health facility, in which persons are treated for
16 emotional problems or disorders in a 24-hour supervised living
17 environment; and

18 (C) an adult day services [~~day-care~~] facility as
19 defined by Section 103.003, Human Resources Code.

20 SECTION 4. Section 250.001(3), Health and Safety Code, as
21 reenacted and amended by S.B. No. 219, Acts of the 84th
22 Legislature, Regular Session, 2015, is amended to read as follows:

23 (3) "Facility" means:

24 (A) a nursing facility, custodial care home, or
25 other institution licensed by the Department of Aging and
26 Disability Services under Chapter 242;

27 (B) an assisted living facility licensed by the

1 Department of Aging and Disability Services under Chapter 247;

2 (C) a home and community support services agency
3 licensed under Chapter 142;

4 (D) an adult day services [~~day care~~] facility
5 licensed by the Department of Aging and Disability Services under
6 Chapter 103, Human Resources Code;

7 (E) an ICF-IID licensed under Chapter 252;

8 (F) an adult foster care provider that contracts
9 with the Department of Aging and Disability Services;

10 (G) a facility that provides mental health
11 services and that is operated by or contracts with the Department of
12 State Health Services;

13 (H) a local mental health authority designated
14 under Section 533.035 or a local intellectual and developmental
15 disability authority designated under Section 533.035;

16 (I) a person exempt from licensing under Section
17 142.003(a)(19);

18 (J) a special care facility licensed by the
19 Department of State Health Services under Chapter 248;

20 (K) a mental health service unit of a hospital
21 licensed under Chapter 241; or

22 (L) a prescribed pediatric extended care center
23 licensed by the Department of Aging and Disability Services under
24 Chapter 248A.

25 SECTION 5. The heading to Chapter 103, Human Resources
26 Code, is amended to read as follows:

27 CHAPTER 103. ADULT DAY SERVICES [~~CARE~~]

1 SECTION 6. Section 103.001, Human Resources Code, as
2 amended by S.B. No. 219, Acts of the 84th Legislature, Regular
3 Session, 2015, and Section 103.002, Human Resources Code, are
4 amended to read as follows:

5 Sec. 103.001. PURPOSE. It is the purpose of this chapter to
6 establish programs of quality adult day services [~~care and day~~
7 ~~health care~~] that will enable persons with disabilities who have
8 medical or functional impairments and elderly persons to maintain
9 maximum independence and to prevent premature or inappropriate
10 institutionalization. It is the purpose of this chapter to provide
11 adequately regulated supervision for elderly persons and persons
12 with disabilities while enabling them to remain in a family
13 environment and affording the family a measure of normality in its
14 daily activities. The legislature intends to provide for the
15 development of policies and programs that will:

- 16 (1) provide alternatives to institutionalization;
17 (2) establish facilities for adult day services [~~care~~
18 ~~and day health care~~] throughout the state that offer services and
19 are accessible to economically disadvantaged persons; and
20 (3) prevent inappropriate institutionalization.

21 Sec. 103.002. SHORT TITLE. This chapter may be cited as the
22 Adult Day Services [~~Care~~] Act.

23 SECTION 7. Section 103.003(1), Human Resources Code, as
24 amended by S.B. No. 219, Acts of the 84th Legislature, Regular
25 Session, 2015, and Section 103.003(2), Human Resources Code, are
26 amended to read as follows:

- 27 (1) "Adult day services [~~day-care~~] facility" means a

1 facility that provides services under an adult day services
2 [~~day-care~~] program on a daily or regular basis but not overnight to
3 four or more elderly persons or persons with disabilities who are
4 not related by blood, marriage, or adoption to the owner of the
5 facility.

6 (2) "Adult day services [~~day-care~~] program" means a
7 structured, comprehensive program that is designed to meet the
8 needs of adults with functional impairments through an individual
9 plan of care by providing health, social, and related support
10 services in a protective setting.

11 SECTION 8. Section 103.0041(a), Human Resources Code, is
12 amended to read as follows:

13 (a) A person may not operate an adult day services
14 [~~day-care~~] facility without a license issued under this chapter.

15 SECTION 9. Section 103.006(a), Human Resources Code, is
16 amended to read as follows:

17 (a) The department shall issue a license to operate an adult
18 day services [~~day-care~~] facility to a person who has met the
19 application requirements and received approval after an on-site
20 inspection.

21 SECTION 10. Section 103.007(a), Human Resources Code, is
22 amended to read as follows:

23 (a) An applicant for a license to operate an adult day
24 services [~~day-care~~] facility must file an application on a form
25 prescribed by the department together with a license fee of \$50.

26 SECTION 11. Section 103.0075(a), Human Resources Code, as
27 amended by S.B. No. 219, Acts of the 84th Legislature, Regular

1 Session, 2015, is amended to read as follows:

2 (a) The executive commissioner by rule shall adopt a
3 procedure under which a person proposing to construct or modify an
4 adult day services [~~day-care~~] facility may submit building plans to
5 the department for review for compliance with the department's
6 architectural requirements before beginning construction or
7 modification. In adopting the procedure, the executive
8 commissioner shall set reasonable deadlines by which the department
9 must complete review of submitted plans.

10 SECTION 12. Section 103.0091(a), Human Resources Code, is
11 amended to read as follows:

12 (a) The department may petition a district court for a
13 temporary restraining order to restrain a continuing violation of
14 the standards or licensing requirements provided under this chapter
15 if the department finds that the violation creates an immediate
16 threat to the health and safety of the adult day services facility
17 [~~day-care~~] residents.

18 SECTION 13. Section 103.0092(a), Human Resources Code, is
19 amended to read as follows:

20 (a) If the department finds an adult day services [~~day-care~~]
21 facility operating in violation of the standards prescribed by this
22 chapter and the violations create an immediate threat to the health
23 and safety of a resident in the facility, the department shall
24 suspend the license or order immediate closing of all or part of the
25 facility.

26 SECTION 14. Section 103.011, Human Resources Code, is
27 amended to read as follows:

1 Sec. 103.011. RIGHTS OF THE ELDERLY. (a) In addition to
2 other rights an individual attending an adult day services [~~care~~]
3 facility has as a citizen, an individual who is 55 years of age or
4 older has the rights prescribed by Chapter 102 of this code.

5 (b) The department shall require each adult day services
6 [~~care~~] facility to implement and enforce the applicable provisions
7 of Chapter 102 of this code.

8 SECTION 15. Section 103.012(a), Human Resources Code, is
9 amended to read as follows:

10 (a) The department may assess an administrative penalty
11 against a person who:

12 (1) violates this chapter, a rule, standard, or order
13 adopted under this chapter, or a term of a license issued under this
14 chapter;

15 (2) makes a false statement of a material fact that the
16 person knows or should know is false:

17 (A) on an application for issuance or renewal of
18 a license or in an attachment to the application; or

19 (B) with respect to a matter under investigation
20 by the department;

21 (3) refuses to allow a representative of the
22 department to inspect:

23 (A) a book, record, or file required to be
24 maintained by an adult day services [~~day-care~~] facility; or

25 (B) any portion of the premises of an adult day
26 services [~~day-care~~] facility;

27 (4) wilfully interferes with the work of a

1 representative of the department or the enforcement of this
2 chapter;

3 (5) wilfully interferes with a representative of the
4 department preserving evidence of a violation of this chapter, a
5 rule, standard, or order adopted under this chapter, or a term of a
6 license issued under this chapter;

7 (6) fails to pay a penalty assessed under this chapter
8 not later than the 30th day after the date the assessment of the
9 penalty becomes final; or

10 (7) fails to notify the department of a change of
11 ownership before the effective date of the change of ownership.

12 SECTION 16. Sections 103.013(a) and (c), Human Resources
13 Code, are amended to read as follows:

14 (a) The department may not collect an administrative
15 penalty from an adult day services [~~day-care~~] facility under
16 Section 103.012 if, not later than the 45th day after the date the
17 facility receives notice under Section 103.014(c), the facility
18 corrects the violation.

19 (c) An adult day services [~~day-care~~] facility that corrects
20 a violation must maintain the correction. If the facility fails to
21 maintain the correction until at least the first anniversary after
22 the date the correction was made, the department may assess and
23 collect an administrative penalty for the subsequent violation. An
24 administrative penalty assessed under this subsection is equal to
25 three times the amount of the original penalty assessed but not
26 collected. The department is not required to provide the facility
27 with an opportunity under this section to correct the subsequent

1 violation.

2 SECTION 17. Sections 103.014(c) and (e), Human Resources
3 Code, are amended to read as follows:

4 (c) The department shall give written notice of the report
5 to the person charged with the violation not later than the 10th day
6 after the date on which the report is issued. The notice must
7 include:

8 (1) a brief summary of the charges;

9 (2) a statement of the amount of penalty recommended;

10 (3) a statement of whether the violation is subject to
11 correction under Section 103.013 and, if the violation is subject
12 to correction under that section, a statement of:

13 (A) the date on which the adult day services
14 [~~day-care~~] facility must file a plan of correction with the
15 department that the department shall review and may approve, if
16 satisfactory; and

17 (B) the date on which the plan of correction must
18 be completed to avoid assessment of the penalty; and

19 (4) a statement that the person charged has a right to
20 a hearing on the occurrence of the violation, the amount of the
21 penalty, or both.

22 (e) If the violation is subject to correction under Section
23 103.013, the adult day services [~~day-care~~] facility shall submit a
24 plan of correction to the department for approval not later than the
25 10th day after the date on which the notice under Subsection (c) is
26 received.

27 SECTION 18. Section 161.151(2), Human Resources Code, is

1 amended to read as follows:

2 (2) "Respite services" means support services,
3 including in-home services or adult day [~~day-care~~] services, that
4 are provided for the purpose of temporarily giving relief to a
5 primary caregiver who provides care to an individual with a chronic
6 serious health condition or disability.

7 SECTION 19. This Act takes effect immediately if it
8 receives a vote of two-thirds of all the members elected to each
9 house, as provided by Section 39, Article III, Texas Constitution.
10 If this Act does not receive the vote necessary for immediate
11 effect, this Act takes effect September 1, 2015.