

**SUBJECT:** Regulating personal care and residential facilities for the elderly

**COMMITTEE:** Human Services— favorable, with amendments

**VOTE:** 7 ayes — Hilderbran, Naishtat, Chavez, Davila, Maxey, McReynolds, Wohlgemuth  
0 nays  
2 absent — Christian, Krusee

**SENATE VOTE:** On final passage, April 3 — voice vote

**WITNESSES:** For — David Latimer, Texas Association of Homes and Services for the Aging; John W. Holtermann, Texas Silver-Haired Legislature; Alan Hardy, American Association of Retired Persons; Diana Deaton, Texas Assisted Living Association; Elaine Nail; Jimmy C. Nail  
Against — Sid Rich, Retirement Communities and Personal Care Facilities

**BACKGROUND :** Texas licenses and regulates nursing homes, personal care facilities, and continuing care facilities under the Health and Safety Code. Personal care facilities furnish room and board to four or more individuals unrelated to the proprietor and personal care services such as assistance with meals, dressing, movement, bathing, the administration of medication, or general supervision.  
Continuing care facilities furnish living units to its residents with personal care services, nursing services, medical services and other health care services under a contract that requires the payment of an entrance fee and that is effective for either the life of the individual or for more than one year. Continuing care facilities are regulated by the department of insurance and must receive a certificate of authority in order to operate in Texas.

**DIGEST:** SB 618 would add a new chapter in the Human Resources Code to require residential facilities for the elderly to contract with residents using specific provisions, and amend laws governing the regulation of personal care facilities.

Residential facilities for the elderly would be defined as facilities that provide food and shelter to two or more adult residents, at least 80 percent of whom are 55 years of age or older or are disabled, and that provide for a fee one or more supportive services, such as medical or social services, or help with personal laundry.

Nursing homes, continuing care facilities, state agency-run facilities, and housing in which all supportive services are arranged by the residents themselves would be exempt from the application of residential facilities for the elderly regulations.

Residential facilities for the elderly that were not licensed as personal care facilities would have to execute a contract with each of its residents that would have to include 15 specified items, including:

- the name, street address and mailing address of the facility and of at least one person authorized to act on behalf of the owner or management agent;
- a statement describing the licensure status of the establishment;
- the name and mailing address of any individual or entity that provides supportive services to the facility;
- a description of services to be provided within the base monthly rate;
- a description of any additional services available for a fee;
- a provision requiring the establishment to provide 30-days notice of any change in fee schedules;
- a description of the process by which the contract could be modified, amended or terminated; and
- a description of the complaint resolution process available to residents.

Promotional materials would have to disclose whether the facility was licensed as a personal care facility. If a facility violated resident contract or promotional material requirements, residents could exercise remedies available to other Texas tenants under sec. 92.205 of the Property Code.

SB 618 also would amend licensure requirements for personal care facilities by:

- exempting from licensure facilities operated by a provider certified by the Texas Department of Mental Health and Mental Retardation to be in compliance with Medicaid waiver requirements;
- requiring personal care facilities to be individually licensed;
- authorizing the issuance of six-month provisional licenses for qualified existing facilities that needed additional time to comply with standards;
- authorizing the Department of Human Services to petition a district court for a temporary restraining order to inspect a facility allegedly required to be licensed and operating without a license;
- establishing a civil penalty of \$1,000 to \$10,000 for persons who did not possess a personal care facility license as required;
- requiring the department to refer to local district, county or city attorneys cases in which the attorney general failed to take action;
- authorizing municipalities to prohibit the operation of unlicensed personal care facilities and to close those that threatened resident health and safety;
- requiring the commissioner of human services to approve any settlement agreements; and
- authorizing the department to develop other enforcement remedies, except monetary penalties.

The bill also would exempt from state architectural barriers standards (art. 9102, VTCS) personal care facilities that are required to meet Americans with Disabilities Act (ADA) requirements.

The bill would take effect September 1, 1997.

**SUPPORTERS  
SAY:**

SB 618 would help the state identify unlicensed personal care facilities and help protect the health and safety of individuals who reside and depend on the services of licensed and unlicensed homes. Personal care homes are usually very small facilities that are hard to identify because they receive no state or federal funding for operations, other than the social security checks or disability checks that the residents use to pay for services.

There may be as many as 2,000-3,000 unlicensed personal care homes now operating in Texas, and the numbers are rapidly growing with the aging of the overall population and current health care trends to provide outpatient, noninstitutional care for elderly, mentally or physically disabled and chronically ill individuals. This bill would improve detection and enforcement of personal care home licensing by authorizing municipalities and local public attorneys to get involved in licensing enforcement, and by improving Department of Human Services (DHS) enforcement authority.

By authorizing the department to impose civil penalties and other remedies, the department could structure and impose as needed alternative mechanisms, such as corrective plans of action or training requirements, that could be used to help correct problems without completely shutting down a personal care home business. DHS is experienced in structuring and using alternative remedies in its regulation of nursing home facilities; restricting department recourse to remedies specifically stated in law would cause both personal care facilities and the department to lose the opportunity to develop remedies that meet changing or unique personal care situations in a timely manner.

Residential facilities that do not completely conform to personal care home or continuing care facility licensure requirements would have to provide important, specified information to residents through contract agreements. This would allow residents to make informed choices about selecting new living arrangements by becoming fully aware of the types and fees for services they could receive from the facility and whether or not the facility was licensed and inspected by the state.

**OPPONENTS  
SAY:**

The bill would be giving the Department of Human Services broad authority to develop other enforcement remedies and should be limited to specific types of remedies.

**NOTES:**

The committee amendments would allow municipalities to participate in enforcement of personal care licensing requirements and the department to develop enforcement remedies other than monetary penalties and to establish a provisional license; exempt certain facilities certified by the

Texas Department of Mental Health and Mental Retardation from personal care home licensure requirements; and exempt personal care homes from other state architectural barrier standards.