

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 1168
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Health & Human Services
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law does not regulate the operation of group homes for residents who are not related to the provider and that are provided by individuals or business concerns for adult persons who are disabled by reason of mental health or mental retardation or are elderly and who are in need of quality, safe, supervised housing. At present, state statutes only require the licensing, inspection, and regulation of such facilities where there is clear evidence of providing varying degrees of medical services, prescription administration, treatment, or therapeutic services. There are no restrictions or regulation on the size, management, or overall operation of these facilities which are typically funded from the personal assignment of the affected resident's disability stipend--usually Social Security--to the facility provider.

Under current law, local governments are singularly the only source of very limited regulation. That regulation is restricted to residential zoning rules, health and safety codes, and other civic policy ordinances under the Local Government Code. With the exception of a limited pilot program established by S.B. 6, 79th Legislature, Regular Session, 2005, (Article 2, Section 2.20) there is no regulatory requirements or state agency authority to effectively monitor and enforce adequate safe guards for the estimated 4,000 residential operations throughout the state serving a conservative estimate of 65,000 affected citizens. With the exception of individually reported and investigated cases of abuse through the Department of Aging and Disability Services (DADS), state agencies currently do not have the authority to require registration, inspection, and oversight or enforcement of such facilities and lack even general investigative authority to ensure the safety and well-being of the residents.

C.S.H.B. 1168 expands and makes permanent, statewide, the pilot program, previously established, for registration, licensing, and oversight of this category of residential homes. The bill requires procedures that would allow other state agencies and appropriate local authorities to participate in the process as well as information sharing for the purpose of protecting citizens who are tenants of these homes. Additionally, this bill would utilize the fees and any penalties assessed and collected to be used to offset administrative costs and to use the remainder to continue to expand services to elderly or disabled citizens. This bill requires a biennial report to the legislature detailing the program status that may be included as part of the other DADS operational summaries but should be clearly specified as to purpose and scope.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 2 (Sections 247.033, Health and Safety Code) and SECTION 3 (Sections 254.003, 254.033, 254.034, 254.037, 254.038, 254.039, 254.061, and 254.065, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 247.031, Health and Safety Code, as follows:

Sec. 247.031. New heading: COUNTY OR MUNICIPAL ENFORCEMENT. Authorizes the governing body of a county by resolution or a municipality by ordinance to prohibit a person who does not hold a license issued under this chapter from establishing or operating an assisted living facility within the county or municipality and to establish a procedure for emergency closure of a facility in certain circumstances.

SECTION 2. (a) Amends Subchapter B, Chapter 247, Health and Safety Code, by adding Section 247.033, as follows:

Sec. 247.033. LISTING OF CERTAIN SMALL FACILITIES. (a) Requires the executive commissioner of the Health and Human Services Commission (HHSC) by rule to establish a system for listing each facility that furnishes food, shelter, and personal care services to three or fewer people who are unrelated to the proprietor of the facility and that provides regular care to the residents of the facility.

(b) Requires a facility described by Subsection (a) to list with the Texas Department of Aging and Disability Services (DADS). Provides that a listing remains valid until surrendered.

(c) Requires DADS to provide to a listed facility a copy of the listing. Requires a listing to contain a provision that states certain language. Provides that the operator of a listed facility is not required to display the listing at the home but is required to make the listing available for examination.

(d) Requires DADS to issue a listing to a facility under this section in both English and Spanish when the most recent federal census shows that more than one-half of the population in a municipality or in a commissioners precinct in a county in which the facility is located is of Hispanic origin or Spanish-speaking.

(e) Provides that a facility required to list with DADS under this section is not otherwise subject to the standards, requirements, or penalties of this chapter.

(b) Requires the executive commissioner of HHSC, not later than January 1, 2008, to adopt the rules necessary to implement Section 247.033, Health and Safety Code, as added by this section.

(c) Provides that a facility, notwithstanding Section 247.033, Health and Safety Code, as added by this section, is not required to list with DADS before March 1, 2008.

SECTION 3. Amends Subtitle B, Title 4, Health and Safety Code, by adding Chapter 254, as follows:

CHAPTER 254. GROUP HOME FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 254.001. DEFINITIONS. Defines "department," "designee," "disabled person," "elderly person," "executive commissioner," "facility," "governmental unit," "person," and "resident."

Sec. 254.002. RIGHTS OF RESIDENTS. Requires each facility to implement and enforce Chapter 102 (Rights of the Elderly), Human Resources Code.

Sec. 254.003. RULES GENERALLY. Requires the executive commissioner of the Health and Human Services Commission (commissioner) to adopt rules related to the administration and implementation of this chapter.

Sec. 254.004. CONSULTATION AND COORDINATION. (a) Requires DADS, whenever possible, to use the services of and consult with state and local agencies in carrying out DADS's functions under this chapter and to use the facilities of DADS or a designee of DADS, particularly in establishing and maintaining standards relating to the human treatment of residents.

(b) Authorizes DADS to cooperate with local public health officials of a municipality or county in carrying out this chapter and authorizes the delegation of power to those officials to make inspections and recommendations to DADS under this chapter.

(c) Authorizes DADS to coordinate its personnel and facilities with a local agency of a municipality or county and to provide advice if the municipality or county decides to supplement the state program with additional rules required to meet local conditions.

(d) Requires DADS and the Department of State Health Services (DSHS) to enter into a memorandum of understanding with the Texas Department of Housing and Community Affairs to coordinate housing resources for persons who may be displaced as a result of actions taken under Subchapters C and D of this chapter.

Sec. 254.005. PROHIBITION OF REMUNERATION. (a) Prohibits a facility from receiving monetary or other remuneration from a person or agency that furnishes services or materials to the facility or residents for a fee.

(b) Authorizes DADS to revoke the license of a facility that violates Subsection (a).

Sec. 254.006. REPORT OF REFERRALS TO DEPARTMENT. (a) Requires a state agency, political subdivision, or a public or private provider of health care services to report the referral of an elderly or disabled person to a facility to DADS.

(b) Prohibits a state agency, political subdivision, or a public or private provider of health care services or behavioral health care services from referring an elderly or disabled person to a facility that is not licensed by the state as provided by this chapter or licensed under other state law.

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

(b) Requires certain appropriations, interest, fees, and penalties to be deposited in the account.

(c) Authorizes the appropriation of money in the account only for the enforcement of this chapter, to provide programs and services for elderly or disabled persons, or for transitional housing and case management services.

(d) Provides that Section 403.095 (Use of Dedicated Revenue), Government Code, does not apply to the account.

[Reserves Sections 254.008-254.030 for expansion.]

SUBCHAPTER B. LICENSING, FEES, AND INSPECTIONS

Sec. 254.031. LICENSE REQUIRED. Prohibits a person, acting severally or jointly with any other person, from establishing, conducting, or maintaining a facility in this state without a license issued under this chapter.

Sec. 254.032. LICENSE APPLICATION. (a) Provides that an application for a license is made to DADS on a form provided by DADS and requires that the form is accompanied by the license fee adopted under Section 254.034.

(b) Requires the application to contain information that DADS requires. Authorizes DADS to require affirmative evidence of ability to comply with the standards and rules adopted under this chapter.

Sec. 254.033. ISSUANCE AND RENEWAL OF LICENSE. (a) Requires DADS, after receiving the application, to issue a license if it finds that the application and facility meet the requirements established under this chapter after inspection and investigation.

(b) Authorizes DADS to issue a license only for the premises and persons named in the application and the maximum number of residents specified in the application.

(c) Prohibits a license from being transferred or assigned.

(d) Provides that a license is renewable on the second anniversary of issuance or renewal of the license after an inspection, filing and approval of a renewal report, and payment of the renewal fee.

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

(f) Requires the executive commissioner by rule to define specific, appropriate, and objective criteria on which DADS is authorized to deny an initial license application or license renewal or revoke a license.

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

(b) Requires the license fee to be paid with each application for an initial license or for a renewal or change of ownership of a license.

(c) Authorizes the executive commissioner to adopt an additional fee for the approval of an increase in number of residents.

Sec. 254.035. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. (a) Authorizes DADS, after providing notice and opportunity for a hearing to the applicant or license holder, to deny, suspend, or revoke a license if DADS finds that the applicant or license holder has substantially failed to comply with the requirements established under this chapter.

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

Sec. 254.036. MINIMUM STANDARDS. Authorizes the executive commissioner to adopt, publish, and enforce minimum standards relating to certain conditions of facilities, safety policies, regulations and requirements for employees, and the quality of life.

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

Sec. 254.038. EARLY COMPLIANCE REVIEW. (a) Requires the executive commissioner by rule to adopt a procedure under which a person proposing to construct or modify a facility is authorized to submit building plans to DADS for review for compliance with architectural requirements before beginning construction or modification. Requires DADS, in adopting the procedure, to set reasonable deadlines by which DADS is required to complete the review of submitted plans.

(b) Requires DADS, within 30 days, to review plans submitted under this section for compliance with architectural requirements and inform the person in writing of the results of the review. Prohibits the architectural requirements applicable to the project from subsequent change, if the plans comply with the architectural requirements, unless the change is required by federal law or the person fails to complete the project within a reasonable time.

(c) Authorizes DADS to charge a reasonable fee for conducting a review under this section.

(d) Requires a fee collected under this section to be deposited in the account under Section 254.007 and authorizes the fee to be appropriated only to DADS to conduct reviews under this section.

(e) Provides that the review procedure provided by this section does not include review of building plans for compliance with the Texas Accessibility Standards as administered and enforced.

Sec. 254.039. FIRE SAFETY REQUIREMENTS. (a) Requires a facility to comply with fire safety requirements established under this section.

(b) Requires the executive commissioner by rule to adopt the fire safety standards applicable to the facility. Requires the fire safety standards to be the same as the fire safety standards established by an edition of the Life Safety Code of the National Fire Protection Association. Authorizes the edition selected to be different for facilities or portions of facilities operated or approved for construction at different times if required by federal law or regulation.

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

(d) Authorizes a municipality to enact, notwithstanding any other provision of this section, additional and more stringent fire safety standards applicable to new construction begun on or after September 1, 2007.

Sec. 254.040. POSTING. Requires each facility to prominently and conspicuously post for display the license issued under this chapter and certain signs in a public area of the facility that is readily available to residents, the operator, any employees, and visitors.

Sec. 254.041. INSPECTIONS. (a) Authorizes DADS or a designee of DADS to make any inspection, survey, or investigation that it considers necessary and to enter the premises of a facility at reasonable times to make an inspection, survey, or investigation in accordance with rules of the executive commissioner.

(b) Entitles DADS to access to books, records, and other documents maintained by or on behalf of a facility to the extent necessary to enforce this chapter and the rules adopted under this chapter.

(c) Provides that a license holder or an applicant for a license is considered to have consented to entry and inspection of the facility by a representative of DADS in accordance with this chapter.

(d) Requires DADS to establish procedures to preserve all relevant evidence of conditions DADS finds during an inspection, survey, or investigation that DADS reasonably believes threaten the health and safety of a resident. Authorizes the procedures to include photography or photocopying of relevant documents, such as a license holder's notes, physician's orders, and pharmacy records, for use in any legal proceeding.

(e) Requires DADS, when photographing a resident, to respect the privacy of the resident to the greatest extent possible and to obtain the resident's permission to the greatest extent possible before taking a photograph that will allow the resident to be identified, and prohibits DADS from making public the identity of the resident.

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

(g) Requires DADS to establish in clear and concise language a form to summarize each inspection report and complaint investigation report.

(h) Requires DADS to establish proper procedures to ensure that copies of all forms and reports under this section are made available to consumers, residents, and the relatives of residents as DADS considers proper.

(i) Requires DADS to have specialized staff conduct inspections, surveys, or investigations of facilities under this section.

Sec. 254.042. UNANNOUNCED INSPECTIONS. (a) Requires DADS to conduct at least two unannounced inspections of each facility each licensing period.

(b) Requires DADS to randomly select a sufficient percentage of facilities for unannounced inspections to be conducted between 5 p.m. and 8 a.m. in order to ensure continuous compliance. Requires those inspections to be cursory to avoid to the greatest extent feasible any disruption of the residents.

(c) Authorizes DADS to require additional unannounced inspections.

(d) Authorizes DADS, as considered appropriate and necessary by DADS, to invite a citizen advocate to participate in inspections. Requires an invited advocate to be an individual who has an interest in or who is employed by or affiliated with an organization or entity that represents, advocates for, or serves elderly or disabled persons.

Sec. 254.043. DISCLOSURE OF UNANNOUNCED INSPECTIONS; CRIMINAL PENALTY. (a) Provides that a person commits an offense, except as expressly provided by this chapter, if the person intentionally, knowingly, or recklessly discloses to an unauthorized person certain information pertaining to an unannounced inspection of a facility before the inspection occurs.

(b) Defines "unauthorized person."

(c) Provides that an offense under this section is a Class B misdemeanor.

(d) Provides that a person convicted under this section is not eligible for state employment.

Sec. 254.044. LICENSING SURVEYS. Requires DADS to provide a team to conduct surveys to validate findings of licensing surveys. Provides that the purpose of a validation survey is assurance that surveying throughout the state is done in a fair and consistent manner.

Sec. 254.045. REPORTING VIOLATIONS. (a) Requires DADS or a DADS representative conducting an inspection, survey, or investigation under this chapter to list each violation of a law or rule on a form designed by DADS for inspections and identify the specific law or rule the facility violates.

(b) Requires DADS or the DADS representative at the conclusion of an inspection, survey, or investigation, to discuss the violations with the facility's management in an exit conference. Requires DADS or the DADS representative to leave a written list of the violations with the facility and the person designated by the facility to receive notice of the imposition of an administrative penalty at the time of the exit conference. Requires DADS or the DADS representative to give the facility an additional exit conference regarding the additional violations if any are discovered during the review of field notes or preparation of the official final list.

(c) Requires the facility to submit a plan to correct the violations to DADS not later than 10 days after the date the facility receives the final statement of violations.

Sec. 254.046. CERTAIN RESIDENTS PROHIBITED. Prohibits a person operating a facility licensed under this chapter, to ensure the safety of residents of facilities licensed under this chapter, from allowing an individual required to register under Chapter 62, Code of Criminal Procedure, to reside in the facility.

[Reserves Sections 254.047-254.060 for expansion.]

SUBCHAPTER C. GENERAL ENFORCEMENT

Sec. 254.061. EMERGENCY SUSPENSION OR CLOSING ORDER. (a) Requires DADS to suspend a facility's license or order an immediate closing of part of the facility if it is found to be operating in violation of the standards prescribed by this chapter and the violation creates an immediate threat to the health and safety of a resident.

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

(c) Requires the executive commissioner, to ensure the availability of emergency placements under Subsection (b), to develop a memorandum of understanding with appropriate counties or municipal agencies that establishes an emergency placement capability for the area served by the county or municipal agency and may provide for partial or full remuneration by the facility of the costs associated with emergency placements provided by the county or municipal agency if the emergency placements resulted from a DADS order suspending the facility's license or closing the facility.

(d) Provides that an order suspending a license or closing a part of a facility under this section is immediately effective on the date on which the license holder receives written notice or a later date specified in the order.

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

Sec. 254.062. INJUNCTION. (a) Authorizes DADS to petition a district court for a temporary restraining order to restrain a person from continuing in violation of the standards prescribed by this chapter if DADS finds that the violation creates an immediate threat to the health and safety of the facility's residents.

(b) Authorizes a district court, on petition of DADS, to take certain actions.

(c) Requires the attorney general, on request by DADS, to bring and conduct on behalf of the state a suit authorized by this section.

(d) Requires a suit for a temporary restraining order or other injunctive relief to be brought in the county in which the alleged violation occurs or in Travis County.

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

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

(c) Provides that each day of a continuing violation after conviction is a separate offense.

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

(b) Provides that each day of a continuing violation constitutes a separate ground for recovery.

(c) Authorizes the attorney general, on request of DADS, to institute an action in a district court to collect a civil penalty under this section. Requires any amount collected to be remitted to the comptroller for deposit to the credit of the elderly and disabled persons account.

Sec. 254.065. ADMINISTRATIVE PENALTY. (a) Authorizes DADS to impose an administrative penalty against a facility that violates this chapter or a rule adopted or order issued under this chapter.

(b) Prohibits the penalty for a facility from being less than \$100 or more than \$1,000 for each violation. Prohibits the total amount of the penalty assessed for a violation continuing or occurring on separate days under this subsection from exceeding \$5,000. Provides that each day a violation occurs and each day of a continuing violation is a separate violation for purposes of imposing a penalty.

(c) Requires the executive commissioner by rule to specify each violation for which an administrative penalty is authorized for assessment. Requires DADS to consider certain factors in determining which violations warrant penalties.

(d) Requires the executive commissioner by rule to establish a specific and detailed schedule of appropriate and graduated penalties for each violation based on certain factors.

(e) Requires the executive commissioner by rule to provide the facility with a reasonable period of time, not less than 45 days, following the first day of a violation to correct the violation before assessing an administrative penalty if a plan of correction has been implemented. Provides that this subsection does not apply to a violation that DADS determines has resulted in serious harm to or the death of a resident or constitutes a serious threat to the health or safety of a resident.

(f) Prohibits DADS from assessing an administrative penalty for a minor violation if the person corrects the violation not later than the 46th day after the date the person receives notice of the violation.

(g) Requires DADS to establish a system to ensure standard and consistent application of penalties regardless of the facility location.

(h) Provides that all proceedings for the assessment of an administrative penalty under this chapter are subject to Chapter 2001 (Administrative Procedure), Government Code.

(i) Provides that an administrative penalty ceases to be incurred on the date a violation is corrected, notwithstanding any other provision of this section. Provides that the administrative penalty ceases to be incurred only if the facility notifies DADS in writing of the correction of the violation and of the date the violation was corrected and shows later that the violation was corrected.

(j) Requires rules adopted under this section to include specific, appropriate, and objective criteria that describe the scope and severity of a violation that results in a recommendation for each specific penalty.

(k) Provides that Sections 252.0651 (Application of Other Law), 252.066 (Notice; Request for Hearing), 252.067 (Hearing; Order), 252.068 (Notice and Payment of Administrative Penalty; Judicial Review; Refund), and 252.070 (Expenses and Costs for Collection of Civil or Administrative Penalty), Health and Safety Code, apply to an administrative penalty imposed under this section.

Sec. 254.066. AMELIORATION OF VIOLATION. (a) Defines "immediate jeopardy to health and safety."

(b) Authorizes DADS to allow a person subject to the penalty to use, under the supervision of DADS, all or part of the amount of the penalty to ameliorate the violation or to improve services, other than administrative services, in the facility affected by the violation in lieu of demanding payment of an administrative penalty.

(c) Requires DADS to offer amelioration to a person for a charged violation if DADS determines that the violation does not result in an immediate jeopardy to the health and safety of a facility resident.

(d) Prohibits DADS from offering amelioration to a person if it is determined that the charged violation constitutes immediate jeopardy to the health and safety of a facility resident.

(e) Requires DADS to offer amelioration to a person under this section not later than the 10th day after the date the person receives a final notification of assessment of administrative penalty from DADS that is sent to the person after an informal dispute resolution process but before an administrative hearing under Section 254.065.

(f) Requires a person to whom amelioration has been offered to file a plan for amelioration not later than 45 days after the date the person receives the offer from DADS. Requires the person to agree to waive the person's right to an administrative hearing under Section 254.065 if DADS approves the submitted plan.

(g) Requires a plan for amelioration to contain certain elements at a minimum.

(h) Authorizes a plan for amelioration to include proposed changes to improve the overall quality of life for residents.

(i) Authorizes DADS to require that an amelioration plan propose changes that would result in conditions that exceed the requirements of this chapter or the rules adopted under this chapter.

(j) Requires DADS to approve or deny an amelioration plan not later than the 45th day after the date DADS receives the plan. Requires DADS, on approval of a person's plan, to deny a pending request for a hearing submitted by the person on the occurrence of the violation, the amount of the penalty, or both.

(k) Prohibits DADS from offering amelioration to a person more than three times in a two-year period or more than one time in a two-year period for the same or similar violation.

Sec. 254.067. COUNTY OR MUNICIPAL ENFORCEMENT. Authorizes the governing body of a county by resolution or a municipality by ordinance to prohibit a person who does not hold a license issued under this chapter from establishing or operating a facility within the county or municipality and establish a procedure for emergency closure of a facility in circumstances in which the facility is established or operating in violation of Section 254.031 and the continued operation of the facility creates an immediate threat to the health and safety of a resident of the facility.

[Reserves Sections 254.068-254.090 for expansion.]

SUBCHAPTER D. NOTIFICATION OF CLOSURE

Sec. 254.091. NOTIFICATION OF CLOSURE. (a) Requires a facility that is closing temporarily or permanently, voluntarily or involuntarily, to provide written notice of the closure of the facility to each resident, the local mental health authority, and DADS, and to make reasonable efforts to provide the same written notice, within a reasonable time before closure, to the nearest relative of each resident or to a person responsible for the resident's support.

(b) Requires the notice required by Subsection (a), if the closure of the facility is for a temporary period, to include the date that the facility is estimated to reopen and the name and contact information of the person responsible for the reopening of the facility.

(c) Requires the facility to make a notification, orally or in writing, if DADS orders it to close or if the facility's closure is in any other way involuntary, immediately on receiving notice of the closing.

(d) Requires the facility to make notification of closure, if the facility's closure is voluntary, not later than one week after the date on which the decision to close is made.

(e) Prohibits a facility, on or after the date on which a facility ceases to provide services to a resident, from continuing to charge a fee, other than a fee for services previously provided to the resident or collect money from a former resident under a financial assignment agreement.

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

(b) Provides that an offense under this section is a Class A misdemeanor.

Sec. 254.093. CLOSURE REPORT. (a) Requires a facility required to provide notice of the facility's closure under Section 254.091(a) to also provide a closure report regarding each resident to DADS in accordance with this section.

(b) Requires the report to include a summary of the actions taken by the facility to relocate the resident, including the name, address, and contact information of a licensed facility or other location to which the resident was transferred, secure the personal property of the resident if the resident's personal property did not accompany the resident to the resident's new location, and finalize any outstanding financial arrangements with the resident, including presenting the resident with a final statement of account with the facility containing all charges and fees for services, discontinuing any financial assignment arrangement, and refunding any excess fees or charges.

[Reserves Sections 254.094-254.120 for expansion.]

SUBCHAPTER E. REPORTS OF ABUSE, NEGLECT, OR EXPLOITATION

Sec. 254.121. REPORTING OF ABUSE, NEGLECT, OR EXPLOITATION. (a) Requires a person, including an owner, operator, or employee of a facility, who has cause to believe that a resident has been abused, neglected, or exploited or may be adversely affected by abuse, neglect, or exploitation caused by another person to report it as required by Section 48.051 (Report), Human Resources Code.

(b) Requires each facility to require each employee, as a condition of employment with the facility, to sign a statement that the employee realizes that the employee may be criminally liable under Section 48.052 (Failure to Report; Penalty), Human Resources Code, for failure to report abuse, neglect, or exploitation.

[Reserves Sections 254.122-254.130 for expansion.]

SUBCHAPTER F. PROHIBITION OF RETALIATION

Sec. 254.131. SUIT FOR RETALIATION. (a) Defines "employee."

(b) Provides that an employee has a cause of action against a facility, the owner or operator of the facility, or another employee of the facility that suspends or terminates employment or otherwise disciplines, discriminates against, or retaliates against the employee for certain actions.

(c) Authorizes a plaintiff who prevails in a suit under this section to recover certain damages, court costs, and attorney's fees.

(d) Entitles a person whose employment is suspended or terminated to appropriate injunctive relief, including reinstatement of the former position and lost fringe benefits or seniority rights, in addition to the amounts that may be recovered under Subsection (c).

(e) Requires the petitioner to bring suit or notify the Texas Workforce Commission (TWC) of the intent to sue under this section not later than the 90th day after the date on which the person's employment is suspended or terminated. Requires a petitioner who notifies TWC under this subsection to bring suit not later than the 90th day after the date of the delivery of the notice to the commission. Requires TWC to notify the facility of the petitioner's intent to bring suit under this section on receipt of the notice.

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

(g) Authorizes a suit under this section to be brought in the district court of the county in which the plaintiff resides or was employed by the defendant or where the defendant conducts business.

(h) Requires each facility to require each employee, as a condition of employment, to sign a statement that the employee understands his or her rights under this section. Requires the statement to be part of the statement required under Section 254.121(b).

Sec. 254.132. SUIT FOR RETALIATION AGAINST VOLUNTEER, RESIDENT, OR FAMILY MEMBER OR GUARDIAN OF RESIDENT. (a) Prohibits a facility from retaliating or discriminating against a volunteer, a resident, or a family member or guardian of a resident because a complaint is made, a violation has been reported, or the person cooperates in or initiates an investigation or proceeding.

(b) Entitles a volunteer, resident, or a family member or guardian of a resident against whom a facility retaliates or discriminates in violation of Subsection (a) to sue for injunctive relief, a certain amount for damages, exemplary damages, court costs, and attorney's fees.

(c) Requires a volunteer, resident, or a family member or guardian of a resident who seeks relief under this section to report the alleged violation not later than 180 days after the date on which the alleged violation of this section occurred or was discovered by person through reasonable diligence.

(d) Authorizes a suit under this section to be brought in the district court of the county in which the facility is located or in a district court of Travis County.

[Reserves Sections 254.133-254.150 for expansion.]

SUBCHAPTER G. REPORTING RESIDENT DEATHS

Sec. 254.151. REPORTS RELATING TO RESIDENT DEATHS; STATISTICAL INFORMATION. (a) Requires a facility licensed under this chapter to submit a report to DADS concerning the death of a resident and a former resident that occurs 24 hours or less after the resident is transferred to a hospital.

(b) Requires the report to be submitted not later than the 10th working day after the last day of each month in which a resident dies. Requires the facility to make the report on a form prescribed by DADS. Requires the report to contain the name and social security number of the deceased.

(c) Requires DADS to correlate reports under this section with death certificate information to develop certain informational data.

(d) Provides that a record under this section is confidential and not subject to the provisions of Chapter 552 (Public Information), Government Code, unless specified by executive commissioner rule.

(e) Requires DADS to develop statistical information on official causes of death to determine patterns and trends of incidents of death among elderly and disabled persons and related conditions and in specific facilities. Provides that information developed under this subsection is not confidential.

(f) Requires a licensed facility to make available on the request of an applicant or applicant's representative historical statistics on all required information.

[Reserves Sections 254.152-254.170 for expansion.]

SUBCHAPTER H. MEDICAL CARE

Sec. 254.171. ADMINISTRATION OF MEDICATION. (a) Prohibits a facility from administering medication to a resident of the facility, except that a facility is authorized to provide assistance to a resident in self-administering medication, including the provision of a secure and safe means of storage for the medication, scheduled times and doses for self-administration of medication, and assistance in requesting and obtaining new or refilled prescriptions from an authorized health care provider.

(b) Requires the facility, as a part of the facility's initial and renewal license application, to submit a description of the type of assistance with self-administration of medication provided by the facility to residents. Prohibits a facility from providing any assistance with self-administration of medication that has not been approved by DADS during the licensing or renewal process.

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

[Reserves Sections 254.172-254.180 for expansion.]

SUBCHAPTER I. REQUIRED REPORTING

Sec. 254.181. LEGISLATIVE REPORT. Requires DADS to include in DADS' biennial report to the legislature information regarding the number of certain license applications, facility closures, and investigations of certain facilities, and a description of any penalties against a facility licensed under this chapter resulting from a DADS investigation.

SECTION 4. Provides that a facility is not required to be licensed under Chapter 254, Health and Safety Code, as added by this Act, before January 1, 2008, notwithstanding Sections 254.031 and 254.063.

SECTION 5. Provides that the executive commissioner and DADS are required to implement and enforce Sections 2 and 3 of this Act only if the legislature appropriates money specifically for that purpose. Authorizes, but does not require, the executive commissioner and DADS to implement and enforce Section 2 and 3 of this Act using other appropriations available for that purpose.

SECTION 6. Effective date: September 1, 2007.