

## **BILL ANALYSIS**

Senate Research Center

H.B. 216  
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Health & Human Services  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Current state 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 for example. 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 SSI/SSDI) to the facility provider.

Without regulation, many boarding houses have become unsafe and unsanitary, left residents in isolated environments, left residents to lose control over their finances so they would lose their ability to relocate if needed, and left residents with inadequate medical care or mental health care services.

The 80th Legislature passed H.B. 1168, which required the Health and Human Services Commission (HHSC) to study the issue of boarding houses. This study was completed in January 2009.

This bill establishes procedures that authorize state agencies and local authorities to participate, as appropriate, in the permitting and inspection of boarding home facilities to protect the tenants. The bill authorizes a local municipality or county to adopt general standards developed by the executive commissioner of HHSC, and it authorizes a local authority to collect fees and penalties and participate in a competitive grant program.

H.B. 216 amends current law relating to the regulation of boarding home facilities for persons with disabilities or elderly persons and assisted living facilities.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subtitle B, Title 4, Health and Safety Code, by adding Chapter 254, as follows:

#### **CHAPTER 254. BOARDING HOME FACILITIES**

Sec. 254.001. DEFINITIONS. Defines "assistance with self-administering medication," "boarding home facility," "commission," "elderly person," "executive commissioner," "person with a disability," and "resident."

Sec. 254.002. EXEMPTIONS. Provides that this chapter does not apply to a person that is required to be licensed under Chapter 142 (Home and Community Support Services), 242 (Convalescent and Nursing Homes and Related Institutions), 246 (Continuing Care

Facilities), 247 (Assisted Living Facilities), or 252 (Intermediate Care Facilities for the Mentally Retarded); a person that is exempt from licensing under Section 142.003(a)(19) (relating to an exemption from licensing under this chapter for a person that provides home health, hospice, or personal assistance services to certain persons), 242.003(3) (relating to an exemption from this chapter for an establishment that meets certain requirements) or 247.004(4) (relating to an exemption for a facility that provides personal care services to certain individuals); a hotel as defined by Section 156.001 (Definition), Tax Code; a retirement community; a monastery or convent; a child care facility as defined by Section 42.002 (Definitions), Human Resources Code; a family violence shelter center as defined by Section 51.002 (Definitions), Human Resources Code; or a sorority or fraternity house or other dormitory associated with an institution of higher education.

Sec. 254.003. MODEL STANDARDS. Requires the executive commissioner of the Health and Human Services Commission (HHSC) to develop and publish in the Texas Register model standards for the operation of a boarding home facility relating to:

- (1) the construction or remodeling of a boarding home facility, including plumbing, heating, lighting, ventilation, and other housing conditions, to ensure the residents' health, safety, comfort, and protection from fire hazard;
- (2) sanitary and related conditions in a boarding home facility and its surroundings, including insect and rodent control, water supply, sewage disposal, food handling, and general hygiene to ensure the residents' health, safety, and comfort;
- (3) the reporting and investigation of injuries, incidents, and unusual accidents and the establishment of other policies and procedures necessary to ensure resident health and safety;
- (4) assistance with self-administering medication;
- (5) requirements for in-service education of the facility's staff;
- (6) criminal history record checks; and
- (7) assessment and periodic monitoring to ensure that a resident does not require the boarding home facility to provide personal care, nursing, or other services not listed in Section 254.001(2) (relating to the definition of "boarding home facility"); and is capable of self-administering medication or is aware of what the resident's medications look like and knows when medications should be taken but requires assistance with self-administering medication.

Sec. 254.004. LOCAL REGULATION. Authorizes a county or municipality to require a person to obtain a permit from the county or municipality to operate a boarding home facility within the county's or municipality's jurisdiction. Authorizes a county or municipality to adopt the standards developed by the executive commissioner of HHSC under Section 254.003 and require a boarding home facility that holds a permit issued by the county or municipality to comply with the adopted standards.

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

- (b) Authorizes a county or municipality that requires a person to obtain a boarding home facility permit as authorized under Section 254.004 to set reasonable fees for issuance of the permit, renewal of the permit, and inspections and to impose fines for noncompliance with the county or municipal boarding home facility regulations. Requires that the fees collected and fines imposed by

the county or municipality 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 elderly persons and person with disabilities.

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

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

- (1) the permit issued by a county or municipality;
- (2) a sign prescribed by the county or municipality that issued the permit that specifies how complaints may be registered with the county or municipality;
- (3) a notice in a form prescribed by the county or municipality that issued the permit stating that inspection and related reports are available at the boarding home facility for public inspection and providing a telephone number that may be used to obtain information concerning the boarding home facility;
- (4) a concise summary of the most recent inspection report relating to the boarding home facility; and
- (5) a notice in a form prescribed by the county or municipality that issued the permit that lists the name, location, and contact information for the closest local public health services agency in the proximity of the boarding home facility; and a local organization or entity that represents, advocates, or serves elderly persons or persons with disabilities, including any related toll-free contact information for reporting emergencies to the organization or entity.

Sec. 254.007. **INSPECTIONS.** (a) Authorizes a county or municipality to conduct any inspection, survey, or investigation that it considers necessary and to enter the premises of a boarding home facility at reasonable times to make an inspection, survey, or investigation.

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

Sec. 254.008. **INTERLOCAL COOPERATION.** Authorizes two or more counties or municipalities to cooperate and contract with each other for the purpose of inspecting and permitting boarding home facilities.

Sec. 254.009. **REPORTING OF ABUSE, NEGLECT, OR EXPLOITATION.** (a) Requires a person, including an owner, operator, or employee of a boarding home facility that holds a permit issued by a county or municipality, who has cause to believe that a resident who is an elderly person or a person with a disability has been abused, neglected, or exploited or may be adversely affected by abuse, neglect, or exploitation caused by another person to report the abuse, neglect, or exploitation to DFPS for investigation by DFPS.

(b) Requires each boarding home facility that holds a permit issued by a county or municipality to require each employee of the boarding home facility, as a condition of employment with the boarding home facility, to sign a statement that the employee acknowledges 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.

(c) Prohibits an owner, operator, or employee of a boarding home facility that holds a permit issued by a county or municipality from retaliating against an employee of the facility who in good faith makes a complaint to the office of the inspector general of HHSC, cooperates with the office of the inspector general in an investigation, or reports abuse, neglect, or exploitation of a resident to DFPS.

Sec. 254.010. **COMPETITIVE GRANT PROGRAM.** (a) Requires HHSC to establish a competitive grant program that promotes innovation and effectiveness in the local regulation of boarding home facilities.

(b) Requires that a grant awarded by HHSC under this section be used to support creative and innovative approaches to local regulation, including public-private initiatives, cooperative arrangements among local agencies and governmental entities, use of mental health or social services personnel, public awareness and education campaigns, and other activities that improve local regulation and quality of life of residents.

(c) Requires HHSC to request proposals for the award of a grant under the program. Requires HHSC 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.

(d) Authorizes HHSC to require a county or municipality to spend local matching funds as a condition for the award of a grant under this section. Prohibits HHSC from collecting any additional money from the county or municipality that is derived from fees collected or fines imposed for the administration of a boarding home facility permitting program authorized under this chapter.

(e) Authorizes HHSC to award a grant under the program only to a county, a municipality, or two or more counties or municipalities that have entered into an interlocal cooperation agreement. Authorizes a grant recipient to use the grant money received under this section only to pay for activities directly related to the purpose of the grant program as described by Subsection (b).

(f) Requires HHSC to establish procedures to administer the grant program, including a procedure for the submission of a proposal and a procedure to be used by HHSC to evaluate a proposal.

(g) Requires HHSC to enter into a contract that includes performance requirements with each grant recipient. Requires HHSC to monitor and enforce the terms of the contract. Requires that the contract authorize HHSC to recoup grant money from a grant recipient for failure of the grant recipient to comply with the terms of the contract.

(h) Requires HHSC to post on its Internet website a summary of each grant awarded under this section.

Sec. 254.011. **EXCLUSION PROHIBITED.** Prohibits an entity, if the entity meets the requirements established by a county or municipality under this chapter, from being excluded from a residential area by zoning ordinances or similar regulations.

**SECTION 2.** Amends Sections 247.002(1), (2), (4), (5), and (7), Health and Safety Code, to redefine "assisted living facility," "board," "department," "personal care services," and "commissioner."

**SECTION 3.** Amends Section 247.004, Health and Safety Code, as follows:

Sec. 247.004. **EXEMPTIONS.** Provides that this chapter does not apply to a boarding home facility as defined by Section 254.001 or a facility that provides personal care services only to persons enrolled in a program that is funded in whole or in part by the

Department of Aging and Disability Services (DADS), rather than the Texas Department of Mental Health and Mental Retardation (MHMR), and that is monitored by DADS, rather than MHMR, or its designated local mental retardation authority in accordance with standards met by DADS, rather than MHMR. Deletes existing text providing that this chapter does not apply to a boarding facility that has rooms for rent and that may offer community meals, light housework, meal preparation, transportation, grocery shopping, money management, or laundry services but that does not provide personal care services.

SECTION 4. Repealer: Section 247.030 (Facilities for Supervision of Medication and General Welfare), Health and Safety Code.

SECTION 5. Provides that it is the intent of the legislature that the passage by the 81st Legislature, Regular Session, 2009, of another bill that amends Subtitle B, Title 4, Health and Safety Code and Chapter 247, Health and Safety Code, and the amendments made by this Act is required to be harmonized, if possible, as provided by Section 311.025(b) (relating to a requirement that amendments be harmonized, if possible), Government Code, so that effect may be given to each. Provides that if the amendments made by this Act to Subtitle B, Title 4, Health and Safety Code, and Chapter 247, Health and Safety Code, and the amendments made to Subtitle B, Title 4, Health and Safety Code, and Chapter 247, Health and Safety code, by any other bill are irreconcilable, it is the intent of the legislature that this Act prevail, regardless of the relative dates of enactment of this Act and the other bill or bills, but only to the extent that differences are irreconcilable.

SECTION 6. Requires the executive commissioner of HHSC, not later than September 1, 2010, to adopt the model standards required by Section 254.003, Health and Safety Code, as added by this Act.

SECTION 7. Effective date, except as provided by Subsection (b) of this section: September 1, 2009.

(b) Effective date, Sections 254.004 through 254.008, Health and Safety Code, as added by this Act, and Section 4 of this Act: September 1, 2010.