

By: Lindsay

S.B. No. 1204

A BILL TO BE ENTITLED

AN ACT

relating to the inspection of, and enforcement of laws relating to, nursing homes and intermediate care facilities.

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

SECTION 1. Subchapter A, Chapter 242, Health and Safety Code, is amended by amending Section 242.016 and adding Section 242.017 to read as follows:

Sec. 242.016. FEES AND PENALTIES. (a) In this section, "reasonable expenses and costs" include expenses incurred by the department, the attorney general, or a county attorney to investigate, initiate, and prosecute an action, including reasonable investigative costs, witness fees, deposition expenses, and court costs.

(b) Except as expressly provided by Subsection (c) or this chapter, a fee or penalty collected by or on behalf of the department under this chapter must be deposited to the credit of the general revenue fund and may be appropriated only to the department to administer and enforce this chapter.

(c) A penalty collected in an enforcement action by a county attorney in accordance with Section 242.017 shall be divided equally between the county attorney and the department.

(d) Except as provided by Subsection (e), investigation ~~[Investigation]~~ and attorney's fees may not be assessed or collected by or on behalf of the department or other state agency

1 unless the department or other state agency assesses and collects a
2 penalty described under this chapter. A county attorney may
3 collect and retain attorney's fees and reasonable expenses and
4 costs in an action brought by the county attorney if the court
5 assesses a civil penalty.

6 (e) If the attorney general or a county attorney brings an
7 action to enforce this chapter under Section 242.063 or 242.094 and
8 the court grants an injunction or temporary restraining order or
9 appoints a trustee to operate the home, the attorney general or
10 county attorney may recover attorney's fees and reasonable expenses
11 and costs. The county attorney may retain attorney's fees and
12 reasonable expenses and costs recovered by the county attorney
13 under this subsection.

14 Sec. 242.017. ENFORCEMENT BY COUNTY ATTORNEY. (a) The
15 county attorney in a county with a population of 3.4 million or more
16 may bring an action to enforce this chapter under Section 242.063,
17 242.065, or 242.094 if the attorney general defers to the county
18 attorney with respect to the action.

19 (b) A county attorney that accepts a deferral under
20 Subsection (a) has all the rights and obligations of the attorney
21 general for enforcing this chapter.

22 SECTION 2. Subsection (b), Section 242.045, Health and
23 Safety Code, is amended to read as follows:

24 (b) In this section, "unauthorized person" does not
25 include:

- 26 (1) the department;
- 27 (2) the office of the attorney general;

1 (3) a statewide organization for the elderly,
2 including the American Association of Retired Persons, the Texas
3 Senior Citizen Association, and the Texas Retired Federal
4 Employees;

5 (4) an ombudsman or representative of the Texas
6 Department on Aging;

7 (5) a representative of an agency or organization when
8 a Medicare or Medicaid survey is made concurrently with a licensing
9 inspection; ~~or~~

10 (6) any other person or entity authorized by law to
11 make an inspection or to accompany an inspector; or

12 (7) the county attorney in a county with a population
13 of 3.4 million or more.

14 SECTION 3. Subsections (a) and (b), Section 242.063, Health
15 and Safety Code, are amended to read as follows:

16 (a) The department may petition a district court for:

17 (1) a temporary restraining order to restrain a person
18 from a violation or threatened violation of the standards imposed
19 under this chapter or any other law affecting residents if the
20 department reasonably believes that the violation or threatened
21 violation creates an immediate threat to the health and safety of a
22 resident; ~~and~~

23 (2) an injunction to restrain a person from a
24 violation or threatened violation of the standards imposed under
25 this chapter or by any other law affecting residents if the
26 department reasonably believes that the violation or threatened
27 violation creates a threat to the health and safety of a resident;

1 and

2 (3) a temporary restraining order to restrain a person
3 from denying the department access to the institution for
4 inspection purposes if the department reasonably believes that the
5 institution is required to be licensed and that it is operating
6 without a license.

7 (b) A district court, on petition of the department, may by
8 injunction or temporary restraining order:

9 (1) prohibit a person from violating the standards or
10 licensing requirements prescribed by this chapter;

11 (2) restrain or prevent the establishment, conduct,
12 management, or operation of an institution without a license issued
13 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 or threatening
16 to violate the standards or licensing requirements prescribed by
17 this chapter; or

18 (4) restrain a person from denying the department
19 access to the institution if the department reasonably believes
20 that the institution is required to be licensed and that it is
21 operating without a license.

22 SECTION 4. The heading to Section 242.073, Health and
23 Safety Code, is amended to read as follows:

24 Sec. 242.073. LEGAL ACTION BY THE ATTORNEY GENERAL OR
25 CERTAIN COUNTY ATTORNEYS.

26 SECTION 5. Subsection (a), Section 242.073, Health and
27 Safety Code, is amended to read as follows:

1 (a) The department and the attorney general or the county
2 attorney in a county with a population of 3.4 million or more shall
3 work in close cooperation throughout any legal proceedings
4 requested by the department.

5 SECTION 6. Subsection (e), Section 242.094, Health and
6 Safety Code, as added by Chapters 583 and 815, Acts of the 73rd
7 Legislature, Regular Session, 1993, is amended to read as follows:

8 (e) Venue for an action brought under this section is:

9 (1) in Travis County; or

10 (2) in a county with a population of 3.4 million or
11 more if the county attorney of the county brings the action under
12 Section 242.017 in that county.

13 SECTION 7. Subsection (b), Section 242.252, Health and
14 Safety Code, is amended to read as follows:

15 (b) An affected institution may elect arbitration under
16 this subchapter by filing the election with the court in which the
17 lawsuit is pending and sending notice of the election to the
18 department and to the office of the attorney general or the county
19 attorney if a county attorney filed an enforcement action under
20 Section 242.065 against the affected institution in accordance with
21 Section 242.017. The election must be filed not later than the 10th
22 day after the date on which the answer is due or the date on which
23 the answer is filed, whichever is sooner. If a civil penalty is
24 requested after the initial filing of a Section 242.094 lawsuit
25 through the filing of an amended or supplemental pleading, an
26 affected institution must elect arbitration not later than the 10th
27 day after the date on which the amended or supplemental pleading is

1 served on the affected institution or its counsel.

2 SECTION 8. Sections 242.319 and 242.320, Health and Safety
3 Code, as added by Section 1.01, Chapter 1280, Acts of the 75th
4 Legislature, Regular Session, 1997, and effective until the federal
5 government issues a ruling that that system for licensure of
6 nursing facility administrators does not comply with federal
7 regulations, are amended to read as follows:

8 Sec. 242.319. CIVIL PENALTY. A person who violates this
9 subchapter is liable to the state for a civil penalty of \$1,000 for
10 each day of violation. At the request of the department, the
11 attorney general shall bring an action to recover a civil penalty
12 established by this section. The county attorney in a county with a
13 population of 3.4 million or more may bring an action to collect a
14 civil penalty for a violation of this subchapter if the attorney
15 general defers to the county attorney with respect to the action.

16 Sec. 242.320. ASSISTANCE OF ATTORNEY GENERAL OR CERTAIN
17 COUNTY ATTORNEYS. The attorney general or the county attorney, if
18 the attorney general has deferred to the county attorney for
19 prosecution of an action under this subchapter, shall provide legal
20 assistance as necessary in enforcing the provisions of this
21 subchapter. This requirement does not relieve a local prosecuting
22 officer of any of the prosecuting officer's duties under the law.

23 SECTION 9. Sections 242.324 and 242.325, Health and Safety
24 Code, as added by Section 2.01, Chapter 1280, Acts of the 75th
25 Legislature, Regular Session, 1997, and effective on issuance by
26 the federal government of a ruling that that system for licensure of
27 nursing facility administrators does not comply with federal

1 regulations, are amended to read as follows:

2 Sec. 242.324. CIVIL PENALTY. A person who violates this
3 subchapter is liable to the state for a civil penalty of \$1,000 for
4 each day of violation. At the request of the department, the
5 attorney general shall bring an action to recover a civil penalty
6 established by this section. The county attorney in a county with a
7 population of 3.4 million or more may bring an action to collect a
8 civil penalty for a violation of this subchapter if the attorney
9 general defers to the county attorney with respect to the action.

10 Sec. 242.325. ASSISTANCE OF ATTORNEY GENERAL OR CERTAIN
11 COUNTY ATTORNEYS. The attorney general or the county attorney, if
12 the attorney general has deferred to the county attorney for
13 prosecution of an action under this subchapter, shall provide legal
14 assistance as necessary in enforcing the provisions of this
15 subchapter. This requirement does not relieve a local prosecuting
16 officer of any of the prosecuting officer's duties under the law.

17 SECTION 10. Subchapter A, Chapter 252, Health and Safety
18 Code, is amended by adding Section 252.012 to read as follows:

19 Sec. 252.012. ENFORCEMENT BY COUNTY ATTORNEY. (a) The
20 county attorney in a county with a population of 3.4 million or more
21 may bring an action to enforce this chapter under Section 252.062,
22 252.064, or 252.093 if the attorney general defers to the county
23 attorney with respect to the action.

24 (b) A county attorney that accepts a deferral under
25 Subsection (a) has all the rights and obligations of the attorney
26 general for enforcing this chapter under Sections 252.062, 252.064,
27 and 252.093.

1 SECTION 11. Subsection (b), Section 252.042, Health and
2 Safety Code, is amended to read as follows:

3 (b) In this section, "unauthorized person" does not
4 include:

5 (1) the department;

6 (2) the office of the attorney general;

7 (3) a representative of an agency or organization when
8 a Medicaid survey is made concurrently with a licensing inspection;
9 [~~or~~]

10 (4) any other person or entity authorized by law to
11 make an inspection or to accompany an inspector; or

12 (5) the county attorney in a county with a population
13 of 3.4 million or more.

14 SECTION 12. Subsections (a) and (b), Section 252.062,
15 Health and Safety Code, are amended to read as follows:

16 (a) The department may petition a district court for a
17 temporary restraining order to:

18 (1) restrain a person from continuing a violation of
19 the standards prescribed by this chapter if the department finds
20 that the violation creates an immediate threat to the health and
21 safety of the facility's residents; or

22 (2) restrain a person from denying the department
23 access to the facility for inspection purposes if the department
24 reasonably believes that the facility is required to be licensed
25 and that it is operating without a license.

26 (b) A district court, on petition of the department, may by
27 injunction or temporary restraining order:

1 (1) prohibit a person from continuing a violation of
2 the standards or licensing requirements prescribed by this chapter;

3 (2) restrain or prevent the establishment, conduct,
4 management, or operation of a facility without a license issued
5 under this chapter; ~~[or]~~

6 (3) grant the injunctive relief warranted by the facts
7 on a finding by the court that a person is violating the standards
8 or licensing requirements prescribed by this chapter; or

9 (4) restrain a person from denying the department
10 access to the facility if the department reasonably believes that
11 the facility is required to be licensed and that it is operating
12 without a license.

13 SECTION 13. Subsection (c), Section 252.064, Health and
14 Safety Code, is amended to read as follows:

15 (c) On request of the department, the attorney general may
16 institute an action in a district court to collect a civil penalty
17 under this section. Any amount collected shall be remitted to the
18 comptroller for deposit to the credit of the general revenue fund.
19 If the action is instituted by a county attorney under Section
20 252.012, the civil penalty shall be divided equally between the
21 county attorney and the department.

22 SECTION 14. Section 252.070, Health and Safety Code, is
23 amended to read as follows:

24 Sec. 252.070. EXPENSES AND COSTS FOR COLLECTION OF CIVIL OR
25 ADMINISTRATIVE PENALTY. (a) If the attorney general or a county
26 attorney brings an action against a person under Section 252.062 or
27 252.064 ~~[or to enforce an administrative penalty assessed under~~

1 ~~Section 252.065]~~ and an injunction is granted against the person or
2 the person is found liable for a civil penalty, or the attorney
3 general brings an action to enforce an administrative penalty
4 assessed under Section 252.065 and the person is found liable for an
5 administrative penalty, the attorney general or the county attorney
6 may recover [~~on behalf of the attorney general and the~~
7 ~~department,~~] reasonable expenses and costs.

8 (b) For purposes of this section, reasonable expenses and
9 costs include expenses incurred by the department, ~~and~~ the
10 attorney general, or the county attorney in the investigation,
11 initiation, and prosecution of an action, including reasonable
12 investigative costs, [~~attorney's fees,~~] witness fees, court costs,
13 and deposition expenses.

14 SECTION 15. This Act takes effect September 1, 2003.

1 (A) determined whether a waiver or authorization
2 from a federal agency is necessary under federal law, including for
3 federal funding purposes, before the department accepts an annual
4 accreditation review from the joint commission:

5 (i) instead of an inspection for license
6 renewal purposes;

7 (ii) as satisfying the requirements for
8 certification by the department for participation in the medical
9 assistance program; or

10 (iii) as satisfying the requirements for
11 certification by the department for participation in the federal
12 Medicare program; and

13 (B) obtained any necessary federal waivers or
14 authorizations.

15 (b) The department shall coordinate its licensing and
16 certification activities with the commission.

17 (c) The department and the commission shall sign a
18 memorandum of agreement to implement this section. The memorandum
19 must provide that if all parties to the memorandum do not agree in
20 the development, interpretation, and implementation of the
21 memorandum, any area of dispute is to be resolved by the board.

22 (d) Except as specifically provided by this section, this
23 ~~[This]~~ section does not limit the department in performing any
24 duties and inspections authorized by this chapter or under any
25 contract relating to the medical assistance program under Chapter
26 32, Human Resources Code, and Titles XVIII and XIX of the Social
27 Security Act (42 U.S.C. Sections 1395 et seq. and 1396 et seq.),

1 including authority to take appropriate action relating to an
2 institution, such as closing the institution.

3 (e) This section does not require a nursing home to obtain
4 accreditation from the commission.

5 (b) Not later than October 1, 2003, the Texas Department of
6 Human Services shall:

7 (1) determine whether a waiver or authorization from a
8 federal agency is necessary under federal law, including for
9 federal funding purposes, before the department may accept an
10 annual accreditation review from the Joint Commission on
11 Accreditation of Health Organizations for a nursing home:

12 (A) instead of an inspection for purposes of
13 renewing a nursing home license under Chapter 242, Health and
14 Safety Code;

15 (B) as satisfying the requirements for
16 certification by the department for participation in the medical
17 assistance program under Chapter 32, Human Resources Code; and

18 (C) as satisfying the requirements for
19 certification by the department for participation in the federal
20 Medicare program; and

21 (2) if the department determines that a waiver or
22 authorization is necessary, request any required waivers or
23 authorizations that the department may possibly obtain under
24 federal law.

25 (c) Not later than December 1, 2003, the Texas Department of
26 Human Services shall report its progress under Subsection (b) of
27 this section to the governor and to the presiding officer of each

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1 house of the legislature.

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Wohlgemuth