

By: Deshotel

H.B. No. 343

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of convalescent homes, nursing homes,
and related institutions.

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

SECTION 1. Section 242.037, Health and Safety Code, is
amended by adding Subsection (j) to read as follows:

(j) The department shall identify in its rules each rule or
standard for which a penalty may be assessed, under this chapter or
in accordance with Chapter 32, Human Resources Code, for a
violation of the rule or standard.

SECTION 2. Section 242.0445(a), Health and Safety Code, is
amended to read as follows:

(a) The department or the department's representative
conducting an inspection, survey, or investigation under Section
242.043 or 242.044 shall:

(1) list each violation of a law or rule on a form
designed by the department for inspections; ~~and~~

(2) identify the specific law or rule the institution
~~[facility]~~ violated; and

(3) if the institution is denied the right to avoid an
administrative penalty by correcting the violation, identify at
least one of the specific reasons listed in Section 242.0665(b) for
the denial.

SECTION 3. Subchapter B, Chapter 242, Health and Safety

Code, is amended by adding Sections 242.0447 and 242.0448 to read as follows:

Sec. 242.0447. DUTIES OF REPRESENTATIVES. The department shall adopt written policies requiring representatives of the department to treat the residents of an institution and the institution's staff with courtesy, consideration, and respect during an inspection, survey, or investigation conducted under Section 242.043 or 242.044 or in accordance with Chapter 32, Human Resources Code.

Sec. 242.0448. INTERNAL AFFAIRS OFFICE. (a) The department shall establish an internal affairs office to investigate complaints by institutions related to an inspection, survey, or investigation conducted under Section 242.043 or 242.044 or in accordance with Chapter 32, Human Resources Code.

(b) An institution inspected, surveyed, or investigated by the department or by a representative of the department may report a suspected violation of department policies adopted under Section 242.0447 to the internal affairs office.

(c) The internal affairs office shall investigate complaints received from institutions regulated under this chapter.

(d) A representative of the department may not retaliate against an institution for filing a complaint with the department's internal affairs office under Subsection (b). A representative of the department who violates this subsection may not inspect, survey, or investigate the institution after the date the department determines the violation of this subsection occurred.

SECTION 4. Section 242.066, Health and Safety Code, is amended by amending Subsection (e) and adding Subsection (i) to read as follows:

(e) In determining the amount of a penalty, the department shall consider any matter that justice may require, including:

(1) the gradations of penalties established under Subsection (d);

(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited act and the hazard or potential hazard created by the act to the health or safety of the public;

(3) the history of previous violations;

(4) deterrence of future violations; ~~and~~

(5) efforts to correct the violation; and

(6) the cash flow and financial condition of the institution.

(i) The department may impose only one administrative penalty for each violation identified or confirmed in an inspection, survey, or investigation conducted under this chapter or in accordance with Chapter 32, Human Resources Code.

SECTION 5. Section 242.0665(b), Health and Safety Code, is amended to read as follows:

(b) If the department determines that the violation resulted in actual harm to a resident, Subsection (a) does not apply:

(1) to a violation that the department determines:

(A) results in serious harm to or death of a

1 resident;

2 (B) constitutes a serious threat to the health or
3 safety of a resident; or

4 (C) substantially limits the institution's
5 capacity to provide care;

6 (2) to a violation described by Sections
7 242.066(a)(2)-(6);

8 (3) to a violation of Section 242.133 or 242.1335; or

9 (4) to a violation of a right of a resident adopted
10 under Subchapter L.

11 SECTION 6. (a) This Act takes effect September 1, 2005.

12 (b) The changes in law made by this Act to Sections 242.066
13 and 242.0665, Health and Safety Code, apply only to the assessment
14 of an administrative penalty based on a charge made in a preliminary
15 report issued under Section 242.067, Health and Safety Code, on or
16 after the effective date of this Act. The assessment of an
17 administrative penalty based on a charge made in a preliminary
18 report issued under Section 242.067, Health and Safety Code, before
19 the effective date of this Act is governed by the law in effect
20 immediately before that date, and that law is continued in effect
21 for that purpose.