

BILL ANALYSIS

C.S.H.B. 1168
By: Menendez
Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

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 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.

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 Senate Bill 6 in the 79R Legislative Session (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 4000 such 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 Adult Protective Services, state agencies currently do not have the authority to require registration, inspection and oversight / enforcement of such facilities and lack even general investigative authority to ensure the safety and well being of the residents.

This bill would expand and make permanent, statewide, the pilot program established by SB 6 in the 79th Legislature, for registration, licensing and oversight of this category of residential homes. Furthermore the bill would require procedures that would allow other state agencies as well as appropriate local authorities 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 administration costs and to use the remainder to continue to expand services to elderly or disabled citizens.

Finally, this bill would require a bi-annual report to the legislature detailing the program status. This may be included as part of the Department of Aging and Disability Services (DADS) other operational summaries but should be clearly specified as to purpose and scope.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 of this bill.

ANALYSIS

SECTION 1.

SECTION 254.001 adds definitions, defines Department of Aging and Disability Services (DADS) as "Department," in particular, facilities are defined as an establishment which provides meals, housework, transportation, money management, or laundry services to 3 or more individuals who are elderly or disabled not related to the owner or proprietor.

254.002 mandates that each facility shall implement and enforce the residents' rights as stipulated in Chapter 102 of the Human Resources Code.

254.003 mandates the Health and Human Services Commission (HHSC) to develop rules related to the administration and implementation of this chapter.

254.004 mandates that whenever possible, DADS use the services of and consult with state and local agencies in carrying out the DADS functions under this chapter,
(b) use the facilities of DADS or a designee in establishing and maintaining humane treatment standards of the residents, and
(c) DADS may coordinate with a local agency of a municipality or county and may provide advice to the same if the municipality or county supplements the state program with additional rules required to meet local conditions.

254.005 prohibits a facility from receiving money or other remuneration from a person or agency that furnishes services or materials to the facility or resident for a fee. Violations may result in the revocation of the facility license.

254.006 mandates a report to DADS of each referral of an elderly or disabled person by a state agency, political subdivision, or a public or private provider of health care services and prohibits the same entities from referring to an unlicensed facility.

254.007 Establishes an elderly and disabled persons account in the General Revenue fund. Deposits in the account will include (1) appropriations to implement and administer this subchapter, (2) interest earnings on the dollars in the account, (3) fees charged under this subchapter and, (4) penalties charged under this subchapter. The money in the account will be used for enforcement, program and services for individuals who are elderly or have a disability. This account is exempted from Section 403.095 of the Government Code.

SUBCHAPTER B

254.031 requires licensure of the facilities described in 001.

254.032 stipulates DADS as the licensing entity and imposes a licensure fee, an application for licensure and allows DADS to require affirmative evidence of the ability to comply with standards and rules adopted under this Chapter.

254.033 mandates that upon receipt of the application, DADS shall inspect, investigate and issue a license if the requirements of the chapter are met. The license is restricted to the premises and persons named in the application and the maximum number of residents specified in the application. It prohibits transfer or assignment of the license. A license may be renewed every two years, after an inspection, filing and approval of a renewal report and payment of the renewal fee. The renewal report will be filed in accordance with rules adopted by HHSC that specify the form of the report, the date it must be submitted and the information it must contain. The rules shall define specific objective criteria on which DADS may deny an initial license application, license renewal or revoke a license.

254.034 rules adopted by HHSC may adopt a fee for a license in an amount reasonable and necessary to recover the costs of administering this chapter. The license fee is paid with each application for initial license or for renewal or change of ownership. An additional fee may be added to approve an increase in the number of residents.

254.035 DADS may deny, suspend or revoke a license after providing notice and an opportunity for a hearing to the applicant or license holder if DADS finds failure to comply with the requirements in this chapter. The status of an applicant or license holder is preserved until final disposition of the contested matter, unless a court with jurisdiction review, may order in the public interest due to the welfare or safety of the resident.

254.036 HHSC may adopt, publish and enforce minimum standards related to the (1) construction or remodeling of a facility, (2) sanitary and related conditions in the facility and its surroundings, (3) equipment essential to the residents' health and welfare, (4) the reporting and investigation of injuries, incidents unusual accidents and policies and procedures to ensure resident safety, (5) policies and procedures for the control of communicable diseases, (6) specialized nutrition support, (7) requirements for in-service education of the operator and each employee who has any contact with residents, (8) regulation of the number and qualification of the operator and employees responsible for providing any part of a service to residents, and (9) the quality of life.

254.037 HHSC shall develop rules to give an already existing facility, which is in operation, a reasonable time frame to comply with the new rule or standards.

254.038 HHSC shall adopt rules by which a facility may be constructed or modified by submitting building plans to DADS to review for compliance with architectural requirements before beginning construction or modification. DADS shall set a reasonable time frame for the review of the submitted plans. DADS shall inform the person in writing within 30 days. If the plans comply with architectural requirements, they may not be subsequently changed unless required by federal law or the person fails to complete the project within a reasonable time. DADS may charge a reasonable fee for conducting a review, which will go into the account and used to conduct future reviews. The review procedure does not include a review of the building plan with Texas Accessibility Standards.

254.039 mandates the facility comply with the applicable fire safety standards that HHSC adopts by rule for this facility type. The standards must be the same as an edition of the Life Safety Code of the National Fire Protection Association. If required by Federal law or regulation, the edition selected may be different for facilities or part of a facility operated or approved for construction at different times.

A facility may voluntarily conform to fire safety standards that are compatible with or more stringent than those adopted by HHSC. A municipality may enact additional or more stringent safety standards applicable to new construction begun on or after 9/1/07.

254.040 mandates that each facility shall post in an area readily available to residents, operators, employees and visitors, the license, a sign delineating how to register a complaint, notice of how to access inspection and related reports, a summary of the most recent report, and notice of protection from discrimination or retaliation.

254.041 DADS or a designee may inspect, survey, or investigate as necessary and may enter the facility at reasonable times to do so in accordance with rules adopted by HHSC. DADS is entitled to access the facility books, records, and other documents as necessary to enforce this chapter and the rules developed. A license holder or applicant is considered to have consented to entry and inspection by DADS in accordance with this Chapter. DADS shall establish procedures to preserve evidence from an inspection, survey or investigations that DADS reasonably believes threaten the health and safety of a resident. The procedures may include photographs or copies of relevant documents for use in any legal proceeding. In photographing a resident, privacy shall be respected to the greatest extent possible and photographs shall not be made public. The facility operator or employee of a facility and resident's attending physician are not civilly liable for surrendering copy or private material under this section. DADS shall establish a form to summarize each inspection report and complaints inspection report. DADS shall establish procedures to ensure copies of the forms and reports under this section are available to consumers, residents and relatives of residents. DADS shall have specialized staff to perform inspections, surveys and investigations.

254.042 DADS shall conduct at least two unannounced inspection of each facility within each licensing period. A percentage of facilities will be randomly selected for unannounced inspections which will be conducted between 5pm and 8 am and intended to minimize disruption of the residents. DADS may require additional inspections. DADS may invite a citizen advocate to participate in inspections. The invited advocate must be interested in, employed by, or affiliated with an organization or entity that represents, advocates for or serves elderly or disabled persons.

254.043 A person commits a Class B misdemeanor if the person knowingly, intentionally or recklessly discloses to an unauthorized person the time or other facts about an unannounced inspection before the inspection occurs and if convicted will not be eligible for state employment. "Unauthorized person" does not include DADS, the Attorney General, or a person or entity authorized to inspect or accompany an inspector.

254.044 DADS shall provide a team to survey to validate findings of licensure surveys as a means to assure fairness and consistency. Deficiencies cited by the validation team must be corrected but the deficiencies are not subject to punitive action.

254.045 While conducting an inspection, survey or investigation, DADS or a designee shall list each violation and identify the law or rule violated. DADS shall perform an exit conference with the facility management and leave a written list of violations with the individual designated by the facility to receive notice of the imposition of an administrative penalty. Additional violations cited after the exit conference will result in an additional exit conference. The facility shall submit a plan of correction within ten days of receiving the final statement of violations.

254.061 DADS shall suspend a facilities license and order an immediate closure of part of the facility if: it is in violation of the standards and the violation creates an immediate threat to the health and safety of a resident. (b) HHSC shall develop rules for the placement of residents during the facility's suspension or closure. (c) An order of suspension or closure is effective the date the license holder receives written notice and is valid for 10 days after the effective date.

254.062 (a) DADS may petition a district court for a temporary restraining order to continuation of a violation of the standards if the violation creates an immediate threat to the health and safety of the facility's residents. (b) A district court may prohibit a person from continuing a violation, restrain or prevent the establishment's operation of a facility without a license or grant the injunctive relief if the court finds the facts support the existence of a violation of the standards or licensing requirement. Upon request from DADS, the Attorney General may bring suit on behalf of the State. A suit for a temporary restraining order or injunctive relief must be brought in Travis county or in the county in which the alleged violation occurred.

254.063 Delineates the fines related to each offense and for any subsequent days of continued violation.

254.064 delineates the amount of the civil penalty imposed on a person who violates this chapter or rule or order under this Chapter and for any subsequent days of continued violation. On request of DADS, the Attorney General may institute action in district court to collect a civil penalty. Any amount collected shall be credited to the elderly and disabled persons account.

254.065 mandates DADS may impose an administrative penalty against a facility for a violation of this Chapter, rule or order under this Chapter. It delineates the maximum and minimum amounts of the civil penalty. The total amount of the penalty, assessed for a violation continuing or occurring on separate days cannot exceed 5,000. Each day a violation occurs and subsequent days is a separate violation for the purpose of imposing a penalty. HHSC shall develop rules to specify violations which result in an administrative penalty. This section delineates the elements DADS will consider in determining administrative penalties. HHSC shall develop rules which provide a reasonable time frame, not less than forty five days, to correct the violation before assessing an administrative penalty if a plan of correction has been implemented. The time frame does not apply to violations that resulted in or constitute a serious threat of harm to the health and safety of a resident. No administrative penalty is assessed for a minor violation if corrected within the forty five days timeframe. DADS shall develop a system to ensure standard and consistent application of penalties. The assessment of an administrative penalty is subject to Chapter 2001 of the Government Code.

The administrative penalty ceases the date the violation is corrected if the facility (1) notifies DADS in writing of the correction and date of correction and (2) shows the violation was corrected. The rules shall include specific appropriate objective criteria to describe the scope and severity of a violation that results in a recommendation for each specific penalty. It delineates the sections of the health and safety code which apply to the administrative penalties.

254.066 Defines “immediate jeopardy of the health and safety” to mean a situation in which there is a high probability that serious harm or injury to a resident could occur at any time or already has occurred and may occur again if the resident is not protected from the harm or if the threat is not removed. Instead of payment, DADS may allow a person to use all or part of the amount of the penalty to ameliorate the violation or improve services in the affected facility. DADS shall offer amelioration if the violation does not result in immediate jeopardy. DADS may not offer amelioration if it determines the violation is an immediate jeopardy. DADS shall offer amelioration by the tenth day after final notification of the administrative penalty after an informal dispute resolution process but before an administrative hearing. The plan accepting for the amelioration must be filed by the forty fifth day after the offer. The plan, if approved by DADS, indicates agreement to waive an administrative hearing. It delineates minimum requirements for a plan of amelioration. The plan may include proposed changes to improve the overall quality of life for residents. DADS may require the plan propose changes which exceed the requirements of this Chapter or rules. DADS will approve or deny the plan within forty five days of receiving the plan. If DADS approves the plan, a pending request for a hearing on the occurrence of the violation amount of penalty or both shall be denied.

254.091 when a facility is closing temporarily or permanently, it shall notify the residents and make reasonable efforts to notify the residents family or person responsible for the persons support within a reasonable time frame. If DADS orders the closure the facility shall make notification orally and in writing on receiving notice of the closing. If the closure is voluntary, the notification is provided not later than one week after the date the decision is made.

254.092 a facility commits a Class A offense if it does not comply with the notification requirements.

254.121 mandates the owner, operator or employee of the facility report suspected abuse, neglect or exploitation of a resident. Each employee shall sign a statement that they may be criminally liable for failure to report.

254.131 an employee or person who provides a service for the facility has a cause of action against the facility, operator, owner or another employee of a facility if a facility suspends, or terminates the employment or otherwise discriminates or retaliates against an employee for reporting a violation of this Chapter or rule or initiates an investigation. It delineates the damages received by a Plaintiff who prevails. It delineates the time frame for the suit or intent to sue. It delineates that the petitioner has the burden of proof unless there is a re-buttable presumption that the person’s employment was suspended, or terminated for reporting abuse or neglect. It mandates where the suit can be brought.

Each facility shall have each employee sign a statement that they understand employees’ rights under this section. If the facility does not require the employee sign the statement, the time frames in (e) do not apply and the petitioner must bring suit by the second anniversary of the date that the employment action was taken.

254.132 Prohibits retaliation against a volunteer, resident, family member or guardian because of a complaint or grievance filed against the facility, reports a violation of law, initiates or cooperates with an investigator proceeding of a governmental entity relating to the services or conditions at the facility. If the facility retaliates or discriminates in violation of (a), the volunteer, resident or family member is entitled to sue for injunctive relief, 1,000 dollars or actual damages, exemplary damages, court costs and reasonable attorney fees. If relief is sought (under this section) the alleged violation must be reported within 180 days after the date the alleged violation occurred or was discovered by the reporter. A suit may be brought in Travis County or the district court of the county in which the facility is located.

A facility shall report to DADS the death of a facility resident or a former resident if the death occurs within 24 hours after transfer from the facility to a hospital. The report must be submitted within 10 working days after the last day of each month in which a resident dies. The report, containing the name and social security number of the deceased, must be made on a form prescribed by DADS.

DADS will correlate reports with death certificate information to develop data relating to the name and age of the deceased, official cause of death, date, time and place of death and the name and address of the facility in which the deceased resided. Unless specified by HHSC rule, the death record is confidential and not subject to Chapter 552 of the Government Code.

DADS shall develop statistical information on the causes of death to determine patterns amongst elderly and disabled persons in these facilities. This information is not confidential. Upon the request of an applicant or applicant's representative, a licensed facility shall make available statistics on all required information.

A facility may not administer medication to a resident of the facility.

SECTION 2. Effective date: September 1, 2007.

SECTION 3. Notwithstanding Sections 254.031 and 254.063, Health and Safety Code, as added by this Act, a facility is not required to be licensed under Chapter 254, Health and Safety Code, as added by this Act, before January 1, 2008.

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

SUBCHAPTER A - adds the further provisions that account money can be appropriated for transitional housing, case management, enforcement of the Chapter and programs and/or services for disabled and elderly individuals.

SUBCHAPTER B - allows sufficient and maximum time for the facility to respond to new rules or standards. Also, it ensures that the building plans are in compliance with Texas Accessibility Standards. It extends the list of entities that can be contacted in the event of a complaint and ensures investigators get permission before taking photographs. Additional inspections will not be announced and those accompanying investigators have to be with a recognizable agency authorized in Texas. Surveys were amended to change the tense from past to future tense.

SUBCHAPTER C - ensures efforts to provide emergency placement coordination during facility closures with local and municipal agencies. Also, it allows for the suspended provider to pay for temporary costs of shelter.

SUBCHAPTER D - the intent to ensure residents and other stakeholders have written notice of closure and the local mental health authority and Department of State Health Services are also notified within an appropriate time frame and can maintain contact with current clients and assist them as needed.

SUBCHAPTER F - this merely mandates that all employees must sign the statement indicating that they know employee's rights.

SUBCHAPTER H - this clarifies that while the facility, owners, employees and operators can not administer medication, they can assist the individual by providing safe storage, reminders of scheduled times and doses, getting new or refilled prescriptions. This information is included in the licensing application and approved by the Department of Aging and Disability Services.