

By: Menendez

H.B. No. 1168

A BILL TO BE ENTITLED

AN ACT

relating to licensing and regulation of certain facilities providing personal care to elderly or disabled persons; providing penalties.

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

SECTION 1. Subtitle B, Title 4, Health and Safety Code, is amended by adding Chapter 254 to read as follows:

CHAPTER 254. GROUP HOME FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 254.001. DEFINITIONS. In this chapter:

(1) "Department" means the Department of Aging and Disability Services.

(2) "Designee" means a state agency or entity with which the department contracts to perform specific, identified duties related to the fulfillment of a responsibility prescribed by this chapter.

(3) "Disabled person" has the meaning assigned by Section 48.002, Human Resources Code.

(4) "Elderly person" has the meaning assigned by Section 48.002, Human Resources Code.

(5) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(6) "Facility" means an establishment that provides services, including community meals, light housework, meal

1 preparation, transportation, grocery shopping, money management,
2 or laundry services to three or more elderly persons or disabled
3 persons residing in the facility who are unrelated to the owner or
4 proprietor of the establishment and that is not required to be
5 licensed under Chapter 242, 246, 247, or 250.

6 (7) "Governmental unit" means the state or a political
7 subdivision of the state, including a county or municipality.

8 (8) "Person" means an individual, firm, partnership,
9 corporation, association, or joint stock company and includes a
10 legal successor of those entities.

11 (9) "Resident" means an individual who is residing in
12 a facility licensed under this chapter.

13 Sec. 254.002. RIGHTS OF RESIDENTS. Each facility shall
14 implement and enforce Chapter 102, Human Resources Code.

15 Sec. 254.003. RULES GENERALLY. The executive commissioner
16 shall adopt rules related to the administration and implementation
17 of this chapter.

18 Sec. 254.004. CONSULTATION AND COORDINATION. (a) Whenever
19 possible, the department shall:

20 (1) use the services of and consult with state and
21 local agencies in carrying out the department's functions under
22 this chapter; and

23 (2) use the facilities of the department or a designee
24 of the department, particularly in establishing and maintaining
25 standards relating to the humane treatment of residents.

26 (b) The department may cooperate with local public health
27 officials of a municipality or county in carrying out this chapter

1 and may delegate to those officials the power to make inspections
2 and recommendations to the department under this chapter.

3 (c) The department may coordinate its personnel and
4 facilities with a local agency of a municipality or county and may
5 provide advice to the municipality or county if the municipality or
6 county decides to supplement the state program with additional
7 rules required to meet local conditions.

8 Sec. 254.005. PROHIBITION OF REMUNERATION. (a) A facility
9 may not receive monetary or other remuneration from a person or
10 agency that furnishes services or materials to the facility or
11 residents for a fee.

12 (b) The department may revoke the license of a facility that
13 violates Subsection (a).

14 Sec. 254.006. REPORT OF REFERRALS TO DEPARTMENT. (a) A
15 state agency, political subdivision, or a public or private
16 provider of health care services shall report to the department the
17 referral of an elderly person or disabled person to a facility.

18 (b) A state agency, political subdivision, or a public or
19 private provider of health care services may not refer an elderly
20 person or disabled person to a facility that is not licensed by the
21 state as provided by this chapter or licensed under other state law.

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

25 (b) The following amounts shall be deposited in the account:

26 (1) appropriations for the implementation and
27 administration of this subchapter;

1 (2) interest paid on money in the account;

2 (3) fees charged under this chapter; and

3 (4) penalties charged under this chapter.

4 (c) Money in the account may be appropriated only:

5 (1) for the enforcement of this chapter; or

6 (2) to provide programs and services for elderly
7 persons or disabled persons.

8 (d) Section 403.095, Government Code, does not apply to the
9 account.

10 [Sections 254.008-254.030 reserved for expansion]

11 SUBCHAPTER B. LICENSING, FEES, AND INSPECTIONS

12 Sec. 254.031. LICENSE REQUIRED. A person, acting severally
13 or jointly with any other person, may not establish, conduct, or
14 maintain in this state a facility without a license issued under
15 this chapter.

16 Sec. 254.032. LICENSE APPLICATION. (a) An application for
17 a license is made to the department on a form provided by the
18 department and must be accompanied by the license fee adopted under
19 Section 254.034.

20 (b) The application must contain information that the
21 department requires. The department may require affirmative
22 evidence of ability to comply with the standards and rules adopted
23 under this chapter.

24 Sec. 254.033. ISSUANCE AND RENEWAL OF LICENSE. (a) After
25 receiving the application, the department shall issue a license if,
26 after inspection and investigation, it finds that the applicant and
27 facility meet the requirements established under this chapter.

1 (b) The department may issue a license only for:

2 (1) the premises and persons named in the application;

3 and

4 (2) the maximum number of residents specified in the
5 application.

6 (c) A license may not be transferred or assigned.

7 (d) A license is renewable on the second anniversary of
8 issuance or renewal of the license after:

9 (1) an inspection;

10 (2) filing and approval of a renewal report; and

11 (3) payment of the renewal fee.

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

16 (f) The executive commissioner by rule shall define
17 specific, appropriate, and objective criteria on which the
18 department may deny an initial license application or license
19 renewal or revoke a license.

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

24 (b) The license fee must be paid with each application for
25 an initial license or for a renewal or change of ownership of a
26 license.

27 (c) The executive commissioner may adopt an additional fee

1 for the approval of an increase in number of residents.

2 Sec. 254.035. DENIAL, SUSPENSION, OR REVOCATION OF
3 LICENSE. (a) The department, after providing notice and
4 opportunity for a hearing to the applicant or license holder, may
5 deny, suspend, or revoke a license if the department finds that the
6 applicant or license holder has substantially failed to comply with
7 the requirements established under this chapter.

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

13 Sec. 254.036. MINIMUM STANDARDS. The executive
14 commissioner may adopt, publish, and enforce minimum standards
15 relating to:

16 (1) the construction or remodeling of a facility,
17 including plumbing, heating, lighting, ventilation, and other
18 housing conditions, to ensure the residents' health, safety,
19 comfort, and protection from fire hazard;

20 (2) sanitary and related conditions in a facility and
21 its surroundings, including water supply, sewage disposal, food
22 handling, and general hygiene to ensure the residents' health,
23 safety, and comfort;

24 (3) equipment essential to the residents' health and
25 welfare;

26 (4) the reporting and investigation of injuries,
27 incidents, and unusual accidents and the establishment of other

1 policies and procedures necessary to ensure resident safety;

2 (5) policies and procedures for the control of
3 communicable diseases;

4 (6) specialized nutrition support;

5 (7) requirements for in-service education of the
6 operator and each employee who has any contact with residents;

7 (8) the regulation of the number and qualification of
8 the operator and each employee responsible for providing any part
9 of a service to residents; and

10 (9) the quality of life.

11 Sec. 254.037. REASONABLE TIME TO COMPLY. The executive
12 commissioner by rule shall give a facility that is in operation when
13 a rule or standard is adopted under this chapter a reasonable time
14 to comply with the rule or standard.

15 Sec. 254.038. EARLY COMPLIANCE REVIEW. (a) The executive
16 commissioner by rule shall adopt a procedure under which a person
17 proposing to construct or modify a facility may submit building
18 plans to the department for review for compliance with
19 architectural requirements before beginning construction or
20 modification. In adopting the procedure, the department shall set
21 reasonable deadlines by which the department must complete review
22 of submitted plans.

23 (b) The department shall, within 30 days, review plans
24 submitted under this section for compliance with architectural
25 requirements and inform the person in writing of the results of the
26 review. If the plans comply with the architectural requirements,
27 the architectural requirements applicable to the project may not

1 subsequently be changed unless:

2 (1) the change is required by federal law; or

3 (2) the person fails to complete the project within a
4 reasonable time.

5 (c) The department may charge a reasonable fee for
6 conducting a review under this section.

7 (d) A fee collected under this section shall be deposited in
8 the elderly and disabled persons account under Section 254.007 and
9 may be appropriated only to the department to conduct reviews under
10 this section.

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

14 Sec. 254.039. FIRE SAFETY REQUIREMENTS. (a) A facility
15 shall comply with fire safety requirements established under this
16 section.

17 (b) The executive commissioner by rule shall adopt the fire
18 safety standards applicable to the facility. The fire safety
19 standards must be the same as the fire safety standards established
20 by an edition of the Life Safety Code of the National Fire
21 Protection Association. If required by federal law or regulation,
22 the edition selected may be different for facilities or portions of
23 facilities operated or approved for construction at different
24 times.

25 (c) The rules adopted under this section do not prevent a
26 facility licensed under this chapter from voluntarily conforming to
27 fire safety standards that are compatible with, equal to, or more

1 stringent than those adopted by the executive commissioner.

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

6 Sec. 254.040. POSTING. Each facility shall prominently and
7 conspicuously post for display in a public area of the facility that
8 is readily available to residents, the operator, any employees, and
9 visitors:

10 (1) the license issued under this chapter;

11 (2) a sign prescribed by the executive commissioner
12 that specifies complaint procedures established under this chapter
13 or rules adopted under this chapter and that specifies how
14 complaints may be registered with the department;

15 (3) a notice in a form prescribed by the executive
16 commissioner stating that inspection and related reports are
17 available at the facility for public inspection and providing the
18 department's toll-free telephone number that may be used to obtain
19 information concerning the facility;

20 (4) a concise summary of the most recent inspection
21 report relating to the facility; and

22 (5) a notice that the operator, any employees, other
23 staff, residents, volunteers, and family members and guardians of
24 residents are protected from discrimination or retaliation as
25 provided by Sections 254.131 and 254.132.

26 Sec. 254.041. INSPECTIONS. (a) The department or the
27 department's designee may make any inspection, survey, or

1 investigation that it considers necessary and may enter the
2 premises of a facility at reasonable times to make an inspection,
3 survey, or investigation in accordance with rules of the executive
4 commissioner.

5 (b) The department is entitled to access to books, records,
6 and other documents maintained by or on behalf of a facility to the
7 extent necessary to enforce this chapter and the rules adopted
8 under this chapter.

9 (c) A license holder or an applicant for a license is
10 considered to have consented to entry and inspection of the
11 facility by a representative of the department in accordance with
12 this chapter.

13 (d) The department shall establish procedures to preserve
14 all relevant evidence of conditions the department finds during an
15 inspection, survey, or investigation that the department
16 reasonably believes threaten the health and safety of a resident.
17 The procedures may include photography or photocopying of relevant
18 documents, such as license holder's notes, physician's orders, and
19 pharmacy records, for use in any legal proceeding.

20 (e) When photographing a resident, the department:

21 (1) shall respect the privacy of the resident to the
22 greatest extent possible; and

23 (2) may not make public the identity of the resident.

24 (f) A facility, the operator, an employee of a facility, and
25 a resident's attending physician are not civilly liable for
26 surrendering confidential or private material under this section,
27 including physician's orders, pharmacy records, notes and

1 memoranda of a state office, and resident files.

2 (g) The department shall establish in clear and concise
3 language a form to summarize each inspection report and complaint
4 investigation report.

5 (h) The department shall establish proper procedures to
6 ensure that copies of all forms and reports under this section are
7 made available to consumers, residents, and the relatives of
8 residents as the department considers proper.

9 (i) The department shall have specialized staff conduct
10 inspections, surveys, or investigations of facilities under this
11 section.

12 Sec. 254.042. UNANNOUNCED INSPECTIONS. (a) Each licensing
13 period, the department shall conduct at least two unannounced
14 inspections of each facility.

15 (b) In order to ensure continuous compliance, the
16 department shall randomly select a sufficient percentage of
17 facilities for unannounced inspections to be conducted between 5
18 p.m. and 8 a.m. Those inspections must be cursory to avoid to the
19 greatest extent feasible any disruption of the residents.

20 (c) The department may require additional inspections.

21 (d) As considered appropriate and necessary by the
22 department, the department may invite a citizen advocate to
23 participate in inspections. An invited advocate must be an
24 individual who has an interest in or who is employed by or
25 affiliated with an organization or entity that represents,
26 advocates for, or serves elderly persons or disabled persons.

27 Sec. 254.043. DISCLOSURE OF UNANNOUNCED INSPECTIONS;

1 CRIMINAL PENALTY. (a) Except as expressly provided by this
2 chapter, a person commits an offense if the person intentionally,
3 knowingly, or recklessly discloses to an unauthorized person the
4 date, time, or any other fact about an unannounced inspection of a
5 facility before the inspection occurs.

6 (b) In this section, "unauthorized person" does not
7 include:

8 (1) the department;

9 (2) the office of the attorney general; or

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

12 (c) An offense under this section is a Class B misdemeanor.

13 (d) A person convicted under this section is not eligible
14 for state employment.

15 Sec. 254.044. LICENSING SURVEYS. The department shall
16 provide a team to conduct surveys to validate findings of licensing
17 surveys. The purpose of a validation survey is to assure that
18 survey teams throughout the state survey in a fair and consistent
19 manner. A facility subjected to a validation survey must correct
20 deficiencies cited by the validation team but is not subject to
21 punitive action for those deficiencies.

22 Sec. 254.045. REPORTING VIOLATIONS. (a) The department
23 or the department's representative conducting an inspection,
24 survey, or investigation under this chapter shall:

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

27 (2) identify the specific law or rule the facility

1 violates.

2 (b) At the conclusion of an inspection, survey, or
3 investigation under this chapter, the department or the
4 department's representative conducting the inspection, survey, or
5 investigation shall discuss the violations with the facility's
6 management in an exit conference. The department or the
7 department's representative shall leave a written list of the
8 violations with the facility and the person designated by the
9 facility to receive notice of the imposition of an administrative
10 penalty at the time of the exit conference. If the department or
11 the department's representative discovers any additional
12 violations during the review of field notes or preparation of the
13 official final list, the department or the department's
14 representative shall give the facility an additional exit
15 conference regarding the additional violations.

16 (c) The facility shall submit a plan to correct the
17 violations to the department not later than the 10th day after the
18 date the facility receives the final statement of violations.

19 [Sections 254.046-254.060 reserved for expansion]

20 SUBCHAPTER C. GENERAL ENFORCEMENT

21 Sec. 254.061. EMERGENCY SUSPENSION OR CLOSING ORDER. (a)
22 The department shall suspend a facility's license or order an
23 immediate closing of part of the facility if:

24 (1) the department finds the facility is operating in
25 violation of the standards prescribed by this chapter; and

26 (2) the violation creates an immediate threat to the
27 health and safety of a resident.

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

4 (c) An order suspending a license or closing a part of a
5 facility under this section is immediately effective on the date on
6 which the license holder receives written notice or a later date
7 specified in the order.

8 (d) An order suspending a license or ordering an immediate
9 closing of a part of a facility is valid for 10 days after the
10 effective date of the order.

11 Sec. 254.062. INJUNCTION. (a) The department may petition
12 a district court for a temporary restraining order to restrain a
13 person from continuing a violation of the standards prescribed by
14 this chapter if the department finds that the violation creates an
15 immediate threat to the health and safety of the facility's
16 residents.

17 (b) A district court, on petition of the department, may by
18 injunction:

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

21 (2) restrain or prevent the establishment, conduct,
22 management, or operation of a facility without a license issued
23 under this chapter; or

24 (3) grant the injunctive relief warranted by the facts
25 on a finding by the court that a person is violating the standards
26 or licensing requirements prescribed by this chapter.

27 (c) The attorney general, on request by the department,

1 shall bring and conduct on behalf of the state a suit authorized by
2 this section.

3 (d) A suit for a temporary restraining order or other
4 injunctive relief must be brought in the county in which the alleged
5 violation occurs or in Travis County.

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

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

11 (c) Each day of a continuing violation after conviction is a
12 separate offense.

13 Sec. 254.064. CIVIL PENALTY. (a) A person who violates
14 this chapter or a rule adopted or order issued under this chapter is
15 liable for a civil penalty of not less than \$100 or more than
16 \$10,000 for each violation if the department determines the
17 violation threatens the health and safety of a resident.

18 (b) Each day of a continuing violation constitutes a
19 separate ground for recovery.

20 (c) On request of the department, the attorney general may
21 institute an action in a district court to collect a civil penalty
22 under this section. Any amount collected shall be remitted to the
23 comptroller for deposit to the credit of the elderly and disabled
24 persons account.

25 Sec. 254.065. ADMINISTRATIVE PENALTY. (a) The department
26 may impose an administrative penalty against a facility that
27 violates this chapter or a rule adopted or order issued under this

1 chapter.

2 (b) The penalty for a facility may not be less than \$100 or
3 more than \$1,000 for each violation. The total amount of the
4 penalty assessed for a violation continuing or occurring on
5 separate days under this subsection may not exceed \$5,000. Each day
6 a violation occurs and each day of a continuing violation is a
7 separate violation for purposes of imposing a penalty.

8 (c) The executive commissioner by rule shall specify each
9 violation for which an administrative penalty may be assessed. In
10 determining which violations warrant penalties, the department
11 shall consider:

12 (1) the seriousness of the violation, including the
13 nature, circumstances, extent, and gravity of the violation and the
14 hazard of the violation to the health or safety of residents; and

15 (2) whether the affected facility had identified the
16 violation as a part of its internal quality assurance process and
17 had made appropriate progress on correction.

18 (d) The executive commissioner by rule shall establish a
19 specific and detailed schedule of appropriate and graduated
20 penalties for each violation based on:

21 (1) the seriousness of the violation, including the
22 nature, circumstances, extent, and gravity of the violation and the
23 hazard of the violation to the health or safety of residents;

24 (2) the history of previous violations;

25 (3) whether the affected facility had identified the
26 violation as a part of its internal quality assurance process and
27 had made appropriate progress on correction;

1 (4) the amount necessary to deter future violations;

2 (5) efforts made to correct the violation;

3 (6) the size of the facility; and

4 (7) any other matters that justice may require.

5 (e) The executive commissioner by rule shall provide the
6 facility with a reasonable period of time, not less than 45 days,
7 following the first day of a violation to correct the violation
8 before assessing an administrative penalty if a plan of correction
9 has been implemented. This subsection does not apply to a violation
10 that the department determines has resulted in serious harm to or
11 the death of a resident or constitutes a serious threat to the
12 health or safety of a resident.

13 (f) The department may not assess an administrative penalty
14 for a minor violation if the person corrects the violation not later
15 than the 46th day after the date the person receives notice of the
16 violation.

17 (g) The department shall establish a system to ensure
18 standard and consistent application of penalties regardless of the
19 facility location.

20 (h) All proceedings for the assessment of an administrative
21 penalty under this chapter are subject to Chapter 2001, Government
22 Code.

23 (i) Notwithstanding any other provision of this section, an
24 administrative penalty ceases to be incurred on the date a
25 violation is corrected. The administrative penalty ceases to be
26 incurred only if the facility:

27 (1) notifies the department in writing of the

1 correction of the violation and of the date the violation was
2 corrected; and

3 (2) shows later that the violation was corrected.

4 (j) Rules adopted under this section shall include
5 specific, appropriate, and objective criteria that describe the
6 scope and severity of a violation that results in a recommendation
7 for each specific penalty.

8 (k) Sections 252.0651, 252.066, 252.067, 252.068, and
9 252.070, Health and Safety Code, apply to an administrative penalty
10 imposed under this section.

11 Sec. 254.066. AMELIORATION OF VIOLATION. (a) In this
12 section, "immediate jeopardy to health and safety" means a
13 situation in which there is a high probability that serious harm or
14 injury to a resident could occur at any time or already has occurred
15 and may occur again if the resident is not protected from the harm
16 or if the threat is not removed.

17 (b) In lieu of demanding payment of an administrative
18 penalty authorized by this subchapter, the department may allow a
19 person subject to the penalty to use, under the supervision of the
20 department, all or part of the amount of the penalty to ameliorate
21 the violation or to improve services, other than administrative
22 services, in the facility affected by the violation.

23 (c) The department shall offer amelioration to a person for
24 a charged violation if the department determines that the violation
25 does not result in an immediate jeopardy to the health and safety of
26 a facility resident.

27 (d) The department may not offer amelioration to a person if

1 the department determines that the charged violation constitutes
2 immediate jeopardy to the health and safety of a facility resident.

3 (e) The department shall offer amelioration to a person
4 under this section not later than the 10th day after the date the
5 person receives from the department a final notification of
6 assessment of administrative penalty that is sent to the person
7 after an informal dispute resolution process but before an
8 administrative hearing under Section 254.065.

9 (f) A person to whom amelioration has been offered must file
10 a plan for amelioration not later than the 45th day after the date
11 the person receives the offer of amelioration from the department.
12 In submitting the plan, the person must agree to waive the person's
13 right to an administrative hearing under Section 254.065 if the
14 department approves the plan.

15 (g) At a minimum, a plan for amelioration must:

16 (1) propose changes to the management or operation of
17 the facility that will improve services to or quality of care of
18 residents of the facility;

19 (2) identify, through measurable outcomes, the ways in
20 which and the extent to which the proposed changes will improve
21 services to or quality of care of residents of the facility;

22 (3) establish clear goals to be achieved through the
23 proposed changes;

24 (4) establish a timeline for implementing the proposed
25 changes; and

26 (5) identify specific actions necessary to implement
27 the proposed changes.

1 (h) A plan for amelioration may include proposed changes
2 to improve the overall quality of life for residents.

3 (i) The department may require that an amelioration plan
4 propose changes that would result in conditions that exceed the
5 requirements of this chapter or the rules adopted under this
6 chapter.

7 (j) The department shall approve or deny an amelioration
8 plan not later than the 45th day after the date the department
9 receives the plan. On approval of a person's plan, the department
10 shall deny a pending request for a hearing submitted by the person
11 on the occurrence of the violation, the amount of the penalty, or
12 both the occurrence of the violation and the amount of the penalty.

13 (k) The department may not offer amelioration to a person:
14 (1) more than three times in a two-year period; or
15 (2) more than one time in a two-year period for the
16 same or similar violation.

17 [Sections 254.067-254.090 reserved for expansion]

18 SUBCHAPTER D. NOTIFICATION OF CLOSURE

19 Sec. 254.091. NOTIFICATION OF CLOSURE. (a) A facility that
20 is closing temporarily or permanently, voluntarily or
21 involuntarily, shall notify the residents of the closing and make
22 reasonable efforts to notify in writing each resident's nearest
23 relative or the person responsible for the resident's support
24 within a reasonable time before the facility closes.

25 (b) If the department orders a facility to close or the
26 facility's closure is in any other way involuntary, the facility
27 shall make the notification, orally or in writing, immediately on

1 receiving notice of the closing.

2 (c) If the facility's closure is voluntary, the facility
3 shall make the notification not later than one week after the date
4 on which the decision to close is made.

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

8 (b) An offense under this section is a Class A misdemeanor.

9 [Sections 254.093-254.120 reserved for expansion]

10 SUBCHAPTER E. REPORTS OF ABUSE, NEGLECT, OR EXPLOITATION

11 Sec. 254.121. REPORTING OF ABUSE, NEGLECT, OR
12 EXPLOITATION. (a) A person, including an owner, operator, or
13 employee of a facility, who has cause to believe that a resident has
14 been abused, neglected, or exploited or may be adversely affected
15 by abuse, neglect, or exploitation caused by another person shall
16 report the abuse, neglect, or exploitation as required by Section
17 48.051, Human Resources Code.

18 (b) Each facility shall require each employee of the
19 facility, as a condition of employment with the facility, to sign a
20 statement that the employee realizes that the employee may be
21 criminally liable under Section 48.052, Human Resources Code, for
22 failure to report abuse, neglect, or exploitation.

23 [Sections 254.122-254.130 reserved for expansion]

24 SUBCHAPTER F. PROHIBITION OF RETALIATION

25 Sec. 254.131. SUIT FOR RETALIATION. (a) In this section,
26 "employee" means a person who is an employee of a facility or any
27 other person who provides services for a facility for compensation,

1 including a contract laborer for the facility.

2 (b) An employee has a cause of action against a facility,
3 the owner or operator of the facility, or another employee of the
4 facility that suspends or terminates the employment of the employee
5 or otherwise disciplines, discriminates against, or retaliates
6 against the employee for:

7 (1) reporting to the employee's supervisor, the
8 facility owner or operator, a state regulatory agency, or a law
9 enforcement agency a violation of law, including a violation of
10 this chapter or a rule adopted under this chapter; or

11 (2) initiating or cooperating in any investigation or
12 proceeding of a governmental entity relating to the services or
13 conditions at the facility.

14 (c) A plaintiff who prevails in a suit under this section
15 may recover:

16 (1) the greater of \$1,000 or actual damages, including
17 damages for:

18 (A) mental anguish, even if an injury other than
19 mental anguish is not shown; and

20 (B) lost wages, if the petitioner's employment
21 was suspended or terminated;

22 (2) exemplary damages;

23 (3) court costs; and

24 (4) reasonable attorney's fees.

25 (d) In addition to the amounts that may be recovered under
26 Subsection (c), a person whose employment is suspended or
27 terminated is entitled to appropriate injunctive relief,

1 including, if applicable:

2 (1) reinstatement in the person's former position;

3 and

4 (2) reinstatement of lost fringe benefits or seniority
5 rights.

6 (e) The petitioner, not later than the 90th day after the
7 date on which the person's employment is suspended or terminated,
8 must bring suit or notify the Texas Workforce Commission of the
9 petitioner's intent to sue under this section. A petitioner who
10 notifies the Texas Workforce Commission under this subsection must
11 bring suit not later than the 90th day after the date of the
12 delivery of the notice to the commission. On receipt of the notice,
13 the commission shall notify the facility of the petitioner's intent
14 to bring suit under this section.

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

20 (g) A suit under this section may be brought in the district
21 court of the county in which:

22 (1) the plaintiff resides;

23 (2) the plaintiff was employed by the defendant; or

24 (3) the defendant conducts business.

25 (h) Each facility shall require each employee of the
26 facility, as a condition of employment with the facility, to sign a
27 statement that the employee understands the employee's rights under

1 this section. The statement must be part of the statement required
2 under Section 254.121(b). If a facility does not require an
3 employee to read and sign the statement, the periods prescribed by
4 Subsection (e) do not apply, and the petitioner must bring suit not
5 later than the second anniversary of the date on which the person's
6 employment is suspended or terminated.

7 Sec. 254.132. SUIT FOR RETALIATION AGAINST VOLUNTEER,
8 RESIDENT, OR FAMILY MEMBER OR GUARDIAN OF RESIDENT. (a) A
9 facility may not retaliate or discriminate against a volunteer, a
10 resident, or a family member or guardian of a resident because the
11 volunteer, the resident, the resident's family member or guardian,
12 or any other person:

13 (1) makes a complaint or files a grievance concerning
14 the facility;

15 (2) reports a violation of law, including a violation
16 of this chapter or a rule adopted under this chapter; or

17 (3) initiates or cooperates in an investigation or
18 proceeding of a governmental entity relating to the services or
19 conditions at the facility.

20 (b) A volunteer, a resident, or a family member or guardian
21 of a resident against whom a facility retaliates or discriminates
22 in violation of Subsection (a) is entitled to sue for:

23 (1) injunctive relief;

24 (2) the greater of \$1,000 or actual damages, including
25 damages for mental anguish, even if an injury other than mental
26 anguish is not shown;

27 (3) exemplary damages;

1 (4) court costs; and

2 (5) reasonable attorney's fees.

3 (c) A volunteer, a resident, or a family member or guardian
4 of a resident who seeks relief under this section must report the
5 alleged violation not later than the 180th day after the date on
6 which the alleged violation of this section occurred or was
7 discovered by the volunteer, the resident, or the family member or
8 guardian of the resident through reasonable diligence.

9 (d) A suit under this section may be brought in the district
10 court of the county in which the facility is located or in a
11 district court of Travis County.

12 [Sections 254.133-254.150 reserved for expansion]

13 SUBCHAPTER G. REPORTING RESIDENT DEATHS

14 Sec. 254.151. REPORTS RELATING TO RESIDENT DEATHS;
15 STATISTICAL INFORMATION. (a) A facility licensed under this
16 chapter shall submit a report to the department concerning the
17 death of:

18 (1) a facility resident; and

19 (2) a former resident that occurs 24 hours or less
20 after the former resident is transferred from the facility to a
21 hospital.

22 (b) The report must be submitted not later than the 10th
23 working day after the last day of each month in which a resident
24 dies. The facility must make the report on a form prescribed by the
25 department. The report must contain the name and social security
26 number of the deceased.

27 (c) The department shall correlate reports under this

1 section with death certificate information to develop data relating
2 to the:

- 3 (1) name and age of the deceased;
4 (2) official cause of death listed on the death
5 certificate;
6 (3) date, time, and place of death; and
7 (4) name and address of the facility in which the
8 deceased resided.

9 (d) Unless specified by executive commissioner rule, a
10 record under this section is confidential and not subject to the
11 provisions of Chapter 552, Government Code.

12 (e) The department shall develop statistical information on
13 official causes of death to determine patterns and trends of
14 incidents of death among elderly persons and disabled persons and
15 related conditions and in specific facilities. Information
16 developed under this subsection is not confidential.

17 (f) A licensed facility shall make available on the request
18 of an applicant or an applicant's representative historical
19 statistics on all required information.

20 [Sections 254.152-254.170 reserved for expansion]

21 SUBCHAPTER H. MEDICAL CARE

22 Sec. 254.171. ADMINISTRATION OF MEDICATION. A facility
23 may not administer medication to a resident of the facility.

24 SECTION 2. This Act takes effect September 1, 2007.

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

H.B. No. 1168

1 as added by this Act, before January 1, 2008.