

1-1 By: Menendez, et al. (Senate Sponsor - Shapleigh) H.B. No. 1168  
1-2 (In the Senate - Received from the House May 14, 2007;  
1-3 May 15, 2007, read first time and referred to Committee on Health  
1-4 and Human Services; May 19, 2007, reported adversely, with  
1-5 favorable Committee Substitute by the following vote: Yeas 6,  
1-6 Nays 0; May 19, 2007, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 1168 By: Shapleigh

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to licensing and regulation of certain facilities  
1-11 providing personal care to elderly or disabled persons; providing  
1-12 penalties.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Section 247.031, Health and Safety Code, is  
1-15 amended to read as follows:

1-16 Sec. 247.031. COUNTY OR MUNICIPAL ENFORCEMENT. The  
1-17 governing body of a county by resolution or a municipality by  
1-18 ordinance may:

1-19 (1) prohibit a person who does not hold a license  
1-20 issued under this chapter from establishing or operating an  
1-21 assisted living facility within the county or municipality; and

1-22 (2) establish a procedure for emergency closure of a  
1-23 facility in circumstances in which:

1-24 (A) the facility is established or operating in  
1-25 violation of Section 247.021; and

1-26 (B) the continued operation of the facility  
1-27 creates an immediate threat to the health and safety of a resident  
1-28 of the facility.

1-29 SECTION 2. (a) Subchapter B, Chapter 247, Health and Safety  
1-30 Code, is amended by adding Section 247.033 to read as follows:

1-31 Sec. 247.033. LISTING OF CERTAIN SMALL FACILITIES. (a) The  
1-32 executive commissioner of the Health and Human Services Commission  
1-33 by rule shall establish a system for listing each facility that:

1-34 (1) furnishes food, shelter, and personal care  
1-35 services to three or fewer people who are unrelated to the  
1-36 proprietor of the facility; and

1-37 (2) provides regular care to the residents of the  
1-38 facility.

1-39 (b) A facility described by Subsection (a) shall list with  
1-40 the department. A listing remains valid until surrendered.

1-41 (c) The department shall provide to a listed facility a copy  
1-42 of the listing. A listing must contain a provision that states:

1-43 "THIS FACILITY IS NOT AN ASSISTED LIVING FACILITY. IT IS NOT  
1-44 LICENSED OR REGISTERED WITH THE DEPARTMENT OF AGING AND DISABILITY  
1-45 SERVICES. IT HAS NOT BEEN INSPECTED AND WILL NOT BE INSPECTED."

1-46 The operator of a listed facility is not required to display the  
1-47 listing at the home but shall make the listing available for  
1-48 examination.

1-49 (d) The department shall issue a listing to a facility under  
1-50 this section in both English and Spanish when the most recent  
1-51 federal census shows that more than one-half of the population in a  
1-52 municipality or in a commissioners precinct in a county in which the  
1-53 facility is located is of Hispanic origin or Spanish-speaking.

1-54 (e) A facility required to list with the department under  
1-55 this section is not otherwise subject to the standards,  
1-56 requirements, or penalties of this chapter.

1-57 (b) Not later than January 1, 2008, the executive  
1-58 commissioner of the Health and Human Services Commission shall  
1-59 adopt the rules necessary to implement Section 247.033, Health and  
1-60 Safety Code, as added by this section.

1-61 (c) Notwithstanding Section 247.033, Health and Safety  
1-62 Code, as added by this section, a facility is not required to list  
1-63 with the Department of Aging and Disability Services before March

1, 2008.

SECTION 3. 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 preparation, transportation, grocery shopping, money management, or laundry services to three or more elderly persons or disabled persons residing in the facility who are unrelated to the owner or proprietor of the establishment and that is not required to be licensed under Chapter 142, 242, 246, 247, or 252.

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

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

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

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

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

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

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

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

(b) The department may cooperate with local public health officials of a municipality or county in carrying out this chapter and may delegate to those officials the power to make inspections and recommendations to the department under this chapter.

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

(d) The department and the Department of State Health Services shall enter into a memorandum of understanding with the Texas Department of Housing and Community Affairs to coordinate housing resources for persons who may be displaced as a result of actions taken under Subchapters C and D of this chapter.

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

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

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

3-1 (b) A state agency, political subdivision, or a public or  
3-2 private provider of health care services or behavioral health care  
3-3 services may not refer an elderly person or disabled person to a  
3-4 facility that is not licensed by the state as provided by this  
3-5 chapter or licensed under other state law.

3-6 Sec. 254.007. ELDERLY AND DISABLED PERSONS ACCOUNT. (a)  
3-7 The elderly and disabled persons account is established as an  
3-8 account in the general revenue fund.

3-9 (b) The following amounts shall be deposited in the account:

3-10 (1) appropriations for the implementation and  
3-11 administration of this subchapter;

3-12 (2) interest paid on money in the account;

3-13 (3) fees charged under this chapter; and

3-14 (4) penalties charged under this chapter.

3-15 (c) Money in the account may be appropriated only:

3-16 (1) for the enforcement of this chapter;

3-17 (2) to provide programs and services for elderly  
3-18 persons or disabled persons; or

3-19 (3) for transitional housing and case management  
3-20 services.

3-21 (d) Section 403.095, Government Code, does not apply to the  
3-22 account.

3-23 [Sections 254.008-254.030 reserved for expansion]

3-24 SUBCHAPTER B. LICENSING, FEES, AND INSPECTIONS

3-25 Sec. 254.031. LICENSE REQUIRED. A person, acting severally  
3-26 or jointly with any other person, may not establish, conduct, or  
3-27 maintain in this state a facility without a license issued under  
3-28 this chapter.

3-29 Sec. 254.032. LICENSE APPLICATION. (a) An application for  
3-30 a license is made to the department on a form provided by the  
3-31 department and must be accompanied by the license fee adopted under  
3-32 Section 254.034.

3-33 (b) The application must contain information that the  
3-34 department requires. The department may require affirmative  
3-35 evidence of ability to comply with the standards and rules adopted  
3-36 under this chapter.

3-37 Sec. 254.033. ISSUANCE AND RENEWAL OF LICENSE. (a) After  
3-38 receiving the application, the department shall issue a license if,  
3-39 after inspection and investigation, it finds that the applicant and  
3-40 facility meet the requirements established under this chapter.

3-41 (b) The department may issue a license only for:

3-42 (1) the premises and persons named in the application;  
3-43 and

3-44 (2) the maximum number of residents specified in the  
3-45 application.

3-46 (c) A license may not be transferred or assigned.

3-47 (d) A license is renewable on the second anniversary of  
3-48 issuance or renewal of the license after:

3-49 (1) an inspection;

3-50 (2) filing and approval of a renewal report; and

3-51 (3) payment of the renewal fee.

3-52 (e) The renewal report required under Subsection (d)(2)  
3-53 must be filed in accordance with rules adopted by the executive  
3-54 commissioner that specify the form of the report, the date it must  
3-55 be submitted, and the information it must contain.

3-56 (f) The executive commissioner by rule shall define  
3-57 specific, appropriate, and objective criteria on which the  
3-58 department may deny an initial license application or license  
3-59 renewal or revoke a license.

3-60 Sec. 254.034. LICENSE FEES. (a) The executive  
3-61 commissioner by rule may adopt a fee for a license issued under this  
3-62 chapter in an amount reasonable and necessary to recover the costs  
3-63 of administering this chapter.

3-64 (b) The license fee must be paid with each application for  
3-65 an initial license or for a renewal or change of ownership of a  
3-66 license.

3-67 (c) The executive commissioner may adopt an additional fee  
3-68 for the approval of an increase in number of residents.

3-69 Sec. 254.035. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.

4-1 (a) The department, after providing notice and opportunity for a  
4-2 hearing to the applicant or license holder, may deny, suspend, or  
4-3 revoke a license if the department finds that the applicant or  
4-4 license holder has substantially failed to comply with the  
4-5 requirements established under this chapter.

4-6 (b) The status of an applicant for a license or of a license  
4-7 holder is preserved until final disposition of the contested  
4-8 matter, except as the court having jurisdiction of a judicial  
4-9 review of the matter may order in the public interest for the  
4-10 welfare and safety of the residents.

4-11 Sec. 254.036. MINIMUM STANDARDS. The executive  
4-12 commissioner may adopt, publish, and enforce minimum standards  
4-13 relating to:

4-14 (1) the construction or remodeling of a facility,  
4-15 including plumbing, heating, lighting, ventilation, and other  
4-16 housing conditions, to ensure the residents' health, safety,  
4-17 comfort, and protection from fire hazard;

4-18 (2) sanitary and related conditions in a facility and  
4-19 its surroundings, including water supply, sewage disposal, food  
4-20 handling, and general hygiene to ensure the residents' health,  
4-21 safety, and comfort;

4-22 (3) equipment essential to the residents' health and  
4-23 welfare;

4-24 (4) the reporting and investigation of injuries,  
4-25 incidents, and unusual accidents and the establishment of other  
4-26 policies and procedures necessary to ensure resident safety;

4-27 (5) policies and procedures for the control of  
4-28 communicable diseases;

4-29 (6) specialized nutrition support;

4-30 (7) requirements for in-service education of the  
4-31 operator and each employee who has any contact with residents;

4-32 (8) the regulation of the number and qualification of  
4-33 the operator and each employee responsible for providing any part  
4-34 of a service to residents; and

4-35 (9) the quality of life.

4-36 Sec. 254.037. REASONABLE TIME TO COMPLY. The executive  
4-37 commissioner by rule shall give a facility that is in operation when  
4-38 a rule or standard is adopted under this chapter a reasonable time  
4-39 to comply with the rule or standard, not to exceed 12 months after  
4-40 the date the rule or standard is adopted.

4-41 Sec. 254.038. EARLY COMPLIANCE REVIEW. (a) The executive  
4-42 commissioner by rule shall adopt a procedure under which a person  
4-43 proposing to construct or modify a facility may submit building  
4-44 plans to the department for review for compliance with  
4-45 architectural requirements before beginning construction or  
4-46 modification. In adopting the procedure, the department shall set  
4-47 reasonable deadlines by which the department must complete review  
4-48 of submitted plans.

4-49 (b) The department shall, within 30 days, review plans  
4-50 submitted under this section for compliance with architectural  
4-51 requirements and inform the person in writing of the results of the  
4-52 review. If the plans comply with the architectural requirements,  
4-53 the architectural requirements applicable to the project may not  
4-54 subsequently be changed unless:

4-55 (1) the change is required by federal law; or

4-56 (2) the person fails to complete the project within a  
4-57 reasonable time.

4-58 (c) The department may charge a reasonable fee for  
4-59 conducting a review under this section.

4-60 (d) A fee collected under this section shall be deposited in  
4-61 the elderly and disabled persons account under Section 254.007 and  
4-62 may be appropriated only to the department to conduct reviews under  
4-63 this section.

4-64 (e) The review procedure provided by this section must  
4-65 include a review of building plans for compliance with the Texas  
4-66 Accessibility Standards as administered and enforced.

4-67 Sec. 254.039. FIRE SAFETY REQUIREMENTS. (a) A facility  
4-68 shall comply with fire safety requirements established under this  
4-69 section.

5-1           (b) The executive commissioner by rule shall adopt the fire  
 5-2 safety standards applicable to the facility. The fire safety  
 5-3 standards must be the same as the fire safety standards established  
 5-4 by an edition of the Life Safety Code of the National Fire  
 5-5 Protection Association. If required by federal law or regulation,  
 5-6 the edition selected may be different for facilities or portions of  
 5-7 facilities operated or approved for construction at different  
 5-8 times.

5-9           (c) The rules adopted under this section do not prevent a  
 5-10 facility licensed under this chapter from voluntarily conforming to  
 5-11 fire safety standards that are compatible with, equal to, or more  
 5-12 stringent than those adopted by the executive commissioner.

5-13           (d) Notwithstanding any other provision of this section, a  
 5-14 municipality may enact additional and more stringent fire safety  
 5-15 standards applicable to new construction begun on or after  
 5-16 September 1, 2007.

5-17           Sec. 254.040. POSTING. Each facility shall prominently and  
 5-18 conspicuously post for display in a public area of the facility that  
 5-19 is readily available to residents, the operator, any employees, and  
 5-20 visitors:

5-21                   (1) the license issued under this chapter;

5-22                   (2) a sign prescribed by the executive commissioner  
 5-23 that specifies complaint procedures established under this chapter  
 5-24 or rules adopted under this chapter and that specifies how  
 5-25 complaints may be registered with the department;

5-26                   (3) a notice in a form prescribed by the executive  
 5-27 commissioner stating that inspection and related reports are  
 5-28 available at the facility for public inspection and providing the  
 5-29 department's toll-free telephone number that may be used to obtain  
 5-30 information concerning the facility;

5-31                   (4) a concise summary of the most recent inspection  
 5-32 report relating to the facility;

5-33                   (5) a notice that the operator, any employees, other  
 5-34 staff, residents, volunteers, and family members and guardians of  
 5-35 residents are protected from discrimination or retaliation as  
 5-36 provided by Sections 254.131 and 254.132; and

5-37                   (6) a notice in a form prescribed by the executive  
 5-38 commissioner that lists the name, location, and contact information  
 5-39 for:

5-40                           (A) the closest local public health services  
 5-41 agency in the proximity of the facility; and

5-42                           (B) a local organization or entity that  
 5-43 represents, advocates, or serves elderly persons or disabled  
 5-44 persons, including any related toll-free contact information for  
 5-45 reporting emergencies to the organization or entity.

5-46           Sec. 254.041. INSPECTIONS. (a) The department or the  
 5-47 department's designee may make any inspection, survey, or  
 5-48 investigation that it considers necessary and may enter the  
 5-49 premises of a facility at reasonable times to make an inspection,  
 5-50 survey, or investigation in accordance with rules of the executive  
 5-51 commissioner.

5-52           (b) The department is entitled to access to books, records,  
 5-53 and other documents maintained by or on behalf of a facility to the  
 5-54 extent necessary to enforce this chapter and the rules adopted  
 5-55 under this chapter.

5-56           (c) A license holder or an applicant for a license is  
 5-57 considered to have consented to entry and inspection of the  
 5-58 facility by a representative of the department in accordance with  
 5-59 this chapter.

5-60           (d) The department shall establish procedures to preserve  
 5-61 all relevant evidence of conditions the department finds during an  
 5-62 inspection, survey, or investigation that the department  
 5-63 reasonably believes threaten the health and safety of a resident.  
 5-64 The procedures may include photography or photocopying of relevant  
 5-65 documents, such as license holder's notes, physician's orders, and  
 5-66 pharmacy records, for use in any legal proceeding.

5-67           (e) When photographing a resident, the department:

5-68                   (1) shall respect the privacy of the resident to the  
 5-69 greatest extent possible;

6-1           (2) shall obtain the resident's permission to the  
6-2 greatest extent possible before taking a photograph that will allow  
6-3 the resident to be identified; and

6-4           (3) may not make public the identity of the resident.

6-5           (f) A facility, the operator, an employee of a facility, and  
6-6 a resident's attending physician are not civilly liable for  
6-7 surrendering confidential or private material under this section,  
6-8 including physician's orders, pharmacy records, notes and  
6-9 memoranda of a state office, and resident files.

6-10          (g) The department shall establish in clear and concise  
6-11 language a form to summarize each inspection report and complaint  
6-12 investigation report.

6-13          (h) The department shall establish proper procedures to  
6-14 ensure that copies of all forms and reports under this section are  
6-15 made available to consumers, residents, and the relatives of  
6-16 residents as the department considers proper.

6-17          (i) The department shall have specialized staff conduct  
6-18 inspections, surveys, or investigations of facilities under this  
6-19 section.

6-20          Sec. 254.042. UNANNOUNCED INSPECTIONS. (a) Each licensing  
6-21 period, the department shall conduct at least two unannounced  
6-22 inspections of each facility.

6-23          (b) In order to ensure continuous compliance, the  
6-24 department shall randomly select a sufficient percentage of  
6-25 facilities for unannounced inspections to be conducted between 5  
6-26 p.m. and 8 a.m. Those inspections must be cursory to avoid to the  
6-27 greatest extent feasible any disruption of the residents.

6-28          (c) The department may require additional unannounced  
6-29 inspections.

6-30          (d) As considered appropriate and necessary by the  
6-31 department, the department may invite a citizen advocate to  
6-32 participate in inspections. An invited advocate must be an  
6-33 individual who has an interest in or who is employed by or  
6-34 affiliated with an organization or entity that represents,  
6-35 advocates for, or serves elderly persons or disabled persons.

6-36          Sec. 254.043. DISCLOSURE OF UNANNOUNCED INSPECTIONS;  
6-37 CRIMINAL PENALTY. (a) Except as expressly provided by this  
6-38 chapter, a person commits an offense if the person intentionally,  
6-39 knowingly, or recklessly discloses to an unauthorized person the  
6-40 date, time, or any other fact about an unannounced inspection of a  
6-41 facility before the inspection occurs.

6-42          (b) In this section, "unauthorized person" does not  
6-43 include:

6-44                 (1) the department;  
6-45                 (2) the office of the attorney general; or  
6-46                 (3) any other person or entity authorized by law to  
6-47 make an inspection or to accompany an inspector.

6-48          (c) An offense under this section is a Class B misdemeanor.

6-49          (d) A person convicted under this section is not eligible  
6-50 for state employment.

6-51          Sec. 254.044. LICENSING SURVEYS. The department shall  
6-52 provide a team to conduct surveys to validate findings of licensing  
6-53 surveys. The purpose of a validation survey is to assure that  
6-54 survey teams throughout the state survey in a fair and consistent  
6-55 manner. A facility subjected to a validation survey must correct  
6-56 deficiencies cited by the validation team but is not subject to  
6-57 punitive action for those deficiencies.

6-58          Sec. 254.045. REPORTING VIOLATIONS. (a) The department or  
6-59 the department's representative conducting an inspection, survey,  
6-60 or investigation under this chapter shall:

6-61                 (1) list each violation of a law or rule on a form  
6-62 designed by the department for inspections; and

6-63                 (2) identify the specific law or rule the facility  
6-64 violates.

6-65          (b) At the conclusion of an inspection, survey, or  
6-66 investigation under this chapter, the department or the  
6-67 department's representative conducting the inspection, survey, or  
6-68 investigation shall discuss the violations with the facility's  
6-69 management in an exit conference. The department or the

7-1 department's representative shall leave a written list of the  
7-2 violations with the facility and the person designated by the  
7-3 facility to receive notice of the imposition of an administrative  
7-4 penalty at the time of the exit conference. If the department or  
7-5 the department's representative discovers any additional  
7-6 violations during the review of field notes or preparation of the  
7-7 official final list, the department or the department's  
7-8 representative shall give the facility an additional exit  
7-9 conference regarding the additional violations.

7-10 (c) The facility shall submit a plan to correct the  
7-11 violations to the department not later than the 10th day after the  
7-12 date the facility receives the final statement of violations.

7-13 Sec. 254.046. CERTAIN RESIDENTS PROHIBITED. To ensure the  
7-14 safety of residents of facilities licensed under this chapter, a  
7-15 person operating a facility licensed under this chapter may not  
7-16 allow an individual required to register under Chapter 62, Code of  
7-17 Criminal Procedure, to reside in the facility.

7-18 [Sections 254.047-254.060 reserved for expansion]

7-19 SUBCHAPTER C. GENERAL ENFORCEMENT

7-20 Sec. 254.061. EMERGENCY SUSPENSION OR CLOSING ORDER. (a)  
7-21 The department shall suspend a facility's license or order an  
7-22 immediate closing of part of the facility if:

7-23 (1) the department finds the facility is operating in  
7-24 violation of the standards prescribed by this chapter; and

7-25 (2) the violation creates an immediate threat to the  
7-26 health and safety of a resident.

7-27 (b) The executive commissioner by rule shall provide for the  
7-28 placement of residents during the facility's suspension or closing  
7-29 to ensure their health and safety.

7-30 (c) To ensure the availability of emergency placements  
7-31 under Subsection (b), the executive commissioner shall develop a  
7-32 memorandum of understanding with appropriate counties or municipal  
7-33 agencies that:

7-34 (1) establishes an emergency placement capability for  
7-35 the area served by the county or municipal agency; and

7-36 (2) may provide for partial or full remuneration by  
7-37 the facility of the costs associated with emergency placements  
7-38 provided by the county or municipal agency if the emergency  
7-39 placements resulted from a department order suspending the  
7-40 facility's license or closing the facility.

7-41 (d) An order suspending a license or closing a part of a  
7-42 facility under this section is immediately effective on the date on  
7-43 which the license holder receives written notice or a later date  
7-44 specified in the order.

7-45 (e) An order suspending a license or ordering an immediate  
7-46 closing of a part of a facility is valid for 10 days after the  
7-47 effective date of the order.

7-48 Sec. 254.062. INJUNCTION. (a) The department may petition  
7-49 a district court for a temporary restraining order to restrain a  
7-50 person from continuing a violation of the standards prescribed by  
7-51 this chapter if the department finds that the violation creates an  
7-52 immediate threat to the health and safety of the facility's  
7-53 residents.

7-54 (b) A district court, on petition of the department, may by  
7-55 injunction:

7-56 (1) prohibit a person from continuing a violation of  
7-57 the standards or licensing requirements prescribed by this chapter;

7-58 (2) restrain or prevent the establishment, conduct,  
7-59 management, or operation of a facility without a license issued  
7-60 under this chapter; or

7-61 (3) grant the injunctive relief warranted by the facts  
7-62 on a finding by the court that a person is violating the standards  
7-63 or licensing requirements prescribed by this chapter.

7-64 (c) The attorney general, on request by the department,  
7-65 shall bring and conduct on behalf of the state a suit authorized by  
7-66 this section.

7-67 (d) A suit for a temporary restraining order or other  
7-68 injunctive relief must be brought in the county in which the alleged  
7-69 violation occurs or in Travis County.

8-1 Sec. 254.063. LICENSE REQUIREMENTS; CRIMINAL PENALTY. (a)  
8-2 A person commits an offense if the person violates Section 254.031.

8-3 (b) An offense under this section is punishable by a fine of  
8-4 not more than \$1,000 for the first offense and not more than \$500  
8-5 for each subsequent offense.

8-6 (c) Each day of a continuing violation after conviction is a  
8-7 separate offense.

8-8 Sec. 254.064. CIVIL PENALTY. (a) A person who violates  
8-9 this chapter or a rule adopted or order issued under this chapter is  
8-10 liable for a civil penalty of not less than \$100 or more than  
8-11 \$10,000 for each violation if the department determines the  
8-12 violation threatens the health and safety of a resident.

8-13 (b) Each day of a continuing violation constitutes a  
8-14 separate ground for recovery.

8-15 (c) On request of the department, the attorney general may  
8-16 institute an action in a district court to collect a civil penalty  
8-17 under this section. Any amount collected shall be remitted to the  
8-18 comptroller for deposit to the credit of the elderly and disabled  
8-19 persons account.

8-20 Sec. 254.065. ADMINISTRATIVE PENALTY. (a) The department  
8-21 may impose an administrative penalty against a facility that  
8-22 violates this chapter or a rule adopted or order issued under this  
8-23 chapter.

8-24 (b) The penalty for a facility may not be less than \$100 or  
8-25 more than \$1,000 for each violation. The total amount of the  
8-26 penalty assessed for a violation continuing or occurring on  
8-27 separate days under this subsection may not exceed \$5,000. Each day  
8-28 a violation occurs and each day of a continuing violation is a  
8-29 separate violation for purposes of imposing a penalty.

8-30 (c) The executive commissioner by rule shall specify each  
8-31 violation for which an administrative penalty may be assessed. In  
8-32 determining which violations warrant penalties, the department  
8-33 shall consider:

8-34 (1) the seriousness of the violation, including the  
8-35 nature, circumstances, extent, and gravity of the violation and the  
8-36 hazard of the violation to the health or safety of residents; and

8-37 (2) whether the affected facility had identified the  
8-38 violation as a part of its internal quality assurance process and  
8-39 had made appropriate progress on correction.

8-40 (d) The executive commissioner by rule shall establish a  
8-41 specific and detailed schedule of appropriate and graduated  
8-42 penalties for each violation based on:

8-43 (1) the seriousness of the violation, including the  
8-44 nature, circumstances, extent, and gravity of the violation and the  
8-45 hazard of the violation to the health or safety of residents;

8-46 (2) the history of previous violations;

8-47 (3) whether the affected facility had identified the  
8-48 violation as a part of its internal quality assurance process and  
8-49 had made appropriate progress on correction;

8-50 (4) the amount necessary to deter future violations;

8-51 (5) efforts made to correct the violation;

8-52 (6) the size of the facility; and

8-53 (7) any other matters that justice may require.

8-54 (e) The executive commissioner by rule shall provide the  
8-55 facility with a reasonable period of time, not less than 45 days,  
8-56 following the first day of a violation to correct the violation  
8-57 before assessing an administrative penalty if a plan of correction  
8-58 has been implemented. This subsection does not apply to a violation  
8-59 that the department determines has resulted in serious harm to or  
8-60 the death of a resident or constitutes a serious threat to the  
8-61 health or safety of a resident.

8-62 (f) The department may not assess an administrative penalty  
8-63 for a minor violation if the person corrects the violation not later  
8-64 than the 46th day after the date the person receives notice of the  
8-65 violation.

8-66 (g) The department shall establish a system to ensure  
8-67 standard and consistent application of penalties regardless of the  
8-68 facility location.

8-69 (h) All proceedings for the assessment of an administrative

9-1 penalty under this chapter are subject to Chapter 2001, Government  
 9-2 Code.

9-3 (i) Notwithstanding any other provision of this section, an  
 9-4 administrative penalty ceases to be incurred on the date a  
 9-5 violation is corrected. The administrative penalty ceases to be  
 9-6 incurred only if the facility:

9-7 (1) notifies the department in writing of the  
 9-8 correction of the violation and of the date the violation was  
 9-9 corrected; and

9-10 (2) shows later that the violation was corrected.

9-11 (j) Rules adopted under this section shall include  
 9-12 specific, appropriate, and objective criteria that describe the  
 9-13 scope and severity of a violation that results in a recommendation  
 9-14 for each specific penalty.

9-15 (k) Sections 252.0651, 252.066, 252.067, 252.068, and  
 9-16 252.070, Health and Safety Code, apply to an administrative penalty  
 9-17 imposed under this section.

9-18 Sec. 254.066. AMELIORATION OF VIOLATION. (a) In this  
 9-19 section, "immediate jeopardy to health and safety" means a  
 9-20 situation in which there is a high probability that serious harm or  
 9-21 injury to a resident could occur at any time or already has occurred  
 9-22 and may occur again if the resident is not protected from the harm  
 9-23 or if the threat is not removed.

9-24 (b) In lieu of demanding payment of an administrative  
 9-25 penalty authorized by this subchapter, the department may allow a  
 9-26 person subject to the penalty to use, under the supervision of the  
 9-27 department, all or part of the amount of the penalty to ameliorate  
 9-28 the violation or to improve services, other than administrative  
 9-29 services, in the facility affected by the violation.

9-30 (c) The department shall offer amelioration to a person for  
 9-31 a charged violation if the department determines that the violation  
 9-32 does not result in an immediate jeopardy to the health and safety of  
 9-33 a facility resident.

9-34 (d) The department may not offer amelioration to a person if  
 9-35 the department determines that the charged violation constitutes  
 9-36 immediate jeopardy to the health and safety of a facility resident.

9-37 (e) The department shall offer amelioration to a person  
 9-38 under this section not later than the 10th day after the date the  
 9-39 person receives from the department a final notification of  
 9-40 assessment of administrative penalty that is sent to the person  
 9-41 after an informal dispute resolution process but before an  
 9-42 administrative hearing under Section 254.065.

9-43 (f) A person to whom amelioration has been offered must file  
 9-44 a plan for amelioration not later than the 45th day after the date  
 9-45 the person receives the offer of amelioration from the department.  
 9-46 In submitting the plan, the person must agree to waive the person's  
 9-47 right to an administrative hearing under Section 254.065 if the  
 9-48 department approves the plan.

9-49 (g) At a minimum, a plan for amelioration must:

9-50 (1) propose changes to the management or operation of  
 9-51 the facility that will improve services to or quality of care of  
 9-52 residents of the facility;

9-53 (2) identify, through measurable outcomes, the ways in  
 9-54 which and the extent to which the proposed changes will improve  
 9-55 services to or quality of care of residents of the facility;

9-56 (3) establish clear goals to be achieved through the  
 9-57 proposed changes;

9-58 (4) establish a timeline for implementing the proposed  
 9-59 changes; and

9-60 (5) identify specific actions necessary to implement  
 9-61 the proposed changes.

9-62 (h) A plan for amelioration may include proposed changes to  
 9-63 improve the overall quality of life for residents.

9-64 (i) The department may require that an amelioration plan  
 9-65 propose changes that would result in conditions that exceed the  
 9-66 requirements of this chapter or the rules adopted under this  
 9-67 chapter.

9-68 (j) The department shall approve or deny an amelioration  
 9-69 plan not later than the 45th day after the date the department

10-1 receives the plan. On approval of a person's plan, the department  
 10-2 shall deny a pending request for a hearing submitted by the person  
 10-3 on the occurrence of the violation, the amount of the penalty, or  
 10-4 both the occurrence of the violation and the amount of the penalty.

10-5 (k) The department may not offer amelioration to a person:  
 10-6 (1) more than three times in a two-year period; or  
 10-7 (2) more than one time in a two-year period for the  
 10-8 same or similar violation.

10-9 Sec. 254.067. COUNTY OR MUNICIPAL ENFORCEMENT. The  
 10-10 governing body of a county by resolution or a municipality by  
 10-11 ordinance may:

10-12 (1) prohibit a person who does not hold a license  
 10-13 issued under this chapter from establishing or operating a facility  
 10-14 within the county or municipality; and

10-15 (2) establish a procedure for emergency closure of a  
 10-16 facility in circumstances in which:

10-17 (A) the facility is established or operating in  
 10-18 violation of Section 254.031; and

10-19 (B) the continued operation of the facility  
 10-20 creates an immediate threat to the health and safety of a resident  
 10-21 of the facility.

10-22 [Sections 254.068-254.090 reserved for expansion]

10-23 SUBCHAPTER D. NOTIFICATION OF CLOSURE

10-24 Sec. 254.091. NOTIFICATION OF CLOSURE. (a) A facility that  
 10-25 is closing temporarily or permanently, voluntarily or  
 10-26 involuntarily, shall:

10-27 (1) provide written notice of the closure of the  
 10-28 facility to each resident, the local mental health authority, and  
 10-29 the department; and

10-30 (2) make reasonable efforts to provide the same  
 10-31 written notice, within a reasonable time before closure, to the  
 10-32 nearest relative of each resident or to a person responsible for the  
 10-33 resident's support.

10-34 (b) If the closure of the facility is for a temporary  
 10-35 period, the notice required by Subsection (a) must include:

10-36 (1) the date that the facility is estimated to reopen;  
 10-37 and

10-38 (2) the name and contact information of the person  
 10-39 responsible for the reopening of the facility.

10-40 (c) If the department orders a facility to close or the  
 10-41 facility's closure is in any other way involuntary, the facility  
 10-42 shall make the notification, orally or in writing, immediately on  
 10-43 receiving notice of the closing.

10-44 (d) If the facility's closure is voluntary, the facility  
 10-45 shall make the notification not later than one week after the date  
 10-46 on which the decision to close is made.

10-47 (e) On or after the date on which a facility ceases to  
 10-48 provide services to a resident, a facility may not continue to:

10-49 (1) charge a fee, other than a fee for services  
 10-50 previously provided to the resident; or

10-51 (2) collect money from a former resident under a  
 10-52 financial assignment agreement.

10-53 Sec. 254.092. CRIMINAL PENALTY FOR FAILURE TO NOTIFY. (a)  
 10-54 A facility commits an offense if the facility knowingly fails to  
 10-55 comply with Section 254.091.

10-56 (b) An offense under this section is a Class A misdemeanor.

10-57 Sec. 254.093. CLOSURE REPORT. (a) A facility required to  
 10-58 provide notice of the facility's closure under Section 254.091(a)  
 10-59 also shall provide a closure report regarding each resident to the  
 10-60 department in accordance with this section.

10-61 (b) The report must include a summary of the actions taken  
 10-62 by the facility to:

10-63 (1) relocate the resident, including the name,  
 10-64 address, and contact information of a licensed facility or other  
 10-65 location to which the resident was transferred;

10-66 (2) secure the personal property of the resident if  
 10-67 the resident's personal property did not accompany the resident to  
 10-68 the resident's new location; and

10-69 (3) finalize any outstanding financial arrangements

11-1 with the resident, including presenting the resident with a final  
 11-2 statement of account with the facility containing all charges and  
 11-3 fees for services, discontinuing any financial assignment  
 11-4 arrangement, and refunding any excess fees or charges.

11-5 [Sections 254.094-254.120 reserved for expansion]

11-6 SUBCHAPTER E. REPORTS OF ABUSE, NEGLECT, OR EXPLOITATION

11-7 Sec. 254.121. REPORTING OF ABUSE, NEGLECT, OR EXPLOITATION.

11-8 (a) A person, including an owner, operator, or employee of a  
 11-9 facility, who has cause to believe that a resident has been abused,  
 11-10 neglected, or exploited or may be adversely affected by abuse,  
 11-11 neglect, or exploitation caused by another person shall report the  
 11-12 abuse, neglect, or exploitation as required by Section 48.051,  
 11-13 Human Resources Code.

11-14 (b) Each facility shall require each employee of the  
 11-15 facility, as a condition of employment with the facility, to sign a  
 11-16 statement that the employee realizes that the employee may be  
 11-17 criminally liable under Section 48.052, Human Resources Code, for  
 11-18 failure to report abuse, neglect, or exploitation.

11-19 [Sections 254.122-254.130 reserved for expansion]

11-20 SUBCHAPTER F. PROHIBITION OF RETALIATION

11-21 Sec. 254.131. SUIT FOR RETALIATION. (a) In this section,  
 11-22 "employee" means a person who is an employee of a facility or any  
 11-23 other person who provides services for a facility for compensation,  
 11-24 including a contract laborer for the facility.

11-25 (b) An employee has a cause of action against a facility,  
 11-26 the owner or operator of the facility, or another employee of the  
 11-27 facility that suspends or terminates the employment of the employee  
 11-28 or otherwise disciplines, discriminates against, or retaliates  
 11-29 against the employee for:

11-30 (1) reporting to the employee's supervisor, the  
 11-31 facility owner or operator, a state regulatory agency, or a law  
 11-32 enforcement agency a violation of law, including a violation of  
 11-33 this chapter or a rule adopted under this chapter; or

11-34 (2) initiating or cooperating in any investigation or  
 11-35 proceeding of a governmental entity relating to the services or  
 11-36 conditions at the facility.

11-37 (c) A plaintiff who prevails in a suit under this section  
 11-38 may recover:

11-39 (1) the greater of \$1,000 or actual damages, including  
 11-40 damages for:

11-41 (A) mental anguish, even if an injury other than  
 11-42 mental anguish is not shown; and

11-43 (B) lost wages, if the petitioner's employment  
 11-44 was suspended or terminated;

11-45 (2) exemplary damages;

11-46 (3) court costs; and

11-47 (4) reasonable attorney's fees.

11-48 (d) In addition to the amounts that may be recovered under  
 11-49 Subsection (c), a person whose employment is suspended or  
 11-50 terminated is entitled to appropriate injunctive relief,  
 11-51 including, if applicable:

11-52 (1) reinstatement in the person's former position; and

11-53 (2) reinstatement of lost fringe benefits or seniority  
 11-54 rights.

11-55 (e) The petitioner, not later than the 90th day after the  
 11-56 date on which the person's employment is suspended or terminated,  
 11-57 must bring suit or notify the Texas Workforce Commission of the  
 11-58 petitioner's intent to sue under this section. A petitioner who  
 11-59 notifies the Texas Workforce Commission under this subsection must  
 11-60 bring suit not later than the 90th day after the date of the  
 11-61 delivery of the notice to the commission. On receipt of the notice,  
 11-62 the commission shall notify the facility of the petitioner's intent  
 11-63 to bring suit under this section.

11-64 (f) The petitioner has the burden of proof, except that  
 11-65 there is a rebuttable presumption that the person's employment was  
 11-66 suspended or terminated for reporting abuse or neglect if the  
 11-67 person is suspended or terminated within 60 days after the date on  
 11-68 which the person reported in good faith.

11-69 (g) A suit under this section may be brought in the district

12-1 court of the county in which:

- 12-2 (1) the plaintiff resides;
- 12-3 (2) the plaintiff was employed by the defendant; or
- 12-4 (3) the defendant conducts business.

12-5 (h) Each facility shall require each employee of the  
 12-6 facility, as a condition of employment with the facility, to sign a  
 12-7 statement that the employee understands the employee's rights under  
 12-8 this section. The statement must be part of the statement required  
 12-9 under Section 254.121(b).

12-10 Sec. 254.132. SUIT FOR RETALIATION AGAINST VOLUNTEER,  
 12-11 RESIDENT, OR FAMILY MEMBER OR GUARDIAN OF RESIDENT. (a) A facility  
 12-12 may not retaliate or discriminate against a volunteer, a resident,  
 12-13 or a family member or guardian of a resident because the volunteer,  
 12-14 the resident, the resident's family member or guardian, or any  
 12-15 other person:

- 12-16 (1) makes a complaint or files a grievance concerning  
 12-17 the facility;
- 12-18 (2) reports a violation of law, including a violation  
 12-19 of this chapter or a rule adopted under this chapter; or
- 12-20 (3) initiates or cooperates in an investigation or  
 12-21 proceeding of a governmental entity relating to the services or  
 12-22 conditions at the facility.

12-23 (b) A volunteer, a resident, or a family member or guardian  
 12-24 of a resident against whom a facility retaliates or discriminates  
 12-25 in violation of Subsection (a) is entitled to sue for:

- 12-26 (1) injunctive relief;
- 12-27 (2) the greater of \$1,000 or actual damages, including  
 12-28 damages for mental anguish, even if an injury other than mental  
 12-29 anguish is not shown;
- 12-30 (3) exemplary damages;
- 12-31 (4) court costs; and
- 12-32 (5) reasonable attorney's fees.

12-33 (c) A volunteer, a resident, or a family member or guardian  
 12-34 of a resident who seeks relief under this section must report the  
 12-35 alleged violation not later than the 180th day after the date on  
 12-36 which the alleged violation of this section occurred or was  
 12-37 discovered by the volunteer, the resident, or the family member or  
 12-38 guardian of the resident through reasonable diligence.

12-39 (d) A suit under this section may be brought in the district  
 12-40 court of the county in which the facility is located or in a  
 12-41 district court of Travis County.

12-42 [Sections 254.133-254.150 reserved for expansion]

12-43 SUBCHAPTER G. REPORTING RESIDENT DEATHS

12-44 Sec. 254.151. REPORTS RELATING TO RESIDENT DEATHS;  
 12-45 STATISTICAL INFORMATION. (a) A facility licensed under this  
 12-46 chapter shall submit a report to the department concerning the  
 12-47 death of:

- 12-48 (1) a facility resident; and
- 12-49 (2) a former resident that occurs 24 hours or less  
 12-50 after the former resident is transferred from the facility to a  
 12-51 hospital.

12-52 (b) The report must be submitted not later than the 10th  
 12-53 working day after the last day of each month in which a resident  
 12-54 dies. The facility must make the report on a form prescribed by the  
 12-55 department. The report must contain the name and social security  
 12-56 number of the deceased.

12-57 (c) The department shall correlate reports under this  
 12-58 section with death certificate information to develop data relating  
 12-59 to the:

- 12-60 (1) name and age of the deceased;
- 12-61 (2) official cause of death listed on the death  
 12-62 certificate;
- 12-63 (3) date, time, and place of death; and
- 12-64 (4) name and address of the facility in which the  
 12-65 deceased resided.

12-66 (d) Unless specified by executive commissioner rule, a  
 12-67 record under this section is confidential and not subject to the  
 12-68 provisions of Chapter 552, Government Code.

12-69 (e) The department shall develop statistical information on

official causes of death to determine patterns and trends of incidents of death among elderly persons and disabled persons and related conditions and in specific facilities. Information developed under this subsection is not confidential.

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

[Sections 254.152-254.170 reserved for expansion]

SUBCHAPTER H. MEDICAL CARE

Sec. 254.171. ADMINISTRATION OF MEDICATION. (a) A facility may not administer medication to a resident of the facility, except that a facility may provide assistance to a resident in self-administering medication, including the provision of:

(1) a secure and safe means of storage for the medication;

(2) scheduled times and doses for self-administration of medication; and

(3) assistance in requesting and obtaining new or refilled prescriptions from an authorized health care provider.

(b) As a part of the facility's initial and renewal license application, the facility shall submit a description of the type of assistance with self-administration of medication provided by the facility to residents. A facility may not provide any assistance with self-administration of medication that has not been approved by the department during the licensing or renewal process.

(c) The facility shall provide the description of the type of assistance with self-administration of medication provided by the facility to residents to a person performing an inspection of the facility under this chapter.

[Sections 254.172-254.180 reserved for expansion]

SUBCHAPTER I. REQUIRED REPORTING

Sec. 254.181. LEGISLATIVE REPORT. The department shall include in the department's biennial report to the legislature information regarding:

(1) the number of:

(A) license applications received under this chapter;

(B) license applications granted under this chapter;

(C) facility closures, including closures required by the department because of violations of this chapter and voluntary closures; and

(D) investigations of facilities licensed under this chapter related to alleged abuse, neglect, or exploitation of a resident; and

(2) a description of any penalties against a facility licensed under this chapter resulting from a department investigation.

SECTION 4. 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.

SECTION 5. The executive commissioner of the Health and Human Services Commission and the Department of Aging and Disability Services are required to implement and enforce Sections 2 and 3 of this Act only if the legislature appropriates money specifically for that purpose. The executive commissioner of the Health and Human Services Commission and the Department of Aging and Disability Services may, but are not required to, implement and enforce Sections 2 and 3 of this Act using other appropriations available for that purpose.

SECTION 6. This Act takes effect September 1, 2007.

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