

AN ACT

relating to the additional exit conference required following inspection, survey, or investigation of, and the temporary change of ownership licenses for, certain facilities.

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

SECTION 1. Section 142.009, Health and Safety Code, is amended by amending Subsections (f) and (g) and adding Subsection (g-1) to read as follows:

(f) At the conclusion of a survey or complaint investigation, the ~~[The]~~ department shall fully inform the person who is in charge of the home and community support services agency of the preliminary findings of the survey at an exit conference and shall give the person a reasonable opportunity to submit additional facts or other information to the department's authorized representative in response to those findings. The response shall be made a part of the record of the survey for all purposes. The department's representative shall leave a written list of the preliminary findings with the agency at the exit conference.

(g) After a survey of a home and community support services agency by the department, the department shall provide to the chief executive officer of the agency:

(1) specific and timely written notice of the official ~~[preliminary]~~ findings of the survey, including:

(A) the specific nature of the survey;

1 (B) any alleged violations of a specific statute
2 or rule;

3 (C) the specific nature of any finding regarding
4 an alleged violation or deficiency; and

5 (D) if a deficiency is alleged, the severity of
6 the deficiency;

7 (2) information on the identity, including the
8 signature, of each department representative conducting,
9 reviewing, or approving the results of the survey and the date on
10 which the department representative acted on the matter; and

11 (3) if requested by the agency, copies of all
12 documents relating to the survey maintained by the department or
13 provided by the department to any other state or federal agency that
14 are not confidential under state law.

15 (g-1) If the department or the department's authorized
16 representative discovers any additional violations during the
17 review of field notes or preparation of the official statement of
18 deficiencies for a home and community support services agency, the
19 department or the department's representative shall conduct an
20 additional exit conference regarding the additional violations.
21 The additional exit conference must be held in person and may not be
22 held over the telephone, by e-mail, or by facsimile transmission.

23 SECTION 2. Section 242.0336, Health and Safety Code, is
24 amended by amending Subsections (a) and (c) through (g) and adding
25 Subsections (b-1) through (b-5), (c-1), and (d-1) to read as
26 follows:

27 (a) For purposes of this section, a temporary change of

1 ownership license is a temporary 90-day license issued to an
2 applicant who proposes to become the new operator of an institution
3 existing on the date the application is filed.

4 (b-1) Except as provided by Subsection (b-2), the
5 department may not issue a temporary change of ownership license
6 before the 31st day after the date the department has received both:

7 (1) the application for the license; and

8 (2) notification, in writing, of the intent of the
9 institution's existing license holder to transfer operation of the
10 institution to the applicant beginning on a date specified by the
11 applicant.

12 (b-2) Notwithstanding Section 242.0335, the department
13 shall establish criteria under which the department may waive the
14 30-day requirement or the notification requirement of Subsection
15 (b-1). The criteria may include the occurrence of forcible entry
16 and detainer, death, or divorce or other events that affect the
17 ownership of the institution by the existing license holder.

18 (b-3) After receipt of an application or written
19 notification described by Subsection (b-1), the department may
20 place a hold on payments to the existing license holder in an amount
21 not to exceed the average of the monthly vendor payments paid to the
22 facility, as determined by the department. The department shall
23 release funds to the previous license holder not later than the
24 120th day after the date on which the final reporting requirements
25 are met and any resulting informal reviews or formal appeals are
26 resolved. The department may reduce the amount of funds released to
27 the previous license holder by the amount owed to the department or

1 the Health and Human Services Commission under the previous license
2 holder's Medicaid contract or license.

3 (b-4) The executive commissioner of the Health and Human
4 Services Commission shall adopt rules for the department that
5 define a change of ownership. In adopting the rules, the executive
6 commissioner shall consider:

7 (1) the proportion of ownership interest that is being
8 transferred to another person;

9 (2) the addition or removal of a stockholder, partner,
10 owner, or other controlling person;

11 (3) the reorganization of the license holder into a
12 different type of business entity; and

13 (4) the death or incapacity of a stockholder, partner,
14 or owner.

15 (b-5) The executive commissioner may adopt rules for the
16 department that require a license holder to notify the department
17 of any change, including a change that is not a change of ownership,
18 as that term is defined by rules adopted under Subsection (b-4).
19 Nothing in this section prevents the department from acting under
20 Section 242.061 or any other provision of this chapter.

21 (c) The department shall issue or deny a temporary change of
22 ownership license not later than the 31st [~~30th~~] day after the date
23 of receipt of the completed application. The effective date of a
24 temporary change of ownership license issued under this section is
25 the date requested in the application unless:

26 (1) the department does not receive the application
27 and written notification described by Subsection (b-1) at least 30

1 days before that date; and

2 (2) no waiver under Subsection (b-2) applies.

3 (c-1) If the department does not receive the application and
4 written notification required by Subsection (b-1) at least 30 days
5 before the effective date requested in the application and
6 Subsection (b-2) does not apply, the effective date of the
7 temporary change of ownership license is the 31st day after the date
8 the department receives both the application and the notification.

9 (d) Except as provided in Subsection (d-1), after [~~After~~]
10 the department issues a temporary change of ownership license to
11 the applicant, the department shall conduct an inspection or survey
12 of the nursing facility under Section 242.043 as soon as reasonably
13 possible. During the period between the issuance of the temporary
14 license and the inspection or survey of the nursing facility or desk
15 review under Subsection (d-1), the department may not place a hold
16 on vendor payments to the temporary license holder.

17 (d-1) The department shall establish criteria under which a
18 desk review of the facility's compliance with applicable
19 requirements may be substituted for the on-site inspection or
20 survey under Subsection (d).

21 (e) After conducting an inspection or survey under
22 Subsection (d) or a desk review under Subsection (d-1), the
23 department shall issue a license under Section 242.033 to the
24 temporary change of ownership license holder if the nursing
25 facility passes the desk review, inspection, or survey and the
26 applicant meets the requirements of Section 242.033. If the
27 nursing facility fails to pass the desk review, inspection, or

1 survey or the applicant fails to meet the requirements of Section
2 242.033, the department may:

3 (1) place a hold on vendor payments to the temporary
4 change of ownership license holder; and

5 (2) take any other action authorized under this
6 chapter.

7 (f) If the applicant meets the requirements of Section
8 242.033 and the nursing facility passes a desk review, ~~[an]~~ initial
9 inspection, or ~~[a]~~ subsequent inspection before the temporary
10 change of ownership license expires, the license issued under
11 Section 242.033 is considered effective on the date the department
12 determines under Subsection (c) or (c-1) ~~[requested in the~~
13 ~~application for a temporary change of ownership]~~.

14 (g) A temporary change of ownership license issued under
15 Subsection (b) expires on the 90th ~~[91st]~~ day after the effective
16 date established under Subsection (c) or (c-1) ~~[date the license~~
17 ~~was issued]~~.

18 SECTION 3. Subsections (b) and (c), Section 242.0445,
19 Health and Safety Code, are amended to read as follows:

20 (b) At the conclusion of an inspection, survey, or
21 investigation under Section 242.043 or 242.044, the department or
22 the department's representative conducting the inspection, survey,
23 or investigation shall discuss the violations with the facility's
24 management in an exit conference. The department or the
25 department's representative shall leave a written list of the
26 violations with the facility at the time of the exit conference. If
27 the department or the department's representative discovers any

1 additional violations during the review of field notes or
2 preparation of the official final list, the department or the
3 department's representative shall give the facility an additional
4 exit conference regarding the additional violations. An additional
5 exit conference must be held in person and may not be held by
6 telephone, e-mail, or facsimile transmission.

7 (c) The facility shall submit a plan to correct the
8 violations to the regional director not later than the 10th working
9 day after the date the facility receives the final official
10 statement of violations.

11 SECTION 4. Section 247.0271, Health and Safety Code, is
12 amended by amending Subsection (c) and adding Subsection (d) to
13 read as follows:

14 (c) If, after the initial exit conference, additional
15 violations are cited, the inspector shall conduct an additional
16 exit conference regarding the newly identified violations. An
17 additional exit conference must be held in person and may not be
18 held by telephone, e-mail, or facsimile transmission.

19 (d) The assisted living facility shall submit a plan of
20 correction to the regional director with supervisory authority over
21 the inspector not later than the 10th working day after the date the
22 facility receives the final official statement of violations.

23 SECTION 5. Section 247.050, Health and Safety Code, is
24 amended by adding Subsection (d) to read as follows:

25 (d) The department shall permanently retain at least one
26 copy or one electronic source of information pertaining to
27 complaints and investigations of unlicensed assisted living

1 facilities used to maintain a registry as required under Subsection
2 (a)(1) and used to prepare a report under Subsection (a)(2).

3 SECTION 6. Subsections (b) and (c), Section 252.044, Health
4 and Safety Code, are amended to read as follows:

5 (b) At the conclusion of an inspection, survey, or
6 investigation under this chapter, the department or the
7 department's representative conducting the inspection, survey, or
8 investigation shall discuss the violations with the facility's
9 management in an exit conference. The department or the
10 department's representative shall leave a written list of the
11 violations with the facility and the person designated by the
12 facility to receive notice under Section 252.066 at the time of the
13 exit conference. If the department or the department's
14 representative discovers any additional violations during the
15 review of field notes or preparation of the official final list, the
16 department or the department's representative shall give the
17 facility an additional exit conference regarding the additional
18 violations. An additional exit conference must be held in person
19 and may not be held by telephone, e-mail, or facsimile
20 transmission.

21 (c) The facility shall submit a plan to correct the
22 violations to the regional director not later than the 10th working
23 day after the date the facility receives the final official
24 statement of violations.

25 SECTION 7. (a) As soon as practicable after the effective
26 date of this Act, the executive commissioner of the Health and Human
27 Services Commission shall adopt the rules required by Section

1 242.0336, Health and Safety Code, as amended by this Act.

2 (b) The changes in law made by this Act to Section 242.0336,
3 Health and Safety Code, apply only to a temporary change of
4 ownership license application received by the Department of Aging
5 and Disability Services on or after September 1, 2007. An
6 application received by the department before September 1, 2007, is
7 governed by the law in effect at the time the application is
8 received, and the former law is continued in effect for that
9 purpose.

10 SECTION 8. This Act takes effect September 1, 2007.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 344 passed the Senate on March 28, 2007, by the following vote: Yeas 30, Nays 0; May 21, 2007, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 22, 2007, House granted request of the Senate; May 26, 2007, Senate adopted Conference Committee Report by the following vote: Yeas 30, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 344 passed the House, with amendments, on May 15, 2007, by the following vote: Yeas 139, Nays 0, two present not voting; May 22, 2007, House granted request of the Senate for appointment of Conference Committee; May 27, 2007, House adopted Conference Committee Report by the following vote: Yeas 143, Nays 0, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor