

AN ACT

relating to the regulation of adult day-care facilities and certain long-term care facilities, including the establishment of late fees and changes to administrative penalties, and relating to the office of the state long-term care ombudsman.

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

SECTION 1. Subsection (m), Section 32.021, Human Resources Code, is amended to read as follows:

(m) Notwithstanding any provision of law to the contrary, the department shall terminate a nursing facility's provider agreement if the department has imposed required Category 2 or Category 3 remedies on the facility three times within a 24-month period. The executive commissioner of the Health and Human Services Commission by rule shall establish criteria under which the requirement to terminate the provider agreement may be waived ~~[unless the department makes an affirmative finding that good cause exists to waive this requirement to facilitate a change in ownership to protect residents of a facility]~~. In this subsection, "Category 2 remedies" and "Category 3 remedies" have the meanings assigned by 42 C.F.R. Section 488.408.

SECTION 2. Subdivision (2), Section 101.051, Human Resources Code, is amended to read as follows:

(2) "Long-term care facility" means a facility that serves persons who are 60 years of age or older and that is licensed

1 or regulated or that is required to be licensed or regulated by the  
2 [~~Texas~~] Department of Aging and Disability [~~Human~~] Services under  
3 Chapter 242 or 247, Health and Safety Code.

4 SECTION 3. Subsection (b), Section 103.006, Human  
5 Resources Code, is amended to read as follows:

6 (b) The license expires two years [~~one year~~] from the date  
7 of its issuance. The executive commissioner of the Health and Human  
8 Services Commission by rule may adopt a system under which licenses  
9 expire on various dates during the two-year period. For the year in  
10 which a license expiration date is changed, the department shall  
11 prorate the license fee on a monthly basis. Each license holder  
12 shall pay only that portion of the license fee allocable to the  
13 number of months for which the license is valid. A license holder  
14 shall pay the total license renewal fee at the time of renewal.

15 SECTION 4. Section 103.007, Human Resources Code, is  
16 amended by amending Subsections (a) and (c) and adding Subsection  
17 (d) to read as follows:

18 (a) An applicant for a license to operate an adult day-care  
19 facility must file an application on a form prescribed by the  
20 department together with a license fee of \$50 [~~\$25~~].

21 (c) A person who operates a facility that is licensed under  
22 this chapter must file an application for a renewal license not  
23 later than the 45th day before the expiration date of the current  
24 license on a form prescribed by the department together with a  
25 renewal fee of \$50 [~~\$25~~].

26 (d) An applicant for a license renewal who submits an  
27 application later than the 45th day before the expiration date of

1 the license is subject to a late fee in accordance with department  
2 rules.

3 SECTION 5. Subsection (b), Section 142.006, Health and  
4 Safety Code, is amended to read as follows:

5 (b) A license issued under this chapter expires two years  
6 ~~[one year]~~ after the date of issuance. The executive commissioner  
7 of the Health and Human Services Commission by rule may adopt a  
8 system under which licenses expire on various dates during the  
9 two-year period. For the year in which a license expiration date is  
10 changed, the department shall prorate the license fee on a monthly  
11 basis. Each license holder shall pay only that portion of the  
12 license fee allocable to the number of months for which the license  
13 is valid. A license holder shall pay the total license renewal fee  
14 at the time of renewal. The department may issue an initial license  
15 for a shorter term ~~[of less than one year]~~ to conform expiration  
16 dates for a locality or an applicant. The department~~[, in~~  
17 ~~accordance with board rules,~~] may issue a temporary license to an  
18 applicant for an initial license.

19 SECTION 6. Subsection (c), Section 142.009, Health and  
20 Safety Code, is amended to read as follows:

21 (c) The department or its authorized representative shall  
22 investigate each complaint received regarding the provision of home  
23 health, hospice, or personal assistance services, including any  
24 allegation of abuse, neglect, or exploitation of a child under the  
25 age of 18, and may, as a part of the investigation:

26 (1) conduct an unannounced survey of a place of  
27 business, including an inspection of medical and personnel records,

1 if the department has reasonable cause to believe that the place of  
2 business is in violation of this chapter or a rule adopted under  
3 this chapter;

4 (2) conduct an interview with a recipient of home  
5 health, hospice, or personal assistance services, which may be  
6 conducted in the recipient's home if the recipient consents;

7 (3) conduct an interview with a family member of a  
8 recipient of home health, hospice, or personal assistance services  
9 who is deceased or other person who may have knowledge of the care  
10 received by the deceased recipient of the home health, hospice, or  
11 personal assistance services; or

12 (4) interview a physician or other health care  
13 practitioner, including a member of the personnel of a home and  
14 community support services agency, who cares for a recipient of  
15 home health, hospice, or personal assistance services.

16 SECTION 7. Subsection (a), Section 142.010, Health and  
17 Safety Code, is amended to read as follows:

18 (a) The department [~~board~~] shall set license fees for home  
19 and community support services agencies in amounts that are  
20 reasonable to meet the costs of administering this chapter, except  
21 that the fees may not be less than \$600 [~~\$300~~] or more than \$2,000  
22 [~~\$1,000~~] for a license to provide home health, hospice, or personal  
23 assistance services.

24 SECTION 8. Section 142.0105, Health and Safety Code, is  
25 amended to read as follows:

26 Sec. 142.0105. LICENSE RENEWAL. (a) A person who is  
27 otherwise eligible to renew a license may renew an unexpired

1 license by submitting a completed application for renewal and  
2 paying the required renewal fee to the department not later than the  
3 45th day before the expiration date of the license. A person whose  
4 license has expired may not engage in activities that require a  
5 license [~~until the license has been renewed~~].

6 (b) An applicant for a license renewal who submits an  
7 application later than the 45th day before the expiration date of  
8 the license is subject to a late fee in accordance with department  
9 rules [~~A person whose license has been expired for 90 days or less~~  
10 ~~may renew the license by paying to the department a renewal fee that~~  
11 ~~is equal to 1-1/2 times the normally required renewal fee~~].

12 (c) [~~A person whose license has been expired for more than~~  
13 ~~90 days may obtain a new license by complying with the requirements~~  
14 ~~and procedures for obtaining an original license.~~

15 [~~(d)~~] Not later than the 120th [~~60th~~] day before the date a  
16 person's license is scheduled to expire, the department shall send  
17 written notice of the impending expiration to the person at the  
18 person's last known address according to the records of the  
19 department. The written notice must include an application for  
20 license renewal and instructions for completing the application.

21 SECTION 9. Section 142.017, Health and Safety Code, is  
22 amended by amending Subsection (e) and adding Subsection (j) to  
23 read as follows:

24 (e) Except as provided by Subsection (j), the [~~The~~]  
25 department by rule shall provide the home and community support  
26 services agency with a reasonable period of time following the  
27 first day of a violation to correct the violation before assessing

1 an administrative penalty if a plan of correction has been  
2 implemented.

3 (j) The department may assess an administrative penalty  
4 without providing a reasonable period of time to the agency to  
5 correct the violation if the violation:

6 (1) results in serious harm or death;

7 (2) constitutes a serious threat to health or safety;

8 (3) substantially limits the agency's capacity to  
9 provide care;

10 (4) is a violation in which a person:

11 (A) makes a false statement, that the person  
12 knows or should know is false, of a material fact:

13 (i) on an application for issuance or  
14 renewal of a license or in an attachment to the application; or

15 (ii) with respect to a matter under  
16 investigation by the department;

17 (B) refuses to allow a representative of the  
18 department to inspect a book, record, or file required to be  
19 maintained by an agency;

20 (C) wilfully interferes with the work of a  
21 representative of the department or the enforcement of this  
22 chapter;

23 (D) wilfully interferes with a representative of  
24 the department preserving evidence of a violation of this chapter  
25 or a rule, standard, or order adopted or license issued under this  
26 chapter;

27 (E) fails to pay a penalty assessed by the

1 department under this chapter not later than the 10th day after the  
2 date the assessment of the penalty becomes final; or

3 (F) fails to submit:

4 (i) a plan of correction not later than the  
5 10th day after the date the person receives a statement of licensing  
6 violations; or

7 (ii) an acceptable plan of correction not  
8 later than the 30th day after the date the person receives  
9 notification from the department that the previously submitted plan  
10 of correction is not acceptable;

11 (5) is a violation of Section 142.0145; or

12 (6) involves the rights of the elderly under Chapter  
13 102, Human Resources Code.

14 SECTION 10. Section 242.032, Health and Safety Code, is  
15 amended by adding Subsection (f) to read as follows:

16 (f) Information obtained under this section regarding an  
17 applicant's or license holder's financial condition is confidential  
18 and may not be disclosed to the public.

19 SECTION 11. Section 242.034, Health and Safety Code, is  
20 amended by adding Subsection (i) to read as follows:

21 (i) An applicant for license renewal who submits an  
22 application later than the 45th day before the expiration date of a  
23 current license is subject to a late fee in accordance with  
24 department rules.

25 SECTION 12. Subsection (a), Section 242.066, Health and  
26 Safety Code, is amended to read as follows:

27 (a) The department may assess an administrative penalty

1 against a person who:

2 (1) violates this chapter or a rule, standard, or  
3 order adopted or license issued under this chapter;

4 (2) makes a false statement, that the person knows or  
5 should know is false, of a material fact:

6 (A) on an application for issuance or renewal of  
7 a license or in an attachment to the application; or

8 (B) with respect to a matter under investigation  
9 by the department;

10 (3) refuses to allow a representative of the  
11 department to inspect:

12 (A) a book, record, or file required to be  
13 maintained by an institution; or

14 (B) any portion of the premises of an  
15 institution;

16 (4) wilfully interferes with the work of a  
17 representative of the department or the enforcement of this  
18 chapter;

19 (5) wilfully interferes with a representative of the  
20 department preserving evidence of a violation of this chapter or a  
21 rule, standard, or order adopted or license issued under this  
22 chapter; ~~or~~

23 (6) fails to pay a penalty assessed by the department  
24 under this chapter not later than the 10th day after the date the  
25 assessment of the penalty becomes final; or

26 (7) fails to notify the department of a change of  
27 ownership before the effective date of the change of ownership.



1 SECTION 13. Subsection (b), Section 242.0665, Health and  
2 Safety Code, is amended to read as follows:

3 (b) Subsection (a) does not apply:

4 (1) to a violation that the department determines:

5 (A) results in serious harm to or death of a  
6 resident;

7 (B) constitutes a serious threat to the health or  
8 safety of a resident; or

9 (C) substantially limits the institution's  
10 capacity to provide care;

11 (2) to a violation described by Sections  
12 242.066(a)(2)-(7) [~~242.066(a)(2)-(6)~~];

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

14 (4) to a violation of a right of a resident adopted  
15 under Subchapter L.

16 SECTION 14. Subsections (a) and (b), Section 247.023,  
17 Health and Safety Code, are amended to read as follows:

18 (a) The department shall issue a license if, after  
19 inspection and investigation, it finds that the applicant, the  
20 assisted living facility, and all controlling persons with respect  
21 to the applicant or facility meet the requirements of this chapter  
22 and the standards adopted under this chapter. The license expires  
23 on the second anniversary of the date of its issuance. The  
24 executive commissioner of the Health and Human Services Commission  
25 by rule may adopt a system under which licenses expire on various  
26 dates during the two-year period. For the year in which a license  
27 expiration date is changed, the department shall prorate the

1 license fee on a monthly basis. Each license holder shall pay only  
2 that portion of the license fee allocable to the number of months  
3 during which the license is valid. A license holder shall pay the  
4 total license renewal fee at the time of renewal.

5 (b) To renew a license, the license holder must submit to  
6 the department the [~~annual~~] license renewal fee.

7 SECTION 15. Section 247.024, Health and Safety Code, is  
8 amended by amending Subsection (a) and adding Subsection (e) to  
9 read as follows:

10 (a) The department [~~board~~] shall set license fees imposed by  
11 this chapter:

12 (1) on the basis of the number of beds in assisted  
13 living facilities required to pay the fee; and

14 (2) in amounts reasonable and necessary to defray the  
15 cost of administering this chapter, but not to exceed \$1,500  
16 [~~\$750~~].

17 (e) An applicant who submits a license renewal later than  
18 the 45th day before the expiration date of a current license is  
19 subject to a late fee in accordance with department rules.

20 SECTION 16. Subsection (a), Section 247.0451, Health and  
21 Safety Code, is amended to read as follows:

22 (a) The department may assess an administrative penalty  
23 against a person who:

24 (1) violates this chapter or a rule, standard, or  
25 order adopted under this chapter or a term of a license issued under  
26 this chapter;

27 (2) makes a false statement, that the person knows or

1 should know is false, of a material fact:

2 (A) on an application for issuance or renewal of  
3 a license or in an attachment to the application; or

4 (B) with respect to a matter under investigation  
5 by the department;

6 (3) refuses to allow a representative of the  
7 department to inspect:

8 (A) a book, record, or file required to be  
9 maintained by an assisted living facility; or

10 (B) any portion of the premises of an assisted  
11 living facility;

12 (4) wilfully interferes with the work of a  
13 representative of the department or the enforcement of this  
14 chapter;

15 (5) wilfully interferes with a representative of the  
16 department preserving evidence of a violation of this chapter or a  
17 rule, standard, or order adopted under this chapter or a term of a  
18 license issued under this chapter; ~~or~~

19 (6) fails to pay a penalty assessed under this chapter  
20 not later than the 30th day after the date the assessment of the  
21 penalty becomes final; or

22 (7) fails to notify the department of a change of  
23 ownership before the effective date of the change of ownership.

24 SECTION 17. Subsection (b), Section 247.0452, Health and  
25 Safety Code, is amended to read as follows:

26 (b) Subsection (a) does not apply:

27 (1) to a violation that the department determines

1 results in serious harm to or death of a resident;

2 (2) to a violation described by Sections  
3 247.0451(a)(2)-(7) [~~247.0451(a)(2)-(6)~~];

4 (3) to a second or subsequent violation of:

5 (A) a right of the same resident under Section  
6 247.064; or

7 (B) the same right of all residents under Section  
8 247.064; or

9 (4) to a violation described by Section 247.066, which  
10 contains its own right to correct provisions.

11 SECTION 18. Section 247.069, Health and Safety Code, is  
12 amended to read as follows:

13 Sec. 247.069. CONSUMER CHOICE FOR ASSISTED LIVING IN  
14 COMMUNITY CARE PROGRAMS. The community based alternatives program  
15 and the residential care programs, which provide an assisted living  
16 option to consumers, shall provide a consumer the opportunity to  
17 choose an assisted living facility that meets the department's  
18 licensing standards relating to facility construction without  
19 regard to the number of units in the facility, if[+]

20 [~~(1)~~] consumers are advised of all other community  
21 care options[~~, and~~

22 [~~(2) the facility:~~

23 [~~(A) has never been licensed by the department as~~  
24 ~~anything other than an assisted living facility,~~

25 [~~(B) is not physically connected to a skilled~~  
26 ~~nursing facility,~~

27 [~~(C) was constructed before September 1, 2005,~~

1 ~~and~~

2  ~~[(D) otherwise meets all other community care~~  
3  ~~program standards].~~

4 SECTION 19. Section 252.034, Health and Safety Code, is  
5 amended by adding Subsection (f) to read as follows:

6 (f) An applicant who submits an application for license  
7 renewal later than the 45th day before the expiration date of a  
8 current license is subject to a late fee in accordance with  
9 department rules.

10 SECTION 20. Subsections (a) and (e), Section 252.065,  
11 Health and Safety Code, are amended to read as follows:

12 (a) The department may assess an administrative penalty  
13 against a person who:

14 (1) violates this chapter or a rule, standard, or  
15 order adopted or license issued under this chapter;

16 (2) makes a false statement, that the person knows or  
17 should know is false, of a material fact:

18 (A) on an application for issuance or renewal of  
19 a license or in an attachment to the application; or

20 (B) with respect to a matter under investigation  
21 by the department;

22 (3) refuses to allow a representative of the  
23 department to inspect:

24 (A) a book, record, or file required to be  
25 maintained by the institution; or

26 (B) any portion of the premises of an  
27 institution;

1           (4) wilfully interferes with the work of a  
2 representative of the department or the enforcement of this  
3 chapter;

4           (5) wilfully interferes with a representative of the  
5 department preserving evidence of a violation of this chapter or a  
6 rule, standard, or order adopted or license issued under this  
7 chapter;

8           (6) fails to pay a penalty assessed by the department  
9 under this chapter not later than the 10th day after the date the  
10 assessment of the penalty becomes final;

11           (7) fails to submit a plan of correction within 10 days  
12 after receiving a statement of licensing violations; or

13           (8) fails to notify the department of a change in  
14 ownership before the effective date of that change of ownership  
15 [~~facility that violates this chapter or a rule adopted under this~~  
16 ~~chapter~~].

17           (e) The department by rule shall provide the facility with a  
18 reasonable period of time, not less than 45 days, following the  
19 first day of a violation to correct the violation before assessing  
20 an administrative penalty if a plan of correction has been  
21 implemented. This subsection does not apply to a violation  
22 described by Subsections (a)(2)-(8) or to a violation that the  
23 department determines:

24           (1) has resulted in serious harm to or the death of a  
25 resident;

26           (2) [~~or~~] constitutes a serious threat to the health or  
27 safety of a resident; or

1           (3) substantially limits the institution's capacity to  
2 provide care.

3           SECTION 21. Subdivision (4), Section 253.001, Health and  
4 Safety Code, is amended to read as follows:

5           (4) "Facility" means:

6                   (A) a facility licensed by the department; ~~[or]~~

7                   (B) an adult foster care provider that contracts  
8 with the department; or

9                   (C) a home and community support services agency  
10 licensed by the department under Chapter 142.

11           SECTION 22. Section 253.008, Health and Safety Code, is  
12 amended to read as follows:

13           Sec. 253.008. VERIFICATION OF EMPLOYABILITY. (a) Before a  
14 facility~~[, an agency licensed under Chapter 142,]~~ or a person  
15 exempt from licensing under Section 142.003(a)(19) may hire an  
16 employee, the facility~~[, agency,]~~ or person shall search the  
17 employee misconduct registry under this chapter and the nurse aide  
18 registry maintained under the Omnibus Budget Reconciliation Act of  
19 1987 (Pub. L. No. 100-203) to determine whether the applicant for  
20 employment is designated in either registry as having abused,  
21 neglected, or exploited a resident or consumer of a facility or an  
22 individual receiving services from a facility ~~[an agency licensed~~  
23 ~~under Chapter 142]~~ or from a person exempt from licensing under  
24 Section 142.003(a)(19).

25           (b) A facility~~[, agency licensed under Chapter 142,]~~ or a  
26 person exempt from licensing under Section 142.003(a)(19) may not  
27 employ a person who is listed in either registry as having abused,

1 neglected, or exploited a resident or consumer of a facility or an  
2 individual receiving services from a facility [~~an agency licensed~~  
3 ~~under Chapter 142~~] or from a person exempt from licensing under  
4 Section 142.003(a)(19).

5 SECTION 23. Subsection (a), Section 253.009, Health and  
6 Safety Code, is amended to read as follows:

7 (a) Each facility [~~each agency licensed under Chapter~~  
8 ~~142~~] and each person exempt from licensing under Section  
9 142.003(a)(19) shall notify its employees in a manner prescribed by  
10 the department:

- 11 (1) about the employee misconduct registry; and  
12 (2) that an employee may not be employed if the  
13 employee is listed in the registry.

14 SECTION 24. If before implementing any provision of this  
15 Act a state agency determines that a waiver or authorization from a  
16 federal agency is necessary for implementation of that provision,  
17 the agency affected by the provision shall request the waiver or  
18 authorization and may delay implementing that provision until the  
19 waiver or authorization is granted.

20 SECTION 25. (a) Except as provided by Subsection (b) of  
21 this section, this Act applies only to a license issued or renewed  
22 on or after September 1, 2007. A license issued or renewed before  
23 September 1, 2007, is governed by the law as it existed immediately  
24 before the effective date of this Act, and that law is continued in  
25 effect for that purpose.

26 (b) The changes in law made by this Act relating to the time  
27 for filing an application for a license renewal and the



1 applicability of a late fee to an application for a license renewal  
2 apply only to an application for a license renewal filed on or after  
3 November 1, 2007. An application for a license renewal filed before  
4 November 1, 2007, is governed by the law as it existed immediately  
5 before the effective date of this Act, and that law is continued in  
6 effect for that purpose.

7 SECTION 26. This Act takes effect September 1, 2007.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 1318 passed the Senate on April 26, 2007, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 17, 2007, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 1318 passed the House, with amendments, on May 11, 2007, by the following vote: Yeas 130, Nays 0, two present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor