

SENATE AMENDMENTS

2nd Printing

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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. Section 247.031, Health and Safety Code, is
amended to read as follows:

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

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

(2) establish a procedure for emergency closure of a
facility in circumstances in which:

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

(B) the continued operation of the facility
creates an immediate threat to the health and safety of a resident
of the facility.

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

Sec. 247.033. LISTING OF CERTAIN SMALL FACILITIES. (a) The
executive commissioner of the Health and Human Services Commission

1 by rule shall establish a system for listing each facility that:

2 (1) furnishes food, shelter, and personal care
3 services to three or fewer people who are unrelated to the
4 proprietor of the facility; and

5 (2) provides regular care to the residents of the
6 facility.

7 (b) A facility described by Subsection (a) shall list with
8 the department. A listing remains valid until surrendered.

9 (c) The department shall provide to a listed facility a copy
10 of the listing. A listing must contain a provision that states:
11 "THIS FACILITY IS NOT AN ASSISTED LIVING FACILITY. IT IS NOT
12 LICENSED OR REGISTERED WITH THE DEPARTMENT OF AGING AND DISABILITY
13 SERVICES. IT HAS NOT BEEN INSPECTED AND WILL NOT BE INSPECTED."
14 The operator of a listed facility is not required to display the
15 listing at the home but shall make the listing available for
16 examination.

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

22 (e) A facility required to list with the department under
23 this section is not otherwise subject to the standards,
24 requirements, or penalties of this chapter.

25 (b) Not later than January 1, 2008, the executive
26 commissioner of the Health and Human Services Commission shall
27 adopt the rules necessary to implement Section 247.033, Health and

Safety Code, as added by this section.

(c) Notwithstanding Section 247.033, Health and Safety Code, as added by this section, a facility is not required to list 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

1 proprietor of the establishment and that is not required to be
2 licensed under Chapter 142, 242, 246, 247, or 252.

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

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

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

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

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

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

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

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

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

27 (c) The department may coordinate its personnel and

1 facilities with a local agency of a municipality or county and may
2 provide advice to the municipality or county if the municipality or
3 county decides to supplement the state program with additional
4 rules required to meet local conditions.

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

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

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

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

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

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

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

2 (1) appropriations for the implementation and
3 administration of this subchapter;

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

5 (3) fees charged under this chapter; and

6 (4) penalties charged under this chapter.

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

8 (1) for the enforcement of this chapter;

9 (2) to provide programs and services for elderly
10 persons or disabled persons; or

11 (3) for transitional housing and case management
12 services.

13 (d) Section 403.095, Government Code, does not apply to the
14 account.

15 [Sections 254.008-254.030 reserved for expansion]

16 SUBCHAPTER B. LICENSING, FEES, AND INSPECTIONS

17 Sec. 254.031. LICENSE REQUIRED. A person, acting severally
18 or jointly with any other person, may not establish, conduct, or
19 maintain in this state a facility without a license issued under
20 this chapter.

21 Sec. 254.032. LICENSE APPLICATION. (a) An application for
22 a license is made to the department on a form provided by the
23 department and must be accompanied by the license fee adopted under
24 Section 254.034.

25 (b) The application must contain information that the
26 department requires. The department may require affirmative
27 evidence of ability to comply with the standards and rules adopted

1 under this chapter.

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

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

7 (1) the premises and persons named in the application;
8 and

9 (2) the maximum number of residents specified in the
10 application.

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

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

14 (1) an inspection;

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

16 (3) payment of the renewal fee.

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

21 (f) The executive commissioner by rule shall define
22 specific, appropriate, and objective criteria on which the
23 department may deny an initial license application or license
24 renewal or revoke a license.

25 Sec. 254.034. LICENSE FEES. (a) The executive
26 commissioner by rule may adopt a fee for a license issued under this
27 chapter in an amount reasonable and necessary to recover the costs

1 of administering this chapter.

2 (b) The license fee must be paid with each application for
3 an initial license or for a renewal or change of ownership of a
4 license.

5 (c) The executive commissioner may adopt an additional fee
6 for the approval of an increase in number of residents.

7 Sec. 254.035. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.

8 (a) The department, after providing notice and opportunity for a
9 hearing to the applicant or license holder, may deny, suspend, or
10 revoke a license if the department finds that the applicant or
11 license holder has substantially failed to comply with the
12 requirements established under this chapter.

13 (b) The status of an applicant for a license or of a license
14 holder is preserved until final disposition of the contested
15 matter, except as the court having jurisdiction of a judicial
16 review of the matter may order in the public interest for the
17 welfare and safety of the residents.

18 Sec. 254.036. MINIMUM STANDARDS. The executive
19 commissioner may adopt, publish, and enforce minimum standards
20 relating to:

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

25 (2) sanitary and related conditions in a facility and
26 its surroundings, including water supply, sewage disposal, food
27 handling, and general hygiene to ensure the residents' health,

1 safety, and comfort;

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

4 (4) the reporting and investigation of injuries,
5 incidents, and unusual accidents and the establishment of other
6 policies and procedures necessary to ensure resident safety;

7 (5) policies and procedures for the control of
8 communicable diseases;

9 (6) specialized nutrition support;

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

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

15 (9) the quality of life.

16 Sec. 254.037. REASONABLE TIME TO COMPLY. The executive
17 commissioner by rule shall give a facility that is in operation when
18 a rule or standard is adopted under this chapter a reasonable time
19 to comply with the rule or standard, not to exceed 12 months after
20 the date the rule or standard is adopted.

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

1 of submitted plans.

2 (b) The department shall, within 30 days, review plans
3 submitted under this section for compliance with architectural
4 requirements and inform the person in writing of the results of the
5 review. If the plans comply with the architectural requirements,
6 the architectural requirements applicable to the project may not
7 subsequently be changed unless:

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

9 (2) the person fails to complete the project within a
10 reasonable time.

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

13 (d) A fee collected under this section shall be deposited in
14 the elderly and disabled persons account under Section 254.007 and
15 may be appropriated only to the department to conduct reviews under
16 this section.

17 (e) The review procedure provided by this section must
18 include a review of building plans for compliance with the Texas
19 Accessibility Standards as administered and enforced.

20 Sec. 254.039. FIRE SAFETY REQUIREMENTS. (a) A facility
21 shall comply with fire safety requirements established under this
22 section.

23 (b) The executive commissioner by rule shall adopt the fire
24 safety standards applicable to the facility. The fire safety
25 standards must be the same as the fire safety standards established
26 by an edition of the Life Safety Code of the National Fire
27 Protection Association. If required by federal law or regulation,

1 the edition selected may be different for facilities or portions of
2 facilities operated or approved for construction at different
3 times.

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

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

12 Sec. 254.040. POSTING. Each facility shall prominently and
13 conspicuously post for display in a public area of the facility that
14 is readily available to residents, the operator, any employees, and
15 visitors:

16 (1) the license issued under this chapter;

17 (2) a sign prescribed by the executive commissioner
18 that specifies complaint procedures established under this chapter
19 or rules adopted under this chapter and that specifies how
20 complaints may be registered with the department;

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

26 (4) a concise summary of the most recent inspection
27 report relating to the facility;

1 (5) a notice that the operator, any employees, other
2 staff, residents, volunteers, and family members and guardians of
3 residents are protected from discrimination or retaliation as
4 provided by Sections 254.131 and 254.132; and

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

8 (A) the closest local public health services
9 agency in the proximity of the facility; and

10 (B) a local organization or entity that
11 represents, advocates, or serves elderly persons or disabled
12 persons, including any related toll-free contact information for
13 reporting emergencies to the organization or entity.

14 Sec. 254.041. INSPECTIONS. (a) The department or the
15 department's designee may make any inspection, survey, or
16 investigation that it considers necessary and may enter the
17 premises of a facility at reasonable times to make an inspection,
18 survey, or investigation in accordance with rules of the executive
19 commissioner.

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

24 (c) A license holder or an applicant for a license is
25 considered to have consented to entry and inspection of the
26 facility by a representative of the department in accordance with
27 this chapter.

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

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

9 (1) shall respect the privacy of the resident to the
10 greatest extent possible;

11 (2) shall obtain the resident's permission to the
12 greatest extent possible before taking a photograph that will allow
13 the resident to be identified; and

14 (3) may not make public the identity of the resident.

15 (f) A facility, the operator, an employee of a facility, and
16 a resident's attending physician are not civilly liable for
17 surrendering confidential or private material under this section,
18 including physician's orders, pharmacy records, notes and
19 memoranda of a state office, and resident files.

20 (g) The department shall establish in clear and concise
21 language a form to summarize each inspection report and complaint
22 investigation report.

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

27 (i) The department shall have specialized staff conduct

1 inspections, surveys, or investigations of facilities under this
2 section.

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

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

11 (c) The department may require additional unannounced
12 inspections.

13 (d) As considered appropriate and necessary by the
14 department, the department may invite a citizen advocate to
15 participate in inspections. An invited advocate must be an
16 individual who has an interest in or who is employed by or
17 affiliated with an organization or entity that represents,
18 advocates for, or serves elderly persons or disabled persons.

19 Sec. 254.043. DISCLOSURE OF UNANNOUNCED INSPECTIONS;
20 CRIMINAL PENALTY. (a) Except as expressly provided by this
21 chapter, a person commits an offense if the person intentionally,
22 knowingly, or recklessly discloses to an unauthorized person the
23 date, time, or any other fact about an unannounced inspection of a
24 facility before the inspection occurs.

25 (b) In this section, "unauthorized person" does not
26 include:

27 (1) the department;

1 (2) the office of the attorney general; or
2 (3) any other person or entity authorized by law to
3 make an inspection or to accompany an inspector.

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

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

7 Sec. 254.044. LICENSING SURVEYS. The department shall
8 provide a team to conduct surveys to validate findings of licensing
9 surveys. The purpose of a validation survey is to assure that
10 survey teams throughout the state survey in a fair and consistent
11 manner. A facility subjected to a validation survey must correct
12 deficiencies cited by the validation team but is not subject to
13 punitive action for those deficiencies.

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

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

19 (2) identify the specific law or rule the facility
20 violates.

21 (b) At the conclusion of an inspection, survey, or
22 investigation under this chapter, the department or the
23 department's representative conducting the inspection, survey, or
24 investigation shall discuss the violations with the facility's
25 management in an exit conference. The department or the
26 department's representative shall leave a written list of the
27 violations with the facility and the person designated by the

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

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

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

16 [Sections 254.047-254.060 reserved for expansion]

17 SUBCHAPTER C. GENERAL ENFORCEMENT

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

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

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

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

1 (c) To ensure the availability of emergency placements
2 under Subsection (b), the executive commissioner shall develop a
3 memorandum of understanding with appropriate counties or municipal
4 agencies that:

5 (1) establishes an emergency placement capability for
6 the area served by the county or municipal agency; and

7 (2) may provide for partial or full remuneration by
8 the facility of the costs associated with emergency placements
9 provided by the county or municipal agency if the emergency
10 placements resulted from a department order suspending the
11 facility's license or closing the facility.

12 (d) An order suspending a license or closing a part of a
13 facility under this section is immediately effective on the date on
14 which the license holder receives written notice or a later date
15 specified in the order.

16 (e) An order suspending a license or ordering an immediate
17 closing of a part of a facility is valid for 10 days after the
18 effective date of the order.

19 Sec. 254.062. INJUNCTION. (a) The department may petition
20 a district court for a temporary restraining order to restrain a
21 person from continuing a violation of the standards prescribed by
22 this chapter if the department finds that the violation creates an
23 immediate threat to the health and safety of the facility's
24 residents.

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

27 (1) prohibit a person from continuing a violation of

1 the standards or licensing requirements prescribed by this chapter;

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

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

8 (c) The attorney general, on request by the department,
9 shall bring and conduct on behalf of the state a suit authorized by
10 this section.

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

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

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

19 (c) Each day of a continuing violation after conviction is a
20 separate offense.

21 Sec. 254.064. CIVIL PENALTY. (a) A person who violates
22 this chapter or a rule adopted or order issued under this chapter is
23 liable for a civil penalty of not less than \$100 or more than
24 \$10,000 for each violation if the department determines the
25 violation threatens the health and safety of a resident.

26 (b) Each day of a continuing violation constitutes a
27 separate ground for recovery.

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

6 Sec. 254.065. ADMINISTRATIVE PENALTY. (a) The department
7 may impose an administrative penalty against a facility that
8 violates this chapter or a rule adopted or order issued under this
9 chapter.

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

16 (c) The executive commissioner by rule shall specify each
17 violation for which an administrative penalty may be assessed. In
18 determining which violations warrant penalties, the department
19 shall consider:

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

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

26 (d) The executive commissioner by rule shall establish a
27 specific and detailed schedule of appropriate and graduated

1 penalties for each violation based on:

2 (1) the seriousness of the violation, including the
3 nature, circumstances, extent, and gravity of the violation and the
4 hazard of the violation to the health or safety of residents;

5 (2) the history of previous violations;

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

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

10 (5) efforts made to correct the violation;

11 (6) the size of the facility; and

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

13 (e) The executive commissioner by rule shall provide the
14 facility with a reasonable period of time, not less than 45 days,
15 following the first day of a violation to correct the violation
16 before assessing an administrative penalty if a plan of correction
17 has been implemented. This subsection does not apply to a violation
18 that the department determines has resulted in serious harm to or
19 the death of a resident or constitutes a serious threat to the
20 health or safety of a resident.

21 (f) The department may not assess an administrative penalty
22 for a minor violation if the person corrects the violation not later
23 than the 46th day after the date the person receives notice of the
24 violation.

25 (g) The department shall establish a system to ensure
26 standard and consistent application of penalties regardless of the
27 facility location.

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

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

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

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

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

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

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

25 (b) In lieu of demanding payment of an administrative
26 penalty authorized by this subchapter, the department may allow a
27 person subject to the penalty to use, under the supervision of the

1 department, all or part of the amount of the penalty to ameliorate
2 the violation or to improve services, other than administrative
3 services, in the facility affected by the violation.

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

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

11 (e) The department shall offer amelioration to a person
12 under this section not later than the 10th day after the date the
13 person receives from the department a final notification of
14 assessment of administrative penalty that is sent to the person
15 after an informal dispute resolution process but before an
16 administrative hearing under Section 254.065.

17 (f) A person to whom amelioration has been offered must file
18 a plan for amelioration not later than the 45th day after the date
19 the person receives the offer of amelioration from the department.
20 In submitting the plan, the person must agree to waive the person's
21 right to an administrative hearing under Section 254.065 if the
22 department approves the plan.

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

24 (1) propose changes to the management or operation of
25 the facility that will improve services to or quality of care of
26 residents of the facility;

27 (2) identify, through measurable outcomes, the ways in

1 which and the extent to which the proposed changes will improve
2 services to or quality of care of residents of the facility;

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

5 (4) establish a timeline for implementing the proposed
6 changes; and

7 (5) identify specific actions necessary to implement
8 the proposed changes.

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

11 (i) The department may require that an amelioration plan
12 propose changes that would result in conditions that exceed the
13 requirements of this chapter or the rules adopted under this
14 chapter.

15 (j) The department shall approve or deny an amelioration
16 plan not later than the 45th day after the date the department
17 receives the plan. On approval of a person's plan, the department
18 shall deny a pending request for a hearing submitted by the person
19 on the occurrence of the violation, the amount of the penalty, or
20 both the occurrence of the violation and the amount of the penalty.

21 (k) The department may not offer amelioration to a person:

22 (1) more than three times in a two-year period; or

23 (2) more than one time in a two-year period for the
24 same or similar violation.

25 Sec. 254.067. COUNTY OR MUNICIPAL ENFORCEMENT. The
26 governing body of a county by resolution or a municipality by
27 ordinance may:

1 (1) prohibit a person who does not hold a license
2 issued under this chapter from establishing or operating a facility
3 within the county or municipality; and

4 (2) establish a procedure for emergency closure of a
5 facility in circumstances in which:

6 (A) the facility is established or operating in
7 violation of Section 254.031; and

8 (B) the continued operation of the facility
9 creates an immediate threat to the health and safety of a resident
10 of the facility.

11 [Sections 254.068-254.090 reserved for expansion]

12 SUBCHAPTER D. NOTIFICATION OF CLOSURE

13 Sec. 254.091. NOTIFICATION OF CLOSURE. (a) A facility that
14 is closing temporarily or permanently, voluntarily or
15 involuntarily, shall:

16 (1) provide written notice of the closure of the
17 facility to each resident, the local mental health authority, and
18 the department; and

19 (2) make reasonable efforts to provide the same
20 written notice, within a reasonable time before closure, to the
21 nearest relative of each resident or to a person responsible for the
22 resident's support.

23 (b) If the closure of the facility is for a temporary
24 period, the notice required by Subsection (a) must include:

25 (1) the date that the facility is estimated to reopen;
26 and

27 (2) the name and contact information of the person

1 responsible for the reopening of the facility.

2 (c) If the department orders a facility to close or the
3 facility's closure is in any other way involuntary, the facility
4 shall make the notification, orally or in writing, immediately on
5 receiving notice of the closing.

6 (d) If the facility's closure is voluntary, the facility
7 shall make the notification not later than one week after the date
8 on which the decision to close is made.

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

11 (1) charge a fee, other than a fee for services
12 previously provided to the resident; or

13 (2) collect money from a former resident under a
14 financial assignment agreement.

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

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

19 Sec. 254.093. CLOSURE REPORT. (a) A facility required to
20 provide notice of the facility's closure under Section 254.091(a)
21 also shall provide a closure report regarding each resident to the
22 department in accordance with this section.

23 (b) The report must include a summary of the actions taken
24 by the facility to:

25 (1) relocate the resident, including the name,
26 address, and contact information of a licensed facility or other
27 location to which the resident was transferred;

1 (2) secure the personal property of the resident if
2 the resident's personal property did not accompany the resident to
3 the resident's new location; and

4 (3) finalize any outstanding financial arrangements
5 with the resident, including presenting the resident with a final
6 statement of account with the facility containing all charges and
7 fees for services, discontinuing any financial assignment
8 arrangement, and refunding any excess fees or charges.

9 [Sections 254.094-254.120 reserved for expansion]

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

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

12 (a) A person, including an owner, operator, or employee of a
13 facility, who has cause to believe that a resident has been abused,
14 neglected, or exploited or may be adversely affected by abuse,
15 neglect, or exploitation caused by another person shall report the
16 abuse, neglect, or exploitation as required by Section 48.051,
17 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; and

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

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

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

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

21 (1) the plaintiff resides;

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

23 (3) the defendant conducts business.

24 (h) Each facility shall require each employee of the
25 facility, as a condition of employment with the facility, to sign a
26 statement that the employee understands the employee's rights under
27 this section. The statement must be part of the statement required

1 under Section 254.121(b).

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

8 (1) makes a complaint or files a grievance concerning
9 the facility;

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

12 (3) initiates or cooperates in an investigation or
13 proceeding of a governmental entity relating to the services or
14 conditions at the facility.

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

18 (1) injunctive relief;

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

22 (3) exemplary damages;

23 (4) court costs; and

24 (5) reasonable attorney's fees.

25 (c) A volunteer, a resident, or a family member or guardian
26 of a resident who seeks relief under this section must report the
27 alleged violation not later than the 180th day after the date on

1 which the alleged violation of this section occurred or was
2 discovered by the volunteer, the resident, or the family member or
3 guardian of the resident through reasonable diligence.

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

7 [Sections 254.133-254.150 reserved for expansion]

8 SUBCHAPTER G. REPORTING RESIDENT DEATHS

9 Sec. 254.151. REPORTS RELATING TO RESIDENT DEATHS;
10 STATISTICAL INFORMATION. (a) A facility licensed under this
11 chapter shall submit a report to the department concerning the
12 death of:

13 (1) a facility resident; and

14 (2) a former resident that occurs 24 hours or less
15 after the former resident is transferred from the facility to a
16 hospital.

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

22 (c) The department shall correlate reports under this
23 section with death certificate information to develop data relating
24 to the:

25 (1) name and age of the deceased;

26 (2) official cause of death listed on the death
27 certificate;

1 (3) date, time, and place of death; and

2 (4) name and address of the facility in which the
3 deceased resided.

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

7 (e) The department shall develop statistical information on
8 official causes of death to determine patterns and trends of
9 incidents of death among elderly persons and disabled persons and
10 related conditions and in specific facilities. Information
11 developed under this subsection is not confidential.

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

15 [Sections 254.152-254.170 reserved for expansion]

16 SUBCHAPTER H. MEDICAL CARE

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

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

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

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

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

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

11 [Sections 254.172-254.180 reserved for expansion]

12 SUBCHAPTER I. REQUIRED REPORTING

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

16 (1) the number of:

17 (A) license applications received under this
18 chapter;

19 (B) license applications granted under this
20 chapter;

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

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

27 (2) a description of any penalties against a facility

1 licensed under this chapter resulting from a department
2 investigation.

3 SECTION 4. Notwithstanding Sections 254.031 and 254.063,
4 Health and Safety Code, as added by this Act, a facility is not
5 required to be licensed under Chapter 254, Health and Safety Code,
6 as added by this Act, before January 1, 2008.

7 SECTION 5. This Act takes effect September 1, 2007.

ADOPTED

MAY 23 2007

Larry Spaw
Secretary of the Senate

H.B. No. 1168

By: *Menendez/Shapleigh*
Substitute the following for H.B. No. 1168:

By: *Ed Shapleigh* C.S. H.B. No. 1168

A BILL TO BE ENTITLED

1 AN ACT

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

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

6 SECTION 1. Section 247.031, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 247.031. COUNTY OR MUNICIPAL ENFORCEMENT. The
9 governing body of a county by resolution or a municipality by
10 ordinance may:

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

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

16 (A) the facility is established or operating in
17 violation of Section 247.021; and

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

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

23 Sec. 247.033. LISTING OF CERTAIN SMALL FACILITIES. (a) The
24 executive commissioner of the Health and Human Services Commission

1 by rule shall establish a system for listing each facility that:

2 (1) furnishes food, shelter, and personal care
3 services to three or fewer people who are unrelated to the
4 proprietor of the facility; and

5 (2) provides regular care to the residents of the
6 facility.

7 (b) A facility described by Subsection (a) shall list with
8 the department. A listing remains valid until surrendered.

9 (c) The department shall provide to a listed facility a copy
10 of the listing. A listing must contain a provision that states:
11 "THIS FACILITY IS NOT AN ASSISTED LIVING FACILITY. IT IS NOT
12 LICENSED OR REGISTERED WITH THE DEPARTMENT OF AGING AND DISABILITY
13 SERVICES. IT HAS NOT BEEN INSPECTED AND WILL NOT BE INSPECTED."
14 The operator of a listed facility is not required to display the
15 listing at the home but shall make the listing available for
16 examination.

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

22 (e) A facility required to list with the department under
23 this section is not otherwise subject to the standards,
24 requirements, or penalties of this chapter.

25 (b) Not later than January 1, 2008, the executive
26 commissioner of the Health and Human Services Commission shall
27 adopt the rules necessary to implement Section 247.033, Health and

1 Safety Code, as added by this section.

2 (c) Notwithstanding Section 247.033, Health and Safety
3 Code, as added by this section, a facility is not required to list
4 with the Department of Aging and Disability Services before March
5 1, 2008.

6 SECTION 3. Subtitle B, Title 4, Health and Safety Code, is
7 amended by adding Chapter 254 to read as follows:

8 CHAPTER 254. GROUP HOME FACILITIES

9 SUBCHAPTER A. GENERAL PROVISIONS

10 Sec. 254.001. DEFINITIONS. In this chapter:

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

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

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

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

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

23 (6) "Facility" means an establishment that provides
24 services, including community meals, light housework, meal
25 preparation, transportation, grocery shopping, money management,
26 or laundry services to three or more elderly persons or disabled
27 persons residing in the facility who are unrelated to the owner or

1 proprietor of the establishment and that is not required to be
2 licensed under Chapter 142, 242, 246, 247, or 252.

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

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

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

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

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

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

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

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

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

27 (c) The department may coordinate its personnel and

1 facilities with a local agency of a municipality or county and may
2 provide advice to the municipality or county if the municipality or
3 county decides to supplement the state program with additional
4 rules required to meet local conditions.

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

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

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

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

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

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

1 (b) The following amounts shall be deposited in the account:
2 (1) appropriations for the implementation and
3 administration of this subchapter;

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

5 (3) fees charged under this chapter; and

6 (4) penalties charged under this chapter.

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

8 (1) for the enforcement of this chapter;

9 (2) to provide programs and services for elderly
10 persons or disabled persons; or

11 (3) for transitional housing and case management
12 services.

13 (d) Section 403.095, Government Code, does not apply to the
14 account.

15 [Sections 254.008-254.030 reserved for expansion]

16 SUBCHAPTER B. LICENSING, FEES, AND INSPECTIONS

17 Sec. 254.031. LICENSE REQUIRED. A person, acting severally
18 or jointly with any other person, may not establish, conduct, or
19 maintain in this state a facility without a license issued under
20 this chapter.

21 Sec. 254.032. LICENSE APPLICATION. (a) An application for
22 a license is made to the department on a form provided by the
23 department and must be accompanied by the license fee adopted under
24 Section 254.034.

25 (b) The application must contain information that the
26 department requires. The department may require affirmative
27 evidence of ability to comply with the standards and rules adopted

1 under this chapter.

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

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

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

8 and

9 (2) the maximum number of residents specified in the
10 application.

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

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

14 (1) an inspection;

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

16 (3) payment of the renewal fee.

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

21 (f) The executive commissioner by rule shall define
22 specific, appropriate, and objective criteria on which the
23 department may deny an initial license application or license
24 renewal or revoke a license.

25 Sec. 254.034. LICENSE FEES. (a) The executive
26 commissioner by rule may adopt a fee for a license issued under this
27 chapter in an amount reasonable and necessary to recover the costs

1 of administering this chapter.

2 (b) The license fee must be paid with each application for
3 an initial license or for a renewal or change of ownership of a
4 license.

5 (c) The executive commissioner may adopt an additional fee
6 for the approval of an increase in number of residents.

7 Sec. 254.035. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.

8 (a) The department, after providing notice and opportunity for a
9 hearing to the applicant or license holder, may deny, suspend, or
10 revoke a license if the department finds that the applicant or
11 license holder has substantially failed to comply with the
12 requirements established under this chapter.

13 (b) The status of an applicant for a license or of a license
14 holder is preserved until final disposition of the contested
15 matter, except as the court having jurisdiction of a judicial
16 review of the matter may order in the public interest for the
17 welfare and safety of the residents.

18 Sec. 254.036. MINIMUM STANDARDS. The executive
19 commissioner may adopt, publish, and enforce minimum standards
20 relating to:

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

25 (2) sanitary and related conditions in a facility and
26 its surroundings, including water supply, sewage disposal, food
27 handling, and general hygiene to ensure the residents' health,

1 safety, and comfort;

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

4 (4) the reporting and investigation of injuries,
5 incidents, and unusual accidents and the establishment of other
6 policies and procedures necessary to ensure resident safety;

7 (5) policies and procedures for the control of
8 communicable diseases;

9 (6) specialized nutrition support;

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

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

15 (9) the quality of life.

16 Sec. 254.037. REASONABLE TIME TO COMPLY. The executive
17 commissioner by rule shall give a facility that is in operation when
18 a rule or standard is adopted under this chapter a reasonable time
19 to comply with the rule or standard, not to exceed 12 months after
20 the date the rule or standard is adopted.

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

1 of submitted plans.

2 (b) The department shall, within 30 days, review plans
3 submitted under this section for compliance with architectural
4 requirements and inform the person in writing of the results of the
5 review. If the plans comply with the architectural requirements,
6 the architectural requirements applicable to the project may not
7 subsequently be changed unless:

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

9 (2) the person fails to complete the project within a
10 reasonable time.

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

13 (d) A fee collected under this section shall be deposited in
14 the elderly and disabled persons account under Section 254.007 and
15 may be appropriated only to the department to conduct reviews under
16 this section.

17 (e) The review procedure provided by this section must
18 include a review of building plans for compliance with the Texas
19 Accessibility Standards as administered and enforced.

20 Sec. 254.039. FIRE SAFETY REQUIREMENTS. (a) A facility
21 shall comply with fire safety requirements established under this
22 section.

23 (b) The executive commissioner by rule shall adopt the fire
24 safety standards applicable to the facility. The fire safety
25 standards must be the same as the fire safety standards established
26 by an edition of the Life Safety Code of the National Fire
27 Protection Association. If required by federal law or regulation,

1 the edition selected may be different for facilities or portions of
2 facilities operated or approved for construction at different
3 times.

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

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

12 Sec. 254.040. POSTING. Each facility shall prominently and
13 conspicuously post for display in a public area of the facility that
14 is readily available to residents, the operator, any employees, and
15 visitors:

16 (1) the license issued under this chapter;

17 (2) a sign prescribed by the executive commissioner
18 that specifies complaint procedures established under this chapter
19 or rules adopted under this chapter and that specifies how
20 complaints may be registered with the department;

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

26 (4) a concise summary of the most recent inspection
27 report relating to the facility;

1 (5) a notice that the operator, any employees, other
2 staff, residents, volunteers, and family members and guardians of
3 residents are protected from discrimination or retaliation as
4 provided by Sections 254.131 and 254.132; and

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

8 (A) the closest local public health services
9 agency in the proximity of the facility; and

10 (B) a local organization or entity that
11 represents, advocates, or serves elderly persons or disabled
12 persons, including any related toll-free contact information for
13 reporting emergencies to the organization or entity.

14 Sec. 254.041. INSPECTIONS. (a) The department or the
15 department's designee may make any inspection, survey, or
16 investigation that it considers necessary and may enter the
17 premises of a facility at reasonable times to make an inspection,
18 survey, or investigation in accordance with rules of the executive
19 commissioner.

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

24 (c) A license holder or an applicant for a license is
25 considered to have consented to entry and inspection of the
26 facility by a representative of the department in accordance with
27 this chapter.

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

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

9 (1) shall respect the privacy of the resident to the
10 greatest extent possible;

11 (2) shall obtain the resident's permission to the
12 greatest extent possible before taking a photograph that will allow
13 the resident to be identified; and

14 (3) may not make public the identity of the resident.

15 (f) A facility, the operator, an employee of a facility, and
16 a resident's attending physician are not civilly liable for
17 surrendering confidential or private material under this section,
18 including physician's orders, pharmacy records, notes and
19 memoranda of a state office, and resident files.

20 (g) The department shall establish in clear and concise
21 language a form to summarize each inspection report and complaint
22 investigation report.

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

27 (i) The department shall have specialized staff conduct

1 inspections, surveys, or investigations of facilities under this
2 section.

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

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

11 (c) The department may require additional unannounced
12 inspections.

13 (d) As considered appropriate and necessary by the
14 department, the department may invite a citizen advocate to
15 participate in inspections. An invited advocate must be an
16 individual who has an interest in or who is employed by or
17 affiliated with an organization or entity that represents,
18 advocates for, or serves elderly persons or disabled persons.

19 Sec. 254.043. DISCLOSURE OF UNANNOUNCED INSPECTIONS;
20 CRIMINAL PENALTY. (a) Except as expressly provided by this
21 chapter, a person commits an offense if the person intentionally,
22 knowingly, or recklessly discloses to an unauthorized person the
23 date, time, or any other fact about an unannounced inspection of a
24 facility before the inspection occurs.

25 (b) In this section, "unauthorized person" does not
26 include:

27 (1) the department;

1 (2) the office of the attorney general; or
2 (3) any other person or entity authorized by law to
3 make an inspection or to accompany an inspector.

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

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

7 Sec. 254.044. LICENSING SURVEYS. The department shall
8 provide a team to conduct surveys to validate findings of licensing
9 surveys. The purpose of a validation survey is to assure that
10 survey teams throughout the state survey in a fair and consistent
11 manner. A facility subjected to a validation survey must correct
12 deficiencies cited by the validation team but is not subject to
13 punitive action for those deficiencies.

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

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

19 (2) identify the specific law or rule the facility
20 violates.

21 (b) At the conclusion of an inspection, survey, or
22 investigation under this chapter, the department or the
23 department's representative conducting the inspection, survey, or
24 investigation shall discuss the violations with the facility's
25 management in an exit conference. The department or the
26 department's representative shall leave a written list of the
27 violations with the facility and the person designated by the

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

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

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

16 [Sections 254.047-254.060 reserved for expansion]

17 SUBCHAPTER C. GENERAL ENFORCEMENT

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

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

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

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

1 (c) To ensure the availability of emergency placements
2 under Subsection (b), the executive commissioner shall develop a
3 memorandum of understanding with appropriate counties or municipal
4 agencies that:

5 (1) establishes an emergency placement capability for
6 the area served by the county or municipal agency; and

7 (2) may provide for partial or full remuneration by
8 the facility of the costs associated with emergency placements
9 provided by the county or municipal agency if the emergency
10 placements resulted from a department order suspending the
11 facility's license or closing the facility.

12 (d) An order suspending a license or closing a part of a
13 facility under this section is immediately effective on the date on
14 which the license holder receives written notice or a later date
15 specified in the order.

16 (e) An order suspending a license or ordering an immediate
17 closing of a part of a facility is valid for 10 days after the
18 effective date of the order.

19 Sec. 254.062. INJUNCTION. (a) The department may petition
20 a district court for a temporary restraining order to restrain a
21 person from continuing a violation of the standards prescribed by
22 this chapter if the department finds that the violation creates an
23 immediate threat to the health and safety of the facility's
24 residents.

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

27 (1) prohibit a person from continuing a violation of

1 the standards or licensing requirements prescribed by this chapter;

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

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

8 (c) The attorney general, on request by the department,
9 shall bring and conduct on behalf of the state a suit authorized by
10 this section.

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

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

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

19 (c) Each day of a continuing violation after conviction is a
20 separate offense.

21 Sec. 254.064. CIVIL PENALTY. (a) A person who violates
22 this chapter or a rule adopted or order issued under this chapter is
23 liable for a civil penalty of not less than \$100 or more than
24 \$10,000 for each violation if the department determines the
25 violation threatens the health and safety of a resident.

26 (b) Each day of a continuing violation constitutes a
27 separate ground for recovery.

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

6 Sec. 254.065. ADMINISTRATIVE PENALTY. (a) The department
7 may impose an administrative penalty against a facility that
8 violates this chapter or a rule adopted or order issued under this
9 chapter.

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

16 (c) The executive commissioner by rule shall specify each
17 violation for which an administrative penalty may be assessed. In
18 determining which violations warrant penalties, the department
19 shall consider:

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

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

26 (d) The executive commissioner by rule shall establish a
27 specific and detailed schedule of appropriate and graduated

1 penalties for each violation based on:

2 (1) the seriousness of the violation, including the
3 nature, circumstances, extent, and gravity of the violation and the
4 hazard of the violation to the health or safety of residents;

5 (2) the history of previous violations;

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

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

10 (5) efforts made to correct the violation;

11 (6) the size of the facility; and

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

13 (e) The executive commissioner by rule shall provide the
14 facility with a reasonable period of time, not less than 45 days,
15 following the first day of a violation to correct the violation
16 before assessing an administrative penalty if a plan of correction
17 has been implemented. This subsection does not apply to a violation
18 that the department determines has resulted in serious harm to or
19 the death of a resident or constitutes a serious threat to the
20 health or safety of a resident.

21 (f) The department may not assess an administrative penalty
22 for a minor violation if the person corrects the violation not later
23 than the 46th day after the date the person receives notice of the
24 violation.

25 (g) The department shall establish a system to ensure
26 standard and consistent application of penalties regardless of the
27 facility location.

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

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

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

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

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

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

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

25 (b) In lieu of demanding payment of an administrative
26 penalty authorized by this subchapter, the department may allow a
27 person subject to the penalty to use, under the supervision of the

1 department, all or part of the amount of the penalty to ameliorate
2 the violation or to improve services, other than administrative
3 services, in the facility affected by the violation.

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

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

11 (e) The department shall offer amelioration to a person
12 under this section not later than the 10th day after the date the
13 person receives from the department a final notification of
14 assessment of administrative penalty that is sent to the person
15 after an informal dispute resolution process but before an
16 administrative hearing under Section 254.065.

17 (f) A person to whom amelioration has been offered must file
18 a plan for amelioration not later than the 45th day after the date
19 the person receives the offer of amelioration from the department.
20 In submitting the plan, the person must agree to waive the person's
21 right to an administrative hearing under Section 254.065 if the
22 department approves the plan.

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

24 (1) propose changes to the management or operation of
25 the facility that will improve services to or quality of care of
26 residents of the facility;

27 (2) identify, through measurable outcomes, the ways in

1 which and the extent to which the proposed changes will improve
2 services to or quality of care of residents of the facility;

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

5 (4) establish a timeline for implementing the proposed
6 changes; and

7 (5) identify specific actions necessary to implement
8 the proposed changes.

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

11 (i) The department may require that an amelioration plan
12 propose changes that would result in conditions that exceed the
13 requirements of this chapter or the rules adopted under this
14 chapter.

15 (j) The department shall approve or deny an amelioration
16 plan not later than the 45th day after the date the department
17 receives the plan. On approval of a person's plan, the department
18 shall deny a pending request for a hearing submitted by the person
19 on the occurrence of the violation, the amount of the penalty, or
20 both the occurrence of the violation and the amount of the penalty.

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

25 Sec. 254.067. COUNTY OR MUNICIPAL ENFORCEMENT. The
26 governing body of a county by resolution or a municipality by
27 ordinance may:

1 (1) prohibit a person who does not hold a license
2 issued under this chapter from establishing or operating a facility
3 within the county or municipality; and

4 (2) establish a procedure for emergency closure of a
5 facility in circumstances in which:

6 (A) the facility is established or operating in
7 violation of Section 254.031; and

8 (B) the continued operation of the facility
9 creates an immediate threat to the health and safety of a resident
10 of the facility.

11 [Sections 254.068-254.090 reserved for expansion]

12 SUBCHAPTER D. NOTIFICATION OF CLOSURE

13 Sec. 254.091. NOTIFICATION OF CLOSURE. (a) A facility that
14 is closing temporarily or permanently, voluntarily or
15 involuntarily, shall:

16 (1) provide written notice of the closure of the
17 facility to each resident, the local mental health authority, and
18 the department; and

19 (2) make reasonable efforts to provide the same
20 written notice, within a reasonable time before closure, to the
21 nearest relative of each resident or to a person responsible for the
22 resident's support.

23 (b) If the closure of the facility is for a temporary
24 period, the notice required by Subsection (a) must include:

25 (1) the date that the facility is estimated to reopen;
26 and

27 (2) the name and contact information of the person

1 responsible for the reopening of the facility.

2 (c) If the department orders a facility to close or the
3 facility's closure is in any other way involuntary, the facility
4 shall make the notification, orally or in writing, immediately on
5 receiving notice of the closing.

6 (d) If the facility's closure is voluntary, the facility
7 shall make the notification not later than one week after the date
8 on which the decision to close is made.

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

11 (1) charge a fee, other than a fee for services
12 previously provided to the resident; or

13 (2) collect money from a former resident under a
14 financial assignment agreement.

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

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

19 Sec. 254.093. CLOSURE REPORT. (a) A facility required to
20 provide notice of the facility's closure under Section 254.091(a)
21 also shall provide a closure report regarding each resident to the
22 department in accordance with this section.

23 (b) The report must include a summary of the actions taken
24 by the facility to:

25 (1) relocate the resident, including the name,
26 address, and contact information of a licensed facility or other
27 location to which the resident was transferred;

1 (2) secure the personal property of the resident if
2 the resident's personal property did not accompany the resident to
3 the resident's new location; and

4 (3) finalize any outstanding financial arrangements
5 with the resident, including presenting the resident with a final
6 statement of account with the facility containing all charges and
7 fees for services, discontinuing any financial assignment
8 arrangement, and refunding any excess fees or charges.

9 [Sections 254.094-254.120 reserved for expansion]

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

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

12 (a) A person, including an owner, operator, or employee of a
13 facility, who has cause to believe that a resident has been abused,
14 neglected, or exploited or may be adversely affected by abuse,
15 neglect, or exploitation caused by another person shall report the
16 abuse, neglect, or exploitation as required by Section 48.051,
17 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; and

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

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

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

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

21 (1) the plaintiff resides;

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

23 (3) the defendant conducts business.

24 (h) Each facility shall require each employee of the
25 facility, as a condition of employment with the facility, to sign a
26 statement that the employee understands the employee's rights under
27 this section. The statement must be part of the statement required

1 under Section 254.121(b).

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

8 (1) makes a complaint or files a grievance concerning
9 the facility;

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

12 (3) initiates or cooperates in an investigation or
13 proceeding of a governmental entity relating to the services or
14 conditions at the facility.

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

18 (1) injunctive relief;

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

22 (3) exemplary damages;

23 (4) court costs; and

24 (5) reasonable attorney's fees.

25 (c) A volunteer, a resident, or a family member or guardian
26 of a resident who seeks relief under this section must report the
27 alleged violation not later than the 180th day after the date on

1 which the alleged violation of this section occurred or was
2 discovered by the volunteer, the resident, or the family member or
3 guardian of the resident through reasonable diligence.

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

7 [Sections 254.133-254.150 reserved for expansion]

8 SUBCHAPTER G. REPORTING RESIDENT DEATHS

9 Sec. 254.151. REPORTS RELATING TO RESIDENT DEATHS;
10 STATISTICAL INFORMATION. (a) A facility licensed under this
11 chapter shall submit a report to the department concerning the
12 death of:

13 (1) a facility resident; and

14 (2) a former resident that occurs 24 hours or less
15 after the former resident is transferred from the facility to a
16 hospital.

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

22 (c) The department shall correlate reports under this
23 section with death certificate information to develop data relating
24 to the:

25 (1) name and age of the deceased;

26 (2) official cause of death listed on the death
27 certificate;

1 (3) date, time, and place of death; and
2 (4) name and address of the facility in which the
3 deceased resided.

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

7 (e) The department shall develop statistical information on
8 official causes of death to determine patterns and trends of
9 incidents of death among elderly persons and disabled persons and
10 related conditions and in specific facilities. Information
11 developed under this subsection is not confidential.

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

15 [Sections 254.152-254.170 reserved for expansion]

16 SUBCHAPTER H. MEDICAL CARE

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

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

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

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

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

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

11 [Sections 254.172-254.180 reserved for expansion]

12 SUBCHAPTER I. REQUIRED REPORTING

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

16 (1) the number of:

17 (A) license applications received under this
18 chapter;

19 (B) license applications granted under this
20 chapter;

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

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

27 (2) a description of any penalties against a facility

1 licensed under this chapter resulting from a department
2 investigation.

3 SECTION 4. Notwithstanding Sections 254.031 and 254.063,
4 Health and Safety Code, as added by this Act, a facility is not
5 required to be licensed under Chapter 254, Health and Safety Code,
6 as added by this Act, before January 1, 2008.

7 SECTION 5. The executive commissioner of the Health and
8 Human Services Commission and the Department of Aging and
9 Disability Services are required to implement and enforce Sections
10 2 and 3 of this Act only if the legislature appropriates money
11 specifically for that purpose. The executive commissioner of the
12 Health and Human Services Commission and the Department of Aging
13 and Disability Services may, but are not required to, implement and
14 enforce Sections 2 and 3 of this Act using other appropriations
15 available for that purpose.

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

FLOOR AMENDMENT NO.

1

ADOPTED

BY:

Shapleigh
(Shapleigh)

MAY 20 2007

Letty Shaw
Secretary of the Senate

1 Amend C.S.H.B. No. 1168 (senate committee version) by
2 striking all the text below the enacting clause and substituting
3 the following:

4 SECTION 1. DEFINITIONS. In this Act:

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

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

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

11 (4) "Executive commissioner" means the executive
12 commissioner of the Health and Human Services Commission.

13 (5) "Boarding house" means an establishment that:

14 (A) provides services, including community meals,
15 light housework, meal preparation, transportation, grocery
16 shopping, money management, or laundry services to three or more
17 elderly persons or disabled persons residing in the boarding
18 house who are unrelated to the owner or proprietor of the
19 establishment;

20 (B) is not:

21 (i) required to be licensed under Chapter
22 142, 242, 246, 247, or 252, Health and Safety Code; or

23 (ii) exempt from licensing under Section
24 142.003(a)(19) or 247.004(4), Health and Safety Code; and

25 (C) is not a:

26 (i) child-care facility as defined by
27 Section 42.002, Human Resources Code;

28 (ii) family violence center as defined by

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1 Section 51.002, Human Resources Code;

2 (iii) hotel as defined by Section 156.001,

3 Tax Code;

4 (iv) retirement community;

5 (v) monastery or convent; or

6 (vi) sorority or fraternity house or other

7 dormitory affiliated with an institution of higher education.

8 SECTION 2. PILOT PROGRAM. (a) Subject to the
9 appropriation of funds for the express purpose of implementing
10 the pilot program described by this section, the executive
11 commissioner by rule shall develop and implement a pilot program
12 in a county or municipality described by Subsection (c) of this
13 section in which the department:

14 (1) requires boarding houses to be licensed;

15 (2) inspects boarding houses; and

16 (3) enforces rules and regulations for licensed
17 boarding houses.

18 (b) In implementing the pilot program, the executive
19 commissioner shall adopt rules and regulations for boarding
20 houses that include:

21 (1) minimum standards to ensure the health and safety
22 of residents of boarding houses, including fire safety
23 requirements;

24 (2) required disclosures by boarding houses;

25 (3) reporting requirements regarding resident deaths,
26 injuries, or accidents; and

27 (4) administrative penalties for a boarding house of
28 not less than \$100 or more than \$1,000 for each violation by a
29 boarding house of a rule adopted or order issued under the pilot
30 program.

2 68

1 (c) Subject to the appropriation of funds for the express
2 purpose of implementing the pilot program described by this
3 section, not later than August 1, 2008, the executive
4 commissioner shall implement the pilot program in a county or
5 municipality that has adopted an order or ordinance regulating
6 the operation of boarding houses.

7 SECTION 3. REPORT. Not later than January 1, 2009, the
8 Health and Human Services Commission shall submit a report to
9 the governor, the lieutenant governor, the speaker of the house
10 of representatives, and the presiding officer of each house and
11 senate standing committee having jurisdiction over adult
12 protective services. The report must include:

13 (1) if the pilot program has been developed and
14 implemented:

15 (A) the number of:

16 (i) boarding houses licensed through the
17 pilot program;

18 (ii) violations by boarding houses of rules
19 adopted under the pilot program; and

20 (iii) investigations of boarding houses
21 licensed under the pilot program related to alleged abuse,
22 neglect, or exploitation of a resident;

23 (B) a description of any penalties against a
24 boarding house licensed under the pilot program resulting from a
25 department investigation; and

26 (C) a recommendation regarding the advisability
27 of expanding the pilot program statewide; or

28 (2) if the pilot program has not been developed and
29 implemented, a study and recommendations regarding the most
30 effective method for regulating boarding houses, including

3 69

1 recommendations on whether clarifying the authority of and
2 granting additional authority to counties and municipalities to
3 establish health and safety standards for boarding houses is
4 recommended.

5 SECTION 4. EXPIRATION. This Act expires September 1,
6 2011.

7 SECTION 5. This Act takes effect September 1, 2007.

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ADOPTED

FLOOR AMENDMENT NO. 2

MAY 23 2007

BY:

Letty Spaw
Secretary of the Senate

C. Christ

1 Amend Floor Amendment No. 1 to H.B. No. 1168 by adding
2 the following appropriately numbered SECTIONS to the bill and
3 renumbering subsequent SECTIONS of the bill accordingly:

4 SECTION _____. Section 247.045, Health and Safety Code, is
5 amended by amending Subsections (d) and (e) and adding
6 Subsections (h) and (i) to read as follows:

7 (d) The attorney general may institute and conduct a suit
8 to collect a penalty and fees under this section at the request
9 of the department. If the attorney general fails to notify the
10 department [~~take action~~] within 30 days of referral from the
11 department that the attorney general will accept the case, the
12 department shall refer the case to the local district attorney,
13 county attorney, or city attorney. The district attorney,
14 county attorney, or city attorney shall file suit in a district
15 court to collect and retain the penalty.

16 (e) Investigation and attorney's fees may not be assessed
17 or collected by or on behalf of the department or other state
18 agency unless [~~the department or other state agency assesses and~~
19 ~~collects~~] a penalty described under this chapter is assessed.

20 (h) If a person who is liable under this section fails to
21 pay any amount the person is obligated to pay under this
22 section, the state may seek satisfaction from any owner, other
23 controlling person, or affiliate of the person found liable.
24 The owner, other controlling person, or affiliate may be found
25 liable in the same suit or in another suit on a showing by the
26 state that the amount to be paid has not been paid or otherwise
27 legally discharged. The department by rule may establish a
28 method for satisfying an obligation imposed under this section
29 from an insurance policy, letter of credit, or other contingency

1 fund.

2 (i) In this section, "affiliate" means:

3 (1) with respect to a partnership other than a
4 limited partnership, each partner of the partnership;

5 (2) with respect to a corporation:

6 (A) an officer;

7 (B) a director;

8 (C) a stockholder who owns, holds, or has the
9 power to vote at least 10 percent of any class of securities
10 issued by the corporation, regardless of whether the power is of
11 record or beneficial; and

12 (D) a controlling individual;

13 (3) with respect to an individual:

14 (A) each partnership and each partner in the
15 partnership in which the individual or any other affiliate of
16 the individual is a partner; and

17 (B) each corporation or other business entity in
18 which the individual or another affiliate of the individual is:

19 (i) an officer;

20 (ii) a director;

21 (iii) a stockholder who owns, holds, or has
22 the power to vote at least 10 percent of any class of securities
23 issued by the corporation, regardless of whether the power is of
24 record or beneficial; and

25 (iv) a controlling individual;

26 (4) with respect to a limited partnership:

27 (A) a general partner; and

28 (B) a limited partner who is a controlling
29 individual;

30 (5) with respect to a limited liability company:

31 (A) an owner who is a manager as described by

1 the Texas Limited Liability Company Act (Article 1528n, Vernon's
2 Texas Civil Statutes); and

3 (B) each owner who is a controlling individual;
4 and

5 (6) with respect to any other business entity, a
6 controlling individual.

7 SECTION _____. The change in law made to Section 247.045,
8 Health and Safety Code, by this Act applies only to a violation
9 that occurs on or after the effective date of this Act. A
10 violation occurs before the effective date of this Act if any
11 element of the violation occurs before that date. A violation
12 that occurs before the effective date of this Act is covered by
13 the law in effect when the violation occurred, and the former
14 law is continued in effect for that purpose.

15 SECTION _____. The change in law made to Section 247.045,
16 Health and Safety Code, by this Act takes effect September 1,
17 2007.

FLOOR AMENDMENT NO. 3

ADOPTED

MAY 23 2007

BY: 

Amend Floor Amendment No. 1 to H.B. No. 1168 by adding appropriately numbered SECTIONS to the bill to read as follows and renumbering remaining SECTIONS:

SECTION __. The heading to Chapter 2005, Government Code, is amended to read as follows:

CHAPTER 2005. MISCELLANEOUS PROVISIONS RELATING TO STATE
LICENSES AND PERMITS [PERMIT PROCESSING]

SECTION __. Sections 2005.001 through 2005.007, Government Code, are designated as Subchapter A, Chapter 2005, Government Code, and a subchapter heading is added to read as follows:

SUBCHAPTER A. PERMIT PROCESSING

SECTION __. Chapter 2005, Government Code, is amended by adding Subchapter B to read as follows:

SUBCHAPTER B. DENIAL, SUSPENSION, OR REVOCATION FOR FALSE
STATEMENT, MISREPRESENTATION, OR REFUSAL TO PROVIDE INFORMATION

Sec. 2005.051. DEFINITIONS. In this subchapter:

(1) "License" means a license, certificate,
registration, permit, or other authorization:

(A) that is issued by a licensing authority;

(B) that is subject before expiration to
suspension, revocation, forfeiture, or termination by the
issuing licensing authority; and

(C) that a person must obtain to:

(i) practice or engage in a particular
business, occupation, or profession; or

(ii) engage in any other regulated
activity, including hunting, fishing, or other recreational
activity for which a license or permit is required.

(2) "Licensing authority" means an agency of the

1 executive, legislative, or judicial branch of state government
2 that issues a license.

3 Sec. 2005.052. DENIAL, SUSPENSION, OR REVOCATION FOR FALSE
4 STATEMENT, MISREPRESENTATION, OR REFUSAL TO PROVIDE
5 INFORMATION. (a) A licensing authority may deny a person's
6 application for a license or suspend or revoke a person's
7 license if the licensing authority determines, after notice and
8 hearing, that the person knowingly:

9 (1) made a false statement in connection with
10 applying for or renewing the license;

11 (2) made a material misrepresentation to the
12 licensing authority in connection with applying for or renewing
13 the license;

14 (3) refused to provide information requested by the
15 licensing authority; or

16 (4) failed to provide all of the person's criminal
17 history information in response to the licensing authority's
18 request for the information.

19 (b) A denial, suspension, or revocation by a licensing
20 authority under this section is governed by the administrative
21 procedures that apply to other disciplinary actions taken by the
22 licensing authority.

23 Sec. 2005.053. CRIMINAL PROSECUTION. A person who
24 knowingly makes a false statement in connection with applying
25 for or renewing a license may be subject to criminal prosecution
26 under Section 37.10, Penal Code.

27 SECTION __. Section 2005.001, Government Code, is amended
28 to read as follows:

29 Sec. 2005.001. DEFINITIONS. In this subchapter [~~chapter~~]:

30 (1) "Permit" means an authorization by a license,
31 certificate, registration, or other form that is required by law

1 or state agency rules to engage in a particular business.

2 (2) "State agency" means a department, board, bureau,
3 commission, division, office, council, or other agency of the
4 state.

5 SECTION __. Section 2005.002, Government Code, is amended
6 to read as follows:

7 Sec. 2005.002. EXCEPTIONS. This subchapter [~~chapter~~] does
8 not apply to a permit:

9 (1) for which an agency's median time during the
10 preceding calendar year for processing a permit application from
11 receipt of the initial application to the final permit decision
12 did not exceed seven days;

13 (2) issued in connection with any form of gaming or
14 gambling; or

15 (3) issued under the Alcoholic Beverage Code.

16 SECTION __. Section 2005.005, Government Code, is amended
17 to read as follows:

18 Sec. 2005.005. DUTY OF HEAD OF AGENCY. The head of each
19 state agency shall ensure that the agency complies with this
20 subchapter [~~chapter~~].

21 SECTION __. Subsection (a), Section 2005.006, Government
22 Code, is amended to read as follows:

23 (a) A state agency subject to this subchapter [~~chapter~~]
24 shall establish by rule a complaint procedure through which a
25 permit applicant can:

26 (1) complain directly to the chief administrator of
27 the agency if the agency exceeds the established period for
28 processing permits; and

29 (2) request a timely resolution of any dispute
30 arising from the delay.

31 SECTION __. Subsection (b), Section 2005.007, Government

1 Code, is amended to read as follows:

2 (b) The report must include:

3 (1) a statement of the periods the agency has adopted
4 under this subchapter [~~chapter~~] for processing each type of
5 permit it issues, specifying any changes the agency made since
6 the last report;

7 (2) a statement of the minimum, maximum, and median
8 times for processing each type of permit during the period since
9 the last report from the date the agency receives the initial
10 permit application to the final permit decision;

11 (3) a description of the complaint procedure required
12 by Section 2005.006;

13 (4) a summary of the number and disposition of
14 complaints received by the agency under Section 2005.006 since
15 the last report; and

16 (5) a description of specific actions taken by the
17 agency since the last report to simplify and improve its permit
18 application, processing, and paperwork requirements.

19 SECTION 9. Subchapter B, Chapter 2005, Government Code, as
20 added by this Act, applies only to a statement,
21 misrepresentation, or refusal made, in connection with applying
22 for or renewing a license, on or after the effective date of
23 this Act.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

May 18, 2007

TO: Honorable Jane Nelson, Chair, Senate Committee on Health & Human Services

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB1168** by Menendez (Relating to licensing and regulation of certain facilities providing personal care to elderly or disabled persons; providing penalties.), **Committee Report 2nd House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1168, Committee Report 2nd House, Substituted: a negative impact of (\$50,057,862) through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	(\$24,508,308)
2009	(\$25,549,554)
2010	(\$24,717,616)
2011	(\$27,297,849)
2012	(\$26,654,716)

All Funds, Five-Year Impact:

Fiscal Year	Probable (Cost) from GENERAL REVENUE FUND 1	Probable (Cost) from GR MATCH FOR MEDICAID 758	Probable (Cost) from FEDERAL FUNDS 555	Probable Revenue Gain from GENERAL REVENUE FUND 1
2008	(\$25,539,245)	(\$1,480,207)	(\$1,480,209)	\$2,511,144
2009	(\$24,930,322)	(\$1,528,258)	(\$1,528,259)	\$909,026
2010	(\$25,691,242)	(\$1,711,312)	(\$1,711,312)	\$2,684,938
2011	(\$26,474,365)	(\$1,919,081)	(\$1,919,082)	\$1,095,597
2012	(\$27,383,416)	(\$2,157,380)	(\$2,157,380)	\$2,886,080

Fiscal Year	Change in Number of State Employees from FY 2007
2008	423.4
2009	440.9
2010	459.3
2011	478.9
2012	499.7

Fiscal Analysis

The bill would amend Title 4, Health and Safety Code, by adding Chapter 254, Group Home Facilities, to the Department of Aging and Disability Services' (DADS) responsibilities in licensing and regulation. The bill sets forth various statutory requirements for the facilities. Some of the requirements include licensure and license denial; suspension and revocation; surveys; inspections and investigations by DADS; and enforcement. The Group Home Facilities would not be required to be licensed before 01/01/08.

The bill provides the OAG the ability to collect civil penalties for violations and to seek temporary restraining orders on the Department's (DADS) behalf (Subchapter C).

Section 254.007 would establish GR Account—Elderly and Disabled Persons, which would be funded from legislative appropriations, fees, and penalties established by the bill and interest earned from the account. Money would be appropriated by the Legislature from the account only for the enforcement of the regulations established by the bill and programs, services for elderly and disabled persons, and for transitional housing and case management services.

Methodology

DADS estimated the number of group homes that would have to be licensed based on the ratio of the number of group homes registered by the City of El Paso (100) compared to the number of assisted living facilities (ALF) in El Paso licensed by the state (46), a ratio of 2.17. Multiplying the statewide number of licensed ALFs (1,445) by that ratio yields 3,141. DADS then applied the historical annual growth rate in the number of assisted living facilities of 3.27 percent, which resulted in a projected number of group home facilities of 3,244 for fiscal year (FY) 2008, 3,350 for FY 2009, 3,460 for FY 2,010, 3,573 for FY 2,011, and 3,690 for FY 2,012.

DADS indicated that Home and Community-Based Services (HCS) homes are currently certified but not licensed. For the number of HCS facilities impacted, DADS determined that as of February 2, 2007, 166 of the 4,243 foster care homes serve three or more individuals and therefore would have to be licensed. In addition, 964 of the 1,412 HCS group homes open as of the same date serve three or four individuals and would have to be licensed, for a combined total of 1,130 facilities that would need to be licensed as group homes. DADS then applied the historical annual growth rate of 12.26 percent, which resulted in a projected number of HCS-related licensed group home facilities of 1,269 for FY 2008, 1,425 for FY 2009, 1,600 for FY 2010, 1,796 for FY 2011, and 2,016 for FY 2012.

For Assisted Living Facilities, DADS assumed that the administrative costs incurred would most closely resemble the annual regulatory costs per facility that DADS is currently experiencing for the Intermediate Care Facilities - Mental Retardation (ICF/MR) program, since that program has a high concentration of small facilities. DADS indicated that annual costs/FTEs per ICF/MR facility are: \$4,197.56 for Salary, \$520.42 for Travel, 0.095 FTEs per facility. For the HCS group homes, DADS assumed the incremental costs of licensing the facilities would approximate the per facility costs experienced for Assisted Living Facilities of \$1457.77 for salary, \$118.30 for travel, and .034 FTEs. In addition to those costs, DADS included first year "set-up" costs, as well as standard recurring direct and indirect overhead costs, and fringe.

The DADS estimates include the cost of additional staff needed to assist with placing persons who need to be relocated as the result of the immediate closure of certain group homes, as well as additional staff needed to develop and negotiate Memoranda of Understanding (MOUs) with local entities.

DADS assumed an average of five MOUs would be needed for each county in Texas, and one work day would be needed for each MOU. The estimate assumed 1,500 available work hours per FTE or 6.8 FTEs needed to negotiate MOUs.

In addition, DADS assumed that 20 percent of the group homes would be closed each year (average nine residents per facility) and that two work days would be needed to relocate each resident. DADS assumed 1,500 available work hours per FTE and the number of FTEs needed to be 62.3 in FY 2008,

64.3 in FY 2009, 66.4 in FY 2011, 68.6 in FY 2011, and 70.8 in FY 2012. DADS assumed the average salary for a Community Care worker, as well as the average annual travel per Community Care worker.

The Office of the Attorney General indicated that the bill would result in additional cases filed by the OAG's Consumer Protection and Public Health Division. OAG review assessed that the bill does not give any entity other than the OAG ability to collect civil penalties for violations, or to seek a temporary restraining order on the Department's (DADS) behalf (Subchapter C). The OAG last year received 16 referrals for enforcement action related to licensed and/or unlicensed assisted living facilities (ALFs). The County Attorney's Office in Harris County had received at least thirty five referrals last year, many of them requiring temporary restraining orders to remove residents who were in immediate danger.

Based on the referrals to OAG and the County Attorney's Office in Harris County actions in fiscal year 2006 for ALFs the OAG has assumed a comparable number of referrals with the addition of Section 254, with referrals being made exclusively to the OAG. The OAG estimated the fiscal impact in fiscal year 2008 to be \$290,782 (plus three FTEs) and \$268,667 (and FTEs) each fiscal year thereafter from the General Revenue Fund.

Technology

DADS indicated that the bill would require creation of a new Group Home Facility type in the Compliance Assessment, Regulatory & Enforcement Systems (CARES) system, modification of the Central Data Repository (CDR), and a new application in the Web Accessible Facility Enrollment (WAFER). The automation for the Group Home Facility type would be applied in records and reports related to licensing, enforcement, and revenue functions.

In addition, modifications to the Compliance Assessment Review and Enforcement System would require creation of the Group Home Facility type and documents (610 hours). Modifications to the Web Accessible Facility Enrollment will require the creation of web accessible facility types and documents (3,900 hours), for a total of 4,510 hours. At an assumed cost of \$82 per hour, the estimated technology cost would be \$369,820.

Local Government Impact

No significant fiscal implication to units of local government is anticipated. Section 254.004(b) of the bill allows DADS to cooperate with local public health officials of a municipality or county in carrying out the chapter and to delegate to those officials the power to make inspections and recommendations to the department. A memorandum of understanding or agreement would need to be developed if DADS chooses to utilize the resources.

Source Agencies: 302 Office of the Attorney General, 539 Aging and Disability Services, Department of
LBB Staff: JOB, CL, PP, ML, KJG

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

May 17, 2007

TO: Honorable Jane Nelson, Chair, Senate Committee on Health & Human Services

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB1168 by Menendez (Relating to licensing and regulation of certain facilities providing personal care to elderly or disabled persons; providing penalties.), **As Engrossed**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1168, As Engrossed: a negative impact of (\$50,057,862) through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

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Fiscal Year	Change in Number of State Employees from FY 2007
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Fiscal Analysis

The bill would amend Title 4, Health and Safety Code, by adding Chapter 254, Group Home Facilities, to the Department of Aging and Disability Services' (DADS) responsibilities in licensing and regulation. The bill sets forth various statutory requirements for the facilities. Some of the requirements include licensure and license denial; suspension and revocation; surveys; inspections and investigations by DADS; and enforcement. The Group Home Facilities would not be required to be licensed before 01/01/08.

The bill provides the OAG the ability to collect civil penalties for violations and to seek temporary restraining orders on the Department's (DADS) behalf (Subchapter C).

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Source Agencies: 529 Health and Human Services Commission, 302 Office of the Attorney General, 539 Aging and Disability Services, Department of

LBB Staff: JOB, CL, PP, ML, KJG

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

April 27, 2007

TO: Honorable Patrick M. Rose, Chair, House Committee on Human Services

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB1168 by Menendez (Relating to licensing and regulation of certain facilities providing personal care to elderly or disabled persons; providing penalties.), **Committee Report 1st House, Substituted**

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The bill would amend Title 4, Health and Safety Code, by adding Chapter 254, Group Home Facilities, to the Department of Aging and Disability Services' (DADS) responsibilities in licensing and regulation. The bill sets forth various statutory requirements for the facilities. Some of the requirements include licensure and license denial; suspension and revocation; surveys; inspections and investigations by DADS; and enforcement. The Group Home Facilities would not be required to be licensed before 01/01/08.

The bill provides the OAG the ability to collect civil penalties for violations and to seek temporary restraining orders on the Department's (DADS) behalf (Subchapter C).

Section 254.007 would establish GR Account—Elderly and Disabled Persons, which would be funded from legislative appropriations, fees, and penalties established by the bill and interest earned from the account. Money would be appropriated by the Legislature from the account only for the enforcement of the regulations established by the bill and programs, services for elderly and disabled persons, and for transitional housing and case management services.

Methodology

DADS estimated the number of group homes that would have to be licensed based on the ratio of the number of group homes registered by the City of El Paso (100) compared to the number of assisted living facilities (ALF) in El Paso licensed by the state (46), a ratio of 2.17. Multiplying the statewide number of licensed ALFs (1,445) by that ratio yields 3,141. DADS then applied the historical annual growth rate in the number of assisted living facilities of 3.27 percent, which resulted in a projected number of group home facilities of 3,244 for fiscal year (FY) 2008, 3,350 for FY 2009, 3,460 for FY 2,010, 3,573 for FY 2,011, and 3,690 for FY 2,012.

DADS indicated that Home and Community-Based Services (HCS) homes are currently certified but not licensed. For the number of HCS facilities impacted, DADS determined that as of February 2, 2007, 166 of the 4,243 foster care homes serve three or more individuals and therefore would have to be licensed. In addition, 964 of the 1,412 HCS group homes open as of the same date serve three or four individuals and would have to be licensed, for a combined total of 1,130 facilities that would need to be licensed as group homes. DADS then applied the historical annual growth rate of 12.26 percent, which resulted in a projected number of HCS-related licensed group home facilities of 1,269 for FY 2008, 1,425 for FY 2009, 1,600 for FY 2010, 1,796 for FY 2011, and 2,016 for FY 2012.

For Assisted Living Facilities, DADS assumed that the administrative costs incurred would most closely resemble the annual regulatory costs per facility that DADS is currently experiencing for the Intermediate Care Facilities - Mental Retardation (ICF/MR) program, since that program has a high concentration of small facilities. DADS indicated that annual costs/FTEs per ICF/MR facility are: \$4,197.56 for Salary, \$520.42 for Travel, 0.095 FTEs per facility. For the HCS group homes, DADS assumed the incremental costs of licensing the facilities would approximate the per facility costs experienced for Assisted Living Facilities of \$1457.77 for salary, \$118.30 for travel, and .034 FTEs. In addition to those costs, DADS included first year "set-up" costs, as well as standard recurring direct and indirect overhead costs, and fringe.

The DADS estimates include the cost of additional staff needed to assist with placing persons who need to be relocated as the result of the immediate closure of certain group homes, as well as additional staff needed to develop and negotiate Memoranda of Understanding (MOUs) with local entities.

DADS assumed an average of five MOUs would be needed for each county in Texas, and one work day would be needed for each MOU. The estimate assumed 1,500 available work hours per FTE or 6.8 FTEs needed to negotiate MOUs.

In addition, DADS assumed that 20 percent of the group homes would be closed each year (average nine residents per facility) and that two work days would be needed to relocate each resident. DADS assumed 1,500 available work hours per FTE and the number of FTEs needed to be 62.3 in FY 2008,

64.3 in FY 2009, 66.4 in FY 2011, 68.6 in FY 2011, and 70.8 in FY 2012. DADS assumed the average salary for a Community Care worker, as well as the average annual travel per Community Care worker.

The Office of the Attorney General indicated that the bill would result in additional cases filed by the OAG's Consumer Protection and Public Health Division. OAG review assessed that the bill does not give any entity other than the OAG ability to collect civil penalties for violations, or to seek a temporary restraining order on the Department's (DADS) behalf (Subchapter C). The OAG last year received 16 referrals for enforcement action related to licensed and/or unlicensed assisted living facilities (ALFs). The County Attorney's Office in Harris County had received at least thirty five referrals last year, many of them requiring temporary restraining orders to remove residents who were in immediate danger.

Based on the referrals to OAG and the County Attorney's Office in Harris County actions in fiscal year 2006 for ALFs the OAG has assumed a comparable number of referrals with the addition of Section 254, with referrals being made exclusively to the OAG. The OAG estimated the fiscal impact in fiscal year 2008 to be \$290,782 (plus three FTEs) and \$268,667 (and FTEs) each fiscal year thereafter from the General Revenue Fund.

Technology

DADS indicated that the bill would require creation of a new Group Home Facility type in the Compliance Assessment, Regulatory & Enforcement Systems (CARES) system, modification of the Central Data Repository (CDR), and a new application in the Web Accessible Facility Enrollment (WAFER). The automation for the Group Home Facility type would be applied in records and reports related to licensing, enforcement, and revenue functions.

In addition, modifications to the Compliance Assessment Review and Enforcement System would require creation of the Group Home Facility type and documents (610 hours). Modifications to the Web Accessible Facility Enrollment will require the creation of web accessible facility types and documents (3,900 hours), for a total of 4,510 hours. At an assumed cost of \$82 per hour, the estimated technology cost would be \$369,820.

Local Government Impact

No significant fiscal implication to units of local government is anticipated. Section 254.004(b) of the bill allows DADS to cooperate with local public health officials of a municipality or county in carrying out the chapter and to delegate to those officials the power to make inspections and recommendations to the department. A memorandum of understanding or agreement would need to be developed if DADS chooses to utilize the resources.

Source Agencies: 302 Office of the Attorney General, 539 Aging and Disability Services, Department of
LBB Staff: JOB, CL, PP, ML, KJG

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

April 1, 2007

TO: Honorable Patrick M. Rose, Chair, House Committee on Human Services

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB1168** by Menendez (Relating to licensing and regulation of certain facilities providing personal care to elderly or disabled persons; providing penalties.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1168, As Introduced: a negative impact of (\$42,059,444) through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	(\$20,566,149)
2009	(\$21,493,295)
2010	(\$20,541,552)
2011	(\$22,996,274)
2012	(\$22,227,631)

All Funds, Five-Year Impact:

Fiscal Year	Probable (Cost) from GENERAL REVENUE FUND 1	Probable (Cost) from GR MATCH FOR MEDICAID 758	Probable (Cost) from FEDERAL FUNDS 555	Probable Revenue Gain from GENERAL REVENUE FUND 1
2008	(\$1,480,207)	(\$21,597,086)	(\$1,480,207)	\$2,511,144
2009	(\$1,528,258)	(\$20,874,063)	(\$1,528,258)	\$909,026
2010	(\$1,711,312)	(\$21,515,178)	(\$1,711,312)	\$2,684,938
2011	(\$1,919,081)	(\$22,172,790)	(\$1,919,081)	\$1,095,597
2012	(\$2,157,380)	(\$22,956,331)	(\$2,157,380)	\$2,886,080

Fiscal Year	Change in Number of State Employees from FY 2007
2008	354.3
2009	369.8
2010	386.1
2011	403.5
2012	422.1

Fiscal Analysis

The bill would amend Title 4, Health and Safety Code, by adding Chapter 254, Group Home Facilities, to the Department of Aging and Disability Services' (DADS) responsibilities in licensing and regulation. The bill sets forth various statutory requirements for the facilities. Some of the requirements include licensure and license denial; suspension and revocation; surveys; inspections and investigations by DADS; and enforcement. The Group Home Facilities would not be required to be licensed before 01/01/08.

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Source Agencies: 302 Office of the Attorney General, 304 Comptroller of Public Accounts

LBB Staff: JOB, CL, PP, ML, KJG

