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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.

No equivalent provision.

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

- (1) furnishes food, shelter, and personal care services to three or fewer people who are unrelated to the proprietor of the facility; and
 - (2) provides regular care to the residents of the facility.
- (b) A facility described by Subsection (a) shall list with

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the department. A listing remains valid until surrendered.

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

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

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

(b) Not later than January 1, 2008, the executive commissioner of the Health and Human Services Commission shall 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.

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

CHAPTER 254. GROUP HOME FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 254.001. DEFINITIONS. In this chapter:

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

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

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

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

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

(6) "Facility" means an establishment that provides services, including community meals, light housework, meal preparation, transportation, grocery shopping, money management, or laundry services to three or more elderly persons or disabled persons residing in the facility who are unrelated to the owner or proprietor of the establishment and that is not required to be licensed under Chapter 142, 242, 246, 247, or 252.

(7) "Governmental unit" means the state or a political

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subdivision of the state, including a county or municipality.

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

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

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

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

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

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

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

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

(c) The department may coordinate its personnel and facilities with a local agency of a municipality or county

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and may provide advice to the municipality or county if the municipality or county decides to supplement the state program with additional rules required to meet local conditions.

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

Sec. 254.005. PROHIBITION OF REMUNERATION.

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

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

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

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

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

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revenue fund.

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

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

(2) interest paid on money in the account;

(3) fees charged under this chapter; and

(4) penalties charged under this chapter.

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

(1) for the enforcement of this chapter;

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

(3) for transitional housing and case management services.

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

[Sections 254.008-254.030 reserved for expansion]

SUBCHAPTER B. LICENSING, FEES, AND INSPECTIONS

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

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

(b) The application must contain information that the department requires. The department may require

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affirmative evidence of ability to comply with the standards and rules adopted under this chapter.

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

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

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

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

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

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

(1) an inspection;

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

(3) payment of the renewal fee.

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

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

Sec. 254.034. LICENSE FEES. (a) The executive commissioner by rule may adopt a fee for a license issued under this chapter in an amount reasonable and

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necessary to recover the costs of administering this chapter.

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

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

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

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

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

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

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

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residents' health, safety, and comfort;

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

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

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

(6) specialized nutrition support;

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

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

(9) the quality of life.

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

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

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must complete review of submitted plans.

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

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

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

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

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

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

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

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

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may be different for facilities or portions of facilities operated or approved for construction at different times.

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

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

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

(1) the license issued under this chapter;

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

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

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

(5) a notice that the operator, any employees, other staff,

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residents, volunteers, and family members and guardians of residents are protected from discrimination or retaliation as provided by Sections 254.131 and 254.132; and

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

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

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

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

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

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

(d) The department shall establish procedures to preserve all relevant evidence of conditions the department finds during an inspection, survey, or

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investigation that the department reasonably believes threaten the health and safety of a resident. The procedures may include photography or photocopying of relevant documents, such as license holder's notes, physician's orders, and pharmacy records, for use in any legal proceeding.

(e) When photographing a resident, the department:

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

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

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

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

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

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

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

Sec. 254.042. UNANNOUNCED INSPECTIONS. (a)

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Each licensing period, the department shall conduct at least two unannounced inspections of each facility.

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

(c) The department may require additional unannounced inspections.

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

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

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

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

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

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

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

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

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

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

(b) At the conclusion of an inspection, survey, or investigation under this chapter, the department or the department's representative conducting the inspection, survey, or investigation shall discuss the violations with the facility's management in an exit conference. The department or the department's representative shall leave a written list of the violations with the facility and the person designated by the facility to receive notice of the imposition of an administrative penalty at the time of the exit conference. If the department or the department's representative discovers any additional violations during

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the review of field notes or preparation of the official final list, the department or the department's representative shall give the facility an additional exit conference regarding the additional violations.

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

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

[Sections 254.047-254.060 reserved for expansion]

SUBCHAPTER C. GENERAL ENFORCEMENT

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

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

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

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

(c) To ensure the availability of emergency placements under Subsection (b), the executive commissioner shall develop a memorandum of understanding with

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appropriate counties or municipal agencies that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) On request of the department, the attorney general may institute an action in a district court to collect a civil penalty under this section. Any amount collected shall be remitted to the comptroller for deposit to the credit of

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the elderly and disabled persons account.

Sec. 254.065. ADMINISTRATIVE PENALTY. (a)

The department may impose an administrative penalty against a facility that violates this chapter or a rule adopted or order issued under this chapter.

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

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

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

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

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

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard of the violation to the health or safety of

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residents;

(2) the history of previous violations;

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

(4) the amount necessary to deter future violations;

(5) efforts made to correct the violation;

(6) the size of the facility; and

(7) any other matters that justice may require.

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

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

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

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

(i) Notwithstanding any other provision of this section,

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an administrative penalty ceases to be incurred on the date a violation is corrected. The administrative penalty ceases to be incurred only if the facility:

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

and

(2) shows later that the violation was corrected.

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

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

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

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

(c) The department shall offer amelioration to a person for a charged violation if the department determines that

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the violation does not result in an immediate jeopardy to the health and safety of a facility resident.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 254.067. 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 a facility within the county or municipality; and

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(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 254.031; and

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

[Sections 254.068-254.090 reserved for expansion]

SUBCHAPTER D. NOTIFICATION OF CLOSURE

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

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

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

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

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

(2) the name and contact information of the person responsible for the reopening of the facility.

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

(d) If the facility's closure is voluntary, the facility shall make the notification not later than one week after the

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date on which the decision to close is made.

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

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

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

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

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

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

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

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

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

(3) finalize any outstanding financial arrangements with the resident, including presenting the resident with a final statement of account with the facility containing all charges and fees for services, discontinuing any financial

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assignment arrangement, and refunding any excess fees or charges.

[Sections 254.094-254.120 reserved for expansion]

SUBCHAPTER E. REPORTS OF ABUSE, NEGLECT, OR EXPLOITATION

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

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

[Sections 254.122-254.130 reserved for expansion]

SUBCHAPTER F. PROHIBITION OF RETALIATION

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

(b) An employee has a cause of action against a facility, the owner or operator of the facility, or another employee of the facility that suspends or terminates the employment of the employee or otherwise disciplines,

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discriminates against, or retaliates against the employee for:

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

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

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

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

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

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

(2) exemplary damages;

(3) court costs; and

(4) reasonable attorney's fees.

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

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

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

(e) The petitioner, not later than the 90th day after the date on which the person's employment is suspended or

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terminated, must bring suit or notify the Texas Workforce Commission of the petitioner's intent to sue under this section. A petitioner who notifies the Texas Workforce Commission under this subsection must bring suit not later than the 90th day after the date of the delivery of the notice to the commission. On receipt of the notice, the commission shall notify the facility of the petitioner's intent to bring suit under this section.

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

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

(1) the plaintiff resides;

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

(3) the defendant conducts business.

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

Sec. 254.132. SUIT FOR RETALIATION AGAINST VOLUNTEER, RESIDENT, OR FAMILY MEMBER OR GUARDIAN OF RESIDENT. (a) A facility may not retaliate or discriminate against a volunteer, a resident, or a family member or guardian of a resident

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because the volunteer, the resident, the resident's family member or guardian, or any other person:

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

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

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

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

(1) injunctive relief;

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

(3) exemplary damages;

(4) court costs; and

(5) reasonable attorney's fees.

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

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

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[Sections 254.133-254.150 reserved for expansion]

SUBCHAPTER G. REPORTING RESIDENT DEATHS

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

(1) a facility resident; and

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

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

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

(1) name and age of the deceased;

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

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

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

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

(e) The department shall develop statistical information on official causes of death to determine patterns and

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

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

[Sections 254.152-254.170 reserved for expansion]

SUBCHAPTER H. MEDICAL CARE

Sec. 254.171. ADMINISTRATION OF MEDICATION.

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

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

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

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

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

(c) The facility shall provide the description of the type of assistance with self-administration of medication provided by the facility to residents to a person

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performing an inspection of the facility under this chapter.

[Sections 254.172-254.180 reserved for expansion]

SUBCHAPTER I. REQUIRED REPORTING

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

(1) the number of:

(A) license applications received under this chapter;

(B) license applications granted under this chapter;

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

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

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

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

No equivalent provision.

No equivalent provision.

SECTION 1. DEFINITIONS. In this Act:

(1) "Department" means the Department of Aging and

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Disability Services.

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

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

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

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

(A) 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 boarding house who are unrelated to the owner or proprietor of the establishment;

(B) is not:

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

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

(C) is not a:

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

(ii) family violence center as defined by Section 51.002, Human Resources Code;

(iii) hotel as defined by Section 156.001, Tax Code;

(iv) retirement community;

(v) monastery or convent; or

(vi) sorority or fraternity house or other dormitory affiliated with an institution of higher education.

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No equivalent provision.

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

- (1) requires boarding houses to be licensed;
- (2) inspects boarding houses; and
- (3) enforces rules and regulations for licensed boarding houses.

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

- (1) minimum standards to ensure the health and safety of residents of boarding houses, including fire safety requirements;
- (2) required disclosures by boarding houses;
- (3) reporting requirements regarding resident deaths, injuries, or accidents; and
- (4) administrative penalties for a boarding house of not less than \$100 or more than \$1,000 for each violation by a boarding house of a rule adopted or order issued under the pilot program.

(c) Subject to the appropriation of funds for the express purpose of implementing the pilot program described by this section, not later than August 1, 2008, the executive commissioner shall implement the pilot program in a

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county or municipality that has adopted an order or ordinance regulating the operation of boarding houses.

No equivalent provision.

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

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

(A) the number of:

(i) boarding houses licensed through the pilot program;

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

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

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

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

(2) if the pilot program has not been developed and implemented, a study and recommendations regarding the most effective method for regulating boarding houses, including recommendations on whether clarifying the authority of and granting additional

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authority to counties and municipalities to establish health and safety standards for boarding houses is recommended.

No equivalent provision.

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

No equivalent provision.

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]

No equivalent provision.

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

No equivalent provision.

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:

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

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

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

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

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

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

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

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

No equivalent provision.

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

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

(1) "Permit" means an authorization by a license, certificate, registration, or other form that is required by law or state agency rules to engage in a particular business.

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

No equivalent provision.

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

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

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- (1)for which an agency's median time during the preceding calendar year for processing a permit application from receipt of the initial application to the final permit decision did not exceed seven days;
- (2)issued in connection with any form of gaming or gambling; or
- (3)issued under the Alcoholic Beverage Code.

No equivalent provision.

SECTION __. Section 2005.005, Government Code, is amended to read as follows:
Sec. 2005.005. DUTY OF HEAD OF AGENCY. The head of each state agency shall ensure that the agency complies with this subchapter [~~chapter~~].

No equivalent provision.

SECTION __. Subsection (a), Section 2005.006, Government Code, is amended to read as follows:
(a)A state agency subject to this subchapter [~~chapter~~] shall establish by rule a complaint procedure through which a permit applicant can:
(1)complain directly to the chief administrator of the agency if the agency exceeds the established period for processing permits; and
(2)request a timely resolution of any dispute arising from the delay.

No equivalent provision.

SECTION __. Subsection (b), Section 2005.007, Government Code, is amended to read as follows:

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(b)The report must include:

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

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

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

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

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

No equivalent provision.

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

No equivalent provision.

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

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

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

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

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

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

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- (2) with respect to a corporation:
 - (A)an officer;
 - (B)a director;
 - (C)a stockholder who owns, holds, or has the power to vote at least 10 percent of any class of securities issued by the corporation, regardless of whether the power is of record or beneficial; and
 - (D)a controlling individual;
- (3) with respect to an individual:
 - (A)each partnership and each partner in the partnership in which the individual or any other affiliate of the individual is a partner; and
 - (B)each corporation or other business entity in which the individual or another affiliate of the individual is:
 - (i)an officer;
 - (ii)a director;
 - (iii)a stockholder who owns, holds, or has the power to vote at least 10 percent of any class of securities issued by the corporation, regardless of whether the power is of record or beneficial; and
 - (iv)a controlling individual;
- (4) with respect to a limited partnership:
 - (A)a general partner; and
 - (B)a limited partner who is a controlling individual;
- (5) with respect to a limited liability company:
 - (A) an owner who is a manager as described by the Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes); and
 - (B) each owner who is a controlling individual; and
- (6) with respect to any other business entity, a

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controlling individual.

No equivalent provision.

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

No equivalent provision.

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

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

Same as House version.