

## **BILL ANALYSIS**

C.S.H.B. 216  
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Human Services  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Currently, there is very limited regulation of private homes operated by an individual as a boarding house for residents who are not related to the provider and who are mentally disabled, mentally retarded, or elderly and in need of quality, safe, and supervised housing. Current law requires certain categories of group homes or facilities to be licensed, inspected, and regulated only if there is clear evidence that the facility provides varying degrees of medical services, such as prescription administration, treatment, or therapeutic services, but the Department of Aging and Disability Services (DADS) lacks evidence of these criteria and has no authority to regulate operations of the residence.

Similarly, a local government's ability to regulate such a facility is restricted under current law to residential zoning rules, health and safety codes, and other municipal ordinances. Excluding individually reported and investigated cases of abuse through the adult protective services program, a state agency does not have the authority to require or enforce registration, inspection, and oversight of such a facility.

C.S.H.B. 216 establishes procedures that authorize state agencies and local authorities to participate, as appropriate, in the permitting and inspection of boarding home facilities to protect the tenants. The bill authorizes a local municipality or county to adopt general standards developed by the executive commissioner of the Health and Human Services Commission, and it authorizes a local authority to collect fees and penalties and participate in a competitive grant program.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 216 amends the Health and Safety Code to require the executive commissioner of the Health and Human Services Commission to develop and publish in the Texas Register model standards for the operation of a boarding home facility relating to the construction or remodeling of a boarding home facility to ensure the resident's health, safety, comfort, and protection from fire hazard; sanitary and related conditions in a boarding home facility and its surroundings; the reporting and investigation of injuries, incidents, and unusual accidents and the establishment of other policies and procedures necessary to ensure resident health and safety; assistance with self-administering medication; requirements for in-service education of the facility's staff; criminal history record checks; and assessment and periodic monitoring to ensure that a resident does not require the facility to provide personal care, nursing, or other services, and is capable of self-administering medication or is aware of what the resident's medication looks like and knows when the medications should be taken but requires assistance with self-administering medication. The bill requires the commissioner to adopt these standards not later than September 1, 2010.

C.S.H.B. 216 authorizes a county or municipality to require a person to obtain a permit from the

county or municipality to operate a boarding home facility within the county's or municipality's jurisdiction. The bill authorizes a county or municipality to adopt the model standards developed by the executive commissioner and require a boarding home facility that holds a permit issued by the county or municipality to comply with the adopted standards.

C.S.H.B. 216 sets forth general provisions for a county or municipality that requires a person to obtain a boarding home facility permit to establish permit procedures, to set reasonable permit fees, and to impose fines for noncompliance with the county or municipal boarding home facility regulations. The bill establishes posting requirements for a boarding home facility that holds a permit issued by a county or municipality. The bill authorizes a county or municipality to conduct any inspection, survey, or investigation that it considers necessary and to enter the premises of a boarding home facility at reasonable times to make an inspection, survey, or investigation. The bill entitles a county or municipality to books, records, and other documents maintained by or on behalf of a boarding home facility as necessary to enforce the model standards.

C.S.H.B. 216 authorizes two or more counties or municipalities to cooperate and contract with each other for the purpose of inspecting and permitting boarding home facilities.

C.S.H.B. 216 requires a person who has cause to believe that a resident who is an elderly person or a person with a disability has been abused, neglected, or exploited or adversely affected by such actions caused by another person to report the action to the Department of Family and Protective Services for investigation by that agency. The bill requires each boarding home facility that holds a permit issued by a county or municipality to require each employee of the facility, as a condition of employment with the facility, to sign a statement that the employee acknowledges that the employee may be held criminally liable for failing to report abuse, neglect, or exploitation of an elderly or disabled person.

C.S.H.B. 216 requires the Health and Human Services Commission to establish a competitive grant program that promotes innovation and effectiveness in the local regulation of boarding home facilities. The bill requires a grant awarded by the commission to be used to support certain creative and innovative approaches to local regulation. The bill requires the commission to request proposals for the award of a grant and to evaluate each proposal and award a grant based on the proposal's quantifiable effectiveness and potentially positive impact on the regulation of boarding home facilities. The bill authorizes the commission to require a county or municipality to spend local matching funds as a condition for the award of a grant and prohibits the commission from collecting any additional money from the county or municipality that is derived from fees collected or fines imposed by the administration of a boarding home facility permitting program. The bill authorizes the commission to award a grant under the program only to a county, a municipality, or two or more counties or municipalities that have entered into an interlocal cooperation agreement. The bill authorizes a grant recipient to use the grant money only to pay for activities directly related to the purpose of the grant program. The bill requires the commission to establish procedures to administer the grant program and to enter into a contract that includes performance requirements with each grant recipient. The bill requires the commission to monitor and enforce the terms of the contract and requires the contract to authorize the commission to recoup grant money from a grant recipient for failure to comply with the contract terms. The bill requires the commission to post on its Internet website a summary of each grant awarded.

C.S.H.B. 216, for purposes of the Assisted Living Facility Licensing Act, redefines "assisted living facility" to include an establishment that provides administration of medication by a person licensed in Texas to administer the medication and that is authorized to provide assistance with or supervision of the administration of medication, and it removes this language from the definition of "personal care services." The bill redefines "board" and "department."

C.S.H.B. 216 exempts a boarding home facility established by the bill from the Assisted Living

Facility Licensing Act, rather than exempting a boarding facility that has rooms for rent and that may offer community meals, light housework, meal preparation, transportation, grocery shopping, money management, or laundry services but that does not provide personal care services.

C.S.H.B. 216 establishes that the bill's provisions on boarding home facilities do not apply to a person who is required to be licensed under state law on home and community support services, convalescent and nursing homes and related institutions, or intermediate care facilities for the mentally retarded or under the Texas Continuing Care Facility Disclosure and Rehabilitation Act or the Assisted Living Facility Licensing Act; certain persons that are exempt from licensing under state law on home and community support services, convalescent and nursing homes and related institutions, and the Assisted Living Facility Licensing Act; a hotel; a retirement community; a monastery or convent; a child-care facility; a family violence shelter center; or a sorority or fraternity house or other dormitory associated with an institution of higher education.

C.S.H.B. 216 defines "assistance with self-administering medication," "boarding home facility," "commission," "elderly person," "executive commissioner," "person with a disability," and "resident."

C.S.H.B. 216 sets forth the legislature's intent for the effect of this bill in relation to other legislation impacting the provisions of law amended by this bill. The bill specifies that its provisions related to local regulation; permit procedures, fees, and fines; posting requirements; inspections; and interlocal cooperation take effect September 1, 2010.

C.S.H.B. 216 repeals Section 247.030, Health and Safety Code, relating to facilities for supervision of medication and general welfare, effective September 1, 2010.

#### **EFFECTIVE DATE**

Except as otherwise provided, September 1, 2009.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 216 differs from the original by removing all language relating to the creation of a group home facility license for facilities that provide 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 family and that were not otherwise required to be licensed. The substitute removes language from the original that requires the executive commissioner of the Health and Human Services Commission to adopt rules to implement and administer the licensing provisions and requires each facility to implement and enforce the rights of elderly residents. The substitute removes provisions from the original that set forth general provisions for licensing procedures, fees, and inspections; general enforcement; notification of closure; prohibition of retaliation; reporting resident deaths; medical care; required reporting; and other provisions related to group home facilities and licenses.

C.S.H.B. 216 adds provisions not in the original that relate to the local regulation of boarding home facilities for persons with disabilities or elderly persons and assisted living facilities. The substitute requires the executive commissioner of the Health and Human Services Commission to develop and publish model standards for the operation of a boarding home facility, and it provides for the local regulation of such a facility and the related model standards; permit procedures, fees, and fines; posting requirements; inspection requirements; interlocal cooperation authority; provisions relating to the reporting of abuse, neglect, or exploitation of boarding home residents; and a competitive grant program established by the Health and Human Services Commission to promote innovation and effectiveness in the local regulation of a facility. The substitute differs from the original by repealing Section 247.030, Health and Safety

Code, relating to facilities for supervision of medication and general welfare. The substitute differs from the original by setting forth legislative intent for the effect of the bill's provisions. The substitute sets forth multiple effective dates, whereas the original sets forth one effective date.