

By: Menendez, Naishtat, Davis of Dallas,
Kent, Leibowitz

H.B. No. 216

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the regulation of boarding home facilities for persons
3 with disabilities or elderly persons and assisted living
4 facilities.

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

6 SECTION 1. Subtitle B, Title 4, Health and Safety Code, is
7 amended by adding Chapter 254 to read as follows:

8 CHAPTER 254. BOARDING HOME FACILITIES

9 Sec. 254.001. DEFINITIONS. In this chapter:

10 (1) "Assistance with self-administering medication"
11 means assisting a resident by reminding the resident to take
12 medication, opening and removing medications from a container, or
13 reminding the resident when a prescription medication needs to be
14 refilled.

15 (2) "Boarding home facility" means an establishment
16 that:

17 (A) furnishes, in one or more buildings, lodging
18 to three or more persons with disabilities or elderly persons who
19 are unrelated to the owner of the establishment by blood or
20 marriage; and

21 (B) provides community meals, light housework,
22 meal preparation, transportation, grocery shopping, money
23 management, laundry services, or assistance with
24 self-administration of medication but does not provide personal

1 care services as defined by Section 247.002 to those persons.

2 (3) "Commission" means the Health and Human Services
3 Commission.

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

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

8 (6) "Person with a disability" means a disabled person
9 as defined by Section 48.002, Human Resources Code.

10 (7) "Resident" means a person who is residing in a
11 boarding home facility.

12 Sec. 254.002. EXEMPTIONS. This chapter does not apply to:

13 (1) a person that is required to be licensed under
14 Chapter 142, 242, 246, 247, or 252;

15 (2) a person that is exempt from licensing under
16 Section 142.003(a)(19), 242.003(3), or 247.004(4);

17 (3) a hotel as defined by Section 156.001, Tax Code;

18 (4) a retirement community;

19 (5) a monastery or convent;

20 (6) a child-care facility as defined by Section
21 42.002, Human Resources Code;

22 (7) a family violence shelter center as defined by
23 Section 51.002, Human Resources Code; or

24 (8) a sorority or fraternity house or other dormitory
25 associated with an institution of higher education.

26 Sec. 254.003. MODEL STANDARDS. The executive commissioner
27 shall develop and publish in the Texas Register model standards for

1 the operation of a boarding home facility relating to:

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

6 (2) sanitary and related conditions in a boarding home
7 facility and its surroundings, including insect and rodent control,
8 water supply, sewage disposal, food handling, and general hygiene
9 to ensure the residents' health, safety, and comfort;

10 (3) the reporting and investigation of injuries,
11 incidents, and unusual accidents and the establishment of other
12 policies and procedures necessary to ensure resident health and
13 safety;

14 (4) assistance with self-administering medication;

15 (5) requirements for in-service education of the
16 facility's staff;

17 (6) criminal history record checks; and

18 (7) assessment and periodic monitoring to ensure that
19 a resident:

20 (A) does not require the boarding home facility
21 to provide personal care, nursing, or other services not listed in
22 Section 254.001(2); and

23 (B) is capable of self-administering medication
24 or is aware of what the resident's medications look like and knows
25 when the medications should be taken but requires assistance with
26 self-administering medication.

27 Sec. 254.004. LOCAL REGULATION. A county or municipality

1 may require a person to obtain a permit from the county or
2 municipality to operate a boarding home facility within the
3 county's or municipality's jurisdiction. A county or municipality
4 may adopt the standards developed by the executive commissioner
5 under Section 254.003 and require a boarding home facility that
6 holds a permit issued by the county or municipality to comply with
7 the adopted standards.

8 Sec. 254.005. PERMIT PROCEDURES; FEES; FINES. (a) A county
9 or municipality that requires a person to obtain a boarding home
10 facility permit as authorized by Section 254.004 may establish
11 procedures for the submission of a boarding home facility permit
12 application and for the issuance, denial, renewal, suspension, and
13 revocation of the permit.

14 (b) A county or municipality that requires a person to
15 obtain a boarding home facility permit as authorized under Section
16 254.004 may set reasonable fees for issuance of the permit, renewal
17 of the permit, and inspections and may impose fines for
18 noncompliance with the county or municipal boarding home facility
19 regulations. The fees collected and fines imposed by the county or
20 municipality must be used to administer the county or municipal
21 permitting program, as a source of local matching funds for state
22 grants, or for other purposes directly related to providing
23 boarding home facility or other assisted living services to elderly
24 persons and persons with disabilities.

25 (c) A person required to obtain a boarding home facility
26 permit from a county or municipality as authorized under Section
27 254.004 shall pay any fees required or fines imposed by the county

1 or municipality.

2 Sec. 254.006. POSTING. A boarding home facility that holds
3 a permit issued by a county or municipality shall prominently and
4 conspicuously post for display in a public area of the boarding home
5 facility that is readily available to residents, the operator,
6 employees, and visitors:

7 (1) the permit issued by a county or municipality;

8 (2) a sign prescribed by the county or municipality
9 that issued the permit that specifies how complaints may be
10 registered with the county or municipality;

11 (3) a notice in a form prescribed by the county or
12 municipality that issued the permit stating that inspection and
13 related reports are available at the boarding home facility for
14 public inspection and providing a telephone number that may be used
15 to obtain information concerning the boarding home facility;

16 (4) a concise summary of the most recent inspection
17 report relating to the boarding home facility; and

18 (5) a notice in a form prescribed by the county or
19 municipality that issued the permit that lists the name, location,
20 and contact information for:

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

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

27 Sec. 254.007. INSPECTIONS. (a) A county or municipality

1 may conduct any inspection, survey, or investigation that it
2 considers necessary and may enter the premises of a boarding home
3 facility at reasonable times to make an inspection, survey, or
4 investigation.

5 (b) A county or municipality is entitled to access to books,
6 records, and other documents maintained by or on behalf of a
7 boarding home facility to the extent necessary to enforce the
8 standards adopted by the county or municipality.

9 Sec. 254.008. INTERLOCAL COOPERATION. Two or more counties
10 or municipalities may cooperate and contract with each other for
11 the purpose of inspecting and permitting boarding home facilities.

12 Sec. 254.009. REPORTING OF ABUSE, NEGLECT, OR EXPLOITATION.

13 (a) A person, including an owner, operator, or employee of a
14 boarding home facility that holds a permit issued by a county or
15 municipality, who has cause to believe that a resident who is an
16 elderly person or a person with a disability has been abused,
17 neglected, or exploited or may be adversely affected by abuse,
18 neglect, or exploitation caused by another person shall report the
19 abuse, neglect, or exploitation to the Department of Family and
20 Protective Services for investigation by that agency.

21 (b) Each boarding home facility that holds a permit issued
22 by a county or municipality shall require each employee of the
23 boarding home facility, as a condition of employment with the
24 boarding home facility, to sign a statement that the employee
25 acknowledges that the employee may be criminally liable under
26 Section 48.052, Human Resources Code, for failure to report abuse,
27 neglect, or exploitation.

1 (c) An owner, operator, or employee of a boarding home
2 facility that holds a permit issued by a county or municipality may
3 not retaliate against an employee of the facility who in good faith
4 makes a complaint to the office of the inspector general of the
5 Health and Human Services Commission, cooperates with the office of
6 the inspector general in an investigation, or reports abuse,
7 neglect, or exploitation of a resident to the Department of Family
8 and Protective Services.

9 Sec. 254.010. COMPETITIVE GRANT PROGRAM. (a) The
10 commission shall establish a competitive grant program that
11 promotes innovation and effectiveness in the local regulation of
12 boarding home facilities.

13 (b) A grant awarded by the commission under this section
14 shall be used to support creative and innovative approaches to
15 local regulation, including:

- 16 (1) public-private initiatives;
17 (2) cooperative arrangements among local agencies and
18 governmental entities;
19 (3) use of mental health or social services personnel;
20 (4) public awareness and education campaigns; and
21 (5) other activities that improve local regulation and
22 quality of life of residents.

23 (c) The commission shall request proposals for the award of
24 a grant under the program. The commission shall evaluate each
25 proposal and award a grant based on the proposal's quantifiable
26 effectiveness and potentially positive impact on the regulation of
27 boarding home facilities.

1 (d) The commission may require a county or municipality to
2 spend local matching funds as a condition for the award of a grant
3 under this section. The commission may not collect any additional
4 money from the county or municipality that is derived from fees
5 collected or fines imposed for the administration of a boarding
6 home facility permitting program authorized under this chapter.

7 (e) The commission may award a grant under the program only
8 to a county, a municipality, or two or more counties or
9 municipalities that have entered into an interlocal cooperation
10 agreement. A grant recipient may use the grant money received under
11 this section only to pay for activities directly related to the
12 purpose of the grant program as described by Subsection (b).

13 (f) The commission shall establish procedures to administer
14 the grant program, including a procedure for the submission of a
15 proposal and a procedure to be used by the commission to evaluate a
16 proposal.

17 (g) The commission shall enter into a contract that includes
18 performance requirements with each grant recipient. The commission
19 shall monitor and enforce the terms of the contract. The contract
20 must authorize the commission to recoup grant money from a grant
21 recipient for failure of the grant recipient to comply with the
22 terms of the contract.

23 (h) The commission shall post on its Internet website a
24 summary of each grant awarded under this section.

25 Sec. 254.011. EXCLUSION PROHIBITED. If an entity meets the
26 requirements established by a county or municipality under this
27 chapter, the entity may not be excluded from a residential area by

1 zoning ordinances or similar regulations.

2 SECTION 2. Sections 247.002(1), (2), (4), (5), and (7),
3 Health and Safety Code, are amended to read as follows:

4 (1) "Assisted living facility" means an establishment
5 that:

6 (A) furnishes, in one or more facilities, food
7 and shelter to four or more persons who are unrelated to the
8 proprietor of the establishment; ~~and~~

9 (B) provides:

10 (i) personal care services; or

11 (ii) administration of medication by a
12 person licensed in this state to administer the medication; and

13 (C) may provide assistance with or supervision of
14 the administration of medication.

15 (2) "Board" means the executive commissioner of the
16 Health and ~~Texas Board of~~ Human Services Commission.

17 (4) "Department" means the ~~[Texas]~~ Department of Aging
18 and Disability ~~[Human]~~ Services.

19 (5) "Personal care services" means:

20 (A) assistance with feeding ~~[meals]~~, dressing,
21 moving ~~[movement]~~, bathing, or other personal needs or maintenance;
22 or

23 (B) ~~[the administration of medication by a person~~
24 ~~licensed to administer medication or the assistance with or~~
25 ~~supervision of medication; or~~

26 ~~[(C)]~~ general supervision or oversight of the
27 physical and mental well-being of a person who needs assistance to

1 maintain a private and independent residence in an assisted living
2 facility or who needs assistance to manage the person's personal
3 life, regardless of whether a guardian has been appointed for the
4 person.

5 (7) "Commissioner" means the commissioner of the
6 department [~~human services~~].

7 SECTION 3. Section 247.004, Health and Safety Code, is
8 amended to read as follows:

9 Sec. 247.004. EXEMPTIONS. This chapter does not apply to:

10 (1) a boarding home facility as defined by Section
11 254.001 [~~that has rooms for rent and that may offer community meals,~~
12 ~~light housework, meal preparation, transportation, grocery~~
13 ~~shopping, money management, or laundry services but that does not~~
14 ~~provide personal care services~~];

15 (2) an establishment conducted by or for the adherents
16 of the Church of Christ, Scientist, for the purpose of providing
17 facilities for the care or treatment of the sick who depend
18 exclusively on prayer or spiritual means for healing without the
19 use of any drug or material remedy if the establishment complies
20 with local safety, sanitary, and quarantine ordinances and
21 regulations;

22 (3) a facility conducted by or for the adherents of a
23 qualified religious society classified as a tax-exempt
24 organization under an Internal Revenue Service group exemption
25 ruling for the purpose of providing personal care services without
26 charge solely for the society's professed members or ministers in
27 retirement, if the facility complies with local safety, sanitation,

1 and quarantine ordinances and regulations; or

2 (4) a facility that provides personal care services
3 only to persons enrolled in a program that is funded in whole or in
4 part by the department [~~Texas Department of Mental Health and~~
5 ~~Mental Retardation~~] and that is monitored by the department [~~Texas~~
6 ~~Department of Mental Health and Mental Retardation~~] or its
7 designated local mental retardation authority in accordance with
8 standards set by the department [~~Texas Department of Mental Health~~
9 ~~and Mental Retardation~~].

10 SECTION 4. Section 247.030, Health and Safety Code, is
11 repealed.

12 SECTION 5. It is the intent of the legislature that the
13 passage by the 81st Legislature, Regular Session, 2009, of another
14 bill that amends Subtitle B, Title 4, Health and Safety Code, and
15 Chapter 247, Health and Safety Code, and the amendments made by this
16 Act shall be harmonized, if possible, as provided by Section
17 311.025(b), Government Code, so that effect may be given to each.
18 If the amendments made by this Act to Subtitle B, Title 4, Health
19 and Safety Code, and Chapter 247, Health and Safety Code, and the
20 amendments made to Subtitle B, Title 4, Health and Safety Code, and
21 Chapter 247, Health and Safety Code, by any other bill are
22 irreconcilable, it is the intent of the legislature that this Act
23 prevail, regardless of the relative dates of enactment of this Act
24 and the other bill or bills, but only to the extent that differences
25 are irreconcilable.

26 SECTION 6. Not later than September 1, 2010, the executive
27 commissioner of the Health and Human Services Commission shall

1 adopt the model standards required by Section 254.003, Health and
2 Safety Code, as added by this Act.

3 SECTION 7. (a) Except as provided by Subsection (b) of this
4 section, this Act takes effect September 1, 2009.

5 (b) Sections 254.004 through 254.008, Health and Safety
6 Code, as added by this Act, and Section 4 of this Act take effect
7 September 1, 2010.