

1 AN ACT

2 relating to the regulation of certain boarding home facilities and  
3 assisted living facilities; providing penalties.

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

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

7 CHAPTER 254. BOARDING HOME FACILITIES

8 Sec. 254.001. DEFINITIONS. In this chapter:

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

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

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

20 (B) provides community meals, light housework,  
21 meal preparation, transportation, grocery shopping, money  
22 management, laundry services, or assistance with  
23 self-administration of medication but does not provide personal  
24 care services as defined by Section 247.002 to those persons.

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

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

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

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

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

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

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

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

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

17           (4) a retirement community;

18           (5) a monastery or convent;

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

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

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

25           Sec. 254.003. MODEL STANDARDS. The executive commissioner  
26 shall develop and publish in the Texas Register model standards for  
27 the operation of a boarding home facility relating to:

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

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

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

13           (4) assistance with self-administering medication;

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

16           (6) criminal history record checks; and

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

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

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

26           Sec. 254.004. LOCAL REGULATION. A county or municipality  
27 may require a person to obtain a permit from the county or

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

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

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

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

27 Sec. 254.006. POSTING. A boarding home facility that holds

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

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

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

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

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

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

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

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

25 Sec. 254.007. INSPECTIONS. (a) A county or municipality  
26 may conduct any inspection, survey, or investigation that it  
27 considers necessary and may enter the premises of a boarding home

1 facility at reasonable times to make an inspection, survey, or  
2 investigation.

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

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

10 Sec. 254.009. REPORTING AND INVESTIGATION OF ABUSE,  
11 NEGLECT, OR EXPLOITATION. (a) A person, including an owner,  
12 operator, or employee of a boarding home facility that holds a  
13 permit issued by a county or municipality, who has cause to believe  
14 that a resident who is an elderly person or a person with a  
15 disability is being or has been abused, neglected, or exploited  
16 shall report the abuse, neglect, or exploitation to the Department  
17 of Family and Protective Services for investigation by that agency.  
18 The Department of Family and Protective Services shall investigate  
19 the allegation of abuse, neglect, or exploitation as authorized and  
20 in the manner provided by Chapter 48, Human Resources Code.

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. ANNUAL REPORT TO COMMISSION; LEGISLATIVE  
10 REPORT. (a) Not later than September 30 of each year following the  
11 establishment of a county or municipal permitting requirement under  
12 this chapter, each county or municipality that requires a person to  
13 obtain a boarding home facility permit under Section 254.004 shall  
14 submit to the commission a report. The report must include:

15           (1) the total number of:

16                   (A) boarding home facilities permitted during  
17 the preceding state fiscal year;

18                   (B) boarding home facility applications denied  
19 permitting, including a summary of cause for denial; and

20                   (C) boarding home facility permits active on  
21 August 31 of the preceding state fiscal year;

22           (2) the total number of residents reported housed in  
23 each boarding home facility reported;

24           (3) the total number of inspections conducted at each  
25 boarding home facility by the county or municipality that requires  
26 the permit; and

27           (4) the total number of permits revoked or suspended

1 as a result of an inspection described by Subdivision (3) and a  
2 summary of the outcome for the residents displaced by revocation or  
3 suspension of a permit.

4 (b) The commission shall establish and maintain a  
5 standardized compilation of information reported under this  
6 section and provide to the legislature a report of this information  
7 not later than January 1 of each odd-numbered year.

8 Sec. 254.011. EXCLUSION PROHIBITED. If an entity meets the  
9 requirements established by a county or municipality under this  
10 chapter, the entity may not be excluded from a residential area by  
11 zoning ordinances or similar regulations.

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

14 (1) "Assisted living facility" means an establishment  
15 that:

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

19 (B) provides:  
20 (i) personal care services; or  
21 (ii) administration of medication by a  
22 person licensed or otherwise authorized in this state to administer  
23 the medication; and

24 (C) may provide assistance with or supervision of  
25 the administration of medication.

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



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

3 (5) "Personal care services" means:

4 (A) assistance with feeding [~~meals~~], dressing,  
5 moving [~~movement~~], bathing, or other personal needs or maintenance;  
6 or

7 (B) [~~the administration of medication by a person~~  
8 ~~licensed to administer medication or the assistance with or~~  
9 ~~supervision of medication; or~~

10 [~~(C)~~] general supervision or oversight of the  
11 physical and mental well-being of a person who needs assistance to  
12 maintain a private and independent residence in an assisted living  
13 facility or who needs assistance to manage the person's personal  
14 life, regardless of whether a guardian has been appointed for the  
15 person.

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

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

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

21 (1) a boarding home facility as defined by Section  
22 254.001 [~~that has rooms for rent and that may offer community meals,~~  
23 ~~light housework, meal preparation, transportation, grocery~~  
24 ~~shopping, money management, or laundry services but that does not~~  
25 ~~provide personal care services~~];

26 (2) an establishment conducted by or for the adherents  
27 of the Church of Christ, Scientist, for the purpose of providing

1 facilities for the care or treatment of the sick who depend  
2 exclusively on prayer or spiritual means for healing without the  
3 use of any drug or material remedy if the establishment complies  
4 with local safety, sanitary, and quarantine ordinances and  
5 regulations;

6 (3) a facility conducted by or for the adherents of a  
7 qualified religious society classified as a tax-exempt  
8 organization under an Internal Revenue Service group exemption  
9 ruling for the purpose of providing personal care services without  
10 charge solely for the society's professed members or ministers in  
11 retirement, if the facility complies with local safety, sanitation,  
12 and quarantine ordinances and regulations; or

13 (4) a facility that provides personal care services  
14 only to persons enrolled in a program that is funded in whole or in  
15 part by the department [~~Texas Department of Mental Health and~~  
16 ~~Mental Retardation~~] and that is monitored by the department [~~Texas~~  
17 ~~Department of Mental Health and Mental Retardation~~] or its  
18 designated local mental retardation authority in accordance with  
19 standards set by the department [~~Texas Department of Mental Health~~  
20 ~~and Mental Retardation~~].

21 SECTION 4. Section 247.030, Health and Safety Code, is  
22 repealed.

23 SECTION 5. It is the intent of the legislature that the  
24 passage by the 81st Legislature, Regular Session, 2009, of another  
25 bill that amends Subtitle B, Title 4, Health and Safety Code, and  
26 Chapter 247, Health and Safety Code, and the amendments made by this  
27 Act shall be harmonized, if possible, as provided by Section

1 311.025(b), Government Code, so that effect may be given to each.  
2 If the amendments made by this Act to Subtitle B, Title 4, Health  
3 and Safety Code, and Chapter 247, Health and Safety Code, and the  
4 amendments made to Subtitle B, Title 4, Health and Safety Code, and  
5 Chapter 247, Health and Safety Code, by any other bill are  
6 irreconcilable, it is the intent of the legislature that this Act  
7 prevail, regardless of the relative dates of enactment of this Act  
8 and the other bill or bills, but only to the extent that differences  
9 are irreconcilable.

10 SECTION 6. Not later than September 1, 2010, the executive  
11 commissioner of the Health and Human Services Commission shall  
12 adopt the model standards required by Section 254.003, Health and  
13 Safety Code, as added by this Act.

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

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

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President of the Senate

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Speaker of the House

I certify that H.B. No. 216 was passed by the House on May 1, 2009, by the following vote: Yeas 140, Nays 2, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 216 on May 23, 2009, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 216 on May 31, 2009, by the following vote: Yeas 143, Nays 0, 1 present, not voting.

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Chief Clerk of the House

H.B. No. 216

I certify that H.B. No. 216 was passed by the Senate, with amendments, on May 20, 2009, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 216 on May 31, 2009, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor