

By: Shapleigh, et al.

S.B. No. 1521

Substitute the following for S.B. No. 1521:

By: Rose

C.S.S.B. No. 1521

A BILL TO BE ENTITLED

AN ACT

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

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

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

CHAPTER 254. BOARDING HOME FACILITIES

Sec. 254.001. DEFINITIONS. In this chapter:

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

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

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

(B) provides community meals, light housework, meal preparation, transportation, grocery shopping, money management, laundry services, or assistance with 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 or for other purposes directly related to
22 providing boarding home facility or other assisted living services
23 to elderly persons and persons with disabilities.

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

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

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

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

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

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

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

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

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

26 Sec. 254.007. INSPECTIONS. (a) A county or municipality
27 may conduct any inspection, survey, or investigation that it

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

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

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

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

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

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

27 (c) An owner, operator, or employee of a boarding home

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

8 Sec. 254.010. ANNUAL REPORT TO COMMISSION; LEGISLATIVE
9 REPORT. (a) Not later than September 30 of each year following the
10 establishment of a county or municipal permitting requirement under
11 this chapter, each county or municipality that requires a person to
12 obtain a boarding home facility permit under Section 254.004 shall
13 submit to the commission a report. The report must include:

14 (1) the total number of:

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

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

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

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

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

26 (4) the total number of permits revoked or suspended
27 as a result of an inspection described by Subdivision (3) and a

1 summary of the outcome for the residents displaced by revocation or
2 suspension of a permit.

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

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

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

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

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

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

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

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

27 (4) "Department" means the ~~[Texas]~~ Department of Aging

1 and Disability [~~Human~~] Services.

2 (5) "Personal care services" means:

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

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

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

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

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

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

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

25 (2) an establishment conducted by or for the adherents
26 of the Church of Christ, Scientist, for the purpose of providing
27 facilities for the care or treatment of the sick who depend

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

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

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

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

22 SECTION 5. It is the intent of the legislature that the
23 passage by the 81st Legislature, Regular Session, 2009, of another
24 bill that amends Subtitle B, Title 4, Health and Safety Code, and
25 Chapter 247, Health and Safety Code, and the amendments made by this
26 Act shall be harmonized, if possible, as provided by Section
27 311.025(b), Government Code, so that effect may be given to each.

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

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

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

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