

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Coleman

H.B. No. 2972

A BILL TO BE ENTITLED

AN ACT

relating to the definition of a controlling person with respect to the operation of certain assisted living facilities.

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

SECTION 1. Section 247.005, Health and Safety Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) Notwithstanding any other provision of this section, for purposes of this chapter, a controlling person of an assisted living facility or of a management company or other business entity described by Subsection (b)(1) that is a publicly traded corporation or is controlled by a publicly traded corporation means an officer or director of the corporation. The term does not include a shareholder or lender of the publicly traded corporation.

SECTION 2. This Act takes effect September 1, 2009.

ADOPTED

MAY 19 2009

*Letty Spaw*  
Secretary of the Senate

By: *Leticia VandePutte*

H.B. No. 2972

Substitute the following for H.B. No. 2972:

By: *[Signature]*

C.S. H.B. No. 2972

A BILL TO BE ENTITLED

AN ACT

relating to licensing of certain health facilities.

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

SECTION 1. Section 242.0021, Health and Safety Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) Notwithstanding any other provision of this section, for purposes of this chapter, a controlling person of an institution or of a management company or other business entity described by Subsection (b)(1) that is a publicly traded corporation or is controlled by a publicly traded corporation means an officer or director of the corporation. The term does not include a shareholder or lender of the publicly traded corporation.

SECTION 2. Section 242.039, Health and Safety Code, is amended by adding Subsection (g) to read as follows:

(g) The executive commissioner of the Health and Human Services Commission shall adopt rules to implement an expedited inspection process that allows an applicant for a license or for a renewal of a license to obtain a life safety code and physical plant inspection not later than the 15th day after the date the request is made. The department may charge a fee to recover the cost of the expedited inspection.

SECTION 3. Section 247.005, Health and Safety Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) Notwithstanding any other provision of this section,

1. for purposes of this chapter, a controlling person of an assisted  
2 living facility or of a management company or other business entity  
3 described by Subsection (b)(1) that is a publicly traded  
4 corporation or is controlled by a publicly traded corporation means  
5 an officer or director of the corporation. The term does not  
6 include a shareholder or lender of the publicly traded corporation.

7       SECTION 4. Section 247.021, Health and Safety Code, is  
8 amended by amending Subsections (d), (g), and (h) and adding  
9 Subsections (d-1), (d-2), (d-3), and (d-4) to read as follows:

10       (d) The department by rule shall establish procedures to  
11 issue a six-month provisional license to existing facilities with  
12 residents. The department may issue a provisional license [~~only~~]  
13 if:

14               (1) the facility is in compliance with resident care  
15 standards;

16               (2) the facility voluntarily discloses that the  
17 facility needs additional time to comply with life safety code and  
18 physical plant standards;

19               (3) the disclosure is made in writing by certified  
20 mail to the department;

21               (4) an investigation of the violation was not  
22 initiated and the violation was not independently detected by the  
23 department; and

24               (5) the disclosure is made promptly after knowledge of  
25 the information disclosed is obtained by the facility.

26       (d-1) A provisional license is effective on the date  
27 requested by the applicant.

1        (d-2) A provisional license expires the earlier of:

2                (1) the 180th day after the effective date of the  
3 provisional license or the end of any extension period granted by  
4 the department, in the department's sole discretion; or

5                (2) the date a license is issued to the provisional  
6 license holder under Subsection (d-4).

7        (d-3) The department shall conduct a life safety code  
8 inspection of the facility as soon as reasonably possible after the  
9 department issues a provisional license.

10        (d-4) After conducting a life safety code inspection, the  
11 department shall issue a license under Section 247.023 to the  
12 provisional license holder if the facility passes the inspection  
13 and the applicant meets all requirements for a license. A license  
14 issued under this subsection has the same effective date as the  
15 provisional license.

16        (g) The ~~[Notwithstanding Subsection (f), the]~~ department  
17 shall, upon submission of a written request by the applicant, [may]  
18 automatically issue a provisional license to a newly constructed  
19 facility if:

20                (1) the facility is in compliance with resident care  
21 standards;

22                (2) all local approvals have been obtained;

23                (3) a complete license application is submitted within  
24 30 days of receipt of all local approvals; ~~[and]~~

25                (4) the license fee has been paid;

26                (5) before beginning construction, the license  
27 applicant submits working drawings and specifications to the

1 department for review; and

2 (6) the department determines that the license  
3 applicant constructed another facility in this state that complies  
4 with the department's life safety code standards.

5 (h) The ~~[Notwithstanding Subsection (f), the]~~ department  
6 may automatically issue a provisional license in the case of a  
7 corporate change of ownership of a facility.

8 SECTION 5. Subchapter B, Chapter 247, Health and Safety  
9 Code, is amended by adding Section 247.0211 to read as follows:

10 Sec. 247.0211. EXPEDITED LIFE SAFETY CODE INSPECTION. (a)  
11 The executive commissioner of the Health and Human Services  
12 Commission shall adopt rules to implement an expedited inspection  
13 process that allows an applicant for an assisted living facility  
14 license or for a renewal of a license to obtain a life safety code  
15 and physical plant inspection not later than the 15th day after the  
16 date the request is made.

17 (b) The department may charge a fee to recover the cost of  
18 the expedited inspection.

19 SECTION 6. Section 247.022, Health and Safety Code, is  
20 amended by adding Subsection (b-1) to read as follows:

21 (b-1) If the department conducts at least three life safety  
22 code inspections at the applicant's facility, the department may  
23 collect a fee in addition to the fee under Subsection (b) for the  
24 application for the license.

25 SECTION 7. Section 247.032(a), Health and Safety Code, is  
26 amended to read as follows:

27 (a) In this section, "accreditation commission" means the

1 Commission on Accreditation of Rehabilitation Facilities, ~~[or]~~ the  
2 Joint Commission on Accreditation of Healthcare Organizations, or  
3 another organization approved by the executive commissioner of the  
4 Health and Human Services Commission.

5 SECTION 8. Sections 247.021(e) and (f), Health and Safety  
6 Code, are repealed.

7 SECTION 9. Not later than January 1, 2010, the executive  
8 commissioner of the Health and Human Services Commission shall  
9 adopt rules to implement the expedited inspection processes as  
10 required by Sections 242.039(g) and 247.0211, Health and Safety  
11 Code, as added by this Act.

12 SECTION 10. This Act takes effect September 1, 2009.

# ADOPTED

MAY 19 2009

*DeWay Spaul*  
Secretary of the Senate

FLOOR AMENDMENT NO. 1

BY: *Patricia VandePutte*

*Hg*

1 Amend C.S.S.B. No. 2972 (senate committee printing) as  
2 follows:

3 (1) In SECTION 2 of the bill, in added Section 242.039(g),  
4 Health and Safety Code (page 1, line 29), after the period, insert  
5 the following:

6 The rules must permit the department to set different fee amounts  
7 based on the size and type of institution.

8 (2) In the recital to SECTION 4 of the bill (page 1, line  
9 41), strike "(d-3), and (d-4)" and substitute "and (d-3)".

10 (3) In SECTION 4 of the bill, strike added Section  
11 247.021(d-1), Health and Safety Code (page 1, lines 58 and 59) and  
12 redesignate added Subsections (d-2), (d-3), and (d-4) as  
13 Subsections (d-1), (d-2), and (d-3) and correct cross-references as  
14 necessary (page 1, line 60, and page 2, lines 2, 3, and 6).

15 (4) In SECTION 6 of the bill, in added Section 247.022(b-1),  
16 Health and Safety Code (page 2, line 44), strike "at least three"  
17 and substitute "more than two".

18 (5) In SECTION 9 of the bill (page 2, line 57), strike  
19 "January" and substitute "June".

20 (6) Add the following appropriately numbered SECTION to the  
21 bill and renumber subsequent SECTIONS of the bill accordingly:

22 SECTION \_\_\_\_\_. Subchapter B, Chapter 247, Health and Safety  
23 Code, is amended by adding Section 247.0262 to read as follows:

24 Sec. 247.0262. REPORT ON LIFE SAFETY CODE SURVEYS. (a) The  
25 department shall annually report the number of life safety code  
26 surveys for an initial assisted living facility license with  
27 respect to which the department first visits the facility to  
28 conduct the survey more than 60 days after the date the applicant  
29 notifies the department that the applicant is ready for the initial

1 survey.

2       **(b) The department may report other data related to the**  
3 **timeliness of life safety code surveys or the processing time of**  
4 **license applications.**

5       **(c) The department may include the information described by**  
6 **Subsections (a) and (b) in any required annual regulatory report.**



**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**May 20, 2009**

**TO:** Honorable Joe Straus, Speaker of the House, House of Representatives

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB2972** by Coleman (Relating to licensing of certain health facilities. ), **As Passed 2nd House**

<b>No significant fiscal implication to the State is anticipated.</b>
---

The bill would amend the Health and Safety Code as it relates to licensing of certain health facilities.

Sections 1 and 3 of the bill would add Subsection (b-1) to Section 242.0021 and 247.005, Health and Safety Code, which defines an officer or director of a corporation as a controlling person of an assisted living facility or institution or of a management company or other business entity described by Subsection (b)(1) that is a publicly traded corporation or is controlled by a publicly traded corporation. The term would not include a shareholder or lender of the publicly traded corporation.

Sections 2 and 5 of the bill require the executive commissioner of the Health and Human Services Commission (commissioner) to adopt rules, not later than June 1, 2010, to implement an expedited inspection process that allows an applicant for a license or for a renewal of a license or for an initial assisted living facility license or renewal license to obtain a life safety code and physical plant inspection within 15 days of the request; the Department of Aging and Disability Services (DADS) is authorized to charge a fee to recover the cost of the expedited inspections. The rules must permit DADS to set different fee amounts based on the size and type of institution.

Section 4 of the bill would require DADS to conduct a life safety code inspection of the facility as soon as reasonably possible after the department issues a provisional license. If the facility passes the inspections and the applicant meets all the requirements for a license, DADS would be required to issue a license under Chapter 247 to the provisional license holder. Also, upon submission of a written request by the applicant, DADS would be required to automatically issue a provisional license to newly constructed facilities, if certain requirements are met. Under current law, DADS is authorized, but not required, to automatically issue a provisional license to newly constructed facilities if these requirements are met.

Section 6 of the bill allows DADS to collect an additional fee, in addition to the fee for an expedited life safety code inspection, if DADS conducts more than two life safety code inspections at the applicant's facility.

Section 7 of the bill would expand the definition of accreditation commission to include other organizations approved by the commissioner.

Section 8 of the bill repeals Sections 247.021 (e) and (f), Health and Safety Code, which are prohibitions on: 1) issuing a license to a facility at the end of the six-month provisional license, if the facility does not meet life safety code and physical plant standards; and 2) issuing a provisional license after December 31, 1999.

The bill also requires DADS to annually report the number of life safety code surveys for an initial assisted living facility license and DADS is authorized to report other data related to the timelines of life safety code surveys or the processing time of license applications.



It is assumed that the provisions of the bill could be implemented within existing resources. Sections 2 and 5 of the bill allow DADS to charge a fee for expedited surveys. It is assumed that any increase in expenditures for implementation of this provision would be offset by a gain in revenue that the agency would accomplish through fee collections; however, the increased revenue would need to be specifically appropriated to DADS in the General Appropriations Act.

The bill would take effect September 1, 2009.

#### **Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 539 Aging and Disability Services, Department of

**LBB Staff:** JOB, SJ, CL, LR



**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**May 13, 2009**

**TO:** Honorable Jane Nelson, Chair, Senate Committee on Health & Human Services

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB2972** by Coleman (Relating to licensing of certain health facilities.), **Committee Report**  
**2nd House, Substituted**

<b>No significant fiscal implication to the State is anticipated.</b>
---

The bill would amend the Health and Safety Code as it relates to licensing of certain health facilities.

Sections 1 and 3 of the bill would add Subsection (b-1) to Section 242.0021 and 247.005, Health and Safety Code, which defines an officer or director of a corporation as a controlling person of an assisted living facility or institution or of a management company or other business entity described by Subsection (b)(1) that is a publicly traded corporation or is controlled by a publicly traded corporation. The term would not include a shareholder or lender of the publicly traded corporation.

Sections 2 and 5 of the bill require the executive commissioner of the Health and Human Services Commission (commissioner) to adopt rules, not later than January 1, 2010, to implement an expedited inspection process that allows an applicant for a license or for a renewal of a license or for an initial assisted living facility license or renewal license to obtain a life safety code and physical plant inspection within 15 days of the request; the Department of Aging and Disability Services (DADS) is authorized to charge a fee to recover the cost of the expedited inspections.

Section 4 of the bill would make the effective date of a provisional license, under Chapter 247, the date on which the license was requested by the applicant. DADS would also be required to conduct a life safety code inspection of the facility as soon as reasonably possible after the department issues a provisional license. If the facility passes the inspections and the applicant meets all the requirements for a license, DADS would be required to issue a license under Chapter 247 to the provisional license holder. Also, upon submission of a written request by the applicant, DADS would be required to automatically issue a provisional license to newly constructed facilities, if certain requirements are met. Under current law, DADS is authorized, but not required, to automatically issue a provisional license to newly constructed facilities if these requirements are met.

Section 6 of the bill allows DADS to collect an additional fee, in addition to the fee for an expedited life safe code inspection, if DADS conducts at least three life safety code inspections at the applicant's facility.

Section 7 of the bill would expand the definition of accreditation commission to include other organizations approved by the commissioner.

Section 8 of the bill repeals Sections 247.021 (e) and (f), Health and Safety Code, which are prohibition on: 1) issuing a license to a facility at the end of the six-month provisional license, if the facility does not meet life safety code and physical plant standards; and 2) issuing a provisional license after December 31, 1999.

It is assumed that the provisions of the bill could be implemented within existing resources. Sections 2 and 5 of the bill allow DADS to charge a fee for expedited surveys. It is assumed that any increase in expenditures for implementation of this provision would be offset by a gain in revenue that the agency



would accomplish through fee collections; however, the increased revenue would need to be specifically appropriated to DADS in the General Appropriations Act.

The bill would take effect September 1, 2009.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 539 Aging and Disability Services, Department of  
**LBB Staff:** JOB, CL, SJ, LR





**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**May 8, 2009**

**TO:** Honorable Jane Nelson, Chair, Senate Committee on Health & Human Services

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB2972** by Coleman (Relating to the definition of a controlling person with respect to the operation of certain assisted living facilities.), **As Engrossed**

<b>No significant fiscal implication to the State is anticipated.</b>
---

The bill would amend the Health and Safety Code as it relates to the definition of a controlling person with respect to the operation of certain assisted living facilities.

The would add Subsection (b-1) to Section 247.005, Health and Safety Code, which defines an officer or director of a corporation as a controlling person of an assisted living facility or of a management company or other business entity described by Subsection (b)(1) that is a publicly traded corporation or is controlled by a publicly traded corporation. The term would not include a shareholder or lender of the publicly traded corporation.

The bill would take effect September 1, 2009.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 539 Aging and Disability Services, Department of

**LBB Staff:** JOB, CL, SJ, LR



**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**April 20, 2009**

**TO:** Honorable Patrick M. Rose, Chair, House Committee on Human Services

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB2972** by Coleman (Relating to the definition of a controlling person with respect to the operation of certain assisted living facilities.), **Committee Report 1st House, Substituted**

<b>No significant fiscal implication to the State is anticipated.</b>
---

The bill would amend the Health and Safety Code as it relates to the definition of a controlling person with respect to the operation of certain assisted living facilities.

The bill would add Subsection (b-1) to Section 247.005, Health and Safety Code, which defines an officer or director of a corporation as a controlling person of an assisted living facility or of a management company or other business entity described by Subsection (b)(1) that is a publicly traded corporation or is controlled by a publicly traded corporation. The term would not include a shareholder or lender of the publicly traded corporation.

The bill would take effect September 1, 2009.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 539 Aging and Disability Services, Department of

**LBB Staff:** JOB, CL, SJ, LR



**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**April 8, 2009**

**TO:** Honorable Patrick M. Rose, Chair, House Committee on Human Services

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB2972** by Coleman (Relating to the definition of a controlling person of an assisted living facility.), **As Introduced**

<b>No significant fiscal implication to the State is anticipated.</b>
---

The bill would amend the Health and Safety Code as it relates to the definition of a controlling person of an assisted living facility.

The bill would add stock holder, limited liability partner, and investor to the list of persons who are not controlling persons, if the person does not exercise formal or actual influence or control over the operation of an assisted living facility. The bill would also provide that no rule adopted that defines a controlling person can include a person who owns the common stock of a publicly traded organization in the normal course of its business as an investment firm that exerts no control over the day to day operation of an assisted living facility.

It is assumed that any costs associated with the provisions of the bill could be absorbed within existing resources.

The bill would take effect September 1, 2009.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 539 Aging and Disability Services, Department of

**LBB Staff:** JOB, CL, SJ, LR

