

By: Truitt

H.B. No. 2109

A BILL TO BE ENTITLED

AN ACT

1
2 relating to agency action concerning assisted living facilities,
3 including regulation of inappropriate placement of residents at
4 facilities; providing a penalty.

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

6 SECTION 1. Section 247.066, Health and Safety Code, is
7 amended by adding Subsections (b-1), (d-1), (d-2), (f), (g), and
8 (h) and amending Subsections (c), (d), and (e) to read as follows:

9 (b-1) If a facility identifies a resident who the facility
10 believes is inappropriately placed at the facility, the facility is
11 not required to move the resident if the facility obtains the
12 written statements and waiver prescribed by Subsection (c).

13 (c) If [~~a department inspector determines that~~] a resident
14 is inappropriately placed at a facility, the facility is not
15 required to move the resident if, not later than the 10th business
16 day after the date that the facility determines or is informed of
17 the department's [~~of the specific basis of the inspector's~~]
18 determination that a resident is inappropriately placed at the
19 facility, the facility:

20 (1) obtains a written assessment from a physician that
21 the resident is appropriately placed;

22 (2) obtains a written statement:

23 (A) from the resident that the resident wishes to
24 remain in the facility; or

1 (B) from a family member of the resident that the
2 family member wishes for the resident to remain in the facility, if
3 the resident lacks capacity to give a statement under this
4 subsection;

5 (3) states in writing that the facility wishes for the
6 resident to remain in the facility; and

7 (4) applies for and obtains a waiver from the
8 department of all applicable requirements for evacuation that the
9 facility does not meet with respect to the resident, if the facility
10 does not meet all requirements for the evacuation of residents with
11 respect to the resident.

12 (d) If the ~~[a]~~ department ~~[inspector]~~ determines that a
13 resident is inappropriately placed at a facility and the facility
14 either agrees with the determination or does not obtain the written
15 statements and waiver prescribed by Subsection (c) that would allow
16 the resident to remain in the facility ~~[notwithstanding the~~
17 ~~determination of the inspector, the department may not assess an~~
18 ~~administrative penalty against the facility because of the~~
19 ~~inappropriate placement. However]~~, the facility shall discharge
20 the resident. The resident is allowed 30 days after the date of
21 discharge to move from the facility. A discharge required under
22 this subsection must be made notwithstanding:

23 (1) any other law, including any law relating to the
24 rights of residents and any obligations imposed under the Property
25 Code; and

26 (2) the terms of any contract.

27 (d-1) If a facility is required to discharge the resident

1 because the facility has not obtained the written statements
2 prescribed by Subsection (c) or the department does not approve a
3 waiver based on the written statements submitted, the department
4 may:

5 (1) assess an administrative penalty against the
6 facility if the facility intentionally or repeatedly disregards
7 department criteria for obtaining a waiver for inappropriate
8 placement of a resident;

9 (2) seek an emergency suspension or closing order
10 against the facility under Section 247.042 if the department
11 determines there is a significant risk to the residents of the
12 facility and an immediate threat to the health and safety of the
13 residents; or

14 (3) seek other sanctions against the facility under
15 Subchapter C in lieu of an emergency suspension or closing order if
16 the department determines there is a significant risk to a resident
17 of the facility and an immediate threat to the health and safety of
18 a resident.

19 (d-2) The executive commissioner by rule shall develop
20 criteria under which the department may determine when a facility
21 has intentionally or repeatedly disregarded the waiver process.

22 (e) To facilitate obtaining the written statements required
23 under Subsections (b-1) and (c)(1)-(3), the department shall
24 develop standard forms that must be used under Subsections (b-1) or
25 (c)(1)-(3), as appropriate. The department shall develop criteria
26 under which the department will determine, based on a resident's
27 specific situation, whether it will grant or deny a request for a

1 waiver under Subsection (b-1) or (c)(4).

2 (f) The department shall ensure that each facility and
3 resident is aware of the waiver process described by Subsection (c)
4 for aging in place. A facility must include with the facility
5 disclosure statement required under Section 247.026(b)(4)(B)
6 information regarding the policies and procedures for aging in
7 place described by this section.

8 (g) The department, in cooperation with assisted living
9 service providers, shall develop cost-effective training regarding
10 aging in place, retaliation, and other issues determined by the
11 department.

12 (h) The department shall require surveyors, facility
13 supervisors, and other staff, as appropriate, to complete the
14 training described by Subsection (g) annually.

15 SECTION 2. Section 247.068, Health and Safety Code, is
16 amended by adding Subsection (c) to read as follows:

17 (c) A department employee may not retaliate against an
18 assisted living facility, an employee of an assisted living
19 facility, or a person in control of an assisted living facility for:

20 (1) complaining about the conduct of a department
21 employee;

22 (2) disagreeing with a department employee about the
23 existence of a violation of this chapter or a rule adopted under
24 this chapter; or

25 (3) asserting a right under state or federal law.

26 SECTION 3. This Act takes effect immediately if it receives
27 a vote of two-thirds of all the members elected to each house, as

H.B. No. 2109

1 provided by Section 39, Article III, Texas Constitution. If this
2 Act does not receive the vote necessary for immediate effect, this
3 Act takes effect September 1, 2011.