

1-1 By: Truitt (Senate Sponsor - Uresti) H.B. No. 2109
1-2 (In the Senate - Received from the House May 6, 2011;
1-3 May 9, 2011, read first time and referred to Committee on Health
1-4 and Human Services; May 18, 2011, reported favorably by the
1-5 following vote: Yeas 9, Nays 0; May 18, 2011, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to agency action concerning assisted living facilities,
1-9 including regulation of inappropriate placement of residents at
1-10 facilities; providing a penalty.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Section 247.066, Health and Safety Code, is
1-13 amended by adding Subsections (b-1), (d-1), (d-2), (f), (g), and
1-14 (h) and amending Subsections (c), (d), and (e) to read as follows:

1-15 (b-1) If a facility identifies a resident who the facility
1-16 believes is inappropriately placed at the facility, the facility is
1-17 not required to move the resident if the facility obtains the
1-18 written statements and waiver prescribed by Subsection (c).

1-19 (c) If ~~[a department inspector determines that]~~ a resident
1-20 is inappropriately placed at a facility, the facility is not
1-21 required to move the resident if, not later than the 10th business
1-22 day after the date that the facility determines or is informed of
1-23 the department's ~~[of the specific basis of the inspector's]~~
1-24 determination that a resident is inappropriately placed at the
1-25 facility, the facility:

1-26 (1) obtains a written assessment from a physician that
1-27 the resident is appropriately placed;

1-28 (2) obtains a written statement:

1-29 (A) from the resident that the resident wishes to
1-30 remain in the facility; or

1-31 (B) from a family member of the resident that the
1-32 family member wishes for the resident to remain in the facility, if
1-33 the resident lacks capacity to give a statement under this
1-34 subsection;

1-35 (3) states in writing that the facility wishes for the
1-36 resident to remain in the facility; and

1-37 (4) applies for and obtains a waiver from the
1-38 department of all applicable requirements for evacuation that the
1-39 facility does not meet with respect to the resident, if the facility
1-40 does not meet all requirements for the evacuation of residents with
1-41 respect to the resident.

1-42 (d) If the [a] department [inspector] determines that a
1-43 resident is inappropriately placed at a facility and the facility
1-44 either agrees with the determination or does not obtain the written
1-45 statements and waiver prescribed by Subsection (c) that would allow
1-46 the resident to remain in the facility ~~[notwithstanding the~~
1-47 ~~determination of the inspector, the department may not assess an~~
1-48 ~~administrative penalty against the facility because of the~~
1-49 ~~inappropriate placement. However],~~ the facility shall discharge
1-50 the resident. The resident is allowed 30 days after the date of
1-51 discharge to move from the facility. A discharge required under
1-52 this subsection must be made notwithstanding:

1-53 (1) any other law, including any law relating to the
1-54 rights of residents and any obligations imposed under the Property
1-55 Code; and

1-56 (2) the terms of any contract.

1-57 (d-1) If a facility is required to discharge the resident
1-58 because the facility has not obtained the written statements
1-59 prescribed by Subsection (c) or the department does not approve a
1-60 waiver based on the written statements submitted, the department
1-61 may:

1-62 (1) assess an administrative penalty against the
1-63 facility if the facility intentionally or repeatedly disregards
1-64 department criteria for obtaining a waiver for inappropriate

2-1 placement of a resident;
 2-2 (2) seek an emergency suspension or closing order
 2-3 against the facility under Section 247.042 if the department
 2-4 determines there is a significant risk to the residents of the
 2-5 facility and an immediate threat to the health and safety of the
 2-6 residents; or
 2-7 (3) seek other sanctions against the facility under
 2-8 Subchapter C in lieu of an emergency suspension or closing order if
 2-9 the department determines there is a significant risk to a resident
 2-10 of the facility and an immediate threat to the health and safety of
 2-11 a resident.

2-12 (d-2) The executive commissioner by rule shall develop
 2-13 criteria under which the department may determine when a facility
 2-14 has intentionally or repeatedly disregarded the waiver process.

2-15 (e) To facilitate obtaining the written statements required
 2-16 under Subsections (b-1) and (c)(1)-(3), the department shall
 2-17 develop standard forms that must be used under Subsections (b-1) or
 2-18 (c)(1)-(3), as appropriate. The department shall develop criteria
 2-19 under which the department will determine, based on a resident's
 2-20 specific situation, whether it will grant or deny a request for a
 2-21 waiver under Subsection (b-1) or (c)(4).

2-22 (f) The department shall ensure that each facility and
 2-23 resident is aware of the waiver process described by Subsection (c)
 2-24 for aging in place. A facility must include with the facility
 2-25 disclosure statement required under Section 247.026(b)(4)(B)
 2-26 information regarding the policies and procedures for aging in
 2-27 place described by this section.

2-28 (g) The department, in cooperation with assisted living
 2-29 service providers, shall develop cost-effective training regarding
 2-30 aging in place, retaliation, and other issues determined by the
 2-31 department.

2-32 (h) The department shall require surveyors, facility
 2-33 supervisors, and other staff, as appropriate, to complete the
 2-34 training described by Subsection (g) annually.

2-35 SECTION 2. Section 247.068, Health and Safety Code, is
 2-36 amended by adding Subsection (c) to read as follows:

2-37 (c) A department employee may not retaliate against an
 2-38 assisted living facility, an employee of an assisted living
 2-39 facility, or a person in control of an assisted living facility for:

2-40 (1) complaining about the conduct of a department
 2-41 employee;

2-42 (2) disagreeing with a department employee about the
 2-43 existence of a violation of this chapter or a rule adopted under
 2-44 this chapter; or

2-45 (3) asserting a right under state or federal law.

2-46 SECTION 3. This Act takes effect immediately if it receives
 2-47 a vote of two-thirds of all the members elected to each house, as
 2-48 provided by Section 39, Article III, Texas Constitution. If this
 2-49 Act does not receive the vote necessary for immediate effect, this
 2-50 Act takes effect September 1, 2011.

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