

## **BILL ANALYSIS**

C.S.S.B. 1999  
By: Menéndez  
Human Services  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Currently, Chapter 103 of the Human Resources Code establishes the Adult Day Care Act. Many believe that the term "adult day care" is archaic and does not honor the dignity and autonomy of the elderly and disabled adults who are served under the act. Interested parties point out that service providers and others refer to the act as providing certain day activities and health services because many elderly and disabled adult clients are less likely to attend an "adult day care" facility than an "adult day services" facility. According to the parties, it is extremely important for the elderly and adults with disabilities or impairments to maintain a sense of independence, and telling these persons that they are to attend a "day care" does not achieve this. C.S.S.B. 1999 seeks to address these concerns.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.S.B. 1999 amends the Government Code, Health and Safety Code, and Human Resources Code, including provisions amended by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015, to change references relating to adult day care to references relating to adult day services.

### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.

### **COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE**

While C.S.S.B. 1999 may differ from the engrossed in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

#### SENATE ENGROSSED

SECTION 1. Section 531.951(a), Government Code, is amended to read as follows:

#### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 531.951(a), Government Code, is amended to read as follows:

84R 31899

15.141.652

Substitute Document Number: 84R 31315

(a) This subchapter applies only to the final licensing, listing, or registration decisions of a health and human services agency with respect to a person under the law authorizing the agency to regulate the following types of persons:

- (1) a youth camp licensed under Chapter 141, Health and Safety Code;
- (2) a home and community support services agency licensed under Chapter 142, Health and Safety Code;
- (3) a hospital licensed under Chapter 241, Health and Safety Code;
- (4) an institution licensed under Chapter 242, Health and Safety Code;
- (5) an assisted living facility licensed under Chapter 247, Health and Safety Code;
- (6) a special care facility licensed under Chapter 248, Health and Safety Code;
- (7) an intermediate care facility licensed under Chapter 252, Health and Safety Code;
- (8) a chemical dependency treatment facility licensed under Chapter 464, Health and Safety Code;
- (9) a mental hospital or mental health facility licensed under Chapter 577, Health and Safety Code;
- (10) a child-care facility or child-placing agency licensed under or a family home listed or registered under Chapter 42, Human Resources Code; or
- (11) a day activity and health services ~~[an adult day-care]~~ facility licensed under Chapter 103, Human Resources Code.

SECTION 2. Section 81.042(e), Health and Safety Code, is amended to read as follows:

(e) The following persons shall report to the local health authority or the department a suspected case of a reportable disease and all information known concerning the person who has or is suspected of having the disease if a report is not made as required by Subsections (a)-(d):

- (1) a professional registered nurse;
- (2) an administrator or director of a public or private temporary or permanent child-care facility;
- (3) an administrator or director of a nursing home, personal care home, adult respite care center, or day activity and health services facility ~~[adult day-care center]~~;
- (4) an administrator of a home health agency;
- (5) an administrator or health official of a

(a) This subchapter applies only to the final licensing, listing, or registration decisions of a health and human services agency with respect to a person under the law authorizing the agency to regulate the following types of persons:

- (1) a youth camp licensed under Chapter 141, Health and Safety Code;
- (2) a home and community support services agency licensed under Chapter 142, Health and Safety Code;
- (3) a hospital licensed under Chapter 241, Health and Safety Code;
- (4) an institution licensed under Chapter 242, Health and Safety Code;
- (5) an assisted living facility licensed under Chapter 247, Health and Safety Code;
- (6) a special care facility licensed under Chapter 248, Health and Safety Code;
- (7) an intermediate care facility licensed under Chapter 252, Health and Safety Code;
- (8) a chemical dependency treatment facility licensed under Chapter 464, Health and Safety Code;
- (9) a mental hospital or mental health facility licensed under Chapter 577, Health and Safety Code;
- (10) a child-care facility or child-placing agency licensed under or a family home listed or registered under Chapter 42, Human Resources Code; or
- (11) an adult day services ~~[day-care]~~ facility licensed under Chapter 103, Human Resources Code.

SECTION 2. Section 81.042(e), Health and Safety Code, is amended to read as follows:

(e) The following persons shall report to the local health authority or the department a suspected case of a reportable disease and all information known concerning the person who has or is suspected of having the disease if a report is not made as required by Subsections (a)-(d):

- (1) a professional registered nurse;
- (2) an administrator or director of a public or private temporary or permanent child-care facility;
- (3) an administrator or director of a nursing home, personal care home, adult respite care center, or adult day services facility ~~[day-care center]~~;
- (4) an administrator of a home health agency;
- (5) an administrator or health official of a

- public or private institution of higher education;
- (6) an owner or manager of a restaurant, dairy, or other food handling or processing establishment or outlet;
  - (7) a superintendent, manager, or health official of a public or private camp, home, or institution;
  - (8) a parent, guardian, or householder;
  - (9) a health professional;
  - (10) an administrator or health official of a penal or correctional institution; or
  - (11) emergency medical service personnel, a peace officer, or a firefighter.

SECTION 3. Section 164.003(5), Health and Safety Code, as amended by S.B. No. 219, Acts of the 84th Legislature, Regular Session, 2015, is amended to read as follows:

- (5) "Mental health facility" means:
  - (A) a "mental health facility" as defined by Section 571.003;
  - (B) a residential treatment facility, other than a mental health facility, in which persons are treated for emotional problems or disorders in a 24-hour supervised living environment; and
  - (C) a day activity and health services [~~an adult day care~~] facility as defined by Section 103.003, Human Resources Code.

SECTION 4. Section 250.001(3), Health and Safety Code, as reenacted and amended by S.B. No. 219, Acts of the 84th Legislature, Regular Session, 2015, is amended to read as follows:

- (3) "Facility" means:
  - (A) a nursing facility, custodial care home, or other institution licensed by the Department of Aging and Disability Services under Chapter 242;
  - (B) an assisted living facility licensed by the Department of Aging and Disability Services under Chapter 247;
  - (C) a home and community support services agency licensed under Chapter 142;
  - (D) a day activity and health services [~~an adult day care~~] facility licensed by the Department of Aging and Disability Services under Chapter 103, Human Resources Code;
  - (E) an ICF-IID licensed under Chapter 252;
  - (F) an adult foster care provider that contracts with the Department of Aging and

- public or private institution of higher education;
- (6) an owner or manager of a restaurant, dairy, or other food handling or processing establishment or outlet;
  - (7) a superintendent, manager, or health official of a public or private camp, home, or institution;
  - (8) a parent, guardian, or householder;
  - (9) a health professional;
  - (10) an administrator or health official of a penal or correctional institution; or
  - (11) emergency medical service personnel, a peace officer, or a firefighter.

SECTION 3. Section 164.003(5), Health and Safety Code, as amended by S.B. No. 219, Acts of the 84th Legislature, Regular Session, 2015, is amended to read as follows:

- (5) "Mental health facility" means:
  - (A) a "mental health facility" as defined by Section 571.003;
  - (B) a residential treatment facility, other than a mental health facility, in which persons are treated for emotional problems or disorders in a 24-hour supervised living environment; and
  - (C) an adult day services [~~day care~~] facility as defined by Section 103.003, Human Resources Code.

SECTION 4. Section 250.001(3), Health and Safety Code, as reenacted and amended by S.B. No. 219, Acts of the 84th Legislature, Regular Session, 2015, is amended to read as follows:

- (3) "Facility" means:
  - (A) a nursing facility, custodial care home, or other institution licensed by the Department of Aging and Disability Services under Chapter 242;
  - (B) an assisted living facility licensed by the Department of Aging and Disability Services under Chapter 247;
  - (C) a home and community support services agency licensed under Chapter 142;
  - (D) an adult day services [~~day care~~] facility licensed by the Department of Aging and Disability Services under Chapter 103, Human Resources Code;
  - (E) an ICF-IID licensed under Chapter 252;
  - (F) an adult foster care provider that contracts with the Department of Aging and

Disability Services;  
(G) a facility that provides mental health services and that is operated by or contracts with the Department of State Health Services;  
(H) a local mental health authority designated under Section 533.035 or a local intellectual and developmental disability authority designated under Section 533.035;  
(I) a person exempt from licensing under Section 142.003(a)(19);  
(J) a special care facility licensed by the Department of State Health Services under Chapter 248;  
(K) a mental health service unit of a hospital licensed under Chapter 241; or  
(L) a prescribed pediatric extended care center licensed by the Department of Aging and Disability Services under Chapter 248A.

SECTION 5. The heading to Chapter 103, Human Resources Code, is amended to read as follows:

CHAPTER 103. DAY ACTIVITY AND HEALTH SERVICES [~~ADULT DAY CARE~~]

SECTION 6. Section 103.001, Human Resources Code, as amended by S.B. No. 219, Acts of the 84th Legislature, Regular Session, 2015, and Section 103.002, Human Resources Code, are amended to read as follows:

Sec. 103.001. PURPOSE. It is the purpose of this chapter to establish programs of quality day activity and health services [~~adult day care and day health care~~] that will enable persons with disabilities who have medical or functional impairments and elderly persons to maintain maximum independence and to prevent premature or inappropriate institutionalization. It is the purpose of this chapter to provide adequately regulated supervision for elderly persons and persons with disabilities while enabling them to remain in a family environment and affording the family a measure of normality in its daily activities. The legislature intends to provide for the development of policies and programs that will:

- (1) provide alternatives to institutionalization;
- (2) establish facilities for day activity and

Disability Services;  
(G) a facility that provides mental health services and that is operated by or contracts with the Department of State Health Services;  
(H) a local mental health authority designated under Section 533.035 or a local intellectual and developmental disability authority designated under Section 533.035;  
(I) a person exempt from licensing under Section 142.003(a)(19);  
(J) a special care facility licensed by the Department of State Health Services under Chapter 248;  
(K) a mental health service unit of a hospital licensed under Chapter 241; or  
(L) a prescribed pediatric extended care center licensed by the Department of Aging and Disability Services under Chapter 248A.

SECTION 5. The heading to Chapter 103, Human Resources Code, is amended to read as follows:

CHAPTER 103. ADULT DAY SERVICES [~~CARE~~]

SECTION 6. Section 103.001, Human Resources Code, as amended by S.B. No. 219, Acts of the 84th Legislature, Regular Session, 2015, and Section 103.002, Human Resources Code, are amended to read as follows:

Sec. 103.001. PURPOSE. It is the purpose of this chapter to establish programs of quality adult day services [~~care and day health care~~] that will enable persons with disabilities who have medical or functional impairments and elderly persons to maintain maximum independence and to prevent premature or inappropriate institutionalization. It is the purpose of this chapter to provide adequately regulated supervision for elderly persons and persons with disabilities while enabling them to remain in a family environment and affording the family a measure of normality in its daily activities. The legislature intends to provide for the development of policies and programs that will:

- (1) provide alternatives to institutionalization;
- (2) establish facilities for adult day services

~~health services [adult day care and day health care]~~ throughout the state that offer services and are accessible to economically disadvantaged persons; and

(3) prevent inappropriate institutionalization.

Sec. 103.002. SHORT TITLE. This chapter may be cited as the Day Activity and Health Services ~~[Adult Day Care]~~ Act.

SECTION 7. Section 103.003(1), Human Resources Code, as amended by S.B. No. 219, Acts of the 84th Legislature, Regular Session, 2015, and Section 103.003(2), Human Resources Code, are amended to read as follows:

(1) "Day activity and health services ~~[Adult day care]~~ facility" means a facility that provides services under a day activity and health services ~~[an adult day care]~~ program on a daily or regular basis but not overnight to four or more elderly persons or persons with disabilities who are not related by blood, marriage, or adoption to the owner of the facility.

(2) "Day activity and health services ~~[Adult day care]~~ program" means a structured, comprehensive program that is designed to meet the needs of adults with functional impairments through an individual plan of care by providing health, social, and related support services in a protective setting.

SECTION 8. Section 103.0041(a), Human Resources Code, is amended to read as follows:

(a) A person may not operate a day activity and health services ~~[an adult day care]~~ facility without a license issued under this chapter.

SECTION 9. Section 103.006(a), Human Resources Code, is amended to read as follows:

(a) The department shall issue a license to operate a day activity and health services ~~[an adult day care]~~ facility to a person who has met the application requirements and received approval after an on-site inspection.

SECTION 10. Section 103.007(a), Human Resources Code, is amended to read as follows:

(a) An applicant for a license to operate a

~~[care and day health care]~~ throughout the state that offer services and are accessible to economically disadvantaged persons; and

(3) prevent inappropriate institutionalization.

Sec. 103.002. SHORT TITLE. This chapter may be cited as the Adult Day Services ~~[Care]~~ Act.

SECTION 7. Section 103.003(1), Human Resources Code, as amended by S.B. No. 219, Acts of the 84th Legislature, Regular Session, 2015, and Section 103.003(2), Human Resources Code, are amended to read as follows:

(1) "Adult day services ~~[day care]~~ facility" means a facility that provides services under an adult day services ~~[day care]~~ program on a daily or regular basis but not overnight to four or more elderly persons or persons with disabilities who are not related by blood, marriage, or adoption to the owner of the facility.

(2) "Adult day services ~~[day care]~~ program" means a structured, comprehensive program that is designed to meet the needs of adults with functional impairments through an individual plan of care by providing health, social, and related support services in a protective setting.

SECTION 8. Section 103.0041(a), Human Resources Code, is amended to read as follows:

(a) A person may not operate an adult day services ~~[day care]~~ facility without a license issued under this chapter.

SECTION 9. Section 103.006(a), Human Resources Code, is amended to read as follows:

(a) The department shall issue a license to operate an adult day services ~~[day care]~~ facility to a person who has met the application requirements and received approval after an on-site inspection.

SECTION 10. Section 103.007(a), Human Resources Code, is amended to read as follows:

(a) An applicant for a license to operate an

day activity and health services [~~an adult day-care~~] facility must file an application on a form prescribed by the department together with a license fee of \$50.

SECTION 11. Section 103.0075(a), Human Resources Code, as amended by S.B. No. 219, Acts of the 84th Legislature, Regular Session, 2015, is amended to read as follows:

(a) The executive commissioner by rule shall adopt a procedure under which a person proposing to construct or modify a day activity and health services [~~an adult day-care~~] facility may submit building plans to the department for review for compliance with the department's architectural requirements before beginning construction or modification. In adopting the procedure, the executive commissioner shall set reasonable deadlines by which the department must complete review of submitted plans.

SECTION 12. Section 103.0091(a), Human Resources Code, is amended to read as follows:

(a) The department may petition a district court for a temporary restraining order to restrain a continuing violation of the standards or licensing requirements provided under this chapter if the department finds that the violation creates an immediate threat to the health and safety of the day activity and health services facility [~~adult day-care~~] residents.

SECTION 13. Section 103.0092(a), Human Resources Code, is amended to read as follows:

(a) If the department finds a day activity and health services [~~an adult day-care~~] facility operating in violation of the standards prescribed by this chapter and the violations create an immediate threat to the health and safety of a resident in the facility, the department shall suspend the license or order immediate closing of all or part of the facility.

SECTION 14. Section 103.011, Human Resources Code, is amended to read as follows:

Sec. 103.011. RIGHTS OF THE ELDERLY. (a) In addition to other rights

adult day services [~~day-care~~] facility must file an application on a form prescribed by the department together with a license fee of \$50.

SECTION 11. Section 103.0075(a), Human Resources Code, as amended by S.B. No. 219, Acts of the 84th Legislature, Regular Session, 2015, is amended to read as follows:

(a) The executive commissioner by rule shall adopt a procedure under which a person proposing to construct or modify an adult day services [~~day-care~~] facility may submit building plans to the department for review for compliance with the department's architectural requirements before beginning construction or modification. In adopting the procedure, the executive commissioner shall set reasonable deadlines by which the department must complete review of submitted plans.

SECTION 12. Section 103.0091(a), Human Resources Code, is amended to read as follows:

(a) The department may petition a district court for a temporary restraining order to restrain a continuing violation of the standards or licensing requirements provided under this chapter if the department finds that the violation creates an immediate threat to the health and safety of the adult day services facility [~~day-care~~] residents.

SECTION 13. Section 103.0092(a), Human Resources Code, is amended to read as follows:

(a) If the department finds an adult day services [~~day-care~~] facility operating in violation of the standards prescribed by this chapter and the violations create an immediate threat to the health and safety of a resident in the facility, the department shall suspend the license or order immediate closing of all or part of the facility.

SECTION 14. Section 103.011, Human Resources Code, is amended to read as follows:

Sec. 103.011. RIGHTS OF THE ELDERLY. (a) In addition to other rights

an individual attending a day activity and health services [an adult day care] facility has as a citizen, an individual who is 55 years of age or older has the rights prescribed by Chapter 102 of this code.

(b) The department shall require each day activity and health services [adult day care] facility to implement and enforce the applicable provisions of Chapter 102 of this code.

SECTION 15. Section 103.012(a), Human Resources Code, is amended to read as follows:

(a) The department may assess an administrative penalty against a person who:

(1) violates this chapter, a rule, standard, or order adopted under this chapter, or a term of a license issued under this chapter;

(2) makes a false statement of a material fact that the person knows or should know is false:

(A) on an application for issuance or renewal of a license or in an attachment to the application; or

(B) with respect to a matter under investigation by the department;

(3) refuses to allow a representative of the department to inspect:

(A) a book, record, or file required to be maintained by a day activity and health services [an adult day care] facility; or

(B) any portion of the premises of a day activity and health services [an adult day care] facility;

(4) wilfully interferes with the work of a representative of the department or the enforcement of this chapter;

(5) wilfully interferes with a representative of the department preserving evidence of a violation of this chapter, a rule, standard, or order adopted under this chapter, or a term of a license issued under this chapter;

(6) fails to pay a penalty assessed under this chapter not later than the 30th day after the date the assessment of the penalty becomes final; or

(7) fails to notify the department of a change of ownership before the effective date of the change of ownership.

SECTION 16. Sections 103.013(a) and (c), Human Resources Code, are amended to read as follows:

an individual attending an adult day services [care] facility has as a citizen, an individual who is 55 years of age or older has the rights prescribed by Chapter 102 of this code.

(b) The department shall require each adult day services [care] facility to implement and enforce the applicable provisions of Chapter 102 of this code.

SECTION 15. Section 103.012(a), Human Resources Code, is amended to read as follows:

(a) The department may assess an administrative penalty against a person who:

(1) violates this chapter, a rule, standard, or order adopted under this chapter, or a term of a license issued under this chapter;

(2) makes a false statement of a material fact that the person knows or should know is false:

(A) on an application for issuance or renewal of a license or in an attachment to the application; or

(B) with respect to a matter under investigation by the department;

(3) refuses to allow a representative of the department to inspect:

(A) a book, record, or file required to be maintained by an adult day services [day care] facility; or

(B) any portion of the premises of an adult day services [day care] facility;

(4) wilfully interferes with the work of a representative of the department or the enforcement of this chapter;

(5) wilfully interferes with a representative of the department preserving evidence of a violation of this chapter, a rule, standard, or order adopted under this chapter, or a term of a license issued under this chapter;

(6) fails to pay a penalty assessed under this chapter not later than the 30th day after the date the assessment of the penalty becomes final; or

(7) fails to notify the department of a change of ownership before the effective date of the change of ownership.

SECTION 16. Sections 103.013(a) and (c), Human Resources Code, are amended to read as follows:

(a) The department may not collect an administrative penalty from a day activity and health services [~~an adult day care~~] facility under Section 103.012 if, not later than the 45th day after the date the facility receives notice under Section 103.014(c), the facility corrects the violation.

(c) A day activity and health services [~~An adult day care~~] facility that corrects a violation must maintain the correction. If the facility fails to maintain the correction until at least the first anniversary after the date the correction was made, the department may assess and collect an administrative penalty for the subsequent violation. An administrative penalty assessed under this subsection is equal to three times the amount of the original penalty assessed but not collected. The department is not required to provide the facility with an opportunity under this section to correct the subsequent violation.

SECTION 17. Sections 103.014(c) and (e), Human Resources Code, are amended to read as follows:

(c) The department shall give written notice of the report to the person charged with the violation not later than the 10th day after the date on which the report is issued. The notice must include:

- (1) a brief summary of the charges;
- (2) a statement of the amount of penalty recommended;
- (3) a statement of whether the violation is subject to correction under Section 103.013 and, if the violation is subject to correction under that section, a statement of:

(A) the date on which the day activity and health services [~~adult day care~~] facility must file a plan of correction with the department that the department shall review and may approve, if satisfactory; and

(B) the date on which the plan of correction must be completed to avoid assessment of the penalty; and

(4) a statement that the person charged has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(e) If the violation is subject to correction under Section 103.013, the day activity and health services [~~adult day care~~] facility shall submit a plan of correction to the department for approval not later than the 10th day after the date on which the notice

(a) The department may not collect an administrative penalty from an adult day services [~~day care~~] facility under Section 103.012 if, not later than the 45th day after the date the facility receives notice under Section 103.014(c), the facility corrects the violation.

(c) An adult day services [~~day care~~] facility that corrects a violation must maintain the correction. If the facility fails to maintain the correction until at least the first anniversary after the date the correction was made, the department may assess and collect an administrative penalty for the subsequent violation. An administrative penalty assessed under this subsection is equal to three times the amount of the original penalty assessed but not collected. The department is not required to provide the facility with an opportunity under this section to correct the subsequent violation.

SECTION 17. Sections 103.014(c) and (e), Human Resources Code, are amended to read as follows:

(c) The department shall give written notice of the report to the person charged with the violation not later than the 10th day after the date on which the report is issued. The notice must include:

- (1) a brief summary of the charges;
- (2) a statement of the amount of penalty recommended;
- (3) a statement of whether the violation is subject to correction under Section 103.013 and, if the violation is subject to correction under that section, a statement of:

(A) the date on which the adult day services [~~day care~~] facility must file a plan of correction with the department that the department shall review and may approve, if satisfactory; and

(B) the date on which the plan of correction must be completed to avoid assessment of the penalty; and

(4) a statement that the person charged has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(e) If the violation is subject to correction under Section 103.013, the adult day services [~~day care~~] facility shall submit a plan of correction to the department for approval not later than the 10th day after the date on which the notice under Subsection



under Subsection (c) is received.

SECTION 18. Section 161.151(2), Human Resources Code, is amended to read as follows:

(2) "Respite services" means support services, including in-home services or day activity and health [~~adult day care~~] services, that are provided for the purpose of temporarily giving relief to a primary caregiver who provides care to an individual with a chronic serious health condition or disability.

SECTION 19. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.

(c) is received.

SECTION 18. Section 161.151(2), Human Resources Code, is amended to read as follows:

(2) "Respite services" means support services, including in-home services or adult day [~~day care~~] services, that are provided for the purpose of temporarily giving relief to a primary caregiver who provides care to an individual with a chronic serious health condition or disability.

SECTION 19. Same as engrossed version.