

By: White of Tyler

H.B. No. 4056

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to inspection procedures in certain long-term care  
3 facilities and the creation of a long-term care legislative  
4 oversight committee; providing penalties.

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

6 SECTION 1. Section [242.039](#), Health and Safety Code, is  
7 amended by adding Subsections (h) and (i) to read as follows:

8 (h) On application of an institution licensed under this  
9 chapter, a municipal fire marshal may grant a waiver for a violation  
10 of a life safety requirement or fire safety standard cited in the  
11 department's final official statement of violations after an  
12 inspection, survey, or investigation conducted under Section  
13 [242.043](#) or [242.044](#) if the fire marshal finds that:

14 (1) the institution met all applicable life safety  
15 requirements and fire safety standards at the time the institution  
16 was initially licensed; and

17 (2) the waiver will not have an adverse effect on  
18 resident health and safety.

19 (i) An institution that receives a waiver under Subsection  
20 (h) is not required to include the waived violation in the  
21 institution's plan to correct violations submitted under Section  
22 [242.0445](#).

23 SECTION 2. Section [242.043](#), Health and Safety Code, is  
24 amended by adding Subsections (i), (j), (k), (l), and (m) to read as

1 follows:

2 (i) A department employee may not conduct an inspection,  
3 survey, or investigation of an institution unless the employee is a  
4 health care professional licensed in this state. An officer or  
5 employee of an institution may require the department employee to  
6 provide proof of the licensure before the department employee  
7 conducts an inspection, survey, or investigation.

8 (j) The leader of a department survey team that conducts an  
9 inspection, survey, or investigation of an institution must be a  
10 registered nurse licensed in this state who has training,  
11 knowledge, and experience in geriatric care.

12 (k) The department or the department's representative who  
13 conducts an inspection, survey, or investigation may not cite a  
14 violation unless the department or the department's representative  
15 finds, by a preponderance of the evidence, that a violation has  
16 occurred.

17 (l) The department or the department's representative shall  
18 include on the department's inspection form:

19 (1) a brief description of the evidence that supports  
20 a finding that a violation occurred; and

21 (2) the name and title of the person who found each  
22 violation.

23 (m) The executive commissioner shall adopt rules to ensure  
24 that among the community services regions the department uniformly  
25 administers inspections, surveys, and investigations and  
26 consistently interprets and enforces the rules and laws regulating  
27 the institutions. The executive commissioner shall prepare and

1 deliver a quarterly progress report on uniform administration,  
2 interpretation, and enforcement to the Health and Human Services  
3 Commission and the appropriate health and human services  
4 legislative standing committees.

5 SECTION 3. Section 242.0445, Health and Safety Code, is  
6 amended by amending Subsection (b) and adding Subsection (d) to  
7 read as follows:

8 (b) At the conclusion of an inspection, survey, or  
9 investigation under Section 242.043 or 242.044, the department or  
10 the department's representative conducting the inspection, survey,  
11 or investigation shall discuss the violations with the facility's  
12 management in an exit conference. The department or the  
13 department's representative shall leave a written list of the  
14 violations with the facility at the time of the exit conference. If  
15 the department or the department's representative discovers any  
16 additional violations during the review of field notes or  
17 preparation of the official final list, the department or the  
18 department's representative shall give the facility an additional  
19 exit conference regarding the additional violations. An additional  
20 exit conference must be held in person and may not be held by  
21 telephone, e-mail, or facsimile transmission. The department or  
22 the department's representative may not conduct an additional  
23 inspection, survey, or investigation during an additional exit  
24 conference. The department or the department's representative may  
25 not use an additional exit conference to retaliate against a  
26 facility for:

27 (1) filing a complaint against the department or the

1 department's representative regarding an inspection, survey, or  
2 investigation; or

3 (2) requesting an administrative hearing to contest a  
4 finding of a violation of this chapter.

5 (d) The department or the department's representative may  
6 not require a facility, through an inspection, survey, or  
7 investigation or the final official statement of violations, to  
8 take any action that conflicts with best practices for the facility  
9 or a written order of a physician. A facility shall provide  
10 evidence that the statement of violations conflicts with best  
11 practices for the facility or a written order of a physician in the  
12 facility's plan to correct violations. A facility is not required  
13 to correct a violation that conflicts with best practices for the  
14 facility or the written orders of a physician.

15 SECTION 4. Subchapter B, Chapter 242, Health and Safety  
16 Code, is amended by adding Section 242.0446 to read as follows:

17 Sec. 242.0446. CIVIL LIABILITY. (a) An institution may  
18 bring a civil action against an employee or representative of the  
19 department who conducts an inspection, survey, or investigation  
20 under Section 242.043 or 242.044 and in bad faith or with a  
21 malicious purpose makes a false or inaccurate statement of a  
22 violation found during the inspection, survey, or investigation.

23 (b) An employee or representative of the department who is  
24 found liable under this section is not entitled to indemnification  
25 under Chapter 104, Civil Practice and Remedies Code.

26 SECTION 5. Section 247.027, Health and Safety Code, is  
27 amended by adding Subsections (c), (d), (e), (f), (g), and (h) to

1 read as follows:

2 (c) On application of an assisted living facility licensed  
3 under this chapter, a municipal fire marshal may grant a waiver for  
4 a violation of a life safety requirement or fire safety standard  
5 cited in the department's final official statement of violations  
6 after an inspection conducted under this section if the fire  
7 marshal finds that:

8 (1) the facility met all applicable life safety  
9 requirements and fire safety standards at the time the facility was  
10 initially licensed; and

11 (2) the waiver will not have an adverse effect on  
12 resident health and safety.

13 (d) An assisted living facility that receives a waiver under  
14 Subsection (c) is not required to include the waived violation in  
15 the facility's plan of correction submitted under Section [247.0271](#).

16 (e) A department employee may not conduct an inspection of  
17 an assisted living facility unless the employee is a health care  
18 professional licensed in this state. An officer or employee of a  
19 facility may require the department employee to provide proof of  
20 the licensure before the department employee conducts an  
21 inspection.

22 (f) A department employee who conducts an inspection may not  
23 cite a violation unless the employee finds, by a preponderance of  
24 the evidence, that a violation has occurred.

25 (g) The department employee shall include on the  
26 department's inspection checklist:

27 (1) a brief description of the evidence that supports

1 a finding that a violation occurred; and

2 (2) the name and title of the person who found each  
3 violation.

4 (h) The executive commissioner of the Health and Human  
5 Services Commission shall adopt rules to ensure that among the  
6 community services regions the department uniformly administers  
7 inspections and consistently interprets and enforces the rules and  
8 laws regulating the assisted living facilities. The executive  
9 commissioner shall prepare and deliver a quarterly progress report  
10 on uniform administration, interpretation, and enforcement to the  
11 Health and Human Services Commission and the appropriate health and  
12 human services legislative standing committees.

13 SECTION 6. Section [247.0271](#), Health and Safety Code, is  
14 amended by adding Subsections (c-1) and (e) to read as follows:

15 (c-1) The inspector may not conduct an additional  
16 inspection during an additional exit conference. The inspector may  
17 not use an additional exit conference to retaliate against an  
18 assisted living facility for:

19 (1) filing a complaint against the department or the  
20 inspector regarding an inspection; or

21 (2) requesting an administrative hearing to contest a  
22 finding of a violation of this chapter.

23 (e) The inspector may not require an assisted living  
24 facility, through an inspection or the final official statement of  
25 violations, to take any action that conflicts with best practices  
26 for the facility or a written order of a physician. A facility shall  
27 provide evidence that the statement of violations conflicts with

1 best practices for the facility or a written order of a physician in  
2 the facility's plan of correction. A facility is not required to  
3 correct a violation that conflicts with best practices for the  
4 facility or the written orders of a physician.

5 SECTION 7. Subchapter B, Chapter 247, Health and Safety  
6 Code, is amended by adding Section 247.0273 to read as follows:

7 Sec. 247.0273. CIVIL LIABILITY. (a) An assisted living  
8 facility may bring a civil action against a department employee who  
9 conducts an inspection under Section 247.023 or 247.027 and in bad  
10 faith or with a malicious purpose makes a false or inaccurate  
11 statement of a violation found during the inspection.

12 (b) A department employee who is found liable under this  
13 section is not entitled to indemnification under Chapter 104, Civil  
14 Practice and Remedies Code.

15 SECTION 8. Section 252.038, Health and Safety Code, is  
16 amended by adding Subsections (f) and (g) to read as follows:

17 (f) On application of a facility licensed under this  
18 chapter, a municipal fire marshal may grant a waiver for a violation  
19 of a life safety requirement or fire safety standard cited in the  
20 department's final official statement of violations after an  
21 inspection, survey, or investigation conducted under this chapter  
22 if the fire marshal finds that:

23 (1) the facility met all applicable life safety  
24 requirements and fire safety standards at the time the facility was  
25 initially licensed; and

26 (2) the waiver will not have an adverse effect on  
27 resident health and safety.

1       (g) A facility that receives a waiver under Subsection (f)  
2 is not required to include the waived violation in the facility's  
3 plan to correct violations submitted under Section 252.044.

4       SECTION 9. Section 252.040, Health and Safety Code, is  
5 amended by amending Subsection (i) and adding Subsections (j), (k),  
6 and (l) to read as follows:

7       (i) The department shall have specialized staff conduct  
8 inspections, surveys, or investigations of facilities under this  
9 section. A department employee may not conduct an inspection,  
10 survey, or investigation of a facility unless the employee is a  
11 health care professional licensed in this state. An officer or  
12 employee of a facility may require the department employee to  
13 provide proof of the licensure before the department employee  
14 conducts an inspection, survey, or investigation.

15       (j) The department or the department's representative who  
16 conducts an inspection, survey, or investigation may not cite a  
17 violation unless the department or the department's representative  
18 finds, by a preponderance of the evidence, that a violation has  
19 occurred.

20       (k) The department or the department's representative shall  
21 include on the department's inspection form:

22               (1) a brief description of the evidence that supports  
23 a finding that a violation occurred; and

24               (2) the name and title of the person who found each  
25 violation.

26       (1) The executive commissioner of the Health and Human  
27 Services Commission shall adopt rules to ensure that among the



1 community services regions the department uniformly administers  
2 inspections, surveys, and investigations and consistently  
3 interprets and enforces the rules and laws regulating the  
4 facilities licensed under this chapter. The executive commissioner  
5 shall prepare and deliver a quarterly progress report on uniform  
6 administration, interpretation, and enforcement to the Health and  
7 Human Services Commission and the appropriate health and human  
8 services legislative standing committees.

9 SECTION 10. Subchapter B, Chapter 252, Health and Safety  
10 Code, is amended by adding Section 252.0401 to read as follows:

11 Sec. 252.0401. CIVIL LIABILITY. (a) A facility may bring a  
12 civil action against a representative of the department who  
13 conducts an inspection, survey, or investigation under this chapter  
14 and in bad faith or with a malicious purpose makes a false or  
15 inaccurate statement of a violation found during the inspection,  
16 survey, or investigation.

17 (b) An employee or representative of the department who is  
18 found liable under this section is not entitled to indemnification  
19 under Chapter 104, Civil Practice and Remedies Code.

20 SECTION 11. Section 252.044, Health and Safety Code, is  
21 amended by adding Subsections (b-1) and (d) to read as follows:

22 (b-1) The department or the department's representative may  
23 not conduct an additional inspection, survey, or investigation  
24 during an additional exit conference. The department or the  
25 department's representative may not use an additional exit  
26 conference to retaliate against a facility for:

27 (1) filing a complaint against the department or the

1 department's representative regarding an inspection, survey, or  
2 investigation; or

3 (2) requesting an administrative hearing to contest a  
4 finding of a violation of this chapter.

5 (d) The department or the department's representative may  
6 not require a facility, through an inspection, survey, or  
7 investigation or the final official statement of violations, to  
8 take any action that conflicts with best practices for the facility  
9 or a written order of a physician. A facility shall provide evidence  
10 that the statement of violations conflicts with best practices for  
11 the facility or a written order of a physician in the facility's  
12 plan to correct violations. A facility is not required to correct a  
13 violation that conflicts with best practices for the facility or  
14 the written orders of a physician.

15 SECTION 12. Chapter 161, Human Resources Code, is amended  
16 by adding Subchapter J to read as follows:

17 SUBCHAPTER J. LEGISLATIVE OVERSIGHT COMMITTEE

18 Sec. 161.401. DEFINITIONS. In this subchapter:

19 (1) "Committee" means the long-term care legislative  
20 oversight committee.

21 (2) "Facility" means:

22 (A) an institution licensed under Chapter 242,  
23 Health and Safety Code;

24 (B) an assisted living facility licensed under  
25 Chapter 247, Health and Safety Code;

26 (C) a home and community support services agency  
27 licensed under Chapter 142, Health and Safety Code; and

1                    (D) an intermediate care facility licensed under  
2 Chapter 252, Health and Safety Code.

3                    Sec. 161.402. COMPOSITION OF COMMITTEE; PRESIDING OFFICER.

4 (a) The committee is composed of:

5                    (1) two members of the senate and one public member  
6 appointed by the lieutenant governor; and

7                    (2) two members of the house of representatives and  
8 one public member appointed by the speaker of the house of  
9 representatives.

10                   (b) A member of the committee serves at the pleasure of the  
11 appointing official.

12                   (c) The lieutenant governor and the speaker of the house of  
13 representatives shall appoint the presiding officer of the  
14 committee on an alternating basis. The presiding officer shall  
15 serve a two-year term expiring February 1 of each odd-numbered  
16 year.

17                   Sec. 161.403. COMMITTEE POWERS AND DUTIES. (a) The  
18 committee:

19                   (1) shall meet at the call of the presiding officer;

20                   (2) may receive, review, and comment on rules proposed  
21 by the department;

22                   (3) shall review recommendations for legislation  
23 proposed by the department or the attorney general relating to  
24 facilities; and

25                   (4) shall propose legislation relating to facilities.

26                   (b) The committee may hear a facility's complaint regarding  
27 an operational dispute and make a recommendation to the department.

1       (c) The committee may issue process, in accordance with  
2 Section 301.024, Government Code, to compel the attendance of  
3 witnesses and the production of books, records, documents, and  
4 instruments required by the committee.

5       (d) The committee shall monitor the effectiveness and  
6 efficiency of the facility regulatory system of this state.

7       (e) The committee may request reports and other information  
8 from the department and the attorney general relating to:

9               (1) the facility regulatory and enforcement system of  
10 this state;

11               (2) the standards for including a facility in the STAR  
12 + PLUS Medicaid managed care program; and

13               (3) the effectiveness of the STAR + PLUS Medicaid  
14 managed care program in reducing preventable acute care costs.

15       (f) The committee shall use the existing staff resources of  
16 the senate and the house of representatives to assist the committee  
17 in performing its duties under this section.

18       Sec. 161.404. REPORT. (a) The committee shall submit a  
19 report to the governor, lieutenant governor, and speaker of the  
20 house of representatives not later than November 15 of each  
21 even-numbered year.

22       (b) The report must include:

23               (1) identification of significant problems in the  
24 facility regulatory and enforcement system, with recommendations  
25 for action;

26               (2) the effectiveness and efficiency of the facility  
27 regulatory system of this state, with recommendations for action;

1 and

2 (3) recommendations for legislative action, if  
3 necessary or appropriate.

4 Sec. 161.405. EXPIRATION. (a) This subchapter expires  
5 September 1, 2019.

6 SECTION 13. (a) As soon as practicable after the effective  
7 date of this Act, the executive commissioner of the Health and Human  
8 Services Commission shall adopt the rules necessary to implement  
9 the changes in law made by this Act.

10 (b) Not later than December 1, 2015, the Department of Aging  
11 and Disability Services shall modify inspection forms to conform to  
12 the requirements of this Act.

13 (c) The changes in law made by this Act apply only to an  
14 inspection, survey, or investigation conducted on or after January  
15 1, 2016.

16 (d) As soon as practicable after the effective date of this  
17 Act, the lieutenant governor and the speaker of the house of  
18 representatives shall appoint members to the long-term care  
19 legislative oversight committee as required by Subchapter J,  
20 Chapter 161, Human Resources Code, as added by this Act. The  
21 speaker of the house of representatives shall appoint the first  
22 presiding officer of the committee.

23 SECTION 14. This Act takes effect September 1, 2015.