

By: Menéndez

S.B. No. 1999

A BILL TO BE ENTITLED

AN ACT

relating to day activity and health services facilities.

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

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

(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

1 under Chapter 464, Health and Safety Code;

2 (9) a mental hospital or mental health facility
3 licensed under Chapter 577, Health and Safety Code;

4 (10) a child-care facility or child-placing agency
5 licensed under or a family home listed or registered under Chapter
6 42, Human Resources Code; or

7 (11) a day activity and health services [~~an adult~~
8 ~~day-care~~] facility licensed under Chapter 103, Human Resources
9 Code.

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

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

17 (1) a professional registered nurse;

18 (2) an administrator or director of a public or
19 private temporary or permanent child-care facility;

20 (3) an administrator or director of a nursing home,
21 personal care home, adult respite care center, or day activity and
22 health services facility [~~adult day-care center~~];

23 (4) an administrator of a home health agency;

24 (5) an administrator or health official of a public or
25 private institution of higher education;

26 (6) an owner or manager of a restaurant, dairy, or
27 other food handling or processing establishment or outlet;

- 1 (7) a superintendent, manager, or health official of a
- 2 public or private camp, home, or institution;
- 3 (8) a parent, guardian, or householder;
- 4 (9) a health professional;
- 5 (10) an administrator or health official of a penal or
- 6 correctional institution; or
- 7 (11) emergency medical service personnel, a peace
- 8 officer, or a firefighter.

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

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

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

- 25 (3) "Facility" means:
 - 26 (A) a nursing facility, custodial care home, or
 - 27 other institution licensed by the Department of Aging and

1 Disability Services under Chapter 242;

2 (B) an assisted living facility licensed by the
3 Department of Aging and Disability Services under Chapter 247;

4 (C) a home and community support services agency
5 licensed under Chapter 142;

6 (D) a day activity and health services [~~an adult~~
7 ~~day care~~] facility licensed by the Department of Aging and
8 Disability Services under Chapter 103, Human Resources Code;

9 (E) an ICF-IID licensed under Chapter 252;

10 (F) an adult foster care provider that contracts
11 with the Department of Aging and Disability Services;

12 (G) a facility that provides mental health
13 services and that is operated by or contracts with the Department of
14 State Health Services;

15 (H) a local mental health authority designated
16 under Section 533.035 or a local intellectual and developmental
17 disability authority designated under Section 533.035;

18 (I) a person exempt from licensing under Section
19 142.003(a)(19);

20 (J) a special care facility licensed by the
21 Department of State Health Services under Chapter 248;

22 (K) a mental health service unit of a hospital
23 licensed under Chapter 241; or

24 (L) a prescribed pediatric extended care center
25 licensed by the Department of Aging and Disability Services under
26 Chapter 248A.

27 SECTION 5. The heading to Chapter 103, Human Resources

1 Code, is amended to read as follows:

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

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

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

- 18 (1) provide alternatives to institutionalization;
- 19 (2) establish facilities for day activity and health
20 services [~~adult day care and day health care~~] throughout the state
21 that offer services and are accessible to economically
22 disadvantaged persons; and
- 23 (3) prevent inappropriate institutionalization.

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

26 SECTION 7. Section 103.003(1), Human Resources Code, as
27 amended by S.B. No. 219, Acts of the 84th Legislature, Regular

1 Session, 2015, and Section 103.003(2), Human Resources Code, are
2 amended to read as follows:

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

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

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

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

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

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

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

27 (a) An applicant for a license to operate a day activity and

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

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

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

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

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

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

25 (a) If the department finds a day activity and health
26 services [~~an adult day-care~~] facility operating in violation of the
27 standards prescribed by this chapter and the violations create an

1 immediate threat to the health and safety of a resident in the
2 facility, the department shall suspend the license or order
3 immediate closing of all or part of the facility.

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

6 Sec. 103.011. RIGHTS OF THE ELDERLY. (a) In addition to
7 other rights an individual attending a day activity and health
8 services [~~an adult day care~~] facility has as a citizen, an
9 individual who is 55 years of age or older has the rights prescribed
10 by Chapter 102 of this code.

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

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

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

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

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

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

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

27 (3) refuses to allow a representative of the

1 department to inspect:

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

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

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

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

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

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

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

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

26 (c) A day activity and health services [~~An adult day-care~~]
27 facility that corrects a violation must maintain the correction.

1 If the facility fails to maintain the correction until at least the
2 first anniversary after the date the correction was made, the
3 department may assess and collect an administrative penalty for the
4 subsequent violation. An administrative penalty assessed under
5 this subsection is equal to three times the amount of the original
6 penalty assessed but not collected. The department is not required
7 to provide the facility with an opportunity under this section to
8 correct the subsequent violation.

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

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

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

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

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

26 (4) a statement that the person charged has a right to
27 a hearing on the occurrence of the violation, the amount of the

1 penalty, or both.

2 (e) If the violation is subject to correction under Section
3 103.013, the day activity and health services [~~adult day-care~~]
4 facility shall submit a plan of correction to the department for
5 approval not later than the 10th day after the date on which the
6 notice under Subsection (c) is received.

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

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

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