

By: Menéndez

S.B. No. 1999

A BILL TO BE ENTITLED

AN ACT

relating to adult day care.

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 164.003(5), Health and Safety Code, is  
11 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 or adult day health care~~] facility as defined by  
21 Section 103.003, Human Resources Code.

22 SECTION 3. Section 250.001(3), Health and Safety Code, as  
23 amended by Chapters 605 (S.B. 944) and 1168 (S.B. 492), Acts of the  
24 83rd Legislature, Regular Session, 2013, is reenacted and amended  
25 to read as follows:

26 (3) "Facility" means:

27 (A) a nursing home, custodial care home, or other

1 institution licensed by the Department of Aging and Disability  
2 Services under Chapter 242;

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

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

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

10 (E) a facility for persons with mental  
11 retardation licensed under Chapter 252;

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

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

17 (H) a local mental health or mental retardation  
18 authority designated under Section [533.035](#);

19 (I) a person exempt from licensing under Section  
20 [142.003\(a\)\(19\)](#);

21 (J) a special care facility licensed by the  
22 Department of State Health Services under Chapter 248; [~~or~~]

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

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

1 SECTION 4. The heading to Chapter 103, Human Resources  
2 Code, is amended to read as follows:

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

4 SECTION 5. Sections 103.001 and 103.002, Human Resources  
5 Code, are amended to read as follows:

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

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

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

25 SECTION 6. Sections 103.003(1) and (2), Human Resources  
26 Code, are amended to read as follows:

- 27 (1) "Day activity and health services [~~Adult day care~~]

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

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

11 SECTION 7. Section 103.0041(a), Human Resources Code, is  
12 amended to read as follows:

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

16 SECTION 8. Section 103.006(a), Human Resources Code, is  
17 amended to read as follows:

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

22 SECTION 9. Section 103.007(a), Human Resources Code, is  
23 amended to read as follows:

24 (a) An applicant for a license to operate a day activity and  
25 health services [~~an adult day-care~~] facility must file an  
26 application on a form prescribed by the department together with a  
27 license fee of \$50.

1 SECTION 10. Section 103.0075(a), Human Resources Code, is  
2 amended to read as follows:

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

11 SECTION 11. Section 103.0091(a), Human Resources Code, is  
12 amended to read as follows:

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

19 SECTION 12. Section 103.0092(a), Human Resources Code, is  
20 amended to read as follows:

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

27 SECTION 13. Section 103.011, Human Resources Code, is

1 amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 SECTION 15. Sections 103.013(a) and (c), Human Resources  
16 Code, are amended to read as follows:

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

22 (c) A day activity and health services [~~An adult day-care~~]  
23 facility that corrects a violation must maintain the correction.  
24 If the facility fails to maintain the correction until at least the  
25 first anniversary after the date the correction was made, the  
26 department may assess and collect an administrative penalty for the  
27 subsequent violation. An administrative penalty assessed under



1 this subsection is equal to three times the amount of the original  
2 penalty assessed but not collected. The department is not required  
3 to provide the facility with an opportunity under this section to  
4 correct the subsequent violation.

5 SECTION 16. Sections 103.014(c) and (e), Human Resources  
6 Code, are amended to read as follows:

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

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

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

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

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

25 (e) If the violation is subject to correction under Section  
26 103.013, the day activity and health services [~~adult day-care~~]  
27 facility shall submit a plan of correction to the department for

1 approval not later than the 10th day after the date on which the  
2 notice under Subsection (c) is received.

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