

By: Raymond

H.B. No. 3533

A BILL TO BE ENTITLED

AN ACT

relating to inspection procedures in certain long-term care facilities and the creation of a long-term care legislative oversight committee.

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

SECTION 1. Section 247.027, Health and Safety Code, is amended by adding Subsections (c), (d), (e), (f), and (g) to read as follows:

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

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

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

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

(e) A commission employee may not conduct an inspection of an assisted living facility unless the employee is a health care

1 professional licensed in this state. An officer or employee of a  
2 facility may require the commission employee to provide proof of  
3 the licensure before the commission employee conducts an  
4 inspection.

5 (f) The commission employee shall include on the  
6 commission's inspection checklist:

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

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

11 (g) The executive commissioner shall adopt rules to ensure  
12 that among the community services regions the commission uniformly  
13 administers inspections and consistently interprets and enforces  
14 the rules and laws regulating the assisted living facilities. The  
15 executive commissioner shall prepare and deliver a semiannual  
16 progress report on uniform administration, interpretation, and  
17 enforcement to the commission and the appropriate health and human  
18 services legislative standing committees.

19 SECTION 2. Section [247.0271](#), Health and Safety Code, is  
20 amended by adding Subsections (c-1) and (e) to read as follows:

21 (c-1) The inspector may not conduct an additional  
22 inspection during an additional exit conference. The inspector may  
23 not use an additional exit conference to retaliate against an  
24 assisted living facility for:

25 (1) filing a complaint against the commission or the  
26 inspector regarding an inspection; or

27 (2) requesting an administrative hearing to contest a

1 finding of a violation of this chapter.

2 (e) The inspector may not require an assisted living  
3 facility, through an inspection or the final official statement of  
4 violations, to take any action that conflicts with a written order  
5 of a physician. A facility shall provide evidence that the  
6 statement of violations conflicts with a written order of a  
7 physician in the facility's plan of correction. A facility is not  
8 required to correct a violation that conflicts with the written  
9 orders of a physician.

10 SECTION 3. Section 252.038, Health and Safety Code, is  
11 amended by adding Subsections (f) and (g) to read as follows:

12 (f) On application of a facility licensed under this  
13 chapter, a municipal fire marshal may grant a waiver for a violation  
14 of a life safety requirement or fire safety standard cited in the  
15 commission's final official statement of violations after an  
16 inspection, survey, or investigation conducted under this chapter  
17 if the fire marshal finds that:

18 (1) the facility met all applicable life safety  
19 requirements and fire safety standards at the time the facility was  
20 initially licensed; and

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

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

26 SECTION 4. Section 252.040, Health and Safety Code, is  
27 amended by amending Subsection (i) and adding Subsections (j) and

1 (k) to read as follows:

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

11 (j) The commission or the commission's representative shall  
12 include on the commission's inspection form:

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

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

17 (k) The executive commissioner shall adopt rules to ensure  
18 that among the community services regions the commission uniformly  
19 administers inspections, surveys, and investigations and  
20 consistently interprets and enforces the rules and laws regulating  
21 the facilities licensed under this chapter. The executive  
22 commissioner shall prepare and deliver a semiannual progress report  
23 on uniform administration, interpretation, and enforcement to the  
24 commission and the appropriate health and human services  
25 legislative standing committees.

26 SECTION 5. Section 252.044, Health and Safety Code, is  
27 amended by adding Subsections (b-1) and (d) to read as follows:

1       (b-1) The commission or the commission's representative may  
2 not conduct an additional inspection, survey, or investigation  
3 during an additional exit conference. The commission or the  
4 commission's representative may not use an additional exit  
5 conference to retaliate against a facility for:

6           (1) filing a complaint against the commission or the  
7 commission's representative regarding an inspection, survey, or  
8 investigation; or

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

11       (d) The commission or the commission's representative may  
12 not require a facility, through an inspection, survey, or  
13 investigation or the final official statement of violations, to  
14 take any action that conflicts with a written order of a physician.  
15 A facility shall provide evidence that the statement of violations  
16 conflicts with a written order of a physician in the facility's plan  
17 to correct violations. A facility is not required to correct a  
18 violation that conflicts with the written orders of a physician.

19       SECTION 6. Chapter 161, Human Resources Code, is amended by  
20 adding Subchapter J to read as follows:

21           SUBCHAPTER J. LEGISLATIVE OVERSIGHT COMMITTEE

22       Sec. 161.401. DEFINITIONS. In this subchapter:

23           (1) "Committee" means the long-term care legislative  
24 oversight committee.

25           (2) "Facility" means:

26                   (A) an institution licensed under Chapter 242,  
27 Health and Safety Code;

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

3                   (C) an intermediate care facility licensed under  
4 Chapter 252, Health and Safety Code.

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

6 (a) The committee is composed of:

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

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

12                  (b) A member of the committee serves at the pleasure of the  
13 appointing official.

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

19                  Sec. 161.403. COMMITTEE POWERS AND DUTIES. (a) The  
20 committee shall:

21                           (1) meet at the call of the presiding officer;

22                           (2) receive, review, and comment on rules proposed by  
23 the commission; and

24                           (3) review recommendations for legislation proposed  
25 by the commission or the attorney general relating to facilities.

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

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 may monitor the effectiveness and  
6 efficiency of the facility regulatory system of this state.

7       (e) The committee may propose legislation relating to  
8 facilities.

9       (f) The committee may request reports and other information  
10 from the commission and the attorney general relating to:

11           (1) the facility regulatory and enforcement system of  
12 this state;

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

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

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

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

24       (b) The report must include:

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

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

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

6           Sec. 161.405. EXPIRATION. This subchapter expires  
7 September 1, 2021.

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

12           (b) Not later than December 1, 2017, the Health and Human  
13 Services Commission shall modify inspection forms to conform to the  
14 requirements of this Act.

15           (c) The changes in law made by this Act apply only to an  
16 inspection, survey, or investigation conducted on or after January  
17 1, 2018.

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

25           SECTION 8. This Act takes effect September 1, 2017.