

H.B. No. 216

AN ACT

relating to the regulation of certain boarding home facilities and assisted living facilities; providing penalties.

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

SECTION 1. Subtitle B, Title 4, Health and Safety Code, is amended by adding Chapter 254 to read as follows:

CHAPTER 254. BOARDING HOME FACILITIES

Sec. 254.001. DEFINITIONS. In this chapter:

(1) "Assistance with self-administering medication" means assisting a resident by reminding the resident to take medication, opening and removing medications from a container, or reminding the resident when a prescription medication needs to be refilled.

(2) "Boarding home facility" means an establishment that:

(A) furnishes, in one or more buildings, lodging to three or more persons with disabilities or elderly persons who are unrelated to the owner of the establishment by blood or marriage; and

(B) provides community meals, light housework, meal preparation, transportation, grocery shopping, money management, laundry services, or assistance with self-administration of medication but does not provide personal care services as defined by Section 247.002 to those persons.

(3) "Commission" means the Health and Human Services Commission.

(4) "Elderly person" has the meaning assigned by Section 48.002, Human Resources Code.

(5) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(6) "Person with a disability" means a disabled person as defined by Section 48.002, Human Resources Code.

(7) "Resident" means a person who is residing in a boarding home facility.

Sec. 254.002. EXEMPTIONS. This chapter does not apply to:

(1) a person that is required to be licensed under Chapter 142, 242, 246, 247, or 252;

(2) a person that is exempt from licensing under Section 142.003(a)(19), 242.003(3), or 247.004(4);

(3) a hotel as defined by Section 156.001, Tax Code;

- (4) a retirement community;
- (5) a monastery or convent;
- (6) a child-care facility as defined by Section 42.002, Human Resources Code;
- (7) a family violence shelter center as defined by Section 51.002, Human Resources Code; or
- (8) a sorority or fraternity house or other dormitory associated with an institution of higher education.

Sec. 254.003. MODEL STANDARDS. The executive commissioner shall develop and publish in the Texas Register model standards for the operation of a boarding home facility relating to:

- (1) the construction or remodeling of a boarding home facility, including plumbing, heating, lighting, ventilation, and other housing conditions, to ensure the residents' health, safety, comfort, and protection from fire hazard;
- (2) sanitary and related conditions in a boarding home facility and its surroundings, including insect and rodent control, water supply, sewage disposal, food handling, and general hygiene to ensure the residents' health, safety, and comfort;
- (3) the reporting and investigation of injuries,

incidents, and unusual accidents and the establishment of other policies and procedures necessary to ensure resident health and safety;

(4) assistance with self-administering medication;

(5) requirements for in-service education of the facility's staff;

(6) criminal history record checks; and

(7) assessment and periodic monitoring to ensure that a resident:

(A) does not require the boarding home facility to provide personal care, nursing, or other services not listed in Section 254.001(2); and

(B) is capable of self-administering medication or is aware of what the resident's medications look like and knows when the medications should be taken but requires assistance with self-administering medication.

Sec. 254.004. LOCAL REGULATION. A county or municipality may require a person to obtain a permit from the county or municipality to operate a boarding home facility within the county's or municipality's jurisdiction. A county or municipality may adopt the standards developed by the executive commissioner under Section 254.003 and require a boarding home facility that

holds a permit issued by the county or municipality to comply with the adopted standards.

Sec. 254.005. PERMIT PROCEDURES; FEES; FINES. (a) A county or municipality that requires a person to obtain a boarding home facility permit as authorized by Section 254.004 may establish procedures for the submission of a boarding home facility permit application and for the issuance, denial, renewal, suspension, and revocation of the permit.

(b) A county or municipality that requires a person to obtain a boarding home facility permit as authorized under Section 254.004 may set reasonable fees for issuance of the permit, renewal of the permit, and inspections and may impose fines for noncompliance with the county or municipal boarding home facility regulations. **The fees collected and fines imposed by the county or municipality must be used to administer the county or municipal permitting program or for other purposes directly related to providing boarding home facility or other assisted living services to elderly persons and persons with disabilities.**

(c) A person required to obtain a boarding home facility permit from a county or municipality as authorized under Section 254.004 shall pay any fees required or fines

imposed by the county or municipality.

Sec. 254.006. POSTING. A boarding home facility that holds a permit issued by a county or municipality shall prominently and conspicuously post for display in a public area of the boarding home facility that is readily available to residents, the operator, employees, and visitors:

(1) the permit issued by a county or municipality;

(2) a sign prescribed by the county or municipality that issued the permit that specifies how complaints may be registered with the county or municipality;

(3) a notice in a form prescribed by the county or municipality that issued the permit stating that inspection and related reports are available at the boarding home facility for public inspection and providing a telephone number that may be used to obtain information concerning the boarding home facility;

(4) a concise summary of the most recent inspection report relating to the boarding home facility;
and

(5) a notice in a form prescribed by the county or municipality that issued the permit that lists the name,

location, and contact information for:

(A) the closest local public health services agency in the proximity of the boarding home facility; and

(B) a local organization or entity that represents, advocates, or serves elderly persons or persons with disabilities, including any related toll-free contact information for reporting emergencies to the organization or entity.

Sec. 254.007. INSPECTIONS. (a) A county or municipality may conduct any inspection, survey, or investigation that it considers necessary and may enter the premises of a boarding home facility at reasonable times to make an inspection, survey, or investigation.

(b) A county or municipality is entitled to access to books, records, and other documents maintained by or on behalf of a boarding home facility to the extent necessary to enforce the standards adopted by the county or municipality.

Sec. 254.008. INTERLOCAL COOPERATION. Two or more counties or municipalities may cooperate and contract with each other for the purpose of inspecting and permitting boarding home facilities.

Sec. 254.009. REPORTING AND INVESTIGATION OF ABUSE,

NEGLECT, OR EXPLOITATION. (a) A person, including an owner, operator, or employee of a boarding home facility that holds a permit issued by a county or municipality, who has cause to believe that a resident who is an elderly person or a person with a disability is being or has been abused, neglected, or exploited shall report the abuse, neglect, or exploitation to the Department of Family and Protective Services for investigation by that agency. The Department of Family and Protective Services shall investigate the allegation of abuse, neglect, or exploitation as authorized and in the manner provided by Chapter 48, Human Resources Code.

(b) Each boarding home facility that holds a permit issued by a county or municipality shall require each employee of the boarding home facility, as a condition of employment with the boarding home facility, to sign a statement that the employee acknowledges that the employee may be criminally liable under Section 48.052, Human Resources Code, for failure to report abuse, neglect, or exploitation.

(c) An owner, operator, or employee of a boarding home facility that holds a permit issued by a county or municipality may not retaliate against an employee of the facility who in good faith makes a complaint to the office

of the inspector general of the Health and Human Services Commission, cooperates with the office of the inspector general in an investigation, or reports abuse, neglect, or exploitation of a resident to the Department of Family and Protective Services.

Sec. 254.010. ANNUAL REPORT TO COMMISSION; LEGISLATIVE REPORT. (a) Not later than September 30 of each year following the establishment of a county or municipal permitting requirement under this chapter, each county or municipality that requires a person to obtain a boarding home facility permit under Section 254.004 shall submit to the commission a report. The report must include:

(1) the total number of:

(A) boarding home facilities permitted during the preceding state fiscal year;

(B) boarding home facility applications denied permitting, including a summary of cause for denial;
and

(C) boarding home facility permits active on August 31 of the preceding state fiscal year;

(2) the total number of residents reported housed in each boarding home facility reported;

(3) the total number of inspections conducted at

each boarding home facility by the county or municipality that requires the permit; and

(4) the total number of permits revoked or suspended as a result of an inspection described by Subdivision (3) and a summary of the outcome for the residents displaced by revocation or suspension of a permit.

(b) The commission shall establish and maintain a standardized compilation of information reported under this section and provide to the legislature a report of this information not later than January 1 of each odd-numbered year.

Sec. 254.011. EXCLUSION PROHIBITED. If an entity meets the requirements established by a county or municipality under this chapter, the entity may not be excluded from a residential area by zoning ordinances or similar regulations.

SECTION 2. Sections 247.002(1), (2), (4), (5), and (7), Health and Safety Code, are amended to read as follows:

(1) "Assisted living facility" means an establishment that:

(A) furnishes, in one or more facilities, food and shelter to four or more persons who are unrelated

to the proprietor of the establishment; ~~and~~

(B) provides:

(i) personal care services; or

(ii) administration of medication by a

person licensed or otherwise authorized in this state to administer the medication; and

(C) may provide assistance with or supervision of the administration of medication.

(2) "Board" means the executive commissioner of the Health and ~~[Texas Board of]~~ Human Services Commission.

(4) "Department" means the ~~[Texas]~~ Department of Aging and Disability ~~[Human]~~ Services.

(5) "Personal care services" means:

(A) assistance with feeding ~~[meals]~~, dressing, moving ~~[movement]~~, bathing, or other personal needs or maintenance; or

~~(B) [the administration of medication by a person licensed to administer medication or the assistance with or supervision of medication; or~~

~~[(C)]~~ general supervision or oversight of the physical and mental well-being of a person who needs assistance to maintain a private and independent residence in an assisted living facility or who needs assistance to manage the person's personal life, regardless of whether a

guardian has been appointed for the person.

(7) "Commissioner" means the commissioner of the department [~~human services~~].

SECTION 3. Section 247.004, Health and Safety Code, is amended to read as follows:

Sec. 247.004. EXEMPTIONS. This chapter does not apply to:

(1) a boarding home facility as defined by Section 254.001 [~~that has rooms for rent and that may offer community meals, light housework, meal preparation, transportation, grocery shopping, money management, or laundry services but that does not provide personal care services~~];

(2) an establishment conducted by or for the adherents of the Church of Christ, Scientist, for the purpose of providing facilities for the care or treatment of the sick who depend exclusively on prayer or spiritual means for healing without the use of any drug or material remedy if the establishment complies with local safety, sanitary, and quarantine ordinances and regulations;

(3) a facility conducted by or for the adherents of a qualified religious society classified as a tax-exempt organization under an Internal Revenue Service group exemption ruling for the purpose of providing personal care

services without charge solely for the society's professed members or ministers in retirement, if the facility complies with local safety, sanitation, and quarantine ordinances and regulations; or

(4) a facility that provides personal care services only to persons enrolled in a program that is funded in whole or in part by the department [~~Texas Department of Mental Health and Mental Retardation~~] and that is monitored by the department [~~Texas Department of Mental Health and Mental Retardation~~] or its designated local mental retardation authority in accordance with standards set by the department [~~Texas Department of Mental Health and Mental Retardation~~].

SECTION 4. Section 247.030, Health and Safety Code, is repealed.

SECTION 5. It is the intent of the legislature that the passage by the 81st Legislature, Regular Session, 2009, of another bill that amends Subtitle B, Title 4, Health and Safety Code, and Chapter 247, Health and Safety Code, and the amendments made by this Act shall be harmonized, if possible, as provided by Section 311.025(b), Government Code, so that effect may be given to each. If the amendments made by this Act to Subtitle B, Title 4, Health and Safety Code, and Chapter 247, Health and Safety Code,

and the amendments made to Subtitle B, Title 4, Health and Safety Code, and Chapter 247, Health and Safety Code, by any other bill are irreconcilable, it is the intent of the legislature that this Act prevail, regardless of the relative dates of enactment of this Act and the other bill or bills, but only to the extent that differences are irreconcilable.

SECTION 6. Not later than September 1, 2010, the executive commissioner of the Health and Human Services Commission shall adopt the model standards required by Section 254.003, Health and Safety Code, as added by this Act.

SECTION 7. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2009.

(b) Sections 254.004 through 254.008, Health and Safety Code, as added by this Act, and Section 4 of this Act take effect September 1, 2010.

President of the Senate

Speaker of the House

I certify that H.B. No. 216 was passed by the House on May 1, 2009, by the following vote: Yeas 140, Nays 2, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 216 on May 23, 2009, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 216 on May 31, 2009, by the following vote: Yeas 143, Nays 0, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 216 was passed by the Senate, with amendments, on May 20, 2009, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 216 on May 31, 2009, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor