

A BILL TO BE ENTITLED

AN ACT

relating to the abuse and neglect of residents of certain facilities.

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

SECTION 1. (a) It is the intent of the legislature that Section 242.061, Health and Safety Code, as amended by this section, establish a ceiling or maximum number of violations related to the abuse and neglect of a resident that a facility can commit before the Department of Aging and Disability Services is required to revoke the facility's license. The changes in law made by this section are not intended to limit or diminish the department's permissive authority to revoke a license under Chapter 242, Health and Safety Code.

(b) Section 242.061, Health and Safety Code, is amended by amending Subsection (a) and adding Subsections (a-1), (a-2), (a-3), and (e) to read as follows:

(a) In this section:

(1) "Abuse" has the meaning assigned by Section 260A.001.

(2) "Immediate threat to health and safety" means a situation in which immediate corrective action is necessary because the facility's noncompliance with one or more requirements has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident.

1           (3) "Neglect" has the meaning assigned by Section  
2 260A.001.

3           (a-1) The department, after providing notice and  
4 opportunity for a hearing to the applicant or license holder, may  
5 deny, suspend, or revoke a license if the department finds that the  
6 applicant, the license holder, or any other person described by  
7 Section 242.032(d) has:

8           (1) violated this chapter or a rule, standard, or  
9 order adopted or license issued under this chapter in either a  
10 repeated or substantial manner;

11           (2) committed any act described by Sections  
12 242.066(a)(2)-(6); or

13           (3) failed to comply with Section 242.074.

14           (a-2) Except as provided by Subsection (a-3) or (e), the  
15 department shall revoke a license under Subsection (a-1) if the  
16 department finds that:

17           (1) the license holder has committed three violations  
18 described by Subsection (a-1), within a 24-month period, that  
19 constitute an immediate threat to health and safety related to the  
20 abuse or neglect of a resident; and

21           (2) each of the violations described by Subdivision  
22 (1) are reported in connection with separate surveys, inspections,  
23 or investigation visits.

24           (a-3) The department may not revoke a license under  
25 Subsection (a-2) due to a violation described by Subsection  
26 (a-2)(1), if:

27           (1) the violation is not included on the written list

1 of violations left with the facility at the time of the initial exit  
2 conference under Section 242.0445(b) for a survey, inspection, or  
3 investigation;

4 (2) the violation is not included on the final  
5 statement of violations described by Section 242.0445; or

6 (3) the violation has been reviewed under the informal  
7 dispute resolution process established by Section 531.058,  
8 Government Code, and a determination was made that:

9 (A) the violation should be removed from the  
10 license holder's record; or

11 (B) the violation is reduced in severity so that  
12 the violation is no longer cited as an immediate threat to health  
13 and safety related to the abuse or neglect of a resident.

14 (e) The executive commissioner may waive a license  
15 revocation required by Subsection (a-2) if the executive  
16 commissioner determines that the waiver would not jeopardize the  
17 health and safety of the residents of the facility or place the  
18 residents at risk of abuse or neglect. The executive commissioner  
19 by rule shall establish criteria under which a waiver may be granted  
20 as provided by this subsection. The executive commissioner may  
21 provide a waiver for a veterans home, as defined by Section 164.002,  
22 Natural Resources Code, if the Veterans' Land Board contracts with  
23 a different entity to operate the veterans home than the entity that  
24 operated the home during the period in which the violations  
25 described by Subsection (a-2) occurred.

26 SECTION 2. Section 242.0615(a), Health and Safety Code, is  
27 amended to read as follows:

1 (a) The department, after providing notice and opportunity  
2 for a hearing, may exclude a person from eligibility for a license  
3 under this chapter if the person or any person described by Section  
4 [242.032\(d\)](#) has substantially failed to comply with this chapter and  
5 the rules adopted under this chapter. The authority granted by this  
6 subsection is in addition to the authority to deny issuance of a  
7 license under Section [242.061\(a-1\)](#) [~~[242.061\(a\)](#)~~].

8 SECTION 3. Section [255.003](#), Health and Safety Code, is  
9 amended by amending Subsections (b), (e), and (j) and adding  
10 Subsections (b-1) and (i-1) to read as follows:

11 (b) Monitoring [~~Priority for monitoring~~] visits shall be  
12 given to long-term care facilities:

- 13 (1) with a history of patient care deficiencies; or  
14 (2) that are identified as medium risk through the  
15 department's early warning system.

16 (b-1) A long-term care facility may request a monitoring  
17 visit under this section.

18 (e) Quality-of-care monitors shall assess:

19 (1) the overall quality of life in the long-term care  
20 facility; and

21 (2) specific conditions in the facility directly  
22 related to patient care, including conditions identified through  
23 the long-term care facility's quality measure reports based on  
24 Minimum Data Set Resident Assessments.

25 (i-1) The department shall schedule a follow-up visit not  
26 later than the 45th day after the date of an initial monitoring  
27 visit conducted under this section.

1 (j) Conditions observed by the quality-of-care monitor that  
2 create an immediate threat to the health or safety of a resident  
3 shall be reported immediately to the long-term care facility  
4 administrator, to the regional office supervisor for appropriate  
5 action and, as appropriate or as required by law, to law  
6 enforcement, adult protective services, other divisions of the  
7 department, or other responsible agencies.

8 SECTION 4. Section 255.004, Health and Safety Code, is  
9 amended by amending Subsection (a) and adding Subsections (a-1) and  
10 (a-2) to read as follows:

11 (a) In this section:

12 (1) "Abuse" has the meaning assigned by Section  
13 260A.001.

14 (2) "Immediate threat to health and safety" means a  
15 situation in which immediate corrective action is necessary because  
16 the facility's noncompliance with one or more requirements has  
17 caused, or is likely to cause, serious injury, harm, impairment, or  
18 death to a resident.

19 (3) "Neglect" has the meaning assigned by Section  
20 260A.001.

21 (a-1) The department shall create rapid response teams  
22 composed of health care experts that can visit a long-term care  
23 facility that:

24 (1) is [~~facilities~~] identified as high risk through  
25 the department's early warning system; or

26 (2) if the long-term care facility is a nursing  
27 institution, has committed three violations described by Section

1 242.061(a-1), within a 24-month period, that constitute an  
2 immediate threat to health and safety related to the abuse or  
3 neglect of a resident.

4 (a-2) A long-term care facility shall cooperate with a rapid  
5 response team deployed under this section to improve the quality of  
6 care provided at the facility.

7 SECTION 5. Section 531.058, Government Code, is amended by  
8 adding Subsection (a-1) to read as follows:

9 (a-1) As part of the informal dispute resolution process  
10 established under this section, the commission shall contract with  
11 an appropriate disinterested person who is a nonprofit organization  
12 to adjudicate disputes between an institution or facility licensed  
13 under Chapter 242, Health and Safety Code, and the Department of  
14 Aging and Disability Services concerning a statement of violations  
15 prepared by the department in connection with a survey conducted by  
16 the department of the institution or facility. Section 2009.053  
17 does not apply to the selection of an appropriate disinterested  
18 person under this subsection. The person with whom the commission  
19 contracts shall adjudicate all disputes described by this  
20 subsection.

21 SECTION 6. (a) As soon as possible after the effective  
22 date of this Act, the Department of Aging and Disability Services or  
23 the Health and Human Services Commission, as appropriate, shall  
24 apply for any waiver or other authorization from a federal agency  
25 that is necessary to implement this Act. The department and  
26 commission may delay implementing this Act until the waiver or  
27 authorization is granted.

1 (b) As soon as practicable after the effective date of this  
2 Act:

3 (1) the executive commissioner of the Health and Human  
4 Services Commission shall adopt the rules necessary to implement  
5 Section 531.058(a-1), Government Code, as added by this Act; and

6 (2) the Department of Aging and Disability Services  
7 and the Health and Human Services Commission shall, as appropriate,  
8 revise or enter into a memorandum of understanding as required by a  
9 federal agency that is necessary to implement Section 531.058(a-1),  
10 Government Code, as added by this Act.

11 SECTION 7. Sections 242.061(a-2) and (a-3), Health and  
12 Safety Code, as added by this Act, apply only to a violation  
13 committed on or after September 1, 2016. A violation committed  
14 before September 1, 2016, is governed by the law in effect on the  
15 date the violation was committed, and the former law is continued in  
16 effect for that purpose. For purposes of this section, a violation  
17 was committed before September 1, 2016, if any element of the  
18 violation occurred before that date.

19 SECTION 8. (a) Except as provided by Subsection (b) of  
20 this section, this Act takes effect immediately if it receives a  
21 vote of two-thirds of all the members elected to each house, as  
22 provided by Section 39, Article III, Texas Constitution. If this  
23 Act does not receive the vote necessary for immediate effect, this  
24 Act takes effect September 1, 2015.

25 (b) Sections 242.061(a-2) and (a-3), Health and Safety  
26 Code, as added by this Act, take effect September 1, 2016.