

By: Schwertner
(Raymond)

S.B. No. 304

Substitute the following for S.B. No. 304:

By: Raymond

C.S.S.B. No. 304

A BILL TO BE ENTITLED

AN ACT

1
2 relating to certain violations committed by long-term care
3 facilities, including violations that constitute the abuse and
4 neglect of residents.

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

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

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

17 (a) In this section:

18 (1) "Abuse" has the meaning assigned by Section
19 260A.001.

20 (2) "Immediate threat to health and safety" means a
21 situation in which immediate corrective action is necessary because
22 the facility's noncompliance with one or more requirements has
23 caused, or is likely to cause, serious injury, harm, impairment, or
24 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-1), the
15 executive commissioner shall revoke a license under Subsection
16 (a-1) if the 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) is reported in connection with a separate survey, inspection,
23 or investigation visit that occurred on separate entrance and exit
24 dates.

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

1 (1) the violation and the determination of immediate
2 threat to health and safety are not included on the written list of
3 violations left with the facility at the time of the initial exit
4 conference under Section 242.0445(b) for a survey, inspection, or
5 investigation;

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

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

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

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

16 (c-1) In the case of revocation of a license under
17 Subsection (a-2), to ensure the health and safety of residents of
18 the institution, the department may:

19 (1) request the appointment of a trustee to operate
20 the institution under Subchapter D;

21 (2) assist with obtaining a new operator for the
22 institution; or

23 (3) assist with the relocation of residents to another
24 institution.

25 (e) The executive commissioner may stay a license
26 revocation required by Subsection (a-2) if the executive
27 commissioner determines that the stay would not jeopardize the

1 health and safety of the residents of the facility or place the
2 residents at risk of abuse or neglect. The executive commissioner
3 by rule shall establish criteria under which a license revocation
4 may be stayed under this subsection. The executive commissioner
5 shall follow negotiated rulemaking procedures prescribed by
6 Chapter 2008, Government Code, for the adoption of rules
7 establishing the criteria. The criteria established must permit
8 the executive commissioner to stay a license revocation of a
9 nursing facility for which the department has deployed a rapid
10 response team under Section 255.004, if the facility has cooperated
11 with the rapid response team and demonstrated improvement in
12 quality of care, as determined by the rapid response team.

13 (e-1) The executive commissioner may stay a license
14 revocation required by Subsection (a-2) for a veterans home, as
15 defined by Section 164.002, Natural Resources Code, if the
16 Veterans' Land Board contracts with a different entity to operate
17 the veterans home than the entity that operated the home during the
18 period in which the violations described by Subsection (a-2)
19 occurred.

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

22 (a) The department, after providing notice and opportunity
23 for a hearing, may exclude a person from eligibility for a license
24 under this chapter if the person or any person described by Section
25 242.032(d) has substantially failed to comply with this chapter and
26 the rules adopted under this chapter. The authority granted by this
27 subsection is in addition to the authority to deny issuance of a

1 license under Section 242.061(a-1) [~~242.061(a)~~].

2 SECTION 3. Section 255.003, Health and Safety Code, is
3 amended by amending Subsections (b), (e), and (j) and adding
4 Subsections (b-1) and (i-1) to read as follows:

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

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

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

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

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

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

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

22 (j) Conditions observed by the quality-of-care monitor that
23 create an immediate threat to the health or safety of a resident
24 shall be reported immediately to the long-term care facility
25 administrator, to the regional office supervisor for appropriate
26 action, and, as appropriate or as required by law, to law
27 enforcement, adult protective services, other divisions of the

1 department, or other responsible agencies.

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

5 (a) In this section:

6 (1) "Abuse" has the meaning assigned by Section
7 [260A.001](#).

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

13 (3) "Neglect" has the meaning assigned by Section
14 [260A.001](#).

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

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

20 (2) if the long-term care facility is a nursing
21 institution, has committed three violations described by Section
22 [242.061](#)(a-1), within a 24-month period, that constitute an
23 immediate threat to health and safety related to the abuse or
24 neglect of a resident.

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

1 SECTION 5. Section [531.058](#), Government Code, is amended by
2 adding Subsection (a-1) to read as follows:

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

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

22 (b) As soon as practicable after the effective date of this
23 Act:

24 (1) the executive commissioner of the Health and Human
25 Services Commission shall adopt the rules necessary to implement
26 Section [531.058](#)(a-1), Government Code, as added by this Act; and

27 (2) the Department of Aging and Disability Services

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

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

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

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