

BILL ANALYSIS

Senate Research Center
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S.B. 1521
By: Shapleigh
Health & Human Services
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law does not regulate the operation of group homes for residents who are not related to the provider and that are provided by individuals or business concerns for adult persons who are disabled by reason of mental health and mental retardation or who are elderly and in need of quality, safe, supervised housing.

At present, state statutes only require the licensing, inspection, and regulation of such facilities where there is clear evidence of providing varying degrees of medical services, prescription administration, treatment, or therapeutic services, for example. There are no restrictions or regulation on the size, management, or overall operation of these facilities, which are typically funded from the assignment of the affected resident's disability stipend to the facility provider.

Without regulation, many boarding houses have become unsafe and unsanitary, left residents in isolated environments, left residents with no control over their finances so they would not have the ability to relocate if needed, and left residents with inadequate medical care or mental health care services.

The 80th Legislature passed H.B. 1168, which required the Health and Human Services Commission to study the issue of boarding houses. This study was completed in January 2009. This bill incorporates a number of the recommendations made in the study.

As proposed, S.B. 1521 amends current law relating to the regulation of certain boarding houses and assisted living facilities and provides penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 (Sections 254.003, 254.053, 254.054, 254.102, and 254.106, Health and Safety Code), of this bill.

Rulemaking authority previously granted to Texas Board of Human Services is transferred to the executive commissioner in SECTION 3 (Section 247.025, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle B, Title 4, Health and Safety Code, by adding Chapter 254, as follows:

CHAPTER 254. BOARDING HOUSES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 254.001. DEFINITIONS. Defines "boarding house," "department," "executive commissioner," and "resident."

Sec. 254.002. EXEMPTIONS. Provides that this chapter does not apply to a facility that is required to be licensed under Chapter 142 (Home and Community Support Services), 242 (Convalescent and Nursing Homes and Related Institutions), 246 (Continuing Care Facilities), 247 (Assisted Living Facilities), or 252 (Intermediate Care Facilities for the Mentally Retarded); a facility that is exempt from licensing under Section

142.003(a)(19) (relating to a person who need not be licensed) or 247.004(4) (relating to this chapter not applying to a facility that provides personal care services only to persons enrolled in a program that is funded in whole or in part by the Texas Department of Mental Health and Mental Retardation (TDMHMR)); a hotel as defined by Section 156.001(Definitions), Tax Code; a retirement community; a monastery or convent; a child-care facility; a facility that provides shelter to victims of domestic violence; or a sorority or fraternity house or other dormitory affiliated with an institution of higher education.

Sec. 254.003. RULES GENERALLY. Requires the executive commissioner of the Health and Human Services Commission (executive commissioner) to adopt rules related to the administration and implementation of this chapter.

Sec. 254.004. CONSULTATION AND COORDINATION. (a) Authorizes the Department of State Health Services (DSHS) to cooperate with local public health officials of a municipality or county in carrying out this chapter and to delegate to those officials the power to make inspections and recommendations to DSHS under this chapter.

(b) Authorizes DSHS to coordinate its personnel and facilities with a local agency of a municipality or county and to provide advice to the municipality or county if the municipality or county supplements the state regulatory program established under this chapter with additional rules required to meet local conditions.

[Reserves Sections 254.005-254.050 for expansion.]

SUBCHAPTER B. REGISTRATION, FEES, AND INSPECTIONS

Sec. 254.051. REGISTRATION REQUIRED. Prohibits a person, acting severally or jointly with any other person, from establishing, conducting, or maintaining in this state a boarding house unless the person holds a certificate of registration issued under this chapter.

Sec. 254.052. APPLICATION. (a) Authorizes a person to apply for registration under this chapter by submitting an application to DSHS on a form prescribed by DSHS and the required registration fee.

(b) Requires that the application contain information that DSHS requires. Authorizes DSHS to require affirmative evidence of ability to comply with the standards and rules adopted under this chapter.

Sec. 254.053. ISSUANCE AND RENEWAL OF CERTIFICATE OF REGISTRATION. (a) Requires DSHS, after receiving the application, to issue a certificate of registration to the applicant if, after inspection and investigation, it finds that the applicant and boarding house meet the requirements established under this chapter and DSHS rule.

(b) Authorizes DSHS to issue a certificate of registration only for the premises and persons named in the application and the maximum number of residents specified in the application.

(c) Prohibits a certificate of registration from being transferred or assigned.

(d) Authorizes a person to renew a certificate of registration by submitting a renewal application on the form prescribed by DSHS and paying the renewal fee.

(e) Requires the executive commissioner by rule to define specific, appropriate, and objective criteria on which the department may deny an initial certificate of registration application or certificate of registration renewal or revoke a certificate of registration.

Sec. 254.054. FEES. (a) Authorizes the executive commissioner by rule to adopt a fee for a certificate of registration issued under this chapter in an amount reasonable and necessary to recover the costs of administering this chapter.

(b) Requires that the certificate of registration fee be paid with each application for an initial certificate of registration or for a renewal or change of ownership of a certificate of registration.

(c) Authorizes the executive commissioner to adopt an additional fee for the approval of an increase in number of residents.

Sec. 254.055. REGISTRY. Requires DSHS to establish a registry of boarding houses registered under this chapter and make the registry available to the public, certificate of registration holders, and appropriate state agencies.

Sec. 254.056. MINIMUM STANDARDS. Authorizes the executive commissioner to adopt, publish, and enforce minimum standards relating to the construction or remodeling of a boarding house, including plumbing, heating, lighting, ventilation, and other housing conditions, to ensure the residents' health, safety, comfort, and protection from fire hazard; sanitary and related conditions in a boarding house and its surroundings, including water supply, sewage disposal, food handling, and general hygiene to ensure the residents' health, safety, and comfort; equipment essential to the residents' health and welfare; the reporting and investigation of injuries, incidents, and unusual accidents and the establishment of other policies and procedures necessary to ensure the residents' safety; policies and procedures for the control of communicable diseases; specialized nutrition support; requirements for in-service education of the operator and each employee who has any contact with residents; the regulation of the number of employees and the qualifications of the operator and each employee responsible for providing any part of a service to residents; and the quality of life.

Sec. 254.057. POSTING. Requires that each boarding house prominently and conspicuously post for display in a public area of the boarding house that is readily available to residents, the operator, any employees, and visitors the certificate of registration issued under this chapter; a sign prescribed by the executive commissioner that specifies complaint procedures established under this chapter or rules adopted under this chapter and that specifies how complaints may be registered with DSHS; a notice in a form prescribed by the executive commissioner stating that inspection and related reports are available at the boarding house for public inspection and providing DSHS's toll-free telephone number that may be used to obtain information concerning the boarding house; and a concise summary of the most recent inspection report relating to the boarding house.

Sec. 254.058. INSPECTIONS. (a) Authorizes DSHS or DSHS's representative to make any inspection, survey, or investigation that it considers necessary and to enter the premises of a boarding house at reasonable times to make an inspection, survey, or investigation in accordance with rules of the executive commissioner.

(b) Entitles DSHS to access to books, records, and other documents maintained by or on behalf of a boarding house to the extent necessary to enforce this chapter and the rules adopted under this chapter.

(c) Provides that a certificate of registration holder or an applicant for a certificate of registration is considered to have consented to entry and inspection of the boarding house by a representative of DSHS in accordance with this chapter.

(d) Requires DSHS to establish procedures to preserve all relevant evidence of conditions DSHS finds during an inspection, survey, or investigation that DSHS reasonably believes threaten the health and safety of a resident. Authorizes the procedures to include photography or photocopying of relevant documents, such as a certificate of registration holder's notes, for use in any legal proceeding.

Sec. 254.059. UNANNOUNCED INSPECTIONS. (a) Requires DSHS, each registration period, to conduct at least two unannounced inspections of each boarding house.

(b) Authorizes DSHS to require additional inspections.

Sec. 254.060. EDUCATION AND OUTREACH. Requires DSHS and the Health and Human Services Commission (HHSC) to provide to the owner or operator of a boarding house information on the circumstances, including the provision of personal care, that require the facility to be licensed under Chapter 247 and the requirements for licensing under that chapter; the services the boarding house may provide; registration under this chapter; and health and safety requirements and staff training requirements.

Sec. 254.061. REPORTING VIOLATIONS. (a) Requires DSHS or DSHS's representative conducting an inspection or investigation under this chapter to list each violation of a law or rule on a form designed by DSHS for inspections and identify the specific law or rule the boarding house violates.

(b) Requires DSHS or DSHS's representative conducting the inspection or investigation, at the conclusion of an inspection or investigation under this chapter, to discuss the violations with the boarding house's management in an exit conference. Requires DSHS or DSHS's representative to leave a written list of the violations with the boarding house and the person designated by the boarding house to receive notice of the imposition of an administrative penalty at the time of the exit conference. Requires DSHS or DSHS's representative, if DSHS or DSHS's representative discovers any additional violations during the review of field notes or preparation of the official final list, to give the boarding house an additional exit conference regarding the additional violations.

(c) Requires that the boarding house submit a plan to correct the violations to DSHS not later than the 10th day after the date the boarding house receives the final statement of violations.

Sec. 254.062. REPORTING OF ABUSE, NEGLECT, OR EXPLOITATION. (a) Requires a person, including an owner, operator, or employee of a boarding house, who has cause to believe that a resident has been abused, neglected, or exploited or may be adversely affected by abuse, neglect, or exploitation caused by another person to report the abuse, neglect, or exploitation as required by Section 48.051 (Report), Human Resources Code, or other applicable law.

(b) Requires each boarding house to require each employee of the boarding house, as a condition of employment with the boarding house, to sign a statement that the employee realizes that the employee may be criminally liable under Section 48.052 (Failure to Report; Penalty), Human Resources Code, for failure to report abuse, neglect, or exploitation.

Sec. 254.063. NOTIFICATION OF CLOSURE. (a) Requires a boarding house that is closing temporarily or permanently, voluntarily or involuntarily, to notify the residents of the closing, if applicable, within a reasonable time before the boarding house closes.

(b) Requires the boarding house, if DSHS orders a boarding house to close or the boarding house's closure is in any other way involuntary, to make the notification, orally or in writing, immediately on receiving notice of the closing.

(c) Requires the boarding house, if the boarding house's closure is voluntary, to make the notification not later than one week after the date on which the decision to close is made.

[Reserves Sections 254.064-254.100 for expansion.]

SUBCHAPTER C. GENERAL ENFORCEMENT

Sec. 254.101. DENIAL, SUSPENSION, OR REVOCATION OF CERTIFICATE OF REGISTRATION. (a) Authorizes DSHS, after providing notice and opportunity for a hearing to an applicant for a certificate of registration or a certificate of registration holder, to deny, suspend, or revoke a certificate of registration if DSHS finds that the applicant or certificate holder has substantially failed to comply with the requirements established under this chapter.

(b) Provides that the status of an applicant for a certificate of registration or of a certificate of registration holder is preserved until final disposition of the contested matter, except as the court having jurisdiction of a judicial review of the matter may order in the public interest for the welfare and safety of the residents.

Sec. 254.102. EMERGENCY SUSPENSION OR CLOSING ORDER. (a) Requires DSHS to suspend a boarding house's certificate of registration or order an immediate closing of part of the boarding house if DSHS finds the boarding house is operating in violation of the standards prescribed by this chapter and the violation creates an immediate threat to the health and safety of a resident.

(b) Requires the executive commissioner by rule to provide for the placement of residents during the boarding house's suspension or closing to ensure their health and safety.

(c) Provides that an order suspending a certificate of registration or closing a part of a boarding house under this section is immediately effective on the date on which the certificate of registration holder receives written notice or a later date specified in the order.

(d) Provides that an order suspending a certificate of registration or ordering an immediate closing of a part of a boarding house is valid for 10 days after the effective date of the order.

Sec. 254.103. INJUNCTION. (a) Authorizes DSHS to petition a district court for a temporary restraining order to restrain a person from continuing a violation of the standards prescribed by this chapter if DSHS finds that the violation creates an immediate threat to the health and safety of the boarding house's residents.

(b) Authorizes a district court, on petition of DSHS, to by injunction prohibit a person from continuing a violation of the standards or registration requirements prescribed by this chapter; restrain or prevent the establishment, conduct, management, or operation of a boarding house without a certificate of registration issued under this chapter; or grant the injunctive relief warranted by the facts on a finding by the court that a person is violating the standards or registration requirements prescribed by this chapter.

(c) Requires the attorney general, on request by DSHS, to bring and conduct on behalf of the state a suit authorized by this section.

(d) Requires that a suit for a temporary restraining order or other injunctive relief be brought in the county in which the alleged violation occurs or in Travis County.

Sec. 254.104. CRIMINAL PENALTY. (a) Defines "immediate threat to the health or safety."

(b) Provides that a person who knowingly operates a boarding house that is required to be registered under this chapter in a manner that creates an immediate threat to the health or safety of a resident of the boarding house commits an offense.

(c) Provides that an offense under this section is a Class B misdemeanor.

Sec. 254.105. CIVIL PENALTY. (a) Provides that a person who violates this chapter or a rule adopted or order issued under this chapter is liable for a civil penalty of not less than \$200 for each violation if DSHS determines the violation threatens the health or safety of a resident.

(b) Provides that each day of a violation constitutes a separate ground for recovery.

(c) Authorizes the attorney general, on request of DSHS, to institute an action in a district court to collect a civil penalty under this section. Requires that any amount collected be remitted to the comptroller of public accounts (comptroller) for deposit in the general revenue fund.

Sec. 254.106. ADMINISTRATIVE PENALTY. (a) Authorizes DSHS to impose an administrative penalty against a boarding house that violates this chapter or a rule adopted or order issued under this chapter.

(b) Prohibits the penalty for a boarding house from being less than \$200 for each violation. Provides that each day a violation occurs is a separate violation for purposes of imposing a penalty.

(c) Requires the executive commissioner by rule to specify each violation for which an administrative penalty may be assessed. Requires DSHS, in determining which violations warrant penalties, to consider the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard of the violation to the health or safety of residents and whether the affected boarding house had identified the violation as a part of its internal quality assurance process and had made appropriate progress on correction.

(d) Requires the executive commissioner by rule to establish a specific and detailed schedule of appropriate and graduated penalties for each violation based on the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard of the violation to the health or safety of residents; the history of previous violations; whether the affected boarding house had identified the violation as a part of its internal quality assurance process and had made appropriate progress on correction; the amount necessary to deter future violations; efforts made to correct the violation; the size of the boarding house; and any other matters that justice may require.

(e) Requires the executive commissioner by rule to provide the boarding house with a reasonable period of time, not less than 45 days, following the first day of a violation to correct the violation before assessing an administrative penalty if a plan of correction has been implemented. Provides that this subsection does not apply to a violation that DSHS determines has resulted in serious harm to or the death of a resident or constitutes a serious threat to the health or safety of a resident.

(f) Prohibits DSHS from assessing an administrative penalty for a minor violation if the person corrects the violation not later than the 46th day after the date the person receives notice of the violation.

(g) Requires DSHS to establish a system to ensure standard and consistent application of penalties regardless of the boarding house location.

(h) Provides that all proceedings for the assessment of an administrative penalty under this chapter are subject to Chapter 2001 (Administrative Procedure), Government Code.

(i) Provides that an administrative penalty, notwithstanding any other provision of this section, ceases to be incurred on the date a violation is corrected. Provides that the administrative penalty ceases to be incurred only if the boarding house notifies DSHS in writing of the correction of the violation and of the date the violation was corrected and shows later that the violation was corrected.

(j) Requires that rules adopted under this section include specific, appropriate, and objective criteria that describe the scope and severity of a violation that results in a recommendation for each specific penalty.

(k) Requires that the imposition and collection of an administrative penalty imposed under this section be conducted in the manner provided by Sections 252.0651(Application of Other Law), 252.066 (Notice; Request for Hearing), 252.067 (Hearing; Order), 252.068 (Notice and Payment of Administrative Penalty; Judicial Review; Refund), and 252.070 (Expenses and Costs for Collection of Civil or Administrative Penalty).

SECTION 2. Amends Section 247.004, Health and Safety Code, as follows:

Sec. 247.004. EXEMPTIONS. Provides that this chapter does not apply to: a boarding house registered under Chapter 254 or a facility that provides personal care services only to persons enrolled in a program that is funded in whole or in part by DSHS or the Department of Aging and Disability Services (DADS) and that is monitored by DSHS or DADS or its designated local authority, as applicable, in accordance with standards set by the applicable department. Deletes existing text providing that this chapter does not apply to: a boarding facility 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 or a facility that provides personal care services only to persons enrolled in a program that is funded in whole or in part by TDMHMR and that is monitored by TDMHMR or its designated local authority, in accordance with standards set by the TDMHMR.

SECTION 3. Amends Section 247.025, Health and Safety Code, as follows:

Sec. 247.025. ADOPTION OF RULES. Requires the executive commissioner, rather than the Texas Board of Human Services, to adopt rules necessary to implement this chapter, including requirements for the issuance, renewal, denial, suspension, and revocation of a license to operate an assisted living facility and rules to require local mental health authorities to work with clients to secure safe, appropriate housing to assist clients in achieving their treatment goals by directing clients to available assisted living facilities licensed under this chapter and other establishments that are not required to be licensed under this chapter that may be an appropriate referral option. Makes nonsubstantive changes.

SECTION 4. Amends Section 247.031, Health and Safety Code, as follows:

Sec. 247.031. MUNICIPAL ENFORCEMENT. (a) Creates this subsection from existing text. Makes no changes to this subsection.

(b) Requires DSHS to develop a communications plan, which may include regional meetings, to educate municipalities about this section and create outreach and training materials and distribute the materials in accordance with the communications plan.

SECTION 5. Amends Chapter 247, Health and Safety Code, by adding Subchapter E, as follows:

SUBCHAPTER E. CRIMINAL PENALTY

Sec. 247.101. CRIMINAL PENALTY. (a) Defines "immediate threat to the health or safety."

(b) Provides that a person who knowingly operates without a license an assisted living facility that is required to be licensed under this chapter in a manner that creates an immediate threat to the health or safety of a resident of the facility commits an offense.

(c) Provides that an offense under this section is a Class B misdemeanor.

SECTION 6. Amends the heading to Title 4, Health and Safety Code, to read as follows:

TITLE 4. CERTAIN RESIDENTIAL AND HEALTH FACILITIES

SECTION 7. Amends the heading to Subtitle B, Title 4, Health and Safety Code, to read as follows:

SUBTITLE B. LICENSING OF FACILITIES

SECTION 8. (a) Requires HHSC, or a health and human services agency, designated by HHSC, not later than October 1, 2009, to establish a stakeholder workgroup to solicit input and make recommendations for revision of the existing rules on Type E facilities as defined by rules of DADS. Requires members of the workgroup to include currently licensed Type E facility operators; unlicensed boarding house operators; local mental health authority staff; area agencies on aging representatives; regional staff of DADS; staff of DSHS with responsibility for mental health services; and mental health advocates.

(b) Requires the workgroup to examine basic supervision, resident well-being, nutritional quality, and medication monitoring related to Type E facilities; recommend rules to encourage more boarding house operators to be licensed as Type E facilities; and examine regulatory oversight of Type E facilities and recommend either DADS, or the DSHS to regulate facilities considering the purpose for which the Type E classification was created, the services currently regulated by each agency, and cost.

(c) Requires the executive commissioner, not later than January 1, 2011, based on the recommendations of the workgroup, to adopt rules relating to the licensing of Type E assisted living facilities.

(d) Requires HHSC or a health and human services agency designated by HHSC, not later than March 1, 2011, to provide copies of the rules adopted under Subsection (c) of this section to the members of the workgroup and other interested parties; provide training and information to regional state regulatory staff and local staff on the adopted rules; and provide information on the adopted rules to boarding houses, state and regional staff employed by DADS, state and regional staff employed by DSHS, and local mental health authorities.

SECTION 9. Requires HHSC, not later than September 1, 2010, to evaluate the Section 1915(i) state plan amendment option of the Social Security Act (42 U.S.C. Section 1396n(i)) available under the Deficit Reduction Act of 2005 (Pub. L. No. 109-171) and the waiver program under Section 1915(c), Social Security Act (42 U.S.C. Section 1396n(c)), to determine if either would provide a feasible means for funding personal care services for people with mental illness under the state Medicaid program.

SECTION 10. (a) Requires the executive commissioner, not later than January 1, 2011, to adopt the rules necessary to implement Chapter 254, Health and Safety Code, as added by this Act, and Chapter 247, Health and Safety Code, as amended by this Act.

(b) Requires DSHS, not later than June 1, 2011, to develop the registry and provide the education and outreach as required under Chapter 254, Health and Safety Code, as added by this Act.

(c) Provides that a person, notwithstanding Chapter 254, Health and Safety Code, as added by this Act, who owns or operates a boarding house is not required to hold a

certificate of registration on the effective date of this Act but is required to hold a certificate of registration under that chapter not later than September 1, 2011.

SECTION 11. (a) Effective date, except as provided by Subsection (b): September 1, 2009.

(b) Effective date, Subchapter C, Chapter 254, Health and Safety Code, as added by this Act: September 1, 2011.