

HEALTH & SAFETY CODE
CHAPTER 247. ASSISTED LIVING FACILITIES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 247.001. SHORT TITLE. This chapter may be cited as the Assisted Living Facility Licensing Act. Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.0011. SCOPE, PURPOSE, AND IMPLEMENTATION. (a) The purpose of this chapter is to ensure that assisted living facilities in this state deliver the highest possible quality of care. This chapter and the rules adopted under this chapter establish minimum acceptable levels of care, and a violation of a minimum acceptable level of care established under this chapter is a violation of law. For purposes of this chapter, components of quality of care include:

- (1) resident independence and self-determination;
- (2) humane treatment;
- (3) conservative intervention;
- (4) access to care;
- (5) continuity of care;
- (6) coordination of services;
- (7) safe surroundings;
- (8) professionalism of service providers;
- (9) participation in useful studies; and
- (10) quality of life.

(b) The department shall protect residents of assisted living facilities by:

- (1) adopting rules relating to quality of care and quality of life;
- (2) adopting rules relating to the assessment of the condition and service needs of each resident;
- (3) promoting policies that maximize the dignity, autonomy, privacy, and independence of each resident;
- (4) regulating the construction, maintenance, and operation of assisted living facilities;
- (5) strictly monitoring factors relating to the health, safety, welfare, and dignity of each resident;
- (6) imposing prompt and effective remedies for violations of this chapter and rules and standards adopted under this chapter;
- (7) providing a residential environment that allows residents to maintain the highest possible degree of independence and self-determination; and
- (8) providing the public with helpful and understandable information relating to the operation of assisted living facilities in this state.

(c) Assisted living services are driven by a service philosophy that emphasizes personal dignity, autonomy, independence, and privacy. Assisted living services should enhance a person's ability to age in place in a residential setting while receiving increasing or decreasing levels of service as the person's needs change.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.002. DEFINITIONS. In this chapter:

- (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 personal care services.
- (2) "Board" means the Texas Board of Human Services.
- (3) "Controlling person" means a person who controls an assisted living facility or other person as described by Section 247.005.
- (4) "Department" means the Texas Department of Human Services.
- (5) "Personal care services" means:
 - (A) assistance with meals, dressing, movement, bathing, or other personal needs or maintenance;
 - (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.

(6) "Qualified religious society" means a church, synagogue, or other organization or association that is organized primarily for religious purposes and that:

(A) has been in existence in this state for at least 35 years; and

(B) does not distribute any of its income to its members, officers, or governing body other than as reasonable compensation for services or reimbursement of expenses.

(7) "Commissioner" means the commissioner of human services.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 608, Sec. 2, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 8.092, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1248, Sec. 1, eff. Sept. 1, 2001.

Sec. 247.0025. IMMEDIATE THREAT OF HARM. For purposes of this chapter, there is considered to be an immediate threat to the health or safety of a resident, or a situation is considered to put the health or safety of a resident in immediate jeopardy, if there is a situation in which an assisted living facility's noncompliance with one or more requirements of licensure has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident.

Added by Acts 2001, 77th Leg., ch. 1248, Sec. 2, eff. Sept. 1, 2001.

Sec. 247.003. APPLICATION OF OTHER LAW. (a) Except as provided by Subsections (b) and (c), Chapter 242 does not apply to an assisted living facility licensed under this chapter.

(b) Subchapter D, Chapter 242, applies to an assisted living facility, and the department shall administer and enforce that subchapter for an assisted living facility in the same manner it is administered and enforced for a nursing home.

(c) Except as provided by this subsection, Subchapter R, Chapter 242, applies to an assisted living facility, and the department shall administer that subchapter for an assisted living facility in the same manner it is administered and enforced for a nursing home, but shall enforce that subchapter in accordance with the sanctions authorized by this chapter. Sections 242.851 and 242.852 do not apply to an assisted living facility or to conduct within an assisted living facility.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 160, Sec. 1, eff. May 27, 2003.

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

(1) 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;

(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 Texas Department of Mental Health and Mental Retardation and that is monitored by the Texas Department of Mental Health and Mental Retardation or its designated local authority in accordance with standards set by the Texas Department of Mental Health and Mental Retardation.

Added by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1,

1991. Amended by Acts 1993, 73rd Leg., ch. 608, Sec. 1, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.005. CONTROLLING PERSON. (a) A person is a controlling person if the person, acting alone or with others, has the ability to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of an assisted living facility or other person.

(b) For purposes of this chapter, "controlling person" includes:

(1) a management company, landlord, or other business entity that operates or contracts with others for the operation of an assisted living facility;

(2) a person who is a controlling person of a management company or other business entity that operates an assisted living facility or that contracts with another person for the operation of an assisted living facility; and

(3) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of an assisted living facility, is in a position of actual control or authority with respect to the facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility.

(c) A controlling person described by Subsection (b)(3) does not include an employee, lender, secured creditor, landlord, or other person who does not exercise formal or actual influence or control over the operation of an assisted living facility.

(d) The department may adopt rules that specify the ownership interests and other relationships that qualify a person as a controlling person.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.006. ADVISORY COMMITTEE. (a) The Advisory Committee on Assisted Living Facilities consists of nine members appointed by the board. The commissioner of human services shall appoint two staff members from the department to serve as nonvoting advisory members. In appointing staff members under this subsection, the commissioner shall appoint one member as a representative of long-term care policy and one member as a representative of long-term care regulation.

(b) The board shall appoint the advisory committee to provide for a balanced representation of assisted living providers and consumers and shall appoint one member who has expertise in life safety code regulations. At least one of the provider members must be representative of a nonprofit facility, and at least one member must be a family member of a resident of a facility.

(c) The committee shall elect the presiding officer from among its members.

(d) The committee shall advise the department on standards for licensing assisted living facilities and on the implementation of this chapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 8.094, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999. Renumbered from Sec. 247.051 and amended by Acts 2001, 77th Leg., ch. 1248, Sec. 10, eff. Sept. 1, 2001.

SUBCHAPTER B. LICENSING, FEES, AND INSPECTIONS

Sec. 247.021. LICENSE REQUIRED. (a) A person may not establish or operate an assisted living facility without a license issued under this chapter.

(b) A person establishing or operating a facility that is not required to be licensed under this chapter may not use the term "assisted living" in referring to the facility or the services provided at the facility.

(c) A person establishing or operating a facility that is not required to be licensed but who elects to obtain a license under this chapter may use the term "assisted living" in referring to the facility or the services provided at the facility.

(d) The department by rule shall establish procedures to issue a six-month provisional license to existing facilities with residents. The department may issue a provisional license only if:

(1) the facility is in compliance with resident care standards;

(2) the facility voluntarily discloses that the facility needs additional time to comply with life safety code and

physical plant standards;

(3) the disclosure is made in writing by certified mail to the department;

(4) an investigation of the violation was not initiated and the violation was not independently detected by the department; and

(5) the disclosure is made promptly after knowledge of the information disclosed is obtained by the facility.

(e) If, at the end of the six-month provisional license period, the facility does not meet life safety code and physical plant standards, the department may not issue a license to the facility.

(f) No provisional licenses shall be issued after December 31, 1999.

(g) Notwithstanding Subsection (f), the department may automatically issue a provisional license to a newly constructed facility if:

(1) the facility is in compliance with resident care standards;

(2) all local approvals have been obtained;

(3) a complete license application is submitted within 30 days of receipt of all local approvals; and

(4) the license fee has been paid.

(h) Notwithstanding Subsection (f), the department may automatically issue a provisional license in the case of a corporate change of ownership of a facility.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 1088, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.022. LICENSE APPLICATION. (a) An applicant for an assisted living facility license must submit an application to the department on a form prescribed by the department.

(b) Each application must be accompanied by a nonrefundable license fee in an amount set by the board.

(c) The department may provide technical assistance to an applicant by making brief inspections of the assisted living facility proposed to be licensed and making recommendations concerning actions necessary to meet standards for assisted living facilities.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.023. ISSUANCE AND RENEWAL OF LICENSE. (a) The department shall issue a license if, after inspection and investigation, it finds that the applicant, the assisted living facility, and all controlling persons with respect to the applicant or facility meet the requirements of this chapter and the standards adopted under this chapter.

(b) To renew a license, the license holder must submit to the department the annual license renewal fee.

(c) The board may require participation in a continuing education program as a condition of renewal of a license. The board shall adopt rules to implement this subsection.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.0231. COMPLIANCE RECORD IN OTHER STATES. The department may require an applicant or license holder to provide the department with information relating to compliance by the applicant, the license holder, or a controlling person with respect to the applicant or license holder with regulatory requirements in another state in which the applicant, license holder, or controlling person operates or operated an assisted living facility.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.024. FEES; DISPOSITION OF REVENUE. (a) The board shall set license fees imposed by this chapter:

(1) on the basis of the number of beds in assisted living facilities required to pay the fee; and

(2) in amounts reasonable and necessary to defray the cost of administering this chapter, but not to exceed \$750.

(b) The board shall establish by rule a base fee schedule and a per bed fee schedule.

(c) All fees or penalties collected under this chapter shall

be deposited in the state treasury to the credit of the general revenue fund and shall be appropriated to the department only to administer and enforce this chapter.

(d) Investigation fees or attorney's fees may not be assessed against or collected from an assisted living facility by or on behalf of the department or another state agency unless the department or other state agency assesses and collects a penalty authorized by this chapter from the facility.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 416, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.025. ADOPTION OF RULES. The board shall 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.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.0255. RESTRAINT AND SECLUSION. A person providing services to a resident of an assisted living facility shall comply with Chapter 322 and the rules adopted under that chapter.

Added by Acts 2005, 79th Leg., ch. 698, Sec. 3, eff. Sept. 1, 2005.

Sec. 247.026. STANDARDS. (a) The board by rule shall prescribe minimum standards to protect the health and safety of an assisted living facility resident.

(b) The standards must:

(1) clearly differentiate an assisted living facility from an institution required to be licensed under Chapter 242;

(2) ensure quality care and protection of the residents' health and safety without excessive cost;

(3) ensure that the daily nutritional and special dietary needs of each resident are met; and

(4) require an assisted living facility to:

(A) use its license number or a state-issued facility identification number in all advertisements, solicitations, and promotional materials; and

(B) provide each prospective resident or prospective resident's representative, as appropriate, with a consumer disclosure statement in a standard form adopted by the department.

(c) The board shall require an assisted living facility that provides brain injury rehabilitation services to include in the facility's consumer disclosure statement a specific statement that licensure as an assisted living facility does not indicate state review, approval, or endorsement of the facility's rehabilitation services.

(d) The board may prescribe different levels of minimum standards for assisted living facilities according to the number of residents, the type of residents, the level of personal care provided, the nutritional needs of residents, and other distinctions the board considers relevant. If the board does not prescribe minimum standards for facilities serving non-geriatric residents, it must develop procedures for consideration and approval of alternate methods of compliance by such facilities with the board's standards.

(e) Local health and safety standards adopted by the municipality in which an assisted living facility is located do not apply to the facility unless the standards specifically state that they apply to assisted living facilities.

(f) The board by rule shall prescribe minimum standards requiring appropriate training in geriatric care for each individual who provides services to geriatric residents as an employee of an assisted living facility and who holds a license or certificate issued by an agency of this state that authorizes the person to provide the services. The minimum standards may require that each licensed or certified individual complete an appropriate program of continuing education or in-service training, as determined by board rule, on a schedule determined by board rule.

(g) Any individual otherwise qualified, who has been employed by a licensed assisted living facility for at least 90 days, shall be eligible to be certified as a medication aide following completion of the required course of study and successful completion of any required examination.

(h) An individual may not serve as the manager of an assisted living facility that has 17 beds or more unless the individual:

(1) has an associate's degree in nursing, health care management, or a related field from a public or private institution of higher education;

(2) has a bachelor's degree from a public or private institution of higher education; or

(3) has at least one year of experience working in management or in the health care industry.

(i) The board by rule shall require each manager of an assisted living facility that has 17 beds or more to complete at least one educational course on the management of assisted living facilities not later than the first anniversary of the date the manager begins employment in that capacity.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 542, Sec. 1, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 583, Sec. 2, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 31.01(57), eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 416, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 734, Sec. 1, eff. Sept. 1, 2003.

Sec. 247.0261. EARLY COMPLIANCE REVIEW. (a) The department by rule shall adopt a procedure under which a person proposing to construct or modify an assisted living facility may submit building plans to the department for review for compliance with the department's architectural requirements before beginning construction or modification. In adopting the procedure, the department shall set reasonable deadlines by which the department must complete review of submitted plans.

(b) The department shall, within 30 days, review plans submitted under this section for compliance with the department's architectural requirements and inform the person of the results of the review. If the plans comply with the department's architectural requirements, the department may not subsequently change the architectural requirements applicable to the project unless:

(1) the change is required by federal law; or

(2) the person fails to complete the project within a reasonable time.

(c) The department may charge a reasonable fee for conducting a review under this section.

(d) A fee collected under this section shall be deposited in the general revenue fund to the credit of the assisted living account and shall be appropriated only to the department to conduct reviews under this section.

(e) The review procedure provided by this section does not include review of building plans for compliance with the Texas Accessibility Standards as administered and enforced by the Texas Department of Licensing and Regulation.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.027. INSPECTIONS. (a) In addition to the inspection required under Section 247.023(a), the department may inspect an assisted living facility annually and may inspect a facility at other reasonable times as necessary to assure compliance with this chapter.

(b) The department shall establish an inspection checklist based on the minimum standards that describes the matters subject to inspection. The department shall use the inspection checklist in conducting inspections under this section and Section 247.023(a).

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.0271. INSPECTION EXIT CONFERENCE. (a) At the conclusion of an inspection under Section 247.023(a) or Section 247.027, the inspector shall perform an exit conference to advise the assisted living facility of the findings resulting from the inspection.

(b) At the exit conference, the inspector shall provide a copy of the inspection checklist to the assisted living facility and list each violation discovered during the inspection, with specific reference to the standard violated.

(c) If, after the initial exit conference, additional

violations are cited, the inspector shall conduct an additional exit conference regarding the newly identified violations.

(d) Repealed by Acts 2001, 77th Leg., ch. 1248, Sec. 17, eff. Sept. 1, 2001.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1248, Sec. 17, eff. Sept. 1, 2001.

Sec. 247.0272. INSPECTOR TRAINING; REQUIRED EXAMINATION. (a) The department shall develop and implement a training program to provide specialized training to department employees who inspect assisted living facilities under this chapter. The training must emphasize the distinction between an assisted living facility and an institution licensed under Chapter 242.

(b) In developing and updating the training program required by this section, the department shall consult with operators of assisted living facilities and consumers of personal care services provided by assisted living facilities or legal representatives of those consumers.

(c) The department shall examine department employees who inspect or otherwise survey assisted living facilities under this chapter. In developing the examination, the department shall consult with operators of assisted living facilities or their representatives and with consumers of personal care services provided by assisted living facilities or representatives of consumers.

(d) A department employee may not independently inspect, survey, or take administrative action against an assisted living facility unless the employee has passed the examination administered under Subsection (c).

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1248, Sec. 3, 4, eff. Sept. 1, 2001.

Sec. 247.028. ASSISTANCE BY DEPARTMENT. The department may provide assistance to an assisted living facility, including the provision of training materials, the coordination of training conferences and workshops with other state agencies, and the development of a provider's handbook explaining assisted living facility rules.

Added by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.029. FACILITIES FOR PERSONS WITH ALZHEIMER'S DISEASE. (a) The board by rule shall establish a classification and license for a facility that advertises, markets, or otherwise promotes that the facility provides personal care services to residents who have Alzheimer's disease or related disorders. A facility is not required to be classified under this section to provide care or treatment to residents who have Alzheimer's disease or related disorders.

(b) The board shall adopt minimum standards for an assisted living facility classified under this section.

(c) An individual may not serve as the manager of an assisted living facility classified under this section or as the supervisor of an assisted living facility unit classified under this section unless the individual is at least 21 years of age and has:

(1) an associate's degree from a public or private institution of higher education in nursing, health care management, or a related field;

(2) a bachelor's degree from a public or private institution of higher education in psychology, gerontology, nursing, or a related field; or

(3) at least one year of experience working with persons with dementia.

Added by Acts 1997, 75th Leg., ch. 444, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.030. FACILITIES FOR SUPERVISION OF MEDICATION AND GENERAL WELFARE. (a) The board by rule shall establish a classification and license for a facility that:

(1) provides only medication supervision, in accordance with Section 247.002(5)(B), and general supervision of residents' welfare, in accordance with Section 247.002(5)(C); and

(2) does not provide substantial assistance with the

activities of daily living, as described by Section 247.002(5)(A).

(b) The board shall adopt minimum standards for an assisted living facility classified under this section, including standards imposing adequate requirements relating to medication supervision. The board shall modify accessibility and life safety code standards generally applicable to a facility licensed under this chapter as necessary for a facility classified under this section to reflect the level of services provided by the facility. The modified standards must be specifically defined by the board and must provide for two-story buildings. Two-story buildings must meet all life safety code requirements in regards to protecting vertical openings, as specified in the 1988 edition of the National Fire Protection Association (NFPA) 101, Section 21-2.3.1.

(c) Except as provided by this section, an assisted living facility classified under this section is required to comply with all requirements imposed by this chapter.
Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 315, Sec. 1, eff. Sept. 1, 2001.

Sec. 247.031. MUNICIPAL ENFORCEMENT. The governing body of a municipality by ordinance may:

(1) prohibit a person who does not hold a license issued under this chapter from establishing or operating an assisted living facility within the municipality; and

(2) establish a procedure for emergency closure of a facility in circumstances in which:

(A) the facility is established or operating in violation of Section 247.021; and

(B) the continued operation of the facility creates an immediate threat to the health and safety of a resident of the facility.

Added by Acts 1997, 75th Leg., ch. 1088, Sec. 2, eff. Sept. 1, 1997.
Renumbered from Sec. 247.029 and amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.032. ACCREDITATION SURVEY TO SATISFY INSPECTION REQUIREMENTS.

Text of section as added by Acts 2005, 79th Leg., ch. 579, Sec. 1, eff. Jan. 1, 2006, and Acts 2005, 79th Leg., ch. 870, Sec. 1, eff. Sept. 1, 2005

(a) In this section, "accreditation commission" means the Commission on Accreditation of Rehabilitation Facilities or the Joint Commission on Accreditation of Healthcare Organizations.

(b) The department shall accept an accreditation survey from an accreditation commission for an assisted living facility instead of an inspection under Section 247.023 or an annual inspection or survey conducted under the authority of Section 247.027, but only if:

(1) the accreditation commission's standards meet or exceed the requirements for licensing of the executive commissioner of the Health and Human Services Commission for an assisted living facility;

(2) the accreditation commission maintains an inspection or survey program that, for each assisted living facility, meets the department's applicable minimum standards as confirmed by the executive commissioner of the Health and Human Services Commission;

(3) the accreditation commission conducts an on-site inspection or survey of the facility at least as often as required by Section 247.023 or 247.027 and in accordance with the department's minimum standards;

(4) the assisted living facility submits to the department a copy of its required accreditation reports to the accreditation commission in addition to the application, the fee, and any report required for renewal of a license;

(5) the inspection or survey results are available for public inspection to the same extent that the results of an investigation or survey conducted under Section 247.023 or 247.027 are available for public inspection; and

(6) the department ensures that the accreditation commission has taken reasonable precautions to protect the confidentiality of personally identifiable information concerning the residents of the assisted living facility.

(c) The department shall coordinate its licensing activities with each of the accreditation commissions.

(d) Except as specifically provided by this section, this

section does not limit the department in performing any power or duty under this chapter or inspection authorized by Section 247.027, including taking appropriate action relating to an assisted living facility, such as suspending or revoking a license, investigating an allegation of abuse, exploitation, or neglect or another complaint, assessing an administrative penalty, or closing the facility.

(e) This section does not require an assisted living facility to obtain accreditation from an accreditation commission. Added by Acts 2005, 79th Leg., ch. 870, Sec. 1, eff. Sept. 1, 2005; Acts 2005, 79th Leg., ch. 579, Sec. 1, eff. Jan. 1, 2006. For text of section as added by Acts 2005, 79th Leg., ch. 1206, Sec. 1, see Sec. 247.032, post.

Sec. 247.032. FEASIBILITY OF REGISTERING SMALL FACILITIES.

Text of section as added by Acts 2005, 79th Leg., ch. 1206, Sec. 1

Text of section effective until January 1, 2007

(a) The commissioner of aging and disability services shall appoint a work group to study the feasibility of requiring facilities that furnish food, shelter, and personal care services to three or fewer people who are unrelated to the proprietor of the facility to register with the department and the best method to identify those facilities. The work group must include:

- (1) representatives of the department;
- (2) a representative from the Department of Family and Protective Services;
- (3) a representative of a licensed assisted living facility;
- (4) a resident of an assisted living facility;
- (5) an advocate for persons with disabilities;
- (6) an advocate for the elderly;
- (7) representatives of provider associations representing assisted living facilities; and
- (8) representatives of local governmental entities, with at least one representative from a rural area of the state and one representative from an urban area of the state.

(b) A member of the work group serving under Subsection (a)(1) or (2) is not entitled to additional compensation for serving on the work group. Another member of the work group is not entitled to compensation for serving on the work group.

(c) Not later than January 1, 2007, the work group shall submit its findings to the lieutenant governor, the speaker of the house of representatives, and the presiding officers of the standing committees of each house with jurisdiction over assisted living facilities.

(d) This section expires January 1, 2007.

Added by Acts 2005, 79th Leg., ch. 1206, Sec. 1, eff. Sept. 1, 2005. For text of section as added by Acts 2005, 79th Leg., ch. 579, Sec. 1, eff. Jan. 1, 2006, and Acts 2005, 79th Leg., ch. 870, Sec. 1, eff. Sept. 1, 2005, see Sec. 247.032, ante.

SUBCHAPTER C. GENERAL ENFORCEMENT

Sec. 247.041. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. (a) The department, after providing notice and opportunity for a hearing to the applicant or license holder, may deny, suspend, or revoke a license if the department finds that the applicant, license holder, or a controlling person has:

- (1) violated this chapter or a rule, standard, or order adopted or license issued under this chapter in either a repeated or substantial manner; or
- (2) committed any act described by Sections 247.0451(a)(2)-(6).

(b) The denial, suspension, or revocation of a license by the department and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

(c) The status of a person as an applicant for a license or as a license 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.

(d) A court having jurisdiction of a judicial review of the matter may not order arbitration, whether on motion of any party or on the court's own motion, to resolve a dispute involving the denial, suspension, or revocation of a license under this section or the conduct with respect to which the denial, suspension, or revocation of the license is sought.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1248, Sec. 5, eff. Sept. 1, 2001.

Sec. 247.042. EMERGENCY SUSPENSION OR CLOSING ORDER. (a) If the department finds an assisted living facility operating in violation of the standards prescribed by this chapter and the violations create an immediate threat to the health and safety of a resident in the facility, the department may suspend the license or order immediate closing of all or part of the facility.

(b) The order suspending a license under Subsection (a) is effective immediately on written notice to the license holder or on the date specified in the order.

(c) The order suspending the license and ordering closure of all or part of an assisted living facility is valid for 10 days after its effective date.

(d) The department shall provide for the relocation of residents of an assisted living facility that is closed. The relocation may not be to a facility with a more restrictive environment unless all other reasonable alternatives are exhausted. Relocation procedures shall be adopted as part of the memorandum of understanding adopted under Section 247.061.

(e) The department and the State Office of Administrative Hearings shall expedite any hearing or decision involving an emergency suspension or closing order issued under this section.

Added by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1248, Sec. 6, eff. Sept. 1, 2001.

Sec. 247.043. INVESTIGATION OF ABUSE, EXPLOITATION, OR NEGLECT. (a) The department shall conduct a preliminary investigation of each allegation of abuse, exploitation, or neglect of a resident of an assisted living facility to determine if there is evidence to corroborate the allegation. If the department determines that there is evidence to corroborate the allegation, the department shall conduct a thorough investigation of the allegation.

(b) If the thorough investigation reveals that abuse, exploitation, or neglect has occurred, the department shall:

(1) implement enforcement measures, including closing the facility, revoking the facility's license, relocating residents, and making referrals to law enforcement agencies;

(2) notify the Department of Protective and Regulatory Services of the results of the investigation;

(3) notify a health and human services agency, as defined by Section 531.001, Government Code, that contracts with the facility for the delivery of personal care services of the results of the investigation; and

(4) provide to a contracting health and human services agency access to the department's documents or records relating to the investigation.

(c) Providing access to a confidential document or record under Subsection (b)(4) does not constitute a waiver of confidentiality.

Added by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.044. INJUNCTION. (a) The department may petition a district court for a temporary restraining order to restrain a continuing violation of the standards or licensing requirements provided under this chapter if the department finds that:

(1) the violation creates an immediate threat to the health and safety of the assisted living facility residents; or

(2) the facility is operating without a license.

(b) A district court, on petition of the department and on a finding by the court that a person is violating the standards or licensing requirements provided under this chapter, may by injunction:

(1) prohibit a person from continuing a violation of the standards or licensing requirements provided under this chapter;

(2) restrain the establishment or operation of an assisted living facility without a license issued under this chapter; or

(3) grant any other injunctive relief warranted by the facts.

(c) The department may petition a district court for a temporary restraining order to inspect a facility allegedly required to be licensed and operating without a license when admission to the facility cannot be obtained. If it is shown that admission to the facility cannot be obtained, the court shall order the facility to allow the department admission to the facility.

(d) The attorney general or local prosecuting attorney may institute and conduct a suit authorized by this section at the request of the department.

(e) Venue for a suit brought under this section is in the county in which the assisted living facility is located or in Travis County.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991. Renumbered from 247.043 and amended by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 416, Sec. 3, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1088, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.045. CIVIL PENALTIES. (a) Except as provided by Subsections (b) and (c), a person who violates this chapter or who fails to comply with a rule adopted under this chapter and whose violation is determined by the department to threaten the health and safety of a resident of an assisted living facility is subject to a civil penalty of not less than \$100 nor more than \$10,000 for each act of violation. Each day of a continuing violation constitutes a separate ground of recovery.

(b) A person is subject to a civil penalty if the person:

(1) is in violation of Section 247.021; or

(2) has been determined to be in violation of Section 247.021 and violates any other provision of this chapter or fails to comply with a rule adopted under this chapter.

(c) The amount of a civil penalty under Subsection (b) may not be less than \$1,000 or more than \$10,000 for each act of violation. Each day of a continuing violation constitutes a separate ground of recovery.

(d) The attorney general may institute and conduct a suit to collect a penalty and fees under this section at the request of the department. If the attorney general fails to take action within 30 days of referral from the department, the department shall refer the case to the local district attorney, county attorney, or city attorney. The district attorney, county attorney, or city attorney shall file suit in a district court to collect and retain the penalty.

(e) Investigation and attorney's fees may not be assessed or collected by or on behalf of the department or other state agency unless the department or other state agency assesses and collects a penalty described under this chapter.

(f) The department and attorney general, or other legal representative as described in Subsection (d), shall work in close cooperation throughout any legal proceedings requested by the department.

(g) The commissioner of human services must approve any settlement agreement to a suit brought under this chapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991. Renumbered from Sec. 247.044 and amended by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 416, Sec. 4, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1088, Sec. 4, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 11.03, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.0451. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty against a person who:

(1) violates this chapter or a rule, standard, or order adopted under this chapter or a term of a license issued under this chapter;

(2) makes a false statement, that the person knows or should know is false, of a material fact:

(A) on an application for issuance or renewal of a license or in an attachment to the application; or

(B) with respect to a matter under investigation by the department;

(3) refuses to allow a representative of the department to inspect:

(A) a book, record, or file required to be maintained by an assisted living facility; or

(B) any portion of the premises of an assisted living facility;

(4) wilfully interferes with the work of a representative of the department or the enforcement of this chapter;

(5) wilfully interferes with a representative of the department preserving evidence of a violation of this chapter or a rule, standard, or order adopted under this chapter or a term of a license issued under this chapter; or

(6) fails to pay a penalty assessed under this chapter not later than the 30th day after the date the assessment of the penalty becomes final.

(b) Except as provided by Section 247.0452(c), the penalty may not exceed \$1,000 for each violation.

(c) The board shall establish gradations of penalties in accordance with the relative seriousness of the violation.

(d) In determining the amount of a penalty, the department shall consider any matter that justice may require, but must consider each of the following and make a record of the extent to which each of the following was considered:

(1) the gradations of penalties established under Subsection (c);

(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited act and the hazard or potential hazard created by the act to the health or safety of the public;

(3) the history of previous violations;

(4) deterrence of future violations;

(5) efforts to correct the violation; and

(6) the size of the facility and of the business entity that owns the facility.

(e) A penalty assessed under Subsection (a)(6) is in addition to the penalty previously assessed and not timely paid.

(f) The department may not assess a penalty under this section against a resident of an assisted living facility unless the resident is also an employee of the facility or a controlling person.

Added by Acts 2001, 77th Leg., ch. 1248, Sec. 8, eff. Sept. 1, 2001.

Sec. 247.0452. RIGHT TO CORRECT. (a) The department may not collect an administrative penalty from an assisted living facility under Section 247.0451 if, not later than the 45th day after the date the facility receives notice under Section 247.0453(c), the facility corrects the violation.

(b) Subsection (a) does not apply:

(1) to a violation that the department determines results in serious harm to or death of a resident;

(2) to a violation described by Sections 247.0451(a)(2)-(6);

(3) to a second or subsequent violation of:

(A) a right of the same resident under Section 247.064; or

(B) the same right of all residents under Section 247.064; or

(4) to a violation described by Section 247.066, which contains its own right to correct provisions.

(c) An assisted living facility that corrects a violation must maintain the correction. If the facility fails to maintain the correction until at least the first anniversary of the date the correction was made, the department may assess and collect an administrative penalty for the subsequent violation. An administrative penalty assessed under this subsection is equal to three times the amount of the original penalty assessed but not collected. The department is not required to provide the facility with an opportunity under this section to correct the subsequent violation.

Added by Acts 2001, 77th Leg., ch. 1248, Sec. 8, eff. Sept. 1, 2001.

Sec. 247.0453. REPORT RECOMMENDING ADMINISTRATIVE PENALTY. (a) The department shall issue a preliminary report stating the facts on which the department concludes that a violation of this chapter or a rule, standard, or order adopted under this chapter or a term of a license issued under this chapter has occurred if the department has:

(1) examined the possible violation and facts

surrounding the possible violation; and

(2) concluded that a violation has occurred.

(b) The report may recommend a penalty under Section 247.0451 and the amount of the penalty.

(c) The department shall give written notice of the report to the person charged with the violation not later than the 10th day after the date on which the report is issued. The notice must include:

(1) a brief summary of the charges;

(2) a statement of the amount of penalty recommended;

(3) a statement of whether the violation is subject to correction under Section 247.0452 and, if the violation is subject to correction under that section, a statement of:

(A) the date on which the assisted living facility must file with the department a plan of correction to be approved by the department; and

(B) the date on which the plan of correction must be completed to avoid assessment of the penalty; and

(4) a statement that the person charged has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(d) Not later than the 20th day after the date on which the notice under Subsection (c) is received, the person charged may:

(1) give to the department written consent to the department's report, including the recommended penalty; or

(2) make a written request for a hearing.

(e) If the violation is subject to correction under Section 247.0452, the assisted living facility shall submit a plan of correction to the department for approval not later than the 10th day after the date on which the notice under Subsection (c) is received.

(f) If the violation is subject to correction under Section 247.0452, and the person reports to the department that the violation has been corrected, the department shall inspect the correction or take any other step necessary to confirm the correction and shall notify the person that:

(1) the correction is satisfactory and a penalty will not be assessed; or

(2) the correction is not satisfactory and a penalty is recommended.

(g) Not later than the 20th day after the date on which a notice under Subsection (f)(2) is received, the person charged may:

(1) give to the department written consent to the department's report, including the recommended penalty; or

(2) make a written request for a hearing.

(h) If the person charged with the violation consents to the penalty recommended by the department or does not timely respond to a notice sent under Subsection (c) or (f)(2), the commissioner or the commissioner's designee shall assess the penalty recommended by the department.

(i) If the commissioner or the commissioner's designee assesses the recommended penalty, the department shall give written notice to the person charged of the decision and the person shall pay the penalty.

Added by Acts 2001, 77th Leg., ch. 1248, Sec. 8, eff. Sept. 1, 2001.

Sec. 247.0454. HEARING ON ADMINISTRATIVE PENALTY. (a) An administrative law judge shall order a hearing and give notice of the hearing if a person charged with a violation under Section 247.0451 timely requests a hearing.

(b) The hearing shall be held before an administrative law judge.

(c) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the commissioner or the commissioner's designee a written decision regarding the occurrence of a violation of this chapter or a rule, standard, or order adopted under this chapter or a term of a license issued under this chapter and a recommendation regarding the amount of the proposed penalty if a penalty is warranted.

(d) Based on the findings of fact and conclusions of law and the recommendation of the administrative law judge, the commissioner or the commissioner's designee by order may:

(1) find that a violation has occurred and assess an administrative penalty; or

(2) find that a violation has not occurred.

(e) If the commissioner or the commissioner's designee

finds that a violation has not occurred, the commissioner or the commissioner's designee shall order that all records reflecting that the department found a violation had occurred and attempted to impose an administrative penalty shall be expunged except:

(1) records obtained by the department during its investigation; and
(2) the administrative law judge's findings of fact.

(f) Proceedings under this section are subject to Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1248, Sec. 8, eff. Sept. 1, 2001.

Sec. 247.0455. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; INTEREST; REFUND. (a) The commissioner or the commissioner's designee shall give notice of the findings made under Section 247.0454(d) to the person charged. If the commissioner or the commissioner's designee finds that a violation has occurred, the commissioner or the commissioner's designee shall give to the person charged written notice of:

(1) the findings;
(2) the amount of the administrative penalty;
(3) the rate of interest payable with respect to the penalty and the date on which interest begins to accrue;
(4) whether action under Section 247.0457 is required in lieu of payment of all or part of the penalty; and
(5) the person's right to judicial review of the order of the commissioner or the commissioner's designee.

(b) Not later than the 30th day after the date on which the order of the commissioner or the commissioner's designee is final, the person charged with the penalty shall:

(1) pay the full amount of the penalty; or
(2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, the department's dissatisfaction with efforts to correct the violation, or any combination of these issues.

(c) Notwithstanding Subsection (b), the department may permit the person to pay a penalty in installments or may require the person to use all or part of the amount of the penalty in accordance with Section 247.0457.

(d) If the person does not pay the penalty within the period provided by Subsection (b) or in accordance with Subsection (c), if applicable:

(1) the penalty is subject to interest; and
(2) the department may refer the matter to the attorney general for collection of the penalty and interest.

(e) Interest under Subsection (d)(1) accrues:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and
(2) for the period beginning on the day after the date on which the penalty becomes due and ending on the date the penalty is paid.

(f) If the amount of the penalty is reduced or the assessment of a penalty is not upheld on judicial review, the commissioner shall:

(1) remit to the person charged the appropriate amount of any penalty payment plus accrued interest; or
(2) execute a release of the supersedeas bond if one has been posted.

(g) Accrued interest on amounts remitted by the commissioner under Subsection (f)(1) shall be paid:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and
(2) for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted to the person charged.

Added by Acts 2001, 77th Leg., ch. 1248, Sec. 8, eff. Sept. 1, 2001.

Sec. 247.0456. APPLICATION OF OTHER LAW. The department may not assess a monetary penalty under this chapter and a monetary penalty under Chapter 32, Human Resources Code, for the same act or failure to act.

Added by Acts 2001, 77th Leg., ch. 1248, Sec. 8, eff. Sept. 1, 2001.

Sec. 247.0457. AMELIORATION OF VIOLATION. (a) In lieu of demanding payment of an administrative penalty assessed under Section 247.0451, the commissioner in accordance with this section may allow the person to use, under the supervision of the department, any portion of the penalty to ameliorate the violation or to improve services, other than administrative services, in the

assisted living facility affected by the violation.

(b) The department shall offer amelioration to a person for a charged violation if the department determines that the violation does not constitute immediate jeopardy to the health and safety of a resident of the assisted living facility.

(c) The department shall offer amelioration to a person under this section not later than the 10th day after the date the person receives from the department a final notification of the recommended assessment of an administrative penalty that is sent to the person after an informal dispute resolution process but before an administrative hearing under Section 247.0454.

(d) A person to whom amelioration has been offered must file a plan for amelioration not later than the 45th day after the date the person receives the offer of amelioration from the department. In submitting the plan, the person must agree to waive the person's right to an administrative hearing under Section 247.0454 if the department approves the plan.

(e) At a minimum, a plan for amelioration must:

(1) propose changes to the management or operation of the assisted living facility that will improve services to or quality of care of residents of the assisted living facility;

(2) identify, through measurable outcomes, the ways in which and the extent to which the proposed changes will improve services to or quality of care of residents of the assisted living facility;

(3) establish clear goals to be achieved through the proposed changes;

(4) establish a time line for implementing the proposed changes; and

(5) identify specific actions necessary to implement the proposed changes.

(f) A plan for amelioration may include proposed changes to:

(1) improve staff recruitment and retention;

(2) offer or improve dental services for residents; and

(3) improve the overall quality of life for residents.

(g) The department may require that an amelioration plan propose changes that would result in conditions that exceed the requirements of this chapter or the rules adopted under this chapter.

(h) The department shall approve or deny an amelioration plan not later than the 45th day after the date the department receives the plan. On approval of a person's plan, the department shall deny a pending request for a hearing submitted by the person under Section 247.0453.

(i) The department may not offer amelioration to a person:

(1) more than three times in a two-year period; or

(2) more than one time in a two-year period for the same or similar violation.

Added by Acts 2001, 77th Leg., ch. 1248, Sec. 8, eff. Sept. 1, 2001.

Sec. 247.0458. USE OF ADMINISTRATIVE PENALTY. Money from an administrative penalty collected under this subchapter may be appropriated for the purpose of funding the grant program established under Section 161.074, Human Resources Code.

Added by Acts 2005, 79th Leg., ch. 786, Sec. 3, eff. Sept. 1, 2005.

Sec. 247.0459. VIOLATION OF LAW RELATING TO ADVANCE DIRECTIVES. (a) The department shall assess an administrative penalty against an assisted living facility that violates Section 166.004.

(b) A penalty assessed under this section shall be \$500.

(c) The penalty shall be assessed in accordance with department rules. The rules must provide for notice and an opportunity for a hearing.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 2.05, eff. Sept. 1, 1999. Renumbered from Sec. 247.0455 and amended by by Acts 2001, 77th Leg., ch. 1248, Sec. 7, eff. Sept. 1, 2001.

Sec. 247.046. COOPERATION AMONG AGENCIES. The board, the Department of Protective and Regulatory Services, and the attorney general shall adopt by rule a memorandum of understanding that:

(1) defines each agency's responsibilities concerning assisted living facilities and coordinates each agency's activities;

(2) details coordinated procedures to be used by each agency in responding to complaints relating to neglect or abuse of residents of facilities, to substandard facilities, and to

unlicensed facilities;

(3) identifies enforcement needs each agency may have in order to perform its duties under the memorandum of understanding, including any need for access to information or to facilities under investigation or operating under a plan of correction; and

(4) provides a plan for correcting violations in substandard or unlicensed assisted living facilities that specifies the conditions under which it is appropriate to impose such a plan and that outlines a schedule of implementation for the plan.

Added by Acts 1991, 72nd Leg., ch. 349, Sec. 1, eff. June 5, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.093, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 416, Sec. 5, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.047. TRANSITION. The department shall grant to a personal care facility licensed on or before December 31, 1990, under Chapter 242 a temporary permit to continue operation until the department performs any inspection or investigation required by this chapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991. Renumbered from Sec. 247.045 by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Renumbered from Sec. 247.046 by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.048. REGIONAL TRAINING FOR AGENCIES AND LOCAL GOVERNMENTS. The department periodically shall conduct regional training programs for representatives of local governments and appropriate state agencies relating to assisted living facility concerns. The training programs must provide to participants information relating to the assisted living facility industry, including information on:

(1) the general characteristics of assisted living facilities and residents of those facilities;

(2) the different types of assisted living facilities;

(3) the laws applicable to assisted living facilities;

and

(4) the authority of the department and other entities to enforce applicable laws.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.049. USE OF REGULATORY REPORTS AND DOCUMENTS. (a) Except as otherwise provided by this section, a report or other document prepared by the department that relates to regulation of an assisted living facility is not admissible as evidence in a civil action to prove that the facility violated a standard prescribed under this chapter.

(b) Subsection (a) does not:

(1) bar the admission into evidence of department reports or other documents in an enforcement action in which the state or an agency or political subdivision of the state is a party, including:

(A) an action seeking injunctive relief under Section 247.044;

(B) an action seeking imposition of a civil penalty under Section 247.045;

(C) a contested case hearing involving denial, suspension, or revocation of a license issued under this chapter; and

(D) an action seeking imposition of an administrative penalty under this subchapter;

(2) bar the admission into evidence of department reports or other documents that are offered:

(A) to establish warning or notice to an assisted living facility of a relevant department determination; or

(B) under any rule or evidentiary predicate of the Texas Rules of Evidence;

(3) prohibit or limit the testimony of a department employee, in accordance with the Texas Rules of Evidence, as to observations, factual findings, conclusions, or determinations that an assisted living facility violated a standard prescribed under this chapter if the observations, factual findings, conclusions, or determinations were made in the discharge of the employee's official duties for the department; or

(4) prohibit or limit the use of department reports or

other documents in depositions or other forms of discovery conducted in connection with a civil action if use of the reports or other documents appears reasonably calculated to lead to the discovery of admissible evidence.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1248, Sec. 9, eff. Sept. 1, 2001.

Sec. 247.050. MONITORING OF UNLICENSED FACILITIES; REPORTING. (a) The board shall adopt procedures to monitor the status of unlicensed assisted living facilities. As part of these procedures, the department shall:

(1) maintain a registry of all reported unlicensed assisted living facilities for the purpose of periodic follow-up by the field staff in each region; and

(2) prepare a quarterly report that shows the number of:

(A) complaints relating to unlicensed assisted living facilities that are received;

(B) complaints that are investigated;

(C) unsubstantiated complaints;

(D) substantiated complaints; and

(E) cases referred to the attorney general.

(b) The attorney general shall prepare a quarterly report that shows:

(1) the number of:

(A) unlicensed assisted living facilities referred to the attorney general;

(B) referrals pending;

(C) referrals investigated;

(D) facilities closed; and

(E) operators permanently enjoined from operating an unlicensed assisted living facility; and

(2) the amount of civil penalties collected from operators of unlicensed assisted living facilities.

(c) The department and the attorney general shall file a copy of the quarterly reports required by this section with the substantive committees of each house of the legislature with jurisdiction over regulation of assisted living facilities.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.051. INFORMAL DISPUTE RESOLUTION. (a) The Health and Human Services Commission by rule shall establish an informal dispute resolution process in accordance with this section. The process must provide for adjudication by an appropriate disinterested person of disputes relating to a proposed enforcement action or related proceeding under this chapter. The informal dispute resolution process must require:

(1) the assisted living facility to request informal dispute resolution not later than the 10th day after the date of notification by the department of the violation of a standard or standards;

(2) the Health and Human Services Commission to complete the process not later than the 30th day after the date of receipt of a request from the assisted living facility for informal dispute resolution; and

(3) any individual representing an assisted living facility in an informal dispute resolution process to register with the Health and Human Services Commission and disclose the following:

(A) the individual's employment history during the preceding five years, including employment in regulatory agencies of this state and other states;

(B) ownership, including the identity of the controlling person or persons, of the assisted living facility the individual is representing before the Health and Human Services Commission; and

(C) the identity of other entities the individual represents or has represented before the Health and Human Services Commission during the preceding 24 months.

(b) The Health and Human Services Commission shall adopt rules to adjudicate claims in contested cases.

(c) The Health and Human Services Commission may not delegate its responsibility to administer the informal dispute resolution process established by this section to another state agency.

Added by Acts 2001, 77th Leg., ch. 1248, Sec. 13, eff. Sept. 1,

2001.

SUBCHAPTER D. MISCELLANEOUS PROVISIONS

Sec. 247.061. COORDINATION BETWEEN AGENCIES. (a) The department and the attorney general shall adopt by rule a memorandum of understanding that:

(1) defines each agency's responsibilities concerning assisted living facilities;

(2) outlines and coordinates procedures to be used by those agencies in responding to complaints concerning assisted living facilities; and

(3) provides a plan for correcting violations or deficiencies in assisted living facilities.

(b) The department shall prepare the initial draft of the memorandum of understanding and shall facilitate and ensure its adoption.

Added by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.095, eff. Sept. 1, 1995. Renumbered from Sec. 247.062 and amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.062. DIRECTORY OF ASSISTED LIVING FACILITIES; CONSUMERS' GUIDE. (a) The department shall prepare a directory of assisted living facilities that includes the name of the owner, the address and telephone number of the facility, the number of beds in the facility, and the facility's accessibility to disabled persons.

(b) The department shall revise the directory annually and shall make it available to the public.

(c) The department shall prepare a consumers' guide to assisted living facilities and make it available to the public. The consumers' guide shall provide information on licensing requirements for assisted living facilities, a brief description of minimum standards for facilities, a copy of the residents' bill of rights, a copy of the providers' bill of rights, and any other information that the department determines may be useful to the public.

Added by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Renumbered from 247.063 and amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.063. REFERRALS. (a) If the Texas Department of Mental Health and Mental Retardation or a local mental health or mental retardation authority refers a patient or client to an assisted living facility, the referral may not be made to a facility that is not licensed under this chapter.

(b) If the Texas Department of Mental Health and Mental Retardation or a local mental health or mental retardation authority gains knowledge of an assisted living facility that is not operated or licensed by the Texas Department of Mental Health and Mental Retardation, the authority, or the Texas Department of Human Services and that has four or more residents who are unrelated to the proprietor of the facility, the Texas Department of Mental Health and Mental Retardation or the authority shall report the name, address, and telephone number of the facility to the Texas Department of Human Services.

Added by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.096, eff. Sept. 1, 1995. Renumbered from Sec. 247.064 and amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.0631. ACCESS. An employee of the Texas Department of Mental Health and Mental Retardation or an employee of a local mental health and mental retardation authority may enter an assisted living facility as necessary to provide services to a resident of the facility.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.064. RESIDENTS' BILL OF RIGHTS. (a) Each assisted living facility shall post a residents' bill of rights in a prominent place in the facility.

(b) The residents' bill of rights must provide that each resident in the assisted living facility has the right to:

(1) manage the resident's financial affairs;

(2) determine the resident's dress, hair style, or other personal effects according to individual preference, except that the resident has the responsibility to maintain personal hygiene;

(3) retain and use personal property in the resident's immediate living quarters and to have an individual locked cabinet in which to keep personal property;

- (4) receive and send unopened mail;
- (5) unaccompanied access to a telephone at a reasonable hour or in case of an emergency or personal crisis;
- (6) privacy;
- (7) unrestricted communication, including personal visitation with any person of the resident's choice, at any reasonable hour, including family members and representatives of advocacy groups and community service organizations;
- (8) make contacts with the community and to achieve the highest level of independence, autonomy, and interaction with the community of which the resident is capable;
- (9) present grievances on behalf of the resident or others to the operator, state agencies, or other persons without threat of reprisal in any manner;
- (10) a safe and decent living environment and considerate and respectful care that recognizes the dignity and individuality of the resident;
- (11) refuse to perform services for the facility, except as contracted for by the resident and operator;
- (12) practice the religion of the resident's choice;
- (13) leave the facility temporarily or permanently, subject to contractual or financial obligations; and
- (14) not be deprived of any constitutional, civil, or legal right solely by reason of residence in an assisted living facility.

(c) The residents' bill of rights must be written in the primary language of each resident of the facility and must also provide the toll-free telephone number of the department for reporting abuse or neglect.

(d) The rights provided under this section do not take precedence over health and safety rights of other residents of the facility.

(e) The department shall develop a residents' bill of rights in accordance with this section and provide a copy to each facility. The copy shall be written in the primary language of each resident of the facility.

Added by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Renumbered from Sec. 247.065 and amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.065. PROVIDERS' BILL OF RIGHTS. (a) Each assisted living facility shall post a providers' bill of rights in a prominent place in the facility.

(b) The providers' bill of rights must provide that a provider of personal care services has the right to:

- (1) be shown consideration and respect that recognizes the dignity and individuality of the provider and assisted living facility;
- (2) terminate a resident's contract for just cause after a written 30-day notice;
- (3) terminate a contract immediately, after notice to the department, if the provider finds that a resident creates a serious or immediate threat to the health, safety, or welfare of other residents of the assisted living facility;
- (4) present grievances, file complaints, or provide information to state agencies or other persons without threat of reprisal or retaliation;
- (5) refuse to perform services for the resident or the resident's family other than those contracted for by the resident and the provider;
- (6) contract with the community to achieve the highest level of independence, autonomy, interaction, and services to residents;
- (7) access to patient information concerning a client referred to the facility, which must remain confidential as provided by law;
- (8) refuse a person referred to the facility if the referral is inappropriate;
- (9) maintain an environment free of weapons and drugs; and
- (10) be made aware of a resident's problems, including self-abuse, violent behavior, alcoholism, or drug abuse.

Added by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Renumbered from Sec. 247.066 and amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.066. APPROPRIATE PLACEMENT DETERMINATION. (a) The

department may not require the removal and relocation of a resident of an assisted living facility if the resident's presence in the facility does not endanger other residents and the resident can receive adequate care at the facility through services:

(1) provided by the facility in accordance with its license; or

(2) obtained by the resident from other providers.

(b) In assessing whether a resident can receive adequate care at a facility, the department shall consider all relevant factors, including the placement preference expressed by the resident with the agreement of the facility operator, the resident's physician, and the resident's family members or other representatives.

(c) If a department inspector determines that a resident is inappropriately placed at a facility, the facility is not required to move the resident if, not later than the 10th business day after the date that the facility is informed of the specific basis of the inspector's determination, the facility:

(1) obtains a written assessment from a physician that the resident is appropriately placed;

(2) obtains a written statement:

(A) from the resident that the resident wishes to remain in the facility; or

(B) from a family member of the resident that the family member wishes for the resident to remain in the facility, if the resident lacks capacity to give a statement under this subsection;

(3) states in writing that the facility wishes for the resident to remain in the facility; and

(4) applies for and obtains a waiver from the department of all applicable requirements for evacuation that the facility does not meet with respect to the resident, if the facility does not meet all requirements for the evacuation of residents with respect to the resident.

(d) If a department inspector determines that a resident is inappropriately placed at a facility and the facility either agrees with the determination or does not obtain the written statements prescribed by Subsection (c) that would allow the resident to remain in the facility notwithstanding the determination of the inspector, the department may not assess an administrative penalty against the facility because of the inappropriate placement. However, the facility shall discharge the resident. The resident is allowed 30 days after the date of discharge to move from the facility. A discharge required under this subsection must be made notwithstanding:

(1) any other law, including any law relating to the rights of residents and any obligations imposed under the Property Code; and

(2) the terms of any contract.

(e) To facilitate obtaining the written statements required under Subsections (c)(1)-(3), the department shall develop standard forms that must be used under Subsections (c)(1)-(3). The department shall develop criteria under which the department will determine, based on a resident's specific situation, whether it will grant or deny a request for a waiver under Subsection (c)(4).
Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 1248, Sec. 14, eff. Sept. 1, 2001.

Sec. 247.067. HEALTH CARE PROFESSIONALS. (a) In this section, "health care professional" means an individual licensed, certified, or otherwise authorized to administer health care, for profit or otherwise, in the ordinary course of business or professional practice. The term includes a physician, registered nurse, licensed vocational nurse, licensed dietitian, physical therapist, and occupational therapist.

(b) A health care professional may provide services within the professional's scope of practice to a resident of an assisted living facility at the facility. This subsection does not authorize a facility to provide ongoing services comparable to the services available in an institution licensed under Chapter 242. A health care professional providing services under this subsection shall maintain medical records of those services in accordance with the licensing, certification, or other regulatory standards applicable to the health care professional under law.

(c) A resident of an assisted living facility has the right

to contract with a home and community support services agency licensed under Chapter 142 or with an independent health professional for health care services.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.068. RETALIATION PROHIBITED. (a) A person licensed under this chapter may not retaliate against a person for filing a complaint, presenting a grievance, or providing in good faith information relating to personal care services provided by the license holder.

(b) This section does not prohibit a license holder from terminating an employee for a reason other than retaliation.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.069. CONSUMER CHOICE FOR ASSISTED LIVING IN COMMUNITY CARE PROGRAMS. The community based alternatives program and the residential care programs, which provide an assisted living option to consumers, shall provide a consumer the opportunity to choose an assisted living facility that meets the department's licensing standards relating to facility construction without regard to the number of units in the facility, if:

(1) consumers are advised of all other community care options; and

(2) the facility:

(A) has never been licensed by the department as anything other than an assisted living facility;

(B) is not physically connected to a skilled nursing facility;

(C) was constructed before September 1, 2005; and

(D) otherwise meets all other community care program standards.

Added by Acts 2005, 79th Leg., ch. 870, Sec. 2, eff. Sept. 1, 2005.