

HEALTH & SAFETY CODE

CHAPTER 252. INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 252.001. PURPOSE. The purpose of this chapter is to promote the public health, safety, and welfare by providing for the development, establishment, and enforcement of standards for the provision of services to individuals residing in intermediate care facilities for the mentally retarded and the establishment, construction, maintenance, and operation of facilities providing this service that, in light of advancing knowledge, will promote quality in the delivery of services and treatment of residents. Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.002. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Board of Human Services.
(2) "Department" means the Texas Department of Human Services.

(3) "Designee" means a state agency or entity with which the department contracts to perform specific, identified duties related to the fulfillment of a responsibility prescribed by this chapter.

(4) "Facility" means a home or an establishment that:
(A) furnishes food, shelter, and treatment or services to four or more persons unrelated to the owner;

(B) is primarily for the diagnosis, treatment, or rehabilitation of persons with mental retardation or related conditions; and

(C) provides in a protected setting continuous evaluation, planning, 24-hour supervision, coordination, and integration of health or rehabilitative services to help each resident function at the resident's greatest ability.

(5) "Governmental unit" means the state or a political subdivision of the state, including a county or municipality.

(6) "Person" means an individual, firm, partnership, corporation, association, or joint stock company and includes a legal successor of those entities.

(7) "Resident" means an individual, including a client, with mental retardation or a related condition who is residing in a facility licensed under this chapter.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.003. EXEMPTIONS. Except as otherwise provided by this chapter, this chapter does not apply to an establishment that:

(1) provides training, habilitation, rehabilitation, or education to individuals with mental retardation or a related condition;

(2) is operated under the jurisdiction of a state or federal agency, including the department, the Texas Rehabilitation Commission, the Texas Department of Mental Health and Mental Retardation, the Texas Commission for the Blind, the Texas Commission on Alcohol and Drug Abuse, the institutional division of the Texas Department of Criminal Justice, or the Veterans' Administration;

(3) is certified through inspection or evaluation as meeting the standards established by the state or federal agency; and

(4) is conducted by or for the adherents of a well-recognized church or religious denomination 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 safety, sanitary, and quarantine laws and rules.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.004. ALLOCATED FEDERAL MONEY. The department may accept and use any money allocated by the federal government to the department for administrative expenses.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.005. LANGUAGE REQUIREMENTS PROHIBITED. A facility may not prohibit a resident or employee from communicating in the person's native language with another resident or employee for the purpose of acquiring or providing care, training, or treatment.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.006. RIGHTS OF RESIDENTS. Each facility shall implement and enforce Chapter 102, Human Resources Code.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.007. PAPERWORK REDUCTION RULES. (a) The department and any designee of the department shall:

(1) adopt rules to reduce the amount of paperwork a facility must complete and retain; and

(2) attempt to reduce the amount of paperwork to the minimum amount required by state and federal law unless the reduction would jeopardize resident safety.

(b) The department, any designee of the department, and each facility shall work together to review rules and propose changes in paperwork requirements so that additional time is available for direct resident care.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.008. RULES GENERALLY. (a) The board shall adopt rules related to the administration and implementation of this chapter.

(b) The department and the Texas Department of Mental Health and Mental Retardation shall cooperate in developing proposed rules under this section. Before the board adopts a rule applicable to a facility, the board shall present the proposed rule to the commissioner of mental health and mental retardation for review of the effects of the proposed rule. Not later than the 31st day after the date the proposed rule is received, the commissioner of mental health and mental retardation shall provide the board a written statement of the effects of the proposed rule. The board shall consider the statement in adopting a rule under this section.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 160, Sec. 1, eff. Sept. 1, 2001.

Sec. 252.0085. RESTRAINT AND SECLUSION. A person providing services to a resident of a facility licensed by the department under this chapter or operated by the department and exempt under Section 252.003 from the licensing requirements of this chapter shall comply with Chapter 322 and the rules adopted under that chapter.

Added by Acts 2005, 79th Leg., ch. 698, Sec. 4, eff. Sept. 1, 2005.

Sec. 252.009. CONSULTATION AND COORDINATION. (a) Whenever possible, the department shall:

(1) use the services of and consult with state and local agencies in carrying out the department's functions under this chapter; and

(2) use the facilities of the department or a designee of the department, particularly in establishing and maintaining standards relating to the humane treatment of residents.

(b) The department may cooperate with local public health officials of a municipality or county in carrying out this chapter and may delegate to those officials the power to make inspections and recommendations to the department under this chapter.

(c) The department may coordinate its personnel and facilities with a local agency of a municipality or county and may provide advice to the municipality or county if the municipality or county decides to supplement the state program with additional rules required to meet local conditions.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.010. CHANGE OF ADMINISTRATORS; FEE. A facility that hires a new administrator or other person designated as the chief management officer for the facility shall:

(1) notify the department in writing of the change not later than the 30th day after the date on which the change becomes effective; and

(2) pay a \$20 administrative fee to the department.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.011. PROHIBITION OF REMUNERATION. (a) A facility may not receive monetary or other remuneration from a person or agency that furnishes services or materials to the facility or residents for a fee.

(b) The department may revoke the license of a facility that violates Subsection (a).

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER B. LICENSING, FEES, AND INSPECTIONS

Sec. 252.031. LICENSE REQUIRED. A person or governmental unit, acting severally or jointly with any other person or governmental unit, may not establish, conduct, or maintain a facility in this state without a license issued under this chapter.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.032. LICENSE APPLICATION. (a) An application for a license is made to the department on a form provided by the department and must be accompanied by the license fee adopted under

Section 252.034.

(b) The application must contain information that the department requires. The department may require affirmative evidence of ability to comply with the standards and rules adopted under this chapter.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.033. ISSUANCE AND RENEWAL OF LICENSE. (a) After receiving the application, the department shall issue a license if, after inspection and investigation, it finds that the applicant and facility meet the requirements established under this chapter.

(b) The department may issue a license only for:

(1) the premises and persons or governmental unit named in the application; and

(2) the maximum number of beds specified in the application.

(c) A license may not be transferred or assigned.

(d) A license is renewable on the second anniversary of issuance or renewal of the license after:

(1) an inspection;

(2) filing and approval of a renewal report; and

(3) payment of the renewal fee.

(e) The renewal report required under Subsection (d)(2) must be filed in accordance with rules adopted by the department that specify the form of the report, the date it must be submitted, and the information it must contain.

(f) The department may not issue a license for new beds or an expansion of an existing facility under this chapter unless the addition of new beds or the expansion is included in the plan approved by the Health and Human Services Commission in accordance with Section 533.062.

(g) A license or renewal fee imposed under this chapter is an allowable cost for reimbursement under the state Medicaid program. An increase in the amount of a fee shall be reflected in reimbursement rates prospectively.

(h) The department by rule shall define specific, appropriate, and objective criteria on which it may deny an initial license application or license renewal or revoke a license.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Amended by Acts 1999, 76th Leg., ch. 534, Sec. 1, eff. Sept. 1, 1999.

Sec. 252.034. LICENSE FEES. (a) The board by rule may adopt a fee for a license issued under this chapter. The fee may not exceed \$150 plus \$5 for each unit of capacity or bed space for which the license is sought.

(b) The license fee must be paid with each application for an initial license or for a renewal or change of ownership of a license.

(c) A facility operated by the state is not required to pay a license fee.

(d) The board may adopt an additional fee for the approval of an increase in bed space.

(e) All license fees collected under this section shall be deposited in the state treasury to the credit of the department and may be appropriated to the department to administer and enforce this chapter.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.035. 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 or license holder has substantially failed to comply with the requirements established under this chapter.

(b) The status of an applicant for a license or 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.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.036. MINIMUM STANDARDS. The board may adopt, publish, and enforce minimum standards relating to:

(1) the construction or remodeling of a facility, including plumbing, heating, lighting, ventilation, and other housing conditions, to ensure the residents' health, safety, comfort, and protection from fire hazard;

(2) sanitary and related conditions in a facility and

its surroundings, including water supply, sewage disposal, food handling, and general hygiene in order to ensure the residents' health, safety, and comfort;

(3) equipment essential to the residents' health and welfare;

(4) the reporting and investigation of injuries, incidents, and unusual accidents and the establishment of other policies and procedures necessary to ensure resident safety;

(5) behavior management, including use of seclusion and physical restraints;

(6) policies and procedures for the control of communicable diseases in employees and residents;

(7) the use and administration of medication in conformity with applicable law and rules for pharmacy services;

(8) specialized nutrition support such as delivery of enteral feedings and parenteral nutrients;

(9) requirements for in-service education of each employee who has any contact with residents;

(10) the regulation of the number and qualification of all personnel, including management and professional support personnel, responsible for any part of the care given to residents; and

(11) the quality of life and the provision of active treatment to residents.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.037. REASONABLE TIME TO COMPLY. The board by rule shall give a facility that is in operation when a rule or standard is adopted under this chapter a reasonable time to comply with the rule or standard.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.0375. EARLY COMPLIANCE REVIEW. (a) The department by rule shall adopt a procedure under which a person proposing to construct or modify a 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 in writing 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 and may 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.

Added by Acts 2001, 77th Leg., ch. 339, Sec. 3, eff. Sept. 1, 2001.

Sec. 252.038. FIRE SAFETY REQUIREMENTS. (a) A facility shall comply with fire safety requirements established under this section.

(b) The board by rule shall adopt the fire safety standards applicable to the facility. The fire safety standards must be the same as the fire safety standards established by an edition of the Life Safety Code of the National Fire Protection Association. If required by federal law or regulation, the edition selected may be different for facilities or portions of facilities operated or approved for construction at different times.

(c) A facility that is licensed under applicable law on September 1, 1997, must comply with the fire safety standards, including fire safety standards imposed by municipal ordinance, applicable to the facility on that date.

(d) The rules adopted under this section do not prevent a facility licensed under this chapter from voluntarily conforming to fire safety standards that are compatible with, equal to, or more stringent than those adopted by the board.

(e) Notwithstanding any other provision of this section, a municipality may enact additional and more stringent fire safety standards applicable to new construction begun on or after September 1, 1997.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.039. POSTING. Each facility shall prominently and conspicuously post for display in a public area of the facility that is readily available to residents, employees, and visitors:

(1) the license issued under this chapter;

(2) a sign prescribed by the department that specifies complaint procedures established under this chapter or rules adopted under this chapter and that specifies how complaints may be registered with the department;

(3) a notice in a form prescribed by the department stating that inspection and related reports are available at the facility for public inspection and providing the department's toll-free telephone number that may be used to obtain information concerning the facility;

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

(5) notice that employees, other staff, residents, volunteers, and family members and guardians of residents are protected from discrimination or retaliation as provided by Sections 252.132 and 252.133.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Amended by Acts 2001, 77th Leg., ch. 192, Sec. 3, eff. Sept. 1, 2001.

Sec. 252.040. INSPECTIONS. (a) The department or the department's designee may make any inspection, survey, or investigation that it considers necessary and may enter the premises of a facility at reasonable times to make an inspection, survey, or investigation in accordance with board rules.

(b) The department is entitled to access to books, records, and other documents maintained by or on behalf of a facility to the extent necessary to enforce this chapter and the rules adopted under this chapter.

(c) A license holder or an applicant for a license is considered to have consented to entry and inspection of the facility by a representative of the department in accordance with this chapter.

(d) The department shall establish procedures to preserve all relevant evidence of conditions the department finds during an inspection, survey, or investigation that the department reasonably believes threaten the health and safety of a resident. The procedures may include photography or photocopying of relevant documents, such as license holder's notes, physician's orders, and pharmacy records, for use in any legal proceeding.

(e) When photographing a resident, the department:

(1) shall respect the privacy of the resident to the greatest extent possible; and

(2) may not make public the identity of the resident.

(f) A facility, an officer or employee of a facility, and a resident's attending physician are not civilly liable for surrendering confidential or private material under this section, including physician's orders, pharmacy records, notes and memoranda of a state office, and resident files.

(g) The department shall establish in clear and concise language a form to summarize each inspection report and complaint investigation report.

(h) The department shall establish proper procedures to ensure that copies of all forms and reports under this section are made available to consumers, service recipients, and the relatives of service recipients as the department considers proper.

(i) The department shall have specialized staff conduct inspections, surveys, or investigations of facilities under this section.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Amended by Acts 2001, 77th Leg., ch. 160, Sec. 2, eff. Sept. 1, 2001.

Sec. 252.041. UNANNOUNCED INSPECTIONS. (a) Each licensing period, the department shall conduct at least two unannounced inspections of each facility.

(b) In order to ensure continuous compliance, the department shall randomly select a sufficient percentage of facilities for unannounced inspections to be conducted between 5

p.m. and 8 a.m. Those inspections must be cursory to avoid to the greatest extent feasible any disruption of the residents.

(c) The department may require additional inspections.

(d) As considered appropriate and necessary by the department, the department may invite at least one person as a citizen advocate to participate in inspections. The invited advocate must be an individual who has an interest in or who is employed by or affiliated with an organization or entity that represents, advocates for, or serves individuals with mental retardation or a related condition.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.042. DISCLOSURE OF UNANNOUNCED INSPECTIONS; CRIMINAL PENALTY. (a) Except as expressly provided by this chapter, a person commits an offense if the person intentionally, knowingly, or recklessly discloses to an unauthorized person the date, time, or any other fact about an unannounced inspection of a facility before the inspection occurs.

(b) In this section, "unauthorized person" does not include:

(1) the department;
(2) the office of the attorney general;
(3) a representative of an agency or organization when a Medicaid survey is made concurrently with a licensing inspection; or

(4) any other person or entity authorized by law to make an inspection or to accompany an inspector.

(c) An offense under this section is a Class B misdemeanor.

(d) A person convicted under this section is not eligible for state employment.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.043. LICENSING SURVEYS. The department shall provide a team to conduct surveys to validate findings of licensing surveys. The purpose of a validation survey is to assure that survey teams throughout the state survey in a fair and consistent manner. A facility subjected to a validation survey must correct deficiencies cited by the validation team but is not subject to punitive action for those deficiencies.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.044. REPORTING VIOLATIONS. (a) The department or the department's representative conducting an inspection, survey, or investigation under this chapter shall:

(1) list each violation of a law or rule on a form designed by the department for inspections; and

(2) identify the specific law or rule the facility violates.

(b) At the conclusion of an inspection, survey, or investigation under this chapter, the department or the department's representative conducting the inspection, survey, or investigation shall discuss the violations with the facility's management in an exit conference. The department or the department's representative shall leave a written list of the violations with the facility and the person designated by the facility to receive notice under Section 252.066 at the time of the exit conference. If the department or the department's representative discovers any additional violations during the review of field notes or preparation of the official final list, the department or the department's representative shall give the facility an additional exit conference regarding the additional violations.

(c) The facility shall submit a plan to correct the violations to the regional director not later than the 10th day after the date the facility receives the final statement of violations.

Added by Acts 1999, 76th Leg., ch. 534, Sec. 2, eff. Sept. 1, 1999.

Sec. 252.045. ADMISSIBILITY OF CERTAIN DOCUMENTS OR TESTIMONY. Sections 32.021(i) and (k), Human Resources Code, govern the admissibility in a civil action against a facility of:

(1) a record of the department described by Section 32.021(i), Human Resources Code; or

(2) the testimony of a department surveyor or investigator described by Section 32.021(k), Human Resources Code.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 3.03, eff. June 15, 2001.

SUBCHAPTER C. GENERAL ENFORCEMENT

Sec. 252.061. EMERGENCY SUSPENSION OR CLOSING ORDER. (a)

The department shall suspend a facility's license or order an immediate closing of part of the facility if:

(1) the department finds the facility is operating in violation of the standards prescribed by this chapter; and

(2) the violation creates an immediate threat to the health and safety of a resident.

(b) The board by rule shall provide for the placement of residents during the facility's suspension or closing to ensure their health and safety.

(c) An order suspending a license or closing a part of a facility under this section is immediately effective on the date on which the license holder receives written notice or a later date specified in the order.

(d) An order suspending a license or ordering an immediate closing of a part of a facility is valid for 10 days after the effective date of the order.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.062. INJUNCTION. (a) The department may 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 the department finds that the violation creates an immediate threat to the health and safety of the facility's residents.

(b) A district court, on petition of the department, may by injunction:

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

(2) restrain or prevent the establishment, conduct, management, or operation of a facility without a license issued under this chapter; or

(3) grant the injunctive relief warranted by the facts on a finding by the court that a person is violating the standards or licensing requirements prescribed by this chapter.

(c) The attorney general, on request by the department, shall bring and conduct on behalf of the state a suit authorized by this section.

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

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Amended by Acts 1999, 76th Leg., ch. 192, Sec. 1, eff. Sept. 1, 1999.

Sec. 252.063. LICENSE REQUIREMENTS; CRIMINAL PENALTY. (a) A person commits an offense if the person violates Section 252.031.

(b) An offense under this section is punishable by a fine of not more than \$1,000 for the first offense and not more than \$500 for each subsequent offense.

(c) Each day of a continuing violation after conviction is a separate offense.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.064. CIVIL PENALTY. (a) A person who violates this chapter or a rule adopted under this chapter is liable for a civil penalty of not less than \$100 or more than \$10,000 for each violation if the department determines the violation threatens the health and safety of a resident.

(b) Each day of a continuing violation constitutes a separate ground for recovery.

(c) On request of the department, the attorney general may institute an action in a district court to collect a civil penalty under this section. Any amount collected shall be remitted to the comptroller for deposit to the credit of the general revenue fund.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Amended by Acts 1999, 76th Leg., ch. 23, Sec. 1, eff. May 3, 1999.

Sec. 252.065. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty against a facility that violates this chapter or a rule adopted under this chapter.

(b) The penalty for a facility with fewer than 60 beds shall be not less than \$100 or more than \$1,000 for each violation. The penalty for a facility with 60 beds or more shall be not less than \$100 or more than \$5,000 for each violation. The total amount of the penalty assessed for a violation continuing or occurring on separate days under this subsection may not exceed \$5,000 for a facility with fewer than 60 beds or \$25,000 for a facility with 60 beds or more. Each day a violation occurs or continues is a separate violation for purposes of imposing a penalty.

(c) The department by rule shall specify each violation for which an administrative penalty may be assessed. In determining which violations warrant penalties, the department shall consider:

(1) 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 clients; and

(2) whether the affected facility had identified the violation as a part of its internal quality assurance process and had made appropriate progress on correction.

(d) The department by rule shall establish a specific and detailed schedule of appropriate and graduated penalties for each violation based on:

(1) 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 clients;

(2) the history of previous violations;

(3) whether the affected facility had identified the violation as a part of its internal quality assurance process and had made appropriate progress on correction;

(4) the amount necessary to deter future violations;

(5) efforts made to correct the violation;

(6) the size of the facility; and

(7) any other matters that justice may require.

(e) The department by rule shall provide the facility 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. This subsection does not apply to a violation that the department 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) The department may not assess 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) The department shall establish a system to ensure standard and consistent application of penalties regardless of the facility location.

(h) All proceedings for the assessment of an administrative penalty under this chapter are subject to Chapter 2001, Government Code.

(i) The department may not assess an administrative penalty against a state agency.

(j) Notwithstanding any other provision of this section, an administrative penalty ceases to be incurred on the date a violation is corrected. The administrative penalty ceases to be incurred only if the facility:

(1) notifies the department in writing of the correction of the violation and of the date the violation was corrected; and

(2) shows later that the violation was corrected.

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

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 534, Sec. 3, eff. Sept. 1, 1999.

Sec. 252.0651. APPLICATION OF OTHER LAW. The department may not assess more than one monetary penalty under this chapter for a violation arising out of the same act or failure to act.

Added by Acts 1999, 76th Leg., ch. 534, Sec. 4, eff. Sept. 1, 1999.

Sec. 252.066. NOTICE; REQUEST FOR HEARING. (a) If, after investigation of a possible violation and the facts surrounding that possible violation, the department determines that a violation has occurred, the department shall give written notice of the violation to the person designated by the facility to receive notice. The notice shall include:

(1) a brief summary of the alleged violation;

(2) a statement of the amount of the proposed penalty based on the factors listed in Section 252.065(d); and

(3) a statement of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(b) Not later than the 20th day after the date on which the

notice is received, the person notified may accept the determination of the department made under this section, including the proposed penalty, or may make a written request for a hearing on that determination.

(c) If the person notified under this section of the violation accepts the determination of the department or if the person fails to respond in a timely manner to the notice, the commissioner of human services or the commissioner's designee shall issue an order approving the determination and ordering that the person pay the proposed penalty.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 534, Sec. 5, eff. Sept. 1, 1999.

Sec. 252.067. HEARING; ORDER. (a) If the person notified requests a hearing, the department shall:

- (1) set a hearing;
- (2) give written notice of the hearing to the person;

and

(3) designate a hearings examiner to conduct the hearing.

(b) The hearings examiner shall make findings of fact and conclusions of law and shall promptly issue to the commissioner of human services or the commissioner's designee a proposal for decision as to the occurrence of the violation and a recommendation as to the amount of the proposed penalty if a penalty is determined to be warranted.

(c) Based on the findings of fact and conclusions of law and the recommendations of the hearings examiner, the commissioner of human services or the commissioner's designee by order may find that a violation has occurred and may assess a penalty or may find that no violation has occurred.

Added by Acts 1999, 76th Leg., ch. 534, Sec. 6, eff. Sept. 1, 1999.

Sec. 252.068. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW; REFUND. (a) The department shall give notice of the order under Section 252.067(c) to the person alleged to have committed the violation and the person designated by the facility to receive notice under Section 252.066. The notice must include:

- (1) separate statements of the findings of fact and conclusions of law;
- (2) the amount of any penalty assessed; and
- (3) a statement of the right of the person to judicial review of the order.

(b) Not later than the 30th day after the date on which the decision becomes final as provided by Chapter 2001, Government Code, the person shall:

- (1) pay the penalty; or
- (2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) Within the 30-day period, a person who acts under Subsection (b)(2) may:

- (1) stay enforcement of the penalty by:
 - (A) paying the penalty to the court for placement in an escrow account; or
 - (B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the order becomes final; or
- (2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department by certified mail.

(d) If the department receives a copy of an affidavit under Subsection (c)(2), the department may file with the court, within 10 days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

(e) If the person does not pay the penalty and the

enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the penalty.

(f) Judicial review of the order:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(g) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(h) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty under Subsection (c)(1)(A) and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the penalty is not upheld by the court, the court shall order the release of the escrow account or bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

Added by Acts 1999, 76th Leg., ch. 534, Sec. 6, eff. Sept. 1, 1999.

Sec. 252.069. USE OF ADMINISTRATIVE PENALTY. 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 1999, 76th Leg., ch. 534, Sec. 6, eff. Sept. 1, 1999. Amended by Acts 2005, 79th Leg., ch. 786, Sec. 4, eff. Sept. 1, 2005.

Sec. 252.070. EXPENSES AND COSTS FOR COLLECTION OF CIVIL OR ADMINISTRATIVE PENALTY. (a) If the attorney general brings an action against a person under Section 252.062 or 252.064 or to enforce an administrative penalty assessed under Section 252.065 and an injunction is granted against the person or the person is found liable for a civil or administrative penalty, the attorney general may recover, on behalf of the attorney general and the department, reasonable expenses and costs.

(b) For purposes of this section, reasonable expenses and costs include expenses incurred by the department and the attorney general in the investigation, initiation, and prosecution of an action, including reasonable investigative costs, attorney's fees, witness fees, and deposition expenses.

Added by Acts 1999, 76th Leg., ch. 534, Sec. 6, eff. Sept. 1, 1999.

Sec. 252.071. AMELIORATION OF VIOLATION.

Text of section as amended by Acts 2001, 77th Leg., ch. 619, Sec. 2

(a) In lieu of demanding payment of an administrative penalty authorized by this subchapter, the department may allow a person subject to the penalty to use, under the supervision of the department, all or part of the amount of the penalty to ameliorate the violation or to improve services, other than administrative services, in the 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 facility resident.

(c) The department may not offer amelioration to a person if the department determines that the charged violation constitutes immediate jeopardy to the health and safety of a facility resident.

(d) 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 assessment of administrative penalty that is sent to the person after an informal dispute resolution process but before an administrative hearing under Section 252.067.

(e) 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 252.067 if the department approves the plan.

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

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

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

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

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

(g) 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.

(h) 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.

(i) 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 252.066(b).

(j) 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.

(k) In this section, "immediate jeopardy to health and safety" means a situation in which there is a high probability that serious harm or injury to a resident could occur at any time or already has occurred and may occur again if the resident is not protected from the harm or if the threat is not removed.

Added by Acts 1999, 76th Leg., ch. 534, Sec. 6, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 619, Sec. 2, eff. Sept. 1, 2001.

For text of section as amended by Acts 2001, 77th Leg., ch. 1284, Sec. 8.02, see Sec. 252.071, post

Sec. 252.071. AMELIORATION OF VIOLATION.

Text of section as amended by Acts 2001, 77th Leg., ch. 1284, Sec. 8.02

(a) In lieu of demanding payment of an administrative penalty authorized by this subchapter, the department may allow a person subject to the penalty to use, under the supervision of the department, all or part of the amount of the penalty to ameliorate the violation or to improve services, other than administrative services, in the 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 facility resident.

(c) The department may not offer amelioration to a person if the department determines that the charged violation constitutes immediate jeopardy to the health and safety of a facility resident.

(d) 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 assessment of administrative penalty that is sent to the person after an informal dispute resolution process but before an administrative hearing under Section 252.067.

(e) 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 252.067 if the department approves the plan.

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

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

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

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

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

(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 252.066(b).

(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.

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

Added by Acts 1999, 76th Leg., ch. 534, Sec. 6, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1284, Sec. 8.02, eff. June 15, 2001.

For text of section as amended by Acts 2001, 77th Leg., ch. 619, Sec. 2, see Sec. 252.071, ante

SUBCHAPTER D. TRUSTEES FOR FACILITIES

Sec. 252.091. FINDINGS AND PURPOSE. (a) The legislature finds that, under some circumstances, closing a facility for a violation of a law or rule may:

(1) have an adverse effect on the facility's residents and their families; and

(2) result in a lack of readily available financial resources to meet the basic needs of the residents for food, shelter, medication, and personal services.

(b) The purpose of this subchapter is to provide for:

(1) the appointment of a trustee to assume the operations of the facility in a manner that emphasizes resident care and reduces resident trauma; and

(2) a fund to assist a court-appointed trustee in meeting the basic needs of the residents.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.092. APPOINTMENT BY AGREEMENT. (a) A person who holds a controlling interest in a facility may request the department to assume the operation of the facility through the appointment of a trustee under this subchapter.

(b) After receiving the request, the department may enter into an agreement providing for the appointment of a trustee to take charge of the facility under conditions both parties consider appropriate if the department considers the appointment desirable.

(c) An agreement under this section must:

(1) specify the terms and conditions of the trustee's appointment and authority; and

(2) preserve the rights of the residents as granted by law.

(d) The agreement terminates at the time:

(1) specified by the parties; or

(2) either party notifies the other in writing that the party is terminating the appointment agreement.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.093. INVOLUNTARY APPOINTMENT. (a) The department may request the attorney general to bring an action on behalf of the state for the appointment of a trustee to operate a facility if:

(1) the facility is operating without a license;

(2) the department has suspended or revoked the facility's license;

(3) license suspension or revocation procedures against the facility are pending and the department determines that an imminent threat to the health and safety of the residents exists;

(4) the department determines that an emergency exists that presents an immediate threat to the health and safety of the

residents; or

(5) the facility is closing and arrangements for relocation of the residents to other licensed facilities have not been made before closure.

(b) A trustee appointed under Subsection (a)(5) may only ensure an orderly and safe relocation of the facility's residents as quickly as possible.

(c) After a hearing, a court shall appoint a trustee to take charge of a facility if the court finds that involuntary appointment of a trustee is necessary.

(d) If possible, the court shall appoint as trustee an individual whose background includes mental retardation service administration.

(e) An action under this section must be brought in Travis County or the county in which the violation is alleged to have occurred.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 192, Sec. 2, eff. Sept. 1, 1999.

Sec. 252.094. FEE; RELEASE OF MONEY. (a) A trustee appointed under this subchapter is entitled to a reasonable fee as determined by the court.

(b) The trustee may petition the court to order the release to the trustee of any payment owed the trustee for care and services provided to the residents if the payment has been withheld, including a payment withheld by a governmental agency or other entity during the appointment of the trustee, such as payments:

(1) for Medicaid or insurance;

(2) by a third party; or

(3) for medical expenses borne by the residents.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.095. EMERGENCY ASSISTANCE FEE. (a) In addition to the licensing and renewal fee collected under Section 252.034, the department may collect an annual fee to be used to make emergency assistance money available to a facility licensed under this chapter.

(b) The fee collected under this section shall be in the amount prescribed by Section 242.097(b) and shall be deposited to the credit of the nursing and convalescent home trust fund established under Section 242.096.

(c) The department may disburse money to a trustee for a facility licensed under this chapter to alleviate an immediate threat to the health or safety of the facility's residents. Payments under this section may include payments described by Section 242.096(b).

(d) A court may order the department to disburse emergency assistance money to a trustee for a facility licensed under this chapter if the court makes the findings provided by Section 242.096(c).

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.096. REIMBURSEMENT. (a) A facility that receives emergency assistance money under this subchapter shall reimburse the department for the amounts received, including interest.

(b) Interest on unreimbursed amounts begins to accrue on the date on which the money is disbursed to the facility. The rate of interest is the rate determined under Section 2, Article 1.05, Title 79, Revised Statutes (Article 5069-1.05, Vernon's Texas Civil Statutes), to be applicable to judgments rendered during the month in which the money is disbursed to the facility.

(c) The owner of the facility when the trustee is appointed is responsible for the reimbursement.

(d) The amount that remains unreimbursed on the first anniversary of the date on which the money is received is delinquent and the Texas Department of Mental Health and Mental Retardation may determine that the facility is ineligible for a Medicaid provider contract.

(e) The department shall deposit the reimbursement and interest received under this section to the credit of the nursing and convalescent home trust fund.

(f) The attorney general shall institute an action to collect money due under this section at the request of the department. An action under this section must be brought in Travis County.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.097. NOTIFICATION OF CLOSURE. (a) A facility that

is closing temporarily or permanently, voluntarily or involuntarily, shall notify the residents of the closing and make reasonable efforts to notify in writing each resident's nearest relative or the person responsible for the resident's support within a reasonable time before the facility closes.

(b) If the department orders a facility to close or the facility's closure is in any other way involuntary, the facility shall make the notification, orally or in writing, immediately on receiving notice of the closing.

(c) If the facility's closure is voluntary, the facility shall make the notification not later than one week after the date on which the decision to close is made.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.098. CRIMINAL PENALTY FOR FAILURE TO NOTIFY. (a) A facility commits an offense if the facility knowingly fails to comply with Section 252.097.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.099. COOPERATION IN FACILITY CLOSURE. The department and the Texas Department of Mental Health and Mental Retardation shall cooperate closely to ensure that the closure and transition plans for a facility that is closing, and the execution of those plans, ensure the short-term and long-term well-being of the clients of the facility.

Added by Acts 2001, 77th Leg., ch. 160, Sec. 3, eff. Sept. 1, 2001.

SUBCHAPTER E. REPORTS OF ABUSE AND NEGLECT

Sec. 252.121. DEFINITION. In this subchapter, "designated agency" means an agency designated by a court to be responsible for the protection of a resident who is the subject of a report of abuse or neglect.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.122. REPORTING OF ABUSE AND NEGLECT. (a) A person, including an owner or employee of a facility, who has cause to believe that the physical or mental health or welfare of a resident has been or may be adversely affected by abuse or neglect caused by another person shall report the abuse or neglect to the department, to a designated agency, or to both the department and the designated agency, as specified in department rules.

(b) Each facility shall require each employee of the facility, as a condition of employment with the facility, to sign a statement that the employee realizes that the employee may be criminally liable for failure to report abuse or neglect.

(c) A person shall make an oral report immediately on learning of abuse or neglect and shall make a written report to the same agency not later than the fifth day after the oral report is made.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.123. CONTENTS OF REPORT. (a) A report of abuse or neglect is nonaccusatory and reflects the reporting person's belief that a resident has been or will be abused or neglected or has died of abuse or neglect.

(b) The report must contain:

- (1) the name and address of the resident;
- (2) the name and address of the person responsible for the care of the resident, if available; and
- (3) other relevant information.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.124. ANONYMOUS REPORTS OF ABUSE OR NEGLECT. (a) An anonymous report of abuse or neglect, although not encouraged, shall be received and acted on in the same manner as an acknowledged report.

(b) A local or state law enforcement agency that receives a report of abuse or neglect shall refer the report to the department or the designated agency.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.125. INVESTIGATION AND REPORT OF RECEIVING AGENCY. (a) The department or the designated agency shall make a thorough investigation promptly after receiving either the oral or written report.

(b) The primary purpose of the investigation is the protection of the resident.

(c) In the investigation, the department or the designated agency shall determine:

- (1) the nature, extent, and cause of the abuse or neglect;

(2) the identity of the person responsible for the abuse or neglect;

(3) the names and conditions of the other residents;

(4) an evaluation of the persons responsible for the care of the residents;

(5) the adequacy of the facility environment; and

(6) any other information required by the department.

(d) The investigation may include a visit to the resident's facility and an interview with the resident, if considered appropriate by the department.

(e) If the department attempts to carry out an on-site investigation and it is shown that admission to the facility or any place where a resident is located cannot be obtained, a probate or county court shall order the person responsible for the care of the resident or the person in charge of a place where the resident is located to allow admission for the investigation and any interview with the resident.

(f) Before the completion of the investigation, the department shall file a petition for temporary care and protection of the resident if the department determines that immediate removal is necessary to protect the resident from further abuse or neglect.

(g) The department or the designated agency shall make a complete written report of the investigation and submit the report and its recommendations to the district attorney and the appropriate law enforcement agency and, if necessary, to the department on the department's request.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.126. CONFIDENTIALITY. A report, record, or working paper used or developed in an investigation made under this subchapter is confidential and may be disclosed only for purposes consistent with the rules adopted by the board or the designated agency.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.127. IMMUNITY. (a) Except as provided by Section 252.131, a person who reports an act of abuse or neglect as provided by this subchapter is immune from civil or criminal liability that, in the absence of the immunity, might result from making the report.

(b) The immunity provided by this section extends to participation in any judicial proceeding that results from the report.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.128. PRIVILEGED COMMUNICATIONS. In a proceeding regarding the abuse or neglect of a resident or the cause of any abuse or neglect, evidence may not be excluded on the ground of privileged communication except in the case of a communication between an attorney and client.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.129. CENTRAL REGISTRY. (a) The department shall maintain in the city of Austin a central registry of reported cases of resident abuse or neglect. The department shall include the registry in the registry maintained under Section 242.130.

(b) The board may adopt rules necessary to carry out this section.

(c) The rules shall provide for cooperation with hospitals and clinics in the exchange of reports of resident abuse or neglect.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.130. FAILURE TO REPORT; CRIMINAL PENALTY. (a) A person commits an offense if the person has cause to believe that a resident's physical or mental health or welfare has been or may be further adversely affected by abuse or neglect and knowingly fails to report in accordance with Section 252.122.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.131. BAD FAITH, MALICIOUS, OR RECKLESS REPORTING; CRIMINAL PENALTY. (a) A person commits an offense if the person reports under this subchapter in bad faith, maliciously, or recklessly.

(b) An offense under this section is a Class A misdemeanor.

(c) The criminal penalty provided by this section is in addition to any civil penalties for which the person may be liable.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.132. SUIT FOR RETALIATION. (a) In this section, "employee" means a person who is an employee of a facility or any other person who provides services for a facility for compensation, including a contract laborer for the facility.

(b) An employee has a cause of action against a facility, the owner of the facility, or another employee of the facility that suspends or terminates the employment of the employee or otherwise disciplines, discriminates against, or retaliates against the employee for:

(1) reporting to the employee's supervisor, an administrator of the facility, a state regulatory agency, or a law enforcement agency a violation of law, including a violation of this chapter or a rule adopted under this chapter; or

(2) initiating or cooperating in any investigation or proceeding of a governmental entity relating to the care, services, or conditions at the facility.

(c) A plaintiff who prevails in a suit under this section may recover:

(1) the greater of \$1,000 or actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown and damages for lost wages if the petitioner's employment was suspended or terminated;

(2) exemplary damages;

(3) court costs; and

(4) reasonable attorney's fees.

(d) In addition to the amounts that may be recovered under Subsection (c), a person whose employment is suspended or terminated is entitled to appropriate injunctive relief, including, if applicable:

(1) reinstatement in the person's former position; and

(2) reinstatement of lost fringe benefits or seniority rights.

(e) The petitioner, not later than the 90th day after the date on which the person's employment is suspended or terminated, must bring suit or notify the Texas Workforce Commission of the petitioner's intent to sue under this section. A petitioner who notifies the Texas Workforce Commission under this subsection must bring suit not later than the 90th day after the date of the delivery of the notice to the commission. On receipt of the notice, the commission shall notify the facility of the petitioner's intent to bring suit under this section.

(f) The petitioner has the burden of proof, except that there is a rebuttable presumption that the person's employment was suspended or terminated for reporting abuse or neglect if the person is suspended or terminated within 60 days after the date on which the person reported in good faith.

(g) A suit under this section may be brought in the district court of the county in which:

(1) the plaintiff resides;

(2) the plaintiff was employed by the defendant; or

(3) the defendant conducts business.

(h) Each facility shall require each employee of the facility, as a condition of employment with the facility, to sign a statement that the employee understands the employee's rights under this section. The statement must be part of the statement required under Section 252.122(b). If a facility does not require an employee to read and sign the statement, the periods prescribed by Subsection (e) do not apply, and the petitioner must bring suit not later than the second anniversary of the date on which the person's employment is suspended or terminated.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 192, Sec. 4, eff. Sept. 1, 2001.

Sec. 252.133. SUIT FOR RETALIATION AGAINST VOLUNTEER, RESIDENT, OR FAMILY MEMBER OR GUARDIAN OF RESIDENT. (a) A facility may not retaliate or discriminate against a volunteer, a resident, or a family member or guardian of a resident because the volunteer, the resident, the resident's family member or guardian, or any other person:

(1) makes a complaint or files a grievance concerning the facility;

(2) reports a violation of law, including a violation of this chapter or a rule adopted under this chapter; or

(3) initiates or cooperates in an investigation or proceeding of a governmental entity relating to the care, services, or conditions at the facility.

(b) A volunteer, a resident, or a family member or guardian of a resident against whom a facility retaliates or discriminates

in violation of Subsection (a) is entitled to sue for:

- (1) injunctive relief;
- (2) the greater of \$1,000 or actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown;
- (3) exemplary damages;
- (4) court costs; and
- (5) reasonable attorney's fees.

(c) A volunteer, a resident, or a family member or guardian of a resident who seeks relief under this section must report the alleged violation not later than the 180th day after the date on which the alleged violation of this section occurred or was discovered by the volunteer, the resident, or the family member or guardian of the resident through reasonable diligence.

(d) A suit under this section may be brought in the district court of the county in which the facility is located or in a district court of Travis County.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 192, Sec. 5, eff. Sept. 1, 2001.

Sec. 252.134. REPORTS RELATING TO RESIDENT DEATHS; STATISTICAL INFORMATION. (a) A facility licensed under this chapter shall submit a report to the department concerning the death of:

- (1) a resident of the facility; and
- (2) a former resident that occurs 24 hours or less after the former resident is transferred from the facility to a hospital.

(b) The report must be submitted not later than the 10th working day after the last day of each month in which a resident of the facility dies. The facility must make the report on a form prescribed by the department. The report must contain the name and social security number of the deceased.

(c) The department shall correlate reports under this section with death certificate information to develop data relating to the:

- (1) name and age of the deceased;
- (2) official cause of death listed on the death certificate;
- (3) date, time, and place of death; and
- (4) name and address of the facility in which the deceased resided.

(d) Unless specified by board rule, a record under this section is confidential and not subject to the provisions of Chapter 552, Government Code.

(e) The department shall develop statistical information on official causes of death to determine patterns and trends of incidents of death among persons with mental retardation and related conditions and in specific facilities. Information developed under this subsection is not confidential.

(f) A licensed facility shall make available on the request of an applicant or an applicant's representative historical statistics on all required information.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER F. MEDICAL CARE

Sec. 252.151. ADMINISTRATION OF MEDICATION. The department shall adopt rules relating to the administration of medication in facilities.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.152. REQUIRED MEDICAL EXAMINATION. (a) The department shall require each resident to be given at least one medical examination each year.

(b) The department shall specify the details of the examination.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER G. RESPITE CARE

Sec. 252.181. DEFINITIONS. In this subchapter:

(1) "Plan of care" means a written description of the care, training, and treatment needed by a person during respite care.

(2) "Respite care" means the provision by a facility to a person, for not more than two weeks for each stay in the facility, of:

- (A) room and board; and
- (B) care at the level ordinarily provided for

permanent residents.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.182. RESPITE CARE. (a) A facility licensed under this chapter may provide respite care for an individual who has a diagnosis of mental retardation or a related condition without regard to whether the individual is eligible to receive intermediate care services under federal law.

(b) The board may adopt rules for the regulation of respite care provided by a facility licensed under this chapter.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.183. PLAN OF CARE. (a) The facility and the person arranging the care must agree on the plan of care and the plan must be filed at the facility before the facility admits the person for the care.

(b) The plan of care must be signed by:

(1) a licensed physician if the person for whom the care is arranged needs medical care or treatment; or

(2) the person arranging for the respite care if medical care or treatment is not needed.

(c) The facility may keep an agreed plan of care for a person for not longer than six months from the date on which it is received. After each admission, the facility shall review and update the plan of care. During that period, the facility may admit the person as frequently as is needed and as accommodations are available.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.184. NOTIFICATION. A facility that offers respite care shall notify the department in writing that it offers respite care.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.185. INSPECTIONS. The department, at the time of an ordinary licensing inspection or at other times determined necessary by the department, shall inspect a facility's records of respite care services, physical accommodations available for respite care, and the plan of care records to ensure that the respite care services comply with the licensing standards of this chapter and with any rules the board may adopt to regulate respite care services.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.186. SUSPENSION. (a) The department may require a facility to cease providing respite care if the department determines that the respite care does not meet the standards required by this chapter and that the facility cannot comply with those standards in the respite care it provides.

(b) The department may suspend the license of a facility that continues to provide respite care after receiving a written order from the department to cease.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER H. QUALITY ASSURANCE FEE

Sec. 252.201. DEFINITION. In this subchapter, "gross receipts" means money paid as compensation for services provided to residents, including client participation. The term does not include charitable contributions to a facility.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 9.01, eff. June 15, 2001.

Sec. 252.202. COMPUTING QUALITY ASSURANCE FEE. (a) A quality assurance fee is imposed on each facility for which a license fee must be paid under Section 252.034, on each facility owned by a community mental health and mental retardation center, as described by Subchapter A, Chapter 534, and on each facility owned by the Texas Department of Mental Health and Mental Retardation. The fee:

(1) is an amount established under Subsection (b) multiplied by the number of patient days as determined in accordance with Section 252.203;

(2) is payable monthly; and

(3) is in addition to other fees imposed under this chapter.

(b) The Health and Human Services Commission or the department at the direction of the commission shall set the quality assurance fee for each day in the amount necessary to produce annual revenues equal to an amount that is not more than six percent of the facility's total annual gross receipts in this state. The fee is subject to a prospective adjustment as necessary.

(c) The amount of the quality assurance fee must be

determined using patient days and gross receipts reported to the department and covering a period of at least six months.

(d) The quality assurance fee is an allowable cost for reimbursement under the Medicaid program.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 9.01, eff. June 15, 2001. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.64, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1251, Sec. 1(a), eff. June 20, 2003.

Sec. 252.203. PATIENT DAYS. For each calendar day, a facility shall determine the number of patient days by adding the following:

(1) the number of patients occupying a facility bed immediately before midnight of that day; and

(2) the number of beds that are on hold on that day and that have been placed on hold for a period not to exceed three consecutive calendar days during which a patient is on therapeutic leave.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 9.01, eff. June 15, 2001. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.65, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1251, Sec. 2, eff. June 20, 2003.

Sec. 252.204. REPORTING AND COLLECTION. (a) The Health and Human Services Commission or the department at the direction of the commission shall collect the quality assurance fee.

(b) Each facility shall:

(1) not later than the 20th day after the last day of a month file a report with the Health and Human Services Commission or the department, as appropriate, stating the total patient days for the month; and

(2) not later than the 30th day after the last day of the month pay the quality assurance fee.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 9.01, eff. June 15, 2001. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.66, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1251, Sec. 3, eff. June 20, 2003.

Sec. 252.205. RULES; ADMINISTRATIVE PENALTY. (a) The Health and Human Services Commission shall adopt rules for the administration of this subchapter, including rules related to the imposition and collection of the quality assurance fee.

(b) The Health and Human Services Commission may not adopt rules granting any exceptions from the quality assurance fee.

(c) An administrative penalty assessed under this subchapter in accordance with Section 252.065 may not exceed one-half of the amount of the outstanding quality assurance fee or \$20,000, whichever is greater.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 9.01, eff. June 15, 2001.

Sec. 252.206. QUALITY ASSURANCE FUND. (a) The quality assurance fund is a fund outside the state treasury held by the Texas Treasury Safekeeping Trust Company. Notwithstanding any other law, the comptroller shall deposit fees collected under this subchapter to the credit of the fund.

(b) The quality assurance fund is composed of:

(1) fees deposited to the credit of the fund under this subchapter; and

(2) the earnings of the fund.

(c) Money deposited to the quality assurance fund remains the property of the fund and may be used only for the purposes of this subchapter.

(d) Repealed by Acts 2003, 78th Leg., ch. 198, Sec. 2.156(a)(1).

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 9.01, eff. June 15, 2001. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.156(a)(1), eff. Sept. 1, 2003.

Sec. 252.207. REIMBURSEMENT OF FACILITIES. (a) Subject to legislative appropriation and state and federal law, the Health and Human Services Commission may use money in the quality assurance fund, together with any federal money available to match that money:

(1) to offset expenses incurred to administer the quality assurance fee under this chapter;

(2) to increase reimbursement rates paid under the Medicaid program to facilities or waiver programs for persons with mental retardation operated in accordance with 42 U.S.C. Section 1396n(c) and its subsequent amendments; or

(3) for any other health and human services purpose approved by the governor and Legislative Budget Board.

(b) Repealed by Acts 2003, 78th Leg., ch. 198, Sec. 2.156(a)(1) and Acts 2003, 78th Leg., ch. 1251, Sec. 4(b).

(c) If money in the quality assurance fund is used to increase a reimbursement rate in the Medicaid program, the Health and Human Services Commission shall ensure that the reimbursement methodology used to set that rate describes how the money in the fund will be used to increase the rate and provides incentives to increase direct care staffing and direct care wages and benefits.

(d) The increased Medicaid reimbursement paid to a facility under this section may not be based solely on the amount of the quality assurance fee paid by that facility unless authorized by 42 C.F.R. Section 433.68 or other federal law.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 9.01, eff. June 15, 2001. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.67, 2.156(a)(1), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1251, Sec. 4(a), (b), eff. June 20, 2003; Acts 2005, 79th Leg., ch. 728, Sec. 9.003, eff. Sept. 1, 2005.

Sec. 252.208. INVALIDITY; FEDERAL FUNDS. If any portion of this subchapter is held invalid by a final order of a court that is not subject to appeal, or if the Health and Human Services Commission determines that the imposition of the fee and the expenditure as prescribed by this subchapter of amounts collected will not entitle the state to receive additional federal funds under the Medicaid program, the commission shall stop collection of the quality assurance fee and shall return, not later than the 30th day after the date collection is stopped, any money collected, but not spent, under this subchapter to the facilities that paid the fees in proportion to the total amount paid by those facilities.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 9.01, eff. June 15, 2001.