

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

5/28/09
Date

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on HB 216 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Elliot Shopley
Elliot Shopley

Carlos Laresti
Carlos Laresti

Robert Nichols
Robert Nichols

Jane Nelson
JANE NELSON

Wentworth
On the part of the Senate
Wentworth

Jose Menendez
Jose Menendez

Patrick M Rose
Patrick Rose

Elliott Karshtat
Elliott Karshtat

John Davis
John Davis

Beyni Hughes
On the part of the House
Beyni Hughes

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

~~Received by _____~~

CONFERENCE COMMITTEE REPORT

3rd Printing

H.B. No. 216

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the regulation of certain boarding home facilities and
3 assisted living facilities; providing penalties.

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

5 SECTION 1. Subtitle B, Title 4, Health and Safety Code, is
6 amended by adding Chapter 254 to read as follows:

7 CHAPTER 254. BOARDING HOME FACILITIES

8 Sec. 254.001. DEFINITIONS. In this chapter:

9 (1) "Assistance with self-administering medication"
10 means assisting a resident by reminding the resident to take
11 medication, opening and removing medications from a container, or
12 reminding the resident when a prescription medication needs to be
13 refilled.

14 (2) "Boarding home facility" means an establishment
15 that:

16 (A) furnishes, in one or more buildings, lodging
17 to three or more persons with disabilities or elderly persons who
18 are unrelated to the owner of the establishment by blood or
19 marriage; and

20 (B) provides community meals, light housework,
21 meal preparation, transportation, grocery shopping, money
22 management, laundry services, or assistance with
23 self-administration of medication but does not provide personal
24 care services as defined by Section 247.002 to those persons.

1 (3) "Commission" means the Health and Human Services
2 Commission.

3 (4) "Elderly person" has the meaning assigned by
4 Section 48.002, Human Resources Code.

5 (5) "Executive commissioner" means the executive
6 commissioner of the Health and Human Services Commission.

7 (6) "Person with a disability" means a disabled person
8 as defined by Section 48.002, Human Resources Code.

9 (7) "Resident" means a person who is residing in a
10 boarding home facility.

11 Sec. 254.002. EXEMPTIONS. This chapter does not apply to:

12 (1) a person that is required to be licensed under
13 Chapter 142, 242, 246, 247, or 252;

14 (2) a person that is exempt from licensing under
15 Section 142.003(a)(19), 242.003(3), or 247.004(4);

16 (3) a hotel as defined by Section 156.001, Tax Code;

17 (4) a retirement community;

18 (5) a monastery or convent;

19 (6) a child-care facility as defined by Section
20 42.002, Human Resources Code;

21 (7) a family violence shelter center as defined by
22 Section 51.002, Human Resources Code; or

23 (8) a sorority or fraternity house or other dormitory
24 associated with an institution of higher education.

25 Sec. 254.003. MODEL STANDARDS. The executive commissioner
26 shall develop and publish in the Texas Register model standards for
27 the operation of a boarding home facility relating to:

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

5 (2) sanitary and related conditions in a boarding home
6 facility and its surroundings, including insect and rodent control,
7 water supply, sewage disposal, food handling, and general hygiene
8 to ensure the residents' health, safety, and comfort;

9 (3) the reporting and investigation of injuries,
10 incidents, and unusual accidents and the establishment of other
11 policies and procedures necessary to ensure resident health and
12 safety;

13 (4) assistance with self-administering medication;

14 (5) requirements for in-service education of the
15 facility's staff;

16 (6) criminal history record checks; and

17 (7) assessment and periodic monitoring to ensure that
18 a resident:

19 (A) does not require the boarding home facility
20 to provide personal care, nursing, or other services not listed in
21 Section 254.001(2); and

22 (B) is capable of self-administering medication
23 or is aware of what the resident's medications look like and knows
24 when the medications should be taken but requires assistance with
25 self-administering medication.

26 Sec. 254.004. LOCAL REGULATION. A county or municipality
27 may require a person to obtain a permit from the county or

1 municipality to operate a boarding home facility within the
2 county's or municipality's jurisdiction. A county or municipality
3 may adopt the standards developed by the executive commissioner
4 under Section 254.003 and require a boarding home facility that
5 holds a permit issued by the county or municipality to comply with
6 the adopted standards.

7 Sec. 254.005. PERMIT PROCEDURES; FEES; FINES. (a) A county
8 or municipality that requires a person to obtain a boarding home
9 facility permit as authorized by Section 254.004 may establish
10 procedures for the submission of a boarding home facility permit
11 application and for the issuance, denial, renewal, suspension, and
12 revocation of the permit.

13 (b) A county or municipality that requires a person to
14 obtain a boarding home facility permit as authorized under Section
15 254.004 may set reasonable fees for issuance of the permit, renewal
16 of the permit, and inspections and may impose fines for
17 noncompliance with the county or municipal boarding home facility
18 regulations. The fees collected and fines imposed by the county or
19 municipality must be used to administer the county or municipal
20 permitting program or for other purposes directly related to
21 providing boarding home facility or other assisted living services
22 to elderly persons and persons with disabilities.

23 (c) A person required to obtain a boarding home facility
24 permit from a county or municipality as authorized under Section
25 254.004 shall pay any fees required or fines imposed by the county
26 or municipality.

27 Sec. 254.006. POSTING. A boarding home facility that holds

1 a permit issued by a county or municipality shall prominently and
2 conspicuously post for display in a public area of the boarding home
3 facility that is readily available to residents, the operator,
4 employees, and visitors:

5 (1) the permit issued by a county or municipality;

6 (2) a sign prescribed by the county or municipality
7 that issued the permit that specifies how complaints may be
8 registered with the county or municipality;

9 (3) a notice in a form prescribed by the county or
10 municipality that issued the permit stating that inspection and
11 related reports are available at the boarding home facility for
12 public inspection and providing a telephone number that may be used
13 to obtain information concerning the boarding home facility;

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

16 (5) a notice in a form prescribed by the county or
17 municipality that issued the permit that lists the name, location,
18 and contact information for:

19 (A) the closest local public health services
20 agency in the proximity of the boarding home facility; and

21 (B) a local organization or entity that
22 represents, advocates, or serves elderly persons or persons with
23 disabilities, including any related toll-free contact information
24 for reporting emergencies to the organization or entity.

25 Sec. 254.007. INSPECTIONS. (a) A county or municipality
26 may conduct any inspection, survey, or investigation that it
27 considers necessary and may enter the premises of a boarding home

1 facility at reasonable times to make an inspection, survey, or
2 investigation.

3 (b) A county or municipality is entitled to access to books,
4 records, and other documents maintained by or on behalf of a
5 boarding home facility to the extent necessary to enforce the
6 standards adopted by the county or municipality.

7 Sec. 254.008. INTERLOCAL COOPERATION. Two or more counties
8 or municipalities may cooperate and contract with each other for
9 the purpose of inspecting and permitting boarding home facilities.

10 Sec. 254.009. REPORTING AND INVESTIGATION OF ABUSE,
11 NEGLECT, OR EXPLOITATION. (a) A person, including an owner,
12 operator, or employee of a boarding home facility that holds a
13 permit issued by a county or municipality, who has cause to believe
14 that a resident who is an elderly person or a person with a
15 disability is being or has been abused, neglected, or exploited
16 shall report the abuse, neglect, or exploitation to the Department
17 of Family and Protective Services for investigation by that agency.
18 The Department of Family and Protective Services shall investigate
19 the allegation of abuse, neglect, or exploitation as authorized and
20 in the manner provided by Chapter 48, Human Resources Code.

21 (b) Each boarding home facility that holds a permit issued
22 by a county or municipality shall require each employee of the
23 boarding home facility, as a condition of employment with the
24 boarding home facility, to sign a statement that the employee
25 acknowledges that the employee may be criminally liable under
26 Section 48.052, Human Resources Code, for failure to report abuse,
27 neglect, or exploitation.

1 (c) An owner, operator, or employee of a boarding home
2 facility that holds a permit issued by a county or municipality may
3 not retaliate against an employee of the facility who in good faith
4 makes a complaint to the office of the inspector general of the
5 Health and Human Services Commission, cooperates with the office of
6 the inspector general in an investigation, or reports abuse,
7 neglect, or exploitation of a resident to the Department of Family
8 and Protective Services.

9 Sec. 254.010. ANNUAL REPORT TO COMMISSION; LEGISLATIVE
10 REPORT. (a) Not later than September 30 of each year following the
11 establishment of a county or municipal permitting requirement under
12 this chapter, each county or municipality that requires a person to
13 obtain a boarding home facility permit under Section 254.004 shall
14 submit to the commission a report. The report must include:

15 (1) the total number of:

16 (A) boarding home facilities permitted during
17 the preceding state fiscal year;

18 (B) boarding home facility applications denied
19 permitting, including a summary of cause for denial; and

20 (C) boarding home facility permits active on
21 August 31 of the preceding state fiscal year;

22 (2) the total number of residents reported housed in
23 each boarding home facility reported;

24 (3) the total number of inspections conducted at each
25 boarding home facility by the county or municipality that requires
26 the permit; and

27 (4) the total number of permits revoked or suspended

1 as a result of an inspection described by Subdivision (3) and a
2 summary of the outcome for the residents displaced by revocation or
3 suspension of a permit.

4 (b) The commission shall establish and maintain a
5 standardized compilation of information reported under this
6 section and provide to the legislature a report of this information
7 not later than January 1 of each odd-numbered year.

8 Sec. 254.011. EXCLUSION PROHIBITED. If an entity meets the
9 requirements established by a county or municipality under this
10 chapter, the entity may not be excluded from a residential area by
11 zoning ordinances or similar regulations.

12 SECTION 2. Sections 247.002(1), (2), (4), (5), and (7),
13 Health and Safety Code, are amended to read as follows:

14 (1) "Assisted living facility" means an establishment
15 that:

16 (A) furnishes, in one or more facilities, food
17 and shelter to four or more persons who are unrelated to the
18 proprietor of the establishment; ~~and~~

19 (B) provides:

20 (i) personal care services; or

21 (ii) administration of medication by a
22 person licensed or otherwise authorized in this state to administer
23 the medication; and

24 (C) may provide assistance with or supervision of
25 the administration of medication.

26 (2) "Board" means the executive commissioner of the
27 Health and ~~Texas Board of~~ Human Services Commission.

1 (4) "Department" means the [~~Texas~~] Department of Aging
2 and Disability [~~Human~~] Services.

3 (5) "Personal care services" means:

4 (A) assistance with feeding [~~meals~~], dressing,
5 moving [~~movement~~], bathing, or other personal needs or maintenance;
6 or

7 (B) [~~the administration of medication by a person~~
8 ~~licensed to administer medication or the assistance with or~~
9 ~~supervision of medication, or~~

10 [~~(C)~~] general supervision or oversight of the
11 physical and mental well-being of a person who needs assistance to
12 maintain a private and independent residence in an assisted living
13 facility or who needs assistance to manage the person's personal
14 life, regardless of whether a guardian has been appointed for the
15 person.

16 (7) "Commissioner" means the commissioner of the
17 department [~~human services~~].

18 SECTION 3. Section 247.004, Health and Safety Code, is
19 amended to read as follows:

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

21 (1) a boarding home facility as defined by Section
22 254.001 [~~that has rooms for rent and that may offer community meals,~~
23 ~~light housework, meal preparation, transportation, grocery~~
24 ~~shopping, money management, or laundry services but that does not~~
25 ~~provide personal care services~~];

26 (2) an establishment conducted by or for the adherents
27 of the Church of Christ, Scientist, for the purpose of providing

1 facilities for the care or treatment of the sick who depend
2 exclusively on prayer or spiritual means for healing without the
3 use of any drug or material remedy if the establishment complies
4 with local safety, sanitary, and quarantine ordinances and
5 regulations;

6 (3) a facility conducted by or for the adherents of a
7 qualified religious society classified as a tax-exempt
8 organization under an Internal Revenue Service group exemption
9 ruling for the purpose of providing personal care services without
10 charge solely for the society's professed members or ministers in
11 retirement, if the facility complies with local safety, sanitation,
12 and quarantine ordinances and regulations; or

13 (4) a facility that provides personal care services
14 only to persons enrolled in a program that is funded in whole or in
15 part by the department [~~Texas Department of Mental Health and~~
16 ~~Mental Retardation~~] and that is monitored by the department [~~Texas~~
17 ~~Department of Mental Health and Mental Retardation~~] or its
18 designated local mental retardation authority in accordance with
19 standards set by the department [~~Texas Department of Mental Health~~
20 ~~and Mental Retardation~~].

21 SECTION 4. Section 247.030, Health and Safety Code, is
22 repealed.

23 SECTION 5. It is the intent of the legislature that the
24 passage by the 81st Legislature, Regular Session, 2009, of another
25 bill that amends Subtitle B, Title 4, Health and Safety Code, and
26 Chapter 247, Health and Safety Code, and the amendments made by this
27 Act shall be harmonized, if possible, as provided by Section

1 311.025(b), Government Code, so that effect may be given to each.
2 If the amendments made by this Act to Subtitle B, Title 4, Health
3 and Safety Code, and Chapter 247, Health and Safety Code, and the
4 amendments made to Subtitle B, Title 4, Health and Safety Code, and
5 Chapter 247, Health and Safety Code, by any other bill are
6 irreconcilable, it is the intent of the legislature that this Act
7 prevail, regardless of the relative dates of enactment of this Act
8 and the other bill or bills, but only to the extent that differences
9 are irreconcilable.

10 SECTION 6. Not later than September 1, 2010, the executive
11 commissioner of the Health and Human Services Commission shall
12 adopt the model standards required by Section 254.003, Health and
13 Safety Code, as added by this Act.

14 SECTION 7. (a) Except as provided by Subsection (b) of this
15 section, this Act takes effect September 1, 2009.

16 (b) Sections 254.004 through 254.008, Health and Safety
17 Code, as added by this Act, and Section 4 of this Act take effect
18 September 1, 2010.

House Bill 216
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Subtitle B, Title 4, Health and Safety Code, is amended by adding Chapter 254 to read as follows:

Chapter 254. Boarding Home Facilities

Sec. 254.001. Definitions.
Sec. 254.002. Exemptions.
Sec. 254.003. Model Standards.
Sec. 254.004. Local Regulation.

Sec. 254.005. Permit Procedures; Fees; Fines. Among other provisions, in Subsection (b) requires the fees collected and fines imposed by the county or municipality to be used to administer the county or municipal permitting program, *as a source of local matching funds for state grants*, or for other purposes directly related to providing boarding home facility or other assisted living services to elderly persons and persons with disabilities.

Sec. 254.006. Posting.
Sec. 254.007. Inspections.
Sec. 254.008. Interlocal Cooperation.

Sec. 254.009. Reporting of Abuse, Neglect, or Exploitation. Among other provisions, in Subsection (a), requires a person, including an owner, operator, or employee of a boarding home facility that holds a permit

SENATE VERSION

SECTION 1. Same as House version, except as follows:

Chapter 254 title. Same as House version.

Secs. 254.001 - 254.004. Same as House version.

Sec. 254.005. Same as House version, except omits the provision requiring the fees to be used as a source of local matching funds for state grants.

Secs. 254.006 - 254.008. Same as House version.

Sec. 254.009. Reporting *and Investigation* of Abuse, Neglect, or Exploitation. Same as House version, except also requires a person to report if a resident *is being* abused, neglected or exploited, in addition to reporting

CONFERENCE

SECTION 1. Same as Senate version.

Chapter 254 title. Same as House version.

Secs. 254.001 - 254.004. Same as House version.

Sec. 254.005. Same as Senate version.

Secs. 254.006 - 254.008. Same as House version.

Sec. 254.009. Same as Senate version

House Bill 216
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

issued by a county or municipality, who has cause to believe that a resident who is an elderly person or a person with a disability has been abused, neglected, or exploited or *may be adversely affected by abuse, neglect, or exploitation caused by another person* to report the abuse, neglect, or exploitation to the Department of Family and Protective Services (DFPS) for investigation by that agency.

Sec. 254.010. Competitive Grant Program. Requires the Health and Human Services Commission to establish a competitive grant program that promotes innovation and effectiveness in the local regulation of boarding home facilities.

No equivalent provision.

SENATE VERSION

those circumstances where a resident has been abused, neglected or exploited. Omits the requirement for a person report to DFPS if a resident may be adversely affected by abuse, neglect, or exploitation caused by another person. Requires DFPS to investigate the allegation of abuse, neglect, or exploitation as authorized by Chapter 48, Human Resources Code, relating to investigations and protective services for elderly and disabled persons.

No equivalent provision.

Sec. 254.010. Annual Report to Commission; Legislative Report. Requires each county or municipality that requires a person to obtain a boarding home facility permit under Section 254.004 to submit to the commission a report not later than September 30 of each year following the establishment of a county or municipal permitting requirement under this chapter. Requires the report to include the total number of boarding home facilities permitted during the preceding state fiscal year, boarding home facility applications denied permitting, and boarding home facility permits active on August 31 of the preceding state fiscal year; the total number of residents reported housed in each

CONFERENCE

Same as Senate version.

Sec. 254.010. Same as Senate version.

House Bill 216
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

boarding home facility reported; the total number of inspections conducted at each boarding home facility by the county or municipality; and the total number of permits revoked or suspended as a result of an inspection and a summary of the outcome for the residents displaced by revocation or suspension of a permit. Requires the Health and Human Services Commission to establish and maintain a standardized compilation of information reported under this section and provide to the legislature a report of this information not later than January 1 of each odd-numbered year.

Sec. 254.011. Exclusion Prohibited.

SECTION 2. Sections 247.002(1), (2), (4), (5), and (7), Health and Safety Code, are amended. Among other provisions, amends the definition of "assisted living facility" to mean an establishment that, among other functions, provides administration of medication by a person licensed in this state to administer the medication and may provide assistance with or supervision of the administration of medication.

SECTIONS 3 - 4. Sections 247.004, and 247.030, Health and Safety Code, are amended.

SECTION 5. Administrative provision establishing intent with regard to conflicting enactments.

Sec. 254.011. Same as House version.

SECTION 2. Same as House version except amends the define of "assisted living facility" to mean an establishment that, among other functions, provides administration of medication by a person licensed *or otherwise authorized* in this state to administer the medication.

SECTIONS 3 - 4. Same as House version.

SECTION 5. Same as House version.

Sec. 254.011. Same as House version.

SECTION 2. Same as Senate version.

SECTIONS 3 - 4. Same as House version.

SECTION 5. Same as House version.

House Bill 216
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

SECTION 6. Transition provision.

SECTION 6. Same as House version.

SECTION 6. Same as House version.

No equivalent provision.

SECTION _____. Specifies that this Act does not make an appropriation and that certain provisions are not mandatory during a fiscal period for which the legislature has not made a specific appropriation to implement the provision.

Same as House version.

SECTION 7. Effective date.

SECTION 7. Same as House version.

SECTION 7. Same as House version.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 30, 2009

**TO: Honorable David Dewhurst , Lieutenant Governor, Senate
Honorable Joe Straus, Speaker of the House, House of Representatives**

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB216 by Menendez (Relating to the regulation of certain boarding home facilities and assisted living facilities; providing penalties.), Conference Committee Report

No significant fiscal implication to the State is anticipated.

The bill would add Chapter 254 to the Health and Safety Code to authorize a county or municipality to establish regulations and to require a person to obtain a permit from the county or municipality to operate a boarding home facility (as defined in the bill) within the county's or municipality's jurisdiction. A county or municipality that requires a facility to obtain a permit would be authorized to establish permit procedures and to set reasonable fees associated with the permit process.

A county or municipality that implements a permitting process would also be authorized to conduct inspections of boarding home facilities and to enforce requirements set forth in the provisions of the bill. The county or municipality could also impose fines for noncompliance with county or municipal regulations.

Two or more counties or municipalities could enter into an interlocal agreement for the purpose of inspecting and permitting boarding home facilities.

A county or municipality that establishes a permitting process for boarding home facilities would be required to submit an annual report to the Health and Human Services Commission (HHSC) not later than September 30 of each year regarding boarding home facilities regulated by the county or municipality. The bill stipulates the information that must be included in the report. HHSC would be required to establish and maintain a standardized compilation of the information reported to the agency and provide a report of the information to the Legislature not later than January 1 of each odd-numbered year.

The bill would repeal Section 247.030, Health and Safety Code, to conform with other provisions of the bill regarding licensing of facilities regarding medication supervision.

HHSC would also be required to develop, adopt, and publish by not later than September 1, 2010, model standards for the operation of a boarding home facility. Provisions of the bill regarding local regulation; permit procedures, fees, and fines; posting requirements within a permitted facility; inspections; and interlocal cooperation agreements would take effect September 1, 2010.

Except as noted, the bill would take effect September 1, 2009.

Based on analysis by the Health and Human Services Commission, it is assumed that costs associated with implementing provisions of the bill could be absorbed within existing resources.

Local Government Impact

According to information provided by the Texas Association of Counties and the Texas Municipal League, if a county or a municipality chose to regulate boarding home facilities, the costs associated with enforcing regulations could be significant. The fiscal impact would vary depending on the

number of facilities within the jurisdiction of a participating county or municipality. According to estimates from Harris County, where there are about 170 facilities that fit the definition of a boarding home facility, the county would need to average at least \$450,000 annually in permit revenue to cover the costs of permitting and enforcing regulations.

Source Agencies: 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 529 Health and Human Services Commission, 530 Family and Protective Services, Department of, 539 Aging and Disability Services, Department of

LBB Staff: JOB, CL, SJ, LR