

Senate Bill 6
79th Legislature, Regular Session, 2005

**A Report to the Governor, Lieutenant Governor, and
Speaker of the House of Representatives**

Texas Health and Human Services Commission
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Executive Summary

Section 2.20, Senate Bill (S.B.) 6, 79th Legislature, Regular Session, 2005 charged the Texas Health and Human Services Commission (HHSC) with developing a pilot program for identifying and taking appropriate action in relation to certain unlicensed long-term care facilities. This pilot program consisted of setting up taskforces to identify facilities that were providing personal care and health care services to residents without being licensed as required by state law. HHSC was required to establish one taskforce in an urban area and one taskforce in a rural area. Because of the nature of these taskforces, HHSC delegated the development to the Department of Aging and Disability Services (DADS), the state agency that licenses long-term care facilities. The complete text of S.B. 6, Section 2.20 can be found in Appendix A.

The purpose of this report is to document the status and outcomes of the pilot program and to make recommendations regarding the advisability of expanding the pilot program statewide.

Background Information

DADS licenses and regulates assisted living facilities. A facility may not use the term “assisted living” to describe its services unless it is licensed by DADS. Chapter 247, Texas Health and Safety Code, Section 247.002 defines an assisted living facility as:

An establishment that furnishes, in one or more facilities, food and shelter to four or more persons who are unrelated to the proprietor of the establishment and provides personal care services.

Section 247.002 defines personal care services as:

- assistance with meals, dressing, movement, bathing, or other personal needs or maintenance;
- the administration of medication by a person licensed to administer medication or the assistance with or supervision of medication; or
- general supervision or oversight of the physical and mental well-being of a person who needs assistance to maintain a private and independent residence in an assisted living facility or who needs assistance to manage the person's personal life, regardless of whether a guardian has been appointed for the person.

An establishment with three or fewer residents that provides food, shelter and personal care services is not required by statute to be licensed as an assisted living facility. Likewise, an establishment that houses four or more residents but does not provide personal care services to any of the residents is not required to be licensed as an assisted living facility.

Pursuant to Chapter 247, DADS may investigate allegations that a facility is operating without a license. Complaints that a facility is operating without a license in violation of Chapter 247 come from a variety of sources: competitors, neighbors unhappy about the

amount of traffic, employees and former employees, dissatisfied residents or their family members, municipal code compliance divisions, law enforcement, and fire marshals or fire departments to name a few.

Previous Related Taskforce Experiences

Prior to the 79th Legislative Session, DADS and the Department of Human Services (DHS), a predecessor agency to DADS, were involved with taskforces to identify facilities operating without a license in violation of Chapter 247. Such taskforces previously existed in Harris and Bexar counties.

In October 1997, DHS convened a taskforce in Harris County to identify facilities operating without a license in violation of Chapter 247. This taskforce was composed of persons from the following entities:

- DHS (both the Long-term Care-Regulatory and Long-term Care-Services divisions)
- Adult Protective Services
- Harris County and City of Houston Fire Marshals
- The Local Long-term Care Ombudsman
- Harris County Community Development Agency
- City of Houston Occupancy Inspection
- Veteran's Administration
- Mental Health and Mental Retardation (MHMR) Authority of Harris County
- Tri-County MHMR Continuity of Care
- Hitchcock Fire Department
- Houston Police Department-Crisis Intervention Team
- Houston City Attorney's Office
- Social Security Administration

The taskforce educated local groups and governmental units on the requirements for licensure and to whom to make a complaint regarding a facility operating without a license in violation of Chapter 247. Members of the taskforce also assisted when DHS took enforcement action against facilities operating without a license in violation of Chapter 247. The taskforce met quarterly from October 1997 until November 2005. Although the taskforce no longer meets, DADS regional staff retain a close working relationship with the groups that formed this taskforce.

In early 2003, a similar taskforce was initiated in Bexar County. The taskforce was composed of persons from the following entities:

- DHS Long-term Care-Regulatory Division
- Adult Protective Services
- The Local Long-term Care Ombudsman
- Texas Health Care Association
- Bexar County District Attorney's Office
- State Attorney General's Office

- City of San Antonio Code Compliance
- San Antonio City Council
- San Antonio City Attorney's Office
- Audie Murphy Veteran's Administration Hospital
- St. Phillip's College Occupational Therapy Assistant Program
- San Antonio College
- Center for Health Care Services

The taskforce educated local groups and governmental units on the requirements for licensure and to whom to make a complaint regarding a facility operating without a license in violation of Chapter 247. Members of the taskforce also assisted when DHS took action against facilities operating without a license in violation of Chapter 247. This taskforce initially met monthly, but began meeting quarterly starting January 2006.

DADS was not previously involved in a taskforce in an area that could be characterized as rural.

Selection of the S.B. 6 Taskforce Locations

Because there was already an active taskforce in Bexar County, DADS elected to use this taskforce to fulfill the requirement for an urban taskforce. Since DADS had not participated in a taskforce in a rural location, DADS staff reviewed basic data to determine the best geographical area on which to focus. DADS staff reviewed the number of complaints related to facilities operating without a license in violation of Chapter 247 from Fiscal Year (FY) 2001 through FY05 broken down by county. DADS further reviewed the number of substantiated complaints for this same time period. In addition, DADS staff reviewed the permanent injunctions obtained against unlicensed operators and the counties in which those facilities had been located. Some of these permanent injunctions were obtained prior to FY01.

Of the 254 counties in Texas, between fiscal year 2001 and fiscal year 2005, DADS received complaints (substantiated or not) about establishments in 92 counties. Of those complaints, DADS substantiated that facilities had been operating without a required license in 46 counties.

In determining which rural area to designate, DADS first operationalized the term "rural." DADS staff contacted the Office of Community and Rural Affairs for guidance. Based on this guidance, DADS decided to focus on counties with populations below 60,000 and above 30,000 in identifying a rural area. The working assumption was that a population size in this range was small enough to be rural but large enough to support a need for a residential facility. DADS staff did encounter questions while seeking to identify a rural location about the implication that a taskforce would encourage (or even require) people to "inform" on their neighbors.

DADS staff identified 17 counties with populations between 30,000-60,000 from which complaints about facilities operating without a license had been received. Of these 17 counties, DADS had confirmed in the past that facilities had been operating without a

license in violation of Chapter 247 in 8 of these counties. The table below shows the number of complaints received and the number substantiated broken down by county population.

Population (as of 2004) ¹	Total Number of Counties	No. of Counties with Complaint of Unlicensed Facility Fiscal Year 2001-Fiscal Year 2005	Number of Counties with Complaint Substantiated Fiscal Year 2001-Fiscal Year 2005
60,000 and Greater	51	46	27
30,000-60,000	40	17	8
20,000-30,000	27	10	4
10,000-20,000	48	11	4
10,000 and Less	88	8	3
Total	254	84	46

DADS staff originally approached representatives in Hardin County to gauge their interest in participating in this taskforce. Hardin County was selected for the following reasons:

- Population below 60,000.
- Relatively close to the DADS Regulatory regional office in Beaumont.
- DADS recently identified a facility operating illegally without a license in that county.
- The Hardin County Attorney had recently agreed to provide legal representation to DADS in its pursuit of an injunction against this unlicensed operator.

DADS staff contacted the Hardin County Attorney's office, which indicated they would discuss this prospect with the county administration. Hurricane Rita made landfall in Southeast Texas shortly thereafter. Understandably, Hardin County's main focus after the hurricane shifted, and they were unable to participate in this pilot project.

DADS staff turned to identifying another rural area with which to partner. For this search, DADS staff developed the following criteria:

- The county should be below 60,000 in population; the area should be unaffected by the recent natural disaster.
- DADS should have received at least one complaint about a facility operating without a license (and preferably would have actually found a location in violation at some point in time).

¹ Source: Texas State Library and Archives Commission website.

- DADS staff would be able to locate a willing local partner from the county's population.

If DADS was unable to locate a willing rural partner with these criteria, the search would be expanded to include counties from which DADS had never received a complaint about facilities operating in violation of Chapter 247.

With these criteria in mind, DADS staff began contacting county judges from counties meeting the initial screening criteria. Seven county judges from the eight counties meeting the preferred initial screening criteria were contacted before one was identified who was willing to participate. The Atascosa County judge agreed to participate in the pilot program, and DADS staff contacted other appropriate representatives from the Atascosa County area to participate. These representatives of Atascosa County agreed to serve as the rural taskforce.

Activity of the Bexar County Taskforce

As previously stated, this taskforce was first convened in early 2003. The taskforce had met monthly until January 2006, at which time it began meeting quarterly. DADS relies upon complaints from the public to identify locations that may be operating without a license in violation of Chapter 247; if members of the public are not aware that certain types of locations are required to be licensed by the state, they are not likely to report those locations to the proper authorities. Therefore, the taskforce's main focus to date has been on educating the public regarding licensure requirements.

Members of the taskforce engaged in educational outreach activities with the following groups:

- Camelot Homeowners Association
- Eastwood Homeowners Association
- Somerset City Council and Mayor's Offices
- City of San Antonio Neighborhood Services Center
- Adult Protective Services Not Forgotten Coalition
- Health and Human Services/DADS Money Follows the Person Initiative
- State Ombudsman Program Area Agencies on Aging
- San Antonio Residential Community Homes Association
- Texas Health Care Association/San Antonio Region 3
- San Antonio District Fire Chief's Division
- Elders' Advocacy Network

The Bexar County Taskforce has plans for future educational outreach activities and plans to continue to meet for the foreseeable future.

The table below shows the number of complaints received and investigated, the number of complaints substantiated and unsubstantiated, and the number of operators referred for prosecution in Bexar County during fiscal year 2006.

**Fiscal Year 2006 Bexar County Statistics of Facilities Operating Without
a License in Violation of Chapter 247 Health and Safety Code**

Number of Complaints Received	31
Number of Complaints Investigated	31
Number of Complaints Unsubstantiated	27
Number of Complaints Substantiated	4
Number of Operators Referred to OAG for Prosecution	0
Number of Operators Referred to Local Prosecutor for Prosecution	3*

* Permanent injunctions were issued against all three of the operators.

Activity of the Atascosa County Taskforce

The Atascosa County taskforce first met in February 2006 and has met every other month since then. This taskforce is composed of persons from the following entities:

- DADS Regulatory Services
- Atascosa County Judge
- The Local Long-term Care Ombudsman
- Adult Protective Services
- Texas Regional Medical Center
- State Attorney General's Office
- Camino Real MHMR

The first step was for DADS staff to provide information to the members of the taskforce about licensure requirements so that the taskforce members could share that information within their individual organizations. As with the Bexar County taskforce, this taskforce also engaged in educational outreach activities to inform the public of the requirements for certain facilities to be licensed and with whom to register complaints about facilities operating without a license in violation of Chapter 247. Members of the taskforce conducted outreach activities with the following groups:

- Atascosa County Commissioners
- Atascosa County Law Enforcement Association
- Administrators, directors of nursing, and social workers at all licensed facilities in Atascosa County
- The Rotary Club

This taskforce has a list of additional groups it intends to contact in the future and will continue to meet as long as the local Atascosa County members desire.

The table below shows the number of complaints received and investigated, the number of complaints substantiated and unsubstantiated, and the number of operators referred for prosecution in Atascosa County during fiscal year 2006.

**Fiscal Year 2006 Atascosa County Statistics of Facilities Operating
Without a License in Violation of Chapter 247 Health and Safety Code**

Number of Complaints Received	0
Number of Complaints Investigated	0
Number of Complaints Unsubstantiated	0
Number of Complaints Substantiated	0
Number of Operators Referred to OAG for Prosecution	0
Number of Operators Referred to Local Prosecutor for Prosecution	0

Other Related Activities

Unrelated to the pilot program mandated by S.B. 6, DADS has been developing an informational brochure that it plans to use for public education. This brochure is expected to be published in January 2007. The brochure will describe the licensing requirements for facilities that provide personal care services and which house four or more residents. The brochure will also include contact information for submitting a complaint about a facility's license status or the services received at a facility. DADS will distribute this brochure to all local Long-Term Care Ombudsmen, Area Agencies on Aging, Mental Health and Mental Retardation Authorities, as well as to the Bexar County and Atascosa County taskforces.

Conclusions

This pilot project was very useful in helping divergent groups understand who is responsible for investigating establishments to determine if they are operating in compliance or violation of the law. There is certainly a benefit to DADS continuing to work closely with local partners and with its sister state agencies. However, not all localities will have issues with or concerns about facilities operating without a license in violation of Chapter 247. As indicated earlier, DADS has never received any complaints regarding facilities operating without a license in violation of Chapter 247 from numerous counties in Texas. Most of the complaints have come from counties with a population of 60,000 or more and most of the substantiated complaints originated in these same counties. It is quite possible that, due to low population density, some counties do not have any facilities with four or more residents that are operating in violation of Chapter 247.

The general public may not know that there is a requirement for certain facilities to be licensed and, furthermore, may not regard compliance with these licensing requirements as a high priority. Public perceptions are not likely to change unless efforts are made to educate those individuals or entities that refer individuals to facilities operating without a license in violation of Chapter 247.

Should additional taskforces be formed, it is important to ensure that a clear delineation is made between the mission of a taskforce and DADS' responsibilities for enforcing Chapter 247, Health and Safety Code. For the purpose of enforcing Chapter 247, DADS is the client of the Texas Office of the Attorney General (OAG) or the local

prosecutor. The taskforce as an entity and individual taskforce members do not play a role in enforcement of Chapter 247 or prosecution. Depending on the circumstances and the roles and responsibilities members have outside of the taskforce, there may be circumstances in which the individual members may personally disagree with the enforcement direction taken by DADS.

Additionally, when DADS staff approached local authorities to seek participation in this pilot project, funding was an issue for at least one locality. All of the individuals and entities that have participated in a taskforce in the past, or are currently participating in one, have done so voluntarily. Consideration might be given for funding to defray the cost of participating in a taskforce, such as travel expenses or time away from assigned job duties, for those local groups for whom the expense might otherwise restrict their ability to participate.

Recommendations

Based on DADS experiences with establishment of and participation in these taskforces, it appears that identifying assisted living facilities that are operating in violation of Chapter 247 is not necessarily a high priority in smaller, more rural communities. Therefore, DADS would not recommend mandatory statewide expansion of this pilot.

However, DADS will continue to participate in existing taskforces and encourage state and local cooperation and coordination in areas of the state that identify this issue as a concern or priority and express an interest in addressing this issue.

Appendix A

S.B. 6, SECTION 2.20. PILOT PROGRAM FOR MONITORING CERTAIN UNLICENSED LONG-TERM CARE FACILITIES. (a) In this section:

(1) "Disabled person" has the meaning assigned by Section 48.002, Human Resources Code.

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

(3) "Long-term care facility" means:

(A) a nursing home or related institution;

(B) an assisted living facility;

(C) an ICF-MR, as defined by Section 531.002, Health and Safety Code;

(D) a community home subject to Chapter 123, Human Resources Code; or

(E) any other residential arrangement that provides care to four or more adults who are unrelated to the proprietor of the establishment.

(b) The executive commissioner of the Health and Human Services Commission by rule shall develop and implement a pilot program in which local taskforces composed of health care providers, representatives from governmental entities, and local government officials are created to:

(1) identify, through a coordination of efforts and resources, persons establishing or operating:

(A) long-term care facilities providing personal care services, health-related services, or other care to elderly or disabled persons without being licensed or providing disclosures as required by state law; or

(B) residential facilities or arrangements providing personal care services or other care in violation of state law to three or fewer elderly or disabled persons who are unrelated to the proprietor of the establishment; and

(2) take appropriate action necessary to:

(A) report the facilities or arrangements described by Subdivision (1) of this subsection to the appropriate state regulatory agencies or local law enforcement agencies;

(B) assist, whenever practicable, a long-term care facility described by Paragraph (A), Subdivision (1) of this subsection, in obtaining the appropriate licensure or making the appropriate disclosures on request of the facility; and

(C) assist, if it is feasible and practicable, a facility or arrangement described by Paragraph (B), Subdivision (1) of this subsection, in complying with applicable regulatory requirements of state or local law.

(c) Not later than January 1, 2006, the executive commissioner of the Health and Human Services Commission shall implement the pilot program in at least one rural area and one urban

area of this state.

(d) Not later than January 1, 2007, the Health and Human Services Commission shall submit a report on the status and progress of the pilot program to the governor, the lieutenant governor, the speaker of the house of representatives, and the presiding officer of each house and senate standing committee having jurisdiction over adult protective services. The report must include a recommendation regarding the advisability of expanding the pilot program statewide.

(e) This section expires September 1, 2007.