

**House Bill 669**  
**79<sup>th</sup> Texas Legislature, Regular Session, 2005**

**A Report to the Lieutenant Governor,  
Speaker of the House of Representatives, and  
Presiding Officers of the Standing Committees with  
Jurisdiction over Assisted Living Facilities**

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## **Purpose of Report**

House Bill (HB) 669, 79<sup>th</sup> Legislature, Regular Session, 2005, required the Department of Aging and Disability Services (DADS) to appoint a workgroup to study the feasibility of requiring facilities that furnish food, shelter and personal care services to three or fewer people unrelated to the proprietor of the facility to register with DADS and to determine the best method to identify those facilities. The full text of HB 669 is included in Appendix A. This report represents the findings of the workgroup.

## **Workgroup Membership**

As required by HB 669, the workgroup was composed of residents, advocates, providers, local officials and state agency staff. The individuals involved included:

### Residents:

Opal Kelm, Austin  
Lois Lowey, Dallas

### Advocates for the Elderly:

Ruby Johnson-Abel, Irving, Private Citizen  
Barbara Effenberger, Sequin, Texas Silver-Haired Legislature  
Carlos Higgins, Austin, Texas Silver-Haired Legislature

### Advocates for Persons with Disabilities:

Ann Denton, Managing Director for Advocates for Human Potential

### Licensed Assisted Living Providers:

Robert Draughn, Commerce  
Teresa Shook, Grandbury

### Assisted Living Provider Associations:

Mike Crowe, Texas Assisted Living Association, Austin  
Sid Rich, Texas Association of Residential Care Centers, Austin

### Local Governmental Entities:

Alfred Deck, LaMarque Fire Department  
David Hogan, City of Dallas

### Department of Family and Protective Services:

Kathleen Dickens, Arlington  
Tim McGinnis, Austin

### Department of Aging and Disability Services:

Carol Ahmed, Assistant Regional Administrator, Houston  
James Stevens, Geriatric Program Manager, Arlington

### Ex-Officio:

Representative Jesse Jones, Ph.D.  
Texas House of Representatives

Lemuel Price, Legislative Aide

### Staff Support and Resources:

Dotty Acosta, DADS, Regulatory Services  
Anthony Chapple, DADS, Regulatory Services  
Susan Davis, DADS, Regulatory Services  
Steven Fearing, DADS, Center for Program Coordination  
Rosemary Patterson, DADS, Regulatory Services  
Diana Spiser, DFPS, Child Care Licensing  
Jacquie Shillis, DADS, Center for Consumer and External Affairs  
Fred Worley, DADS, Regulatory Services

## **Workgroup Schedule**

The workgroup convened on April 25, 2006 and May 25, 2006 to discuss the matter before it.

## **Background**

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.”

Personal care services are defined by Texas Health and Safety Code Section 247.002(5) 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.

Under current law, establishments within the scope of the HB 669 workgroup (those with three or fewer residents) are **not** required to be licensed or registered. The state currently has no oversight over these businesses.

An operator providing care for three or fewer individuals in a house need only meet the local building code and fire safety requirements for a single family residence. The fire safety requirements for a facility providing care for four or more individuals unrelated to the proprietor are more stringent than those for a single family home; for example, a manual fire alarm and smoke detection system must be installed. If the facility provides care for residents unable to evacuate unassisted by staff, then an automatic sprinkler system must be installed.

The Department of Family and Protective Services Adult Protective Services (APS) Unit investigates allegations of abuse, neglect, or exploitation of adults who are elderly and disabled and live in the community, including settings in which personal care services are being provided to three or fewer individuals. APS investigates allegations of self-neglect and those of abuse, neglect and exploitation by certain alleged perpetrators, such as family members, caretakers, or others with an ongoing relationship with the elderly or adults with disabilities.

## **Workgroup Considerations**

The workgroup divided its charge into two parts:

- Is it feasible for establishments with three or fewer people to register?
- What are the best methods for identifying these establishments?

### Feasibility

In assessing the feasibility of requiring these businesses to register, the workgroup looked for comparable examples in other arenas. The regulation for child day care at DFPS is one such example, and includes three categories:

- Licensed child day care facilities
  - Two license types:
    - 7-12 children under age 14, and
    - 13 or more children under age 14
  - Requires an application, orientation, and background checks
  - Must meet published standards and are routinely monitored and inspected
- Registered Child Care Homes
  - Day care in the caregiver's home for up to 6 children under age 14 (more children are allowed under certain conditions)
  - Requires an application, orientation, and background checks
  - Must meet minimum standards and are inspected and monitored
- Listed Family Homes
  - Child care for 1-3 unrelated children in the caregiver's home
  - Requires an application and background checks
  - No minimum standards
  - No inspections unless a report of abuse or neglect is received

Among the three types of child care providers recognized by DFPS, listed family homes in particular drew the attention of some members of the workgroup. Child care providers must “list” with DFPS if they are compensated to provide regular child care (at least four hours per day, three or more days a week, for more than nine consecutive weeks) in their own homes for one to three unrelated children. After receipt of an application and background check clearances, DFPS issues a certificate to the caregiver. The listed family home caregiver must be at least 18 years old. There are no minimum standards, orientation or training requirements for listed homes.

Listed family homes **are not inspected** unless DFPS receives a report alleging that the home should be registered or licensed, or alleging that a child in the home has been abused or neglected. In these cases, DFPS conducts an investigation. Listed homes are posted on the DFPS web-site where anyone looking for child care services can access the information.

A person who operates a family home that meets the definition of “listed family home” without the required listing or registration commits a Class B misdemeanor. As of the end of Fiscal Year 2005, there were 4,132 listed family homes. DFPS estimated there are thousands of homes providing childcare that are not listed, registered or licensed. The agency finds out about these through complaint investigations. One concern is that there may be a public perception that listing infers that the homes are monitored or regulated in some manner by the state, which is not the case.

Cost considerations are another aspect of feasibility. As originally filed, HB 669 would have required biennial registration for an establishment that furnishes food, shelter and personal care services to three or fewer individuals unrelated to the proprietor. These facilities would have been required to submit a registration application and a \$50 fee. The Legislative Budget Board fiscal note estimated that such a registration program would cost the State General Revenue Fund \$3,367,762 over the first two years and an additional \$1.8 million over the succeeding three years. These costs were to have been incurred by DADS and DFPS.

#### Methods for Identifying Establishments

DFPS has used various methods and channels for informing childcare providers about the requirements for listing, registration and licensing, including:

- Conducting a public awareness campaign
- Distributing information to:
  - Libraries
  - Pediatricians
  - Health clinics
  - Information and referral services for child care
  - Employers
  - Hospitals
- Working with local newspapers, and free print media (such as Greensheet) to request that they not accept advertising from non-regulated homes.

## **Workgroup Conclusions**

There was no clear consensus among workgroup members as to the meaning of “feasibility.” Some members of the workgroup suggested that a program to register these facilities could be cost-prohibitive and thus, registration would not be feasible. Others on the workgroup felt the charge was simply to identify whether it would be feasible for such a state program to be developed. Their thinking was that the details of a registration program should be left to the legislature but that it is feasible such a program could be established.

The members agreed there are myriad approaches for trying to identify these establishments; however, it will likely be impossible to identify all of them. Businesses with three or fewer individuals tend to be the operator’s personal home and currently do not become known to officials until there is a report that someone has been harmed or exploited. Even with a change in law to require registration, it would take time for operator’s to become aware of this requirement.

## **Workgroup Recommendations**

After a full study and discussion of the task assigned, the workgroup recommends the following:

Assuming appropriation of adequate resources to fund the effort, it is feasible to require establishments that furnish food and shelter and personal care services to three or fewer people unrelated to the proprietor to register with DADS. Registration alone would not give DADS any regulatory authority over these businesses; however, it could provide information about where some of these establishments are located.

Identification of every establishment of this type is not possible, since they most often are single family dwellings with the owner/operator living in them. The workgroup offers, however, the following methods for consideration which are not to be considered all inclusive:

- Production and distribution of Public Service Announcements (PSAs) to television stations, radio stations and newspapers with a toll free number for citizens to call if they suspect a location is providing personal care services to three or fewer persons.
- Monitoring of addresses that receive food stamp awards and SSI checks for multiple people.
- Coordinating an education campaign with local neighborhood associations on the need for these establishments to be registered.
- Posting helpful information on city websites that provide information on how to report an establishment providing personal care services to three or fewer individuals without having registered with the state.
- Building partnerships with other organizations and agencies to help identify and encourage these establishments to register.

- Monitoring of complaints to local police and fire departments about establishments known or suspected to be providing personal care services to three or fewer individuals.
- Educating local county and municipal officials on their authority to take action in their communities regarding these establishments.
- Posting information on public websites of addresses known to be providing personal care services without being licensed or registered.
- Ensuring that state agencies are given sufficient resources in terms of staff and dollars to effectively administer this new requirement.



AN ACT

relating to a study of the feasibility of requiring registration of certain assisted living facilities.

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

SECTION 1. Subchapter B, Chapter 247, Health and Safety Code, is amended by adding Section 247.032 to read as follows:

Sec. 247.032. FEASIBILITY OF REGISTERING SMALL FACILITIES. (a) The commissioner of aging and disability services shall appoint a work group to study the feasibility of requiring facilities that furnish food, shelter, and personal care services to three or fewer people who are unrelated to the proprietor of the facility to register with the department and the best method to identify those facilities. The work group must include:

- (1) representatives of the department;
- (2) a representative from the Department of Family and Protective Services;
- (3) a representative of a licensed assisted living facility;
- (4) a resident of an assisted living facility;
- (5) an advocate for persons with disabilities;
- (6) an advocate for the elderly;
- (7) representatives of provider associations representing assisted living facilities;

and

(8) representatives of local governmental entities, with at least one representative from a rural area of the state and one representative from an urban area of the state.

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

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

(d) This section expires January 1, 2007.

SECTION 2. Not later than January 1, 2006, the commissioner of aging and disability services shall appoint the members of the work group as required by Section 247.032, Health and Safety Code, as added by this Act.

SECTION 3. This Act takes effect September 1, 2005.