

CHAPTER 815

S.B. No. 29

AN ACT

relating to licenses of and complaint investigations and data collection on quality improvement of convalescent and nursing homes and related institutions.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. (a) Subsections (d) and (e), Section 242.033, Health and Safety Code, are amended to read as follows:

(d) A license is renewable *every two years* [~~annually~~] after:

- (1) an inspection, unless an inspection is not required as provided by Section 242.047;
- (2) payment of the [~~annual~~] license fee; and
- (3) department approval of the [~~annual~~] report filed *every two years* by the licensee.

(e) The [~~annual~~] report required for license renewal under Subsection (d)(3) must comply with rules adopted by the board that specify the date of submission of the report, the information it must contain, and its form.

(b) Section 242.034, Health and Safety Code, is amended by amending Subsections (a) and (b) and adding Subsection (f) to read as follows:

(a) *The board may establish by rule license fees for institutions licensed by the department under this chapter. The license fee may not exceed \$150 [is \$50] plus \$5 [\$2] for each unit of capacity or bed space for which a license is sought. An additional license fee may be charged as provided by Section 242.097.*

(b) The license fee must be paid [~~annually~~] with each application for an *initial license*, a renewal [~~of the institution's~~] license, or a *change of ownership license*.

(f) *The license fees established under this chapter are an allowable cost for reimbursement under the medical assistance program administered by the Texas Department of Human Services under Chapter 32, Human Resources Code. Any fee increases shall be reflected in reimbursement rates prospectively.*

(c) Section 242.044, Health and Safety Code, is amended by amending Subsections (a) and (b) to read as follows:

(a) Each *licensing period* [~~year~~], the department shall conduct at least two unannounced inspections of each institution.

(b) For at least two unannounced inspections each *licensing period* [~~year~~] of an institution other than one that provides maternity care, the department shall invite at least one person as a citizen advocate from:

- (1) the American Association of Retired Persons;
- (2) the Texas Senior Citizen Association;
- (3) the Texas Retired Federal Employees;
- (4) the Texas Department on Aging Certified Long Term Care Ombudsman; or
- (5) another statewide organization for the elderly.

SECTION 2. Subchapter B, Chapter 242, Health and Safety Code, is amended by adding Section 242.049 to read as follows:

Sec. 242.049. **QUALITY IMPROVEMENT.** (a) *The department may evaluate data for quality of care in nursing homes.*

(b) *The department may gather data on a form or forms to be provided by the department to improve the quality of care in nursing homes and may provide information to nursing homes which will allow them to improve and maintain the quality of care which they provide. Data referred to in this section can include information compiled from documents otherwise available under the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), including but not limited to individual survey reports and investigation reports.*

(c) *All licensed nursing homes in the state may be required to submit information designated by the department as necessary to improve the quality of care in nursing homes.*

(d) *The collection, compilation, and analysis of the information and any reports produced from these sources shall be done in a manner that protects the privacy of any individual about whom information is given and is explicitly confidential. The department shall protect and maintain the confidentiality of the information. The information received by the department, any information compiled as a result of review of internal agency documents, and any reports, compilations, and analyses produced from these sources shall not be available for public inspection or disclosure, nor are these sources public records within the meaning of the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes). The information and any compilations, reports, or analyses produced from the information shall not be subject to discovery, subpoena, or other means of legal compulsion for release to any person or entity except as provided in this section and shall not be admissible in any civil, administrative, or criminal proceeding. This privilege shall be recognized by Rules 501 and 502 of the Texas Rules of Civil Evidence and the Texas Rules of Criminal Evidence.*

(e) *The information and reports, compilations, and analyses developed by the department for quality improvement shall be used only for the evaluation and improvement of quality care in nursing homes. No department proceeding or record shall be subject to discovery, subpoena, or other means of legal compulsion for release to any person or entity, and shall not be admissible in any civil, administrative, or criminal proceeding. This privilege shall be recognized by Rules 501 and 502 of the Texas Rules of Civil Evidence and the Texas Rules of Criminal Evidence.*

(f) *Notwithstanding Subsection (d), the department shall transmit reports, compilations, and analyses of the information provided by a nursing home to that nursing home, and such*

disclosure shall not be violative of this section nor shall it constitute a waiver of confidentiality.

(g) A member, agent, or employee of the department may not disclose or be required to disclose a communication made to the department or a record or proceeding of the department required to be submitted under this section except to the nursing home in question or its agents or employees.

(h) Nothing in this section is intended to abridge the department's enforcement responsibilities under this chapter or under any other law.

(i) Any information, reports, and other documents produced which are subject to any means of legal compulsion or which are considered to be public information under Subchapter E and the rules adopted under that subchapter shall continue to be subject to legal compulsion and be treated as public information under Subchapter E after the effective date of this Act, even though such information, reports, and other documents may be used in the collection, compilation, and analysis described in Subsections (b) and (d).

SECTION 3. Section 242.094, Health and Safety Code, is amended by adding Subsection (e) to read as follows:

(e) Venue for actions brought under this section shall be in Travis County.

SECTION 4. Subsections (d) and (e), Section 242.126, Health and Safety Code, are amended to read as follows:

(d) The investigation may [shall] include a visit to the resident's institution and an interview with the resident if these actions are determined by the department to be appropriate.

(e) If the department attempts to carry out an on-site investigation and it is shown that admission to the institution, or any place where the 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 entrance for the interview and investigation.

SECTION 5. This Act takes effect September 1, 1993.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on May 7, 1993, by a viva-voce vote; the Senate concurred in House amendments on May 28, 1993, by a viva-voce vote; passed the House, with amendments, on May 26, 1993, by a non-record vote.

Approved June 19, 1993.

Effective Sept. 1, 1993.