

HEALTH AND SAFETY CODE CHAPTER 242. CONVALESCENT AND NURSING HOMES
AND RELATED INSTITUTIONS

HEALTH AND SAFETY CODE

TITLE 4. HEALTH FACILITIES

SUBTITLE B. LICENSING OF HEALTH FACILITIES

CHAPTER 242. CONVALESCENT AND NURSING HOMES AND RELATED
INSTITUTIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 242.001. SCOPE, PURPOSE, AND IMPLEMENTATION. (a) It is the goal of this chapter to ensure that institutions in this state deliver the highest possible quality of care. This chapter, and the rules and standards adopted under this chapter, establish minimum acceptable levels of care. A violation of a minimum acceptable level of care established under this chapter or a rule or standard adopted under this chapter is forbidden by law. Each institution licensed under this chapter shall, at a minimum, provide quality care in accordance with this chapter and the rules and standards. Components of quality of care addressed by these rules and standards include:

- (1) quality of life;
- (2) access to care;
- (3) continuity of care;
- (4) comprehensiveness of care;
- (5) coordination of services;
- (6) humaneness of treatment;
- (7) conservatism in intervention;
- (8) safety of the environment;
- (9) professionalism of caregivers; and
- (10) participation in useful studies.

(b) The rules and standards adopted under this chapter may be more stringent than the standards imposed by federal law for certification for participation in the state Medicaid program. The rules and standards may not be less stringent than the Medicaid certification standards imposed under the Omnibus Budget Reconciliation Act of 1987 (OBRA), Pub.L. No. 100-203.

(c) The rules and standards adopted under this chapter apply

to each licensed institution. The rules and standards are intended for use in state surveys of the facilities and any investigation and enforcement action and are designed to be useful to consumers and providers in assessing the quality of care provided in an institution.

(d) The legislature finds that the construction, maintenance, and operation of institutions shall be regulated in a manner that protects the residents of the institutions by:

- (1) providing the highest possible quality of care;
- (2) strictly monitoring all factors relating to the health, safety, welfare, and dignity of each resident;
- (3) imposing prompt and effective remedies for noncompliance with licensing standards; and
- (4) providing the public with information concerning the operation of institutions in this state.

(e) It is the legislature's intent that this chapter accomplish the goals listed in Subsection (d).

(f) This chapter shall be construed broadly to accomplish the purposes set forth in this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.002. DEFINITIONS. In this chapter:

- (1) "Board" means the Texas Board of Human Services.
- (2) "Commissioner" means the commissioner of human services.
- (3) "Controlling person" means a person who controls an institution or other person as described by Section 242.0021.
- (4) "Department" means the Texas Department of Human Services.
- (5) "Elderly person" means an individual who is 65 years of age or older.

Text of subd. (6) as amended by Acts 1997, 75th Leg., ch. 693, Sec. 2

- (6) "Institution" means an establishment that:
 - (A) furnishes, in one or more facilities, food

and shelter to four or more persons who are unrelated to the proprietor of the establishment; and

(B) provides minor treatment under the direction and supervision of a physician licensed by the Texas State Board of Medical Examiners, or other services that meet some need beyond the basic provision of food, shelter, and laundry.

Text of subd. (6) as amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.02

(6) "Facility" means an institution.

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

(8) "Home" means an institution.

(9) "Hospital" has the meaning assigned by Chapter 241 (Texas Hospital Licensing Law).

(10) "Institution" means an establishment that:

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

(B) provides minor treatment under the direction and supervision of a physician licensed by the Texas Medical Board, or other services that meet some need beyond the basic provision of food, shelter, and laundry.

(11) "Person" means an individual, firm, partnership, corporation, association, joint stock company, limited partnership, limited liability company, or any other legal entity and includes a legal successor of those entities.

(12) "Resident" means an individual, including a patient, who resides in an institution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 561, Sec. 30, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 747, Sec. 23, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(27), 8.084, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 693, Sec. 2, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 1159, Sec. 1.02, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 404, Sec. 1, eff. September 1, 2007.

Sec. 242.0021. CONTROLLING PERSON. (a) A person is a controlling person if the person has the ability, acting alone or in concert with others, to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of an institution or other person.

(b) For purposes of this chapter, "controlling person" includes:

(1) a management company, landlord, or other business entity that operates or contracts with others for the operation of an institution;

(2) any person who is a controlling person of a management company or other business entity that operates an institution or that contracts with another person for the operation of an institution; and

(3) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of an institution, is in a position of actual control or authority with respect to the institution, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility.

(c) A controlling person described by Subsection (b)(3) does not include a person, such as an employee, lender, secured creditor, or landlord, who does not exercise any influence or control, whether formal or actual, over the operation of an institution.

(d) The department may adopt rules that define the ownership interests and other relationships that qualify a person as a controlling person.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.03, eff. Sept. 1, 1997.

Sec. 242.003. EXEMPTIONS. Except as otherwise provided, this chapter does not apply to:

(1) a hotel or other similar place that furnishes only food, lodging, or both, to its guests;

(2) a hospital;

(3) an establishment 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;

(4) an establishment that furnishes, in addition to food, shelter, and laundry, only baths and massages;

(5) an institution operated by a person licensed by the Texas Board of Chiropractic Examiners;

(6) a facility that:

(A) primarily engages in training, habilitation, rehabilitation, or education of clients or residents;

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

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

(7) a foster care type residential facility that serves fewer than five persons and operates under rules adopted by the Texas Department of Human Services; and

(8) a facility licensed under Chapter 252 or exempt from licensure under Section 252.003.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 88, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 693, Sec. 3, eff. Sept. 1, 1997.

Sec. 242.004. SIMULTANEOUS CARE FOR PREGNANT WOMEN AND

OTHER WOMEN. This chapter does not prohibit an institution defined by Section 242.002(6)(B) from simultaneously caring for pregnant women and other women younger than 50 years of age.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.005. PERFORMANCE REPORTS. (a) The department and the attorney general each shall prepare annually a full report of the operation and administration of their respective responsibilities under this chapter, including recommendations and suggestions considered advisable.

(b) The Legislative Budget Board and the state auditor shall jointly prescribe the form and content of reports required under this section, provided, however, that the state auditor's participation under this section is subject to approval by the legislative audit committee for inclusion in the audit plan under Section 321.013(c), Government Code.

(c) The department and the attorney general shall submit the required reports to the governor and the legislature not later than October 1 of each year.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.04, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 785, Sec. 68, eff. Sept. 1, 2003.

Sec. 242.006. DIRECTORY OF LICENSED INSTITUTIONS.

(a) The department shall prepare and publish annually a directory of all licensed institutions.

(b) The directory must contain:

(1) the name and address of the institution;

(2) the name of the proprietor or sponsoring organization; and

(3) other pertinent data that the department considers useful and beneficial to those persons interested in institutions operated in accordance with this chapter.

(c) The department shall make copies of the directory available to the public.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.007. CONSULTATION AND COOPERATION. (a) Whenever possible, the department shall use the services of and consult with state and local agencies in carrying out its responsibility under this chapter.

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

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.085, eff. Sept. 1, 1995.

Sec. 242.008. EMPLOYMENT OF PERSONNEL. The department may employ the personnel necessary to administer this chapter properly. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.009. FEDERAL FUNDS. The department may accept and use any funds allocated by the federal government to the department for administrative expenses.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.010. CHANGE OF ADMINISTRATORS. An institution that hires a new administrator or person designated as chief manager shall:

(1) notify the department in writing 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.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.011. LANGUAGE REQUIREMENTS PROHIBITED. An institution 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 medical treatment, nursing care, or institutional services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.013. PAPERWORK REDUCTION RULES. (a) The department shall:

(1) adopt rules to reduce the amount of paperwork an institution 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, the contracting agency, and providers shall work together to review rules and propose changes in paperwork requirements so that additional time is available for direct resident care.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.086, eff. Sept. 1, 1995.

Sec. 242.014. PROHIBITION OF REMUNERATION. (a) An institution may not receive monetary or other remuneration from a person or agency that furnishes services or materials to the institution or its occupants for a fee.

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

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.015. LICENSED ADMINISTRATOR. (a) Each institution must have a licensed nursing facility administrator.

(b) The administrator shall:

(1) manage the institution;

(2) be responsible for:

(A) delivery of quality care to all residents;

and

(B) implementation of the policies and procedures of the institution; and

(3) work at least 40 hours per week on administrative

duties.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.05, eff. Sept. 1, 1997.

Sec. 242.016. FEES AND PENALTIES. Except as expressly provided by this chapter, a fee or penalty collected by or on behalf of the department under this chapter must be deposited to the credit of the general revenue fund and may be appropriated only to the department to administer and enforce this chapter. Investigation and attorney's fees may not be assessed or collected by or on behalf of the department or other state agency unless the department or other state agency assesses and collects a penalty described under this chapter.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.05, eff. Sept. 1, 1997.

Sec. 242.017. ADMISSIBILITY OF CERTAIN EVIDENCE IN CIVIL ACTIONS. (a) The following are not admissible as evidence in a civil action:

(1) any finding by the department that an institution has violated this chapter or a rule adopted under this chapter; or

(2) the fact of the assessment of a penalty against an institution under this chapter or the payment of the penalty by an institution.

(b) This section does not apply in an enforcement action in which the state or an agency or political subdivision of the state is a party.

(c) Notwithstanding any other provision of this section, evidence described by Subsection (a) is admissible as evidence in a civil action only if:

(1) the evidence relates to a material violation of this chapter or a rule adopted under this chapter or assessment of a monetary penalty with respect to:

(A) the particular incident and the particular individual whose personal injury is the basis of the claim being brought in the civil action; or

(B) a finding by the department that directly

involves substantially similar conduct that occurred at the institution within a period of one year before the particular incident that is the basis of the claim being brought in the civil action; and

(2) the evidence of a material violation has been affirmed by the entry of a final adjudicated and unappealable order of the department after formal appeal; and

(3) the record is otherwise admissible under the Texas Rules of Evidence.

Added by Acts 2003, 78th Leg., ch. 204, Sec. 16.02, eff. Sept. 1, 2003.

SUBCHAPTER B. LICENSING, FEES, AND INSPECTIONS

Sec. 242.031. LICENSE REQUIRED. A person or governmental unit, acting severally or jointly with any other person or governmental unit, may not establish, conduct, or maintain an institution in this state without a license issued under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.032. LICENSE OR RENEWAL APPLICATION. (a) An application for a license or renewal of a license is made to the department on a form provided by the department and must be accompanied by the license fee.

(b) The application must contain information that the department requires.

(c) The applicant or license holder must furnish evidence to affirmatively establish the applicant's or license holder's ability to comply with:

(1) minimum standards of medical care, nursing care, and financial condition; and

(2) any other applicable state or federal standard.

(d) The department shall consider the background and qualifications of:

(1) the applicant or license holder;

(2) a partner, officer, director, or managing employee of the applicant or license holder;

(3) a person who owns or who controls the owner of the physical plant of a facility in which the institution operates or is to operate; and

(4) a controlling person with respect to the institution for which a license or license renewal is requested.

(e) In making the evaluation required by Subsection (d), the department shall require the applicant or license holder to file a sworn affidavit of a satisfactory compliance history and any other information required by the department to substantiate a satisfactory compliance history relating to each state or other jurisdiction in which the applicant or license holder and any other person described by Subsection (d) operated an institution at any time during the five-year period preceding the date on which the application is made. The department by rule shall determine what constitutes a satisfactory compliance history. The department may also require the applicant or license holder to file information relating to the history of the financial condition of the applicant or license holder and any other person described by Subsection (d) with respect to an institution operated in another state or jurisdiction at any time during the five-year period preceding the date on which the application is made.

(f) Information obtained under this section regarding an applicant's or license holder's financial condition is confidential and may not be disclosed to the public.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.06, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809, Sec. 10, eff. September 1, 2007.

Sec. 242.033. ISSUANCE AND RENEWAL OF LICENSE. (a) After receiving an application for a license, the department shall issue the license if, after inspection and investigation, it finds that the applicant or license holder, and any other person described by Section 242.032(d), meet the requirements established under each provision of this chapter and any rule or standard adopted 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) Except as provided by Subsection (f), a license is renewable every two years after:

(1) an inspection, unless an inspection is not required as provided by Section 242.047;

(2) payment of the license fee; and

(3) department approval of the report filed every two years by the licensee.

(e) The 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.

(f) The initial license issued to a license holder who has not previously held a license under this subchapter is a probationary license. A probationary license is valid for only one year. At the end of the one-year period, a license under Subsection (a) shall be issued but only after:

(1) the department finds that the license holder and any other person described by Section 242.032(d) continue to meet the requirements established under each provision of this chapter and any rule or standard adopted under this chapter;

(2) an inspection, unless an inspection is not required as provided by Section 242.047;

(3) payment of the license fee; and

(4) department approval of the report required for license renewal that complies with rules adopted under Subsection (e).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 815, Sec. 1(a), eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1159, Sec. 1.07, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 512, Sec. 1, eff. Sept. 1, 1999.

Sec. 242.0335. EXPEDITED ISSUANCE OF CHANGE OF OWNERSHIP LICENSE TO CERTAIN CURRENT LICENSE HOLDERS. (a) The department shall maintain, and keep current, a list of license holders that operate an institution in this state and that have excellent operating records according to the information available to the department. The department by rule shall establish specific criteria for designating a license holder as eligible for the list.

(b) The department shall establish a procedure under which a listed license holder may be granted expedited approval in obtaining a change of ownership license to operate another existing institution in this state. The procedure may involve allowing a listed license holder to submit an affidavit demonstrating that the license holder continues to meet the criteria for being listed and continues to meet the requirements described by Subsection (c).

(c) An applicant for a change of ownership license must meet all applicable requirements that an applicant for renewal of a license must meet under this subchapter, including under Section 242.032(d), and under rules that the department has adopted under this subchapter. Any requirement relating to inspections or to an accreditation review applies only to institutions operated by the license holder at the time the application is made for the change of ownership license.

(d) Subsection (c) applies only to a license holder designated as eligible for and placed on the list maintained under Subsection (a).

Added by Acts 2001, 77th Leg., ch. 731, Sec. 1, eff. Sept. 1, 2001.
Amended by Acts 2001, 77th Leg., ch. 1284, Sec. 7.05, eff. June 15, 2001.

Sec. 242.0336. TEMPORARY CHANGE OF OWNERSHIP LICENSE.

(a) For purposes of this section, a temporary change of ownership license is a temporary 90-day license issued to an applicant who proposes to become the new operator of an institution existing on the date the application is filed.

(b) After receiving an application for a temporary change of ownership license, the department shall issue a temporary license to the applicant if, after investigation, the department finds that

the applicant and any other person described by Section 242.032(d) meet:

(1) the requirements established under Section 242.032(c); and

(2) the department's standards for background and qualifications under Sections 242.032(d) and (e).

(b-1) Except as provided by Subsection (b-2), the department may not issue a temporary change of ownership license before the 31st day after the date the department has received both:

(1) the application for the license; and

(2) notification, in writing, of the intent of the institution's existing license holder to transfer operation of the institution to the applicant beginning on a date specified by the applicant.

(b-2) Notwithstanding Section 242.0335, the department shall establish criteria under which the department may waive the 30-day requirement or the notification requirement of Subsection (b-1). The criteria may include the occurrence of forcible entry and detainer, death, or divorce or other events that affect the ownership of the institution by the existing license holder.

(b-3) After receipt of an application or written notification described by Subsection (b-1), the department may place a hold on payments to the existing license holder in an amount not to exceed the average of the monthly vendor payments paid to the facility, as determined by the department. The department shall release funds to the previous license holder not later than the 120th day after the date on which the final reporting requirements are met and any resulting informal reviews or formal appeals are resolved. The department may reduce the amount of funds released to the previous license holder by the amount owed to the department or the Health and Human Services Commission under the previous license holder's Medicaid contract or license.

(b-4) The executive commissioner of the Health and Human Services Commission shall adopt rules for the department that define a change of ownership. In adopting the rules, the executive commissioner shall consider:

(1) the proportion of ownership interest that is being

transferred to another person;

(2) the addition or removal of a stockholder, partner, owner, or other controlling person;

(3) the reorganization of the license holder into a different type of business entity; and

(4) the death or incapacity of a stockholder, partner, or owner.

(b-5) The executive commissioner may adopt rules for the department that require a license holder to notify the department of any change, including a change that is not a change of ownership, as that term is defined by rules adopted under Subsection (b-4). Nothing in this section prevents the department from acting under Section 242.061 or any other provision of this chapter.

(c) The department shall issue or deny a temporary change of ownership license not later than the 31st day after the date of receipt of the completed application. The effective date of a temporary change of ownership license issued under this section is the date requested in the application unless:

(1) the department does not receive the application and written notification described by Subsection (b-1) at least 30 days before that date; and

(2) no waiver under Subsection (b-2) applies.

(c-1) If the department does not receive the application and written notification required by Subsection (b-1) at least 30 days before the effective date requested in the application and Subsection (b-2) does not apply, the effective date of the temporary change of ownership license is the 31st day after the date the department receives both the application and the notification.

(d) Except as provided in Subsection (d-1), after the department issues a temporary change of ownership license to the applicant, the department shall conduct an inspection or survey of the nursing facility under Section 242.043 as soon as reasonably possible. During the period between the issuance of the temporary license and the inspection or survey of the nursing facility or desk review under Subsection (d-1), the department may not place a hold on vendor payments to the temporary license holder.

(d-1) The department shall establish criteria under which a

desk review of the facility's compliance with applicable requirements may be substituted for the on-site inspection or survey under Subsection (d).

(e) After conducting an inspection or survey under Subsection (d) or a desk review under Subsection (d-1), the department shall issue a license under Section 242.033 to the temporary change of ownership license holder if the nursing facility passes the desk review, inspection, or survey and the applicant meets the requirements of Section 242.033. If the nursing facility fails to pass the desk review, inspection, or survey or the applicant fails to meet the requirements of Section 242.033, the department may:

(1) place a hold on vendor payments to the temporary change of ownership license holder; and

(2) take any other action authorized under this chapter.

(f) If the applicant meets the requirements of Section 242.033 and the nursing facility passes a desk review, initial inspection, or subsequent inspection before the temporary change of ownership license expires, the license issued under Section 242.033 is considered effective on the date the department determines under Subsection (c) or (c-1).

(g) A temporary change of ownership license issued under Subsection (b) expires on the 90th day after the effective date established under Subsection (c) or (c-1).

Added by Acts 2001, 77th Leg., ch. 14, Sec. 1, eff. Sept. 1, 2001.
Renumbered from Health & Safety Code Sec. 242.0335 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(91), eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 974, Sec. 2, eff. September 1, 2007.

Sec. 242.034. LICENSE FEES. (a) The board may establish by rule license fees for institutions licensed by the department under this chapter. The license fee may not exceed \$250 plus:

(1) \$10 for each unit of capacity or bed space for which a license is sought; and

(2) a background examination fee imposed under Subsection (d).

(b) The license fee for a probationary license issued under Section 242.033(f) may not exceed \$125 plus:

(1) \$5 for each unit of capacity or bed space for which the license is sought; and

(2) a background examination fee imposed under Subsection (d).

(c) An additional license fee may be charged as provided by Section 242.097.

(d) The board may establish a background examination fee in an amount necessary to defray the department's expenses in administering its duties under Sections 242.032(d) and (e).

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

(f) The state is not required to pay the license fee.

(g) An approved increase in bed space is subject to an additional fee.

(h) 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.

(i) An applicant for license renewal who submits an application later than the 45th day before the expiration date of a current license is subject to a late fee in accordance with department rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 815, Sec. 1(b), eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1159, Sec. 1.08, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 512, Sec. 2, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809, Sec. 11, eff. September 1, 2007.

Sec. 242.035. LICENSING CATEGORIES. (a) The department

shall determine the rank of licensing categories.

(b) Unless prohibited by another state or federal requirement, the department shall allow a licensed institution to operate a portion of the institution under the standards of a lower licensing category. The board shall establish procedures and standards to accommodate an institution's operation under the lower category.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.036. GRADING. (a) The board may adopt, publish, and enforce minimum standards relating to the grading of an institution, other than an institution that provides maternity care, in order to recognize those institutions that provide more than the minimum level of services and personnel as established by the board.

(b) An institution that has a superior grade shall prominently display the grade for public view.

(c) As an incentive to attain the superior grade, an institution may advertise its grade, except that it may not advertise a superior grade that has been canceled.

(d) The department may not award a superior grade to an institution that, during the year preceding the grading inspection, violated state or federal law, rules, or regulations relating to:

- (1) the health, safety, or welfare of its residents;
- (2) resident funds;
- (3) the confidentiality of a resident's records;
- (4) the financial practices of the institution; or
- (5) the control of medication in the institution.

(e) The department shall cancel an institution's superior grade if the institution:

- (1) does not meet the criteria established for a superior grade; or
- (2) violates a state or federal law, rule, or regulation described by Subsection (d).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.037. RULES; MINIMUM STANDARDS. (a) The

department shall make and enforce rules and minimum standards to implement this chapter, including rules and minimum standards relating to quality of life, quality of care, and residents' rights.

(b) The rules and standards adopted under this chapter may be more stringent than the standards imposed by federal law for certification for participation in the state Medicaid program.

(c) The rules and standards adopted by the department may not be less stringent than the Medicaid certification standards and regulations imposed under the Omnibus Budget Reconciliation Act of 1987 (OBRA), Pub.L. No. 100-203.

(d) To implement Sections 242.032(d) and (e), the department by rule shall adopt minimum standards for the background and qualifications of any person described by Section 242.032(d). The department may not issue or renew a license if a person described by Section 242.032 does not meet the minimum standards adopted under this section.

(e) In addition to standards or rules required by other provisions of this chapter, the board shall adopt, publish, and enforce minimum standards relating to:

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

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

(3) requirements for in-service education of all employees who have any contact with the residents;

(4) training on the care of persons with Alzheimer's disease and related disorders for employees who work with those persons;

(5) sanitary and related conditions in an institution and its surroundings, including water supply, sewage disposal, food handling, and general hygiene in order to ensure the residents' health, safety, and comfort;

(6) the nutritional needs of each resident according

to good nutritional practice or the recommendations of the physician attending the resident;

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

(8) the use and administration of medication in conformity with applicable law and rules;

(9) care and treatment of residents and any other matter related to resident health, safety, and welfare;

(10) licensure of institutions; and

(11) implementation of this chapter.

(f) The board shall adopt, publish, and enforce minimum standards requiring appropriate training in geriatric care for each individual who provides services to geriatric residents in an institution and who holds a license or certificate issued by an agency of this state that authorizes the person to provide the services. The minimum standards may require that each licensed or certified individual complete an appropriate program of continuing education or in-service training, as determined by board rule, on a schedule determined by board rule.

(g) To administer the surveys for provider certification provided for by federal law and regulation, the department must identify each area of care that is subject to both state licensing requirements and federal certification requirements. For each area of care that is subject to the same standard under both federal certification and state licensing requirements, an institution that is in compliance with the federal certification standard is considered to be in compliance with the same state licensing requirement.

(h) The board shall adopt each rule adopted by the Texas Board of Health under Section 161.0051 as part of the rules and standards adopted under this chapter that apply to institutions serving residents who are elderly persons.

(i) The minimum standards adopted by the board under this section must require that each institution, as part of an existing training program, provide each registered nurse, licensed vocational nurse, nurse aide, and nursing assistant who provides nursing services in the institution at least one hour of training

each year in caring for people with dementia.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 583, Sec. 1, eff. Aug. 28, 1995; Acts 1995, 74th Leg., ch. 1049, Sec. 2, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 31.01(54), eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1159, Sec. 1.09, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 259, Sec. 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1031, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1239, Sec. 1, eff. Sept. 1, 2003.

Sec. 242.0371. NOTICE OF CERTAIN EMPLOYMENT POLICIES.

(a) An institution licensed under this chapter shall prepare a written statement describing the institution's policy for:

(1) the drug testing of employees who have direct contact with residents; and

(2) the conducting of criminal history record checks of employees and applicants for employment in accordance with Chapter 250.

(b) The institution shall provide the statement to:

(1) each person applying for services from the institution or the person's next of kin or guardian; and

(2) any person requesting the information.

Added by Acts 1999, 76th Leg., ch. 1020, Sec. 2, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1025, Sec. 1, eff. Sept. 1, 2001.

Sec. 242.0373. RESTRAINT AND SECLUSION. A person providing services to a resident of an institution shall comply with Chapter 322 and the rules adopted under that chapter.

Added by Acts 2005, 79th Leg., Ch. 698, Sec. 2, eff. September 1, 2005.

Sec. 242.038. REASONABLE TIME TO COMPLY. The board by rule shall give an institution that is in operation when a rule or standard is adopted under this chapter a reasonable time to comply with the rule or standard.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.0385. EARLY COMPLIANCE REVIEW. (a) The department by rule shall adopt a procedure under which a person proposing to construct or modify an institution 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. 2, eff. Sept. 1, 2001.

Sec. 242.039. FIRE SAFETY REQUIREMENTS. (a) The board shall adopt rules necessary to specify the edition of the Life Safety Code of the National Fire Protection Association that will be used to establish the life safety requirements for an institution licensed under this chapter.

(b) The board shall adopt the edition of the Life Safety Code of the National Fire Protection Association for fire safety as designated by federal law and regulations for an institution or

portion of an institution that is constructed after September 1, 1993, and for an institution or portion of an institution that was operating or approved for construction on or before September 1, 1993.

(c) The board may not require more stringent fire safety standards than those required by federal law and regulation. The rules adopted under this section may not prevent an institution 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.

(d) Licensed health care facilities in existence at the time of the effective date of this subsection may have their existing use or occupancy continued if such facilities comply with fire safety standards and ordinances in existence at the time of the effective date of this subsection.

(e) Notwithstanding any other provision of this section, a municipality shall have the authority to enact additional and higher fire safety standards applicable to new construction beginning on or after the effective date of this subsection.

(f)(1) An advisory committee is created to propose rules for adoption by the department concerning the applicability of municipal ordinances and regulations to the remodeling and renovation of existing structures to be used as health care facilities licensed under this chapter.

(2) The advisory committee shall be appointed by the board and composed as follows:

- (A) two municipal fire marshals;
- (B) four individuals representing the nursing home industry;
- (C) the commissioner of human services or a designee;
- (D) one building official from a municipality that has adopted the Uniform Building Code;
- (E) one building official from a municipality that has adopted the Standard Building Code;
- (F) one architect licensed under state law;
- (G) one member of the Texas Board of Human

Services; and

(H) one state Medicaid director or designee.

(3) The advisory committee shall serve without compensation or remuneration of any kind.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 583, Sec. 1, eff. Sept. 1, 1993.

Sec. 242.040. CERTIFICATION OF INSTITUTIONS THAT CARE FOR PERSONS WITH ALZHEIMER'S DISEASE AND RELATED DISORDERS. (a) The department shall establish a system for certifying institutions that meet standards adopted by the board concerning the specialized care and treatment of persons with Alzheimer's disease and related disorders.

(b) An institution is not required to be certified under this section in order to provide care and treatment of persons with Alzheimer's disease and related disorders.

(c) The board by rule may adopt standards for the specialized care and treatment of persons with Alzheimer's disease and related disorders and provide procedures for institutions applying for certification under this section. The rules must provide for annual certification.

(d) The board may establish and charge fees for the certification in an amount necessary to administer this section.

(e) An institution may not advertise or otherwise communicate that the institution is certified by the department to provide specialized care for persons with Alzheimer's disease or related disorders unless the institution is certified under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.041. FALSE COMMUNICATION CONCERNING CERTIFICATION; CRIMINAL PENALTY. (a) An institution commits an offense if the institution violates Section 242.040(e).

(b) An offense under this section is a Class C misdemeanor.
Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.042. POSTING. (a) Each institution shall

prominently and conspicuously post for display in a public area of the institution 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 licensing inspection reports and other related reports which show deficiencies cited by the department are available at the institution for public inspection and providing the department's toll-free telephone number that may be used to obtain information concerning the institution;

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

(5) notice that the department can provide summary reports relating to the quality of care, recent investigations, litigation, and other aspects of the operation of the institution;

(6) notice that the Texas Board of Nursing Facility Administrators can provide information about the nursing facility administrator;

(7) any notice or written statement required to be posted under Section 242.072(c);

(8) notice that informational materials relating to the compliance history of the institution are available for inspection at a location in the institution specified by the sign; and

(9) notice that employees, other staff, residents, volunteers, and family members and guardians of residents are protected from discrimination or retaliation as provided by Sections 242.133 and 242.1335.

(b) The notice required by Subsection (a)(8) must also be posted at each door providing ingress to and egress from the institution.

(c) The informational materials required to be maintained for public inspection by an institution under Subsection (a)(8)

must be maintained in a well-lighted accessible location and must include:

(1) any information required to be included under Section 242.504; and

(2) a statement of the institution's record of compliance with this chapter and the rules and standards adopted under this chapter that is updated not less frequently than bi-monthly and that reflects the record of compliance during the period beginning one year before the date the statement is last updated, in the form required by the department.

(d) The notice required by Subsection (a)(9) must be posted in English and a second language as required by department rule.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.10, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 324, Sec. 3, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 192, Sec. 1, eff. Sept. 1, 2001.

Sec. 242.043. INSPECTIONS. (a) The department or the department's representative may make any inspection, survey, or investigation that it considers necessary and may enter the premises of an institution 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 an institution 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 institution by a representative of the department in accordance with this chapter.

(d) The department shall establish procedures to preserve all relevant evidence of conditions found during an inspection, survey, or investigation that the department reasonably believes threaten the health and safety of a resident, including photography and photocopying of relevant documents, such as a license holder's notes, a 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) An institution, an officer or employee of an institution, 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.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.044. UNANNOUNCED INSPECTIONS. (a) Each licensing period, the department shall conduct at least two unannounced inspections of each institution.

(b) For at least two unannounced inspections each licensing period 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 department's Certified Long Term Care Ombudsman; or

(5) another statewide organization for the elderly.

(c) In order to ensure continuous compliance, the department shall randomly select a sufficient percentage of institutions 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.

(d) The department may require additional inspections. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 815, Sec. 1(c), eff. Sept. 1, 1993. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 798, Sec. 1, eff. September 1, 2008.

Sec. 242.0445. REPORTING OF VIOLATIONS. (a) The department or the department's representative conducting an inspection, survey, or investigation under Section 242.043 or 242.044 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 violated.

(b) At the conclusion of an inspection, survey, or investigation under Section 242.043 or 242.044, 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 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. An additional exit conference must be held in person and may not be held by telephone, e-mail, or facsimile transmission.

(b-1) Not later than the fifth working day after the date the facility receives the final statement of violations under this section, the facility shall provide a copy of the statement to a representative of the facility's family council.

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

statement of violations.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 2, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 798, Sec. 2, eff. September 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 974, Sec. 3, eff. September 1, 2007.

Sec. 242.045. 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 an institution 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 statewide organization for the elderly, including the American Association of Retired Persons, the Texas Senior Citizen Association, and the Texas Retired Federal Employees;
- (4) an ombudsman or representative of the Texas Department on Aging;
- (5) a representative of an agency or organization when a Medicare or Medicaid survey is made concurrently with a licensing inspection; or
- (6) 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 third degree felony.

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

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.11, eff. Sept. 1, 1997.

Sec. 242.046. OPEN HEARING. (a) The department shall hold an open hearing in a licensed institution, other than an

institution that provides maternity care, if the department has taken a punitive action against the institution in the preceding 12 months or if the department receives a complaint from an ombudsman, advocate, resident, or relative of a resident relating to a serious or potentially serious problem in the institution and the department has reasonable cause to believe the complaint is valid. The department is not required to hold more than one open meeting in a particular institution in each year.

(b) The department shall give notice of the time, place, and date of the hearing to:

(1) the institution;

(2) the designated closest living relative or legal guardian of each resident; and

(3) appropriate state or federal agencies that work with the institution.

(c) The department may exclude an institution's administrators and personnel from the hearing.

(d) The department shall notify the institution of any complaints received at the hearing and, without identifying the source of the complaints, provide a summary of them to the institution.

(e) The department shall determine and implement a mechanism to notify confidentially a complainant of the results of the investigation of the complaint.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 89, eff. Sept. 1, 1991.

Sec. 242.047. ACCREDITATION REVIEW TO SATISFY INSPECTION OR CERTIFICATION REQUIREMENTS. (a) The department shall accept an annual accreditation review from the Joint Commission on Accreditation of Health Organizations for a nursing home instead of an inspection for renewal of a license under Section 242.033 and in satisfaction of the requirements for certification by the department for participation in the medical assistance program under Chapter 32, Human Resources Code, and the federal Medicare program, but only if:

(1) the nursing home is accredited by the commission

under the commission's long-term care standards;

(2) the commission maintains an annual inspection or review program that, for each nursing home, meets the department's applicable minimum standards as confirmed by the board;

(3) the commission conducts an annual on-site inspection or review of the home;

(4) the nursing home submits to the department a copy of its annual accreditation review from the commission in addition to the application, fee, and any report required for renewal of a license or for certification, as applicable; and

(5) the department has:

(A) determined whether a waiver or authorization from a federal agency is necessary under federal law, including for federal funding purposes, before the department accepts an annual accreditation review from the joint commission:

(i) instead of an inspection for license renewal purposes;

(ii) as satisfying the requirements for certification by the department for participation in the medical assistance program; or

(iii) as satisfying the requirements for certification by the department for participation in the federal Medicare program; and

(B) obtained any necessary federal waivers or authorizations.

(b) The department shall coordinate its licensing and certification activities with the commission.

(c) The department and the commission shall sign a memorandum of agreement to implement this section. The memorandum must provide that if all parties to the memorandum do not agree in the development, interpretation, and implementation of the memorandum, any area of dispute is to be resolved by the board.

(d) Except as specifically provided by this section, this section does not limit the department in performing any duties and inspections authorized by this chapter or under any contract relating to the medical assistance program under Chapter 32, Human Resources Code, and Titles XVIII and XIX of the Social Security Act

(42 U.S.C. Sections 1395 et seq. and 1396 et seq.), including authority to take appropriate action relating to an institution, such as closing the institution.

(e) This section does not require a nursing home to obtain accreditation from the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.57(a), eff. Sept. 1, 2003.

Sec. 242.048. LICENSING SURVEYS. The department shall provide a team to conduct surveys to validate findings of licensing surveys. The purpose of validation surveys 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 1991, 72nd Leg., ch. 14, Sec. 90, eff. Sept. 1, 1991.

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 Chapter 552, Government Code, 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 Chapter 552, Government Code. 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 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 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).

Added by Acts 1993, 73rd Leg., ch. 815, Sec. 2, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(88), eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1420, Sec. 10.0011, eff. Sept. 1, 2001.

Sec. 242.051. NOTIFICATION OF AWARD OF EXEMPLARY DAMAGES.

(a) If exemplary damages are awarded under Chapter 41, Civil Practice and Remedies Code, against an institution or an officer, employee, or agent of an institution, the court shall notify the department.

(b) If the department receives notice under Subsection (a), the department shall maintain the information contained in the notice in the records of the department relating to the history of the institution.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 2.01, eff. June 15, 2001.

Sec. 242.052. DRUG TESTING OF EMPLOYEES. (a) An institution may establish a drug testing policy for employees of the institution. An institution that establishes a drug testing policy under this subsection may adopt the model drug testing policy adopted by the board or may use another drug testing policy.

(b) The board by rule shall adopt a model drug testing policy for use by institutions. The model drug testing policy must be designed to ensure the safety of residents through appropriate drug testing and to protect the rights of employees. The model drug testing policy must:

(1) require at least one scheduled drug test each year for each employee of an institution that has direct contact with a resident in the institution; and

(2) authorize random, unannounced drug testing for employees described by Subdivision (1).

Added by Acts 2001, 77th Leg., ch. 1025, Sec. 2, eff. Sept. 1, 2001.
Renumbered from Health & Safety Code Sec. 242.050 by Acts 2003, 78th

SUBCHAPTER C. GENERAL ENFORCEMENT

Sec. 242.061. 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, the license holder, or any other person described by Section 242.032(d) has:

(1) violated this chapter or a rule, standard, or order adopted or license issued under this chapter in either a repeated or substantial manner;

(2) committed any act described by Sections 242.066(a)(2)-(6); or

(3) failed to comply with Section 242.074.

(b) The status of a person as 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.

(c) The department may deny, suspend, or revoke the license of an institution if any person described by Section 242.032(d) has been excluded from holding a license under Section 242.0615.

(d) A court having jurisdiction of a judicial review of the matter may not order arbitration, whether on motion of any party or on the court's own motion, to resolve a dispute involving the denial, suspension, or revocation of a license under this section or the conduct with respect to which the denial, suspension, or revocation of the license is sought.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.12, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 452, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1094, Sec. 1, eff. Sept. 1, 1999.

Sec. 242.0615. EXCLUSION. (a) The department, after providing notice and opportunity for a hearing, may exclude a person from eligibility for a license under this chapter if the

person or any person described by Section 242.032(d) has substantially failed to comply with this chapter and the rules adopted under this chapter. The authority granted by this subsection is in addition to the authority to deny issuance of a license under Section 242.061(a).

(b) Exclusion of a person under this section must extend for a period of at least two years, but may not exceed a period of 10 years.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.13, eff. Sept. 1, 1997.

Sec. 242.062. EMERGENCY SUSPENSION OR CLOSING ORDER.

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

(1) the department finds the institution 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 institution's suspension or closing to ensure their health and safety.

(c) An order suspending a license or closing a part of an institution 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 an institution is valid for 10 days after the effective date of the order.

(e) A court having jurisdiction of a judicial review of the matter may not order arbitration, whether on motion of any party or on the court's own motion, to resolve a dispute involving an emergency suspension or closing order under this section or the conduct with respect to which the emergency suspension or closing order is sought.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1094, Sec. 2, eff. Sept. 1, 1999.

Sec. 242.063. INJUNCTION. (a) The department may petition a district court for:

(1) a temporary restraining order to restrain a person from a violation or threatened violation of the standards imposed under this chapter or any other law affecting residents if the department reasonably believes that the violation or threatened violation creates an immediate threat to the health and safety of a resident; and

(2) an injunction to restrain a person from a violation or threatened violation of the standards imposed under this chapter or by any other law affecting residents if the department reasonably believes that the violation or threatened violation creates a threat to the health and safety of a resident.

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

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

(2) restrain or prevent the establishment, conduct, management, or operation of an institution 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 or threatening to violate the standards or licensing requirements prescribed by this chapter.

(c) The attorney general, on request by the department, shall institute and conduct in the name of the state a suit authorized by this section or Subchapter D.

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

(e) Repealed by Acts 2003, 78th Leg., ch. 198, Sec. 2.58(b). Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.14, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 198, Sec. 2.58(a), (b), eff. Sept. 1, 2003.

Sec. 242.064. LICENSE REQUIREMENT; CRIMINAL PENALTY.

(a) A person commits an offense if the person violates Section 242.031.

(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.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.065. CIVIL PENALTY. (a) A person who violates or causes a violation of this chapter or a rule adopted under this chapter is liable for a civil penalty of not less than \$1,000 or more than \$20,000 for each act of violation if the department determines the violation threatens the health and safety of a resident.

(b) In determining the amount of a penalty to be awarded under this section, the trier of fact shall consider:

- (1) the seriousness of the violation;
- (2) the history of violations committed by the person or the person's affiliate, employee, or controlling person;
- (3) the amount necessary to deter future violations;
- (4) the efforts made to correct the violation;
- (5) any misrepresentation made to the department or to another person regarding:
 - (A) the quality of services rendered or to be rendered to residents;
 - (B) the compliance history of the institution or any institutions owned or controlled by an owner or controlling person of the institution; or
 - (C) the identity of an owner or controlling person of the institution;
- (6) the culpability of the individual who committed the violation; and
- (7) any other matter that should, as a matter of justice or equity, be considered.

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

(d) Any party to a suit under this section may request a jury.

(e) If a person who is liable under this section fails to pay any amount the person is obligated to pay under this section, the state may seek satisfaction from any owner, other controlling person, or affiliate of the person found liable. The owner, other controlling person, or affiliate may be found liable in the same suit or in another suit on a showing by the state that the amount to be paid has not been paid or otherwise legally discharged. The department by rule may establish a method for satisfying an obligation imposed under this section from an insurance policy, letter of credit, or other contingency fund.

(f) On request by the department, the attorney general may institute an action in a district court to collect a civil penalty under this section.

(g) A payment made to satisfy an obligation under this section is not an allowable cost for reimbursement under the state Medicaid program.

(h) A civil penalty awarded under this section constitutes a fine, penalty, or forfeiture payable to and for the benefit of a government unit and is not compensation for actual pecuniary loss.

(i) In this section, "affiliate" means:

(1) with respect to a partnership other than a limited partnership, each partner of the partnership;

(2) with respect to a corporation:

(A) an officer;

(B) a director;

(C) a stockholder who owns, holds, or has the power to vote at least 10 percent of any class of securities issued by the corporation, regardless of whether the power is of record or beneficial; and

(D) a controlling individual;

(3) with respect to an individual:

(A) each partnership and each partner in the partnership in which the individual or any other affiliate of the individual is a partner; and

(B) each corporation or other business entity in

which the individual or another affiliate of the individual is:

- (i) an officer;
- (ii) a director;
- (iii) a stockholder who owns, holds, or has the power to vote at least 10 percent of any class of securities issued by the corporation, regardless of whether the power is of record or beneficial; and

- (iv) a controlling individual;

(4) with respect to a limited partnership:

- (A) a general partner; and

- (B) a limited partner who is a controlling individual;

(5) with respect to a limited liability company:

- (A) an owner who is a manager as described by the Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes); and

- (B) each owner who is a controlling individual;

and

(6) with respect to any other business entity, a controlling individual.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.15, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 13, Sec. 1, eff. May 3, 1999; Acts 2003, 78th Leg., ch. 198, Sec. 2.59, eff. Sept. 1, 2003.

Sec. 242.066. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty against a person who:

- (1) violates this chapter or a rule, standard, or order adopted or license issued under this chapter;

- (2) makes a false statement, that the person knows or should know is false, of a material fact:

- (A) on an application for issuance or renewal of a license or in an attachment to the application; or

- (B) with respect to a matter under investigation by the department;

- (3) refuses to allow a representative of the department to inspect:

(A) a book, record, or file required to be maintained by an institution; or

(B) any portion of the premises of an institution;

(4) wilfully interferes with the work of a representative of the department or the enforcement of this chapter;

(5) wilfully interferes with a representative of the department preserving evidence of a violation of this chapter or a rule, standard, or order adopted or license issued under this chapter;

(6) fails to pay a penalty assessed by the department under this chapter not later than the 10th day after the date the assessment of the penalty becomes final; or

(7) fails to notify the department of a change of ownership before the effective date of the change of ownership.

(b) Except as provided by Subsection (f) and Section 242.0665(c), the penalty may not exceed \$10,000 a day for each violation.

(c) Each day of a continuing violation constitutes a separate violation.

(d) The board shall establish gradations of penalties in accordance with the relative seriousness of the violation.

(e) In determining the amount of a penalty, the department shall consider any matter that justice may require, including:

(1) the gradations of penalties established under Subsection (d);

(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited act and the hazard or potential hazard created by the act to the health or safety of the public;

(3) the history of previous violations;

(4) deterrence of future violations; and

(5) efforts to correct the violation.

(f) The penalty for a violation of Section 242.072(c) or a right of a resident adopted under Subchapter L may not exceed \$1,000 a day for each violation. This subsection does not apply to

conduct that violates both Subchapter K or a standard adopted under Subchapter K and a right of a resident adopted under Subchapter L.

(g) The persons against whom an administrative penalty may be assessed under Subsection (a) include:

- (1) an applicant for a license under this chapter;
- (2) a license holder;
- (3) a partner, officer, director, or managing employee of a license holder or applicant; and
- (4) a person who controls an institution.

(h) A penalty assessed under Subsection (a)(6) is in addition to the penalty previously assessed and not timely paid.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.16, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 93, Sec. 2, eff. May 17, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809, Sec. 12, eff. September 1, 2007.

Sec. 242.0663. VIOLATION OF LAW RELATING TO ADVANCE DIRECTIVES. (a) The department shall assess an administrative penalty under this subchapter against an institution that violates Section 166.004.

(b) Notwithstanding Sections 242.066(b) and (c), a penalty assessed in accordance with this section shall be \$500 and a separate penalty may not be assessed for a separate day of a continuing violation.

(c) Section 242.0665 does not apply to a penalty assessed in accordance with this section.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 2.04, eff. Sept. 1, 1999.

Sec. 242.0665. RIGHT TO CORRECT. (a) The department may not collect an administrative penalty against an institution under this subchapter if, not later than the 45th day after the date the institution receives notice under Section 242.067(c), the institution corrects the violation.

(b) Subsection (a) does not apply:

(1) to a violation that the department determines:

(A) results in serious harm to or death of a resident;

(B) constitutes a serious threat to the health or safety of a resident; or

(C) substantially limits the institution's capacity to provide care;

(2) to a violation described by Sections 242.066(a)(2)-(7);

(3) to a violation of Section 242.133 or 242.1335; or

(4) to a violation of a right of a resident adopted under Subchapter L.

(c) An institution that corrects a violation under Subsection (a) must maintain the correction. If the institution fails to maintain the correction until at least the first anniversary of the date the correction was made, the department may assess an administrative penalty under this subchapter for the subsequent violation. A penalty assessed under this subsection shall be equal to three times the amount of the penalty assessed but not collected under Subsection (a). The department is not required to provide the institution an opportunity to correct the subsequent violation under this section.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.17, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 93, Sec. 3, eff. May 17, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809, Sec. 13, eff. September 1, 2007.

Sec. 242.067. REPORT RECOMMENDING ADMINISTRATIVE PENALTY.

(a) The department may issue a preliminary report stating the facts on which it concludes that a violation of this chapter or a rule, standard, or order adopted or license issued under this chapter has occurred if it has:

(1) examined the possible violation and facts surrounding the possible violation; and

(2) concluded that a violation has occurred.

(b) The report may recommend a penalty under Section 242.069 and the amount of the penalty.

(c) The department shall give written notice of the report to the person charged with the violation not later than the 10th day after the date on which the report is issued. The notice must include:

- (1) a brief summary of the charges;
- (2) a statement of the amount of penalty recommended;
- (3) a statement of whether the violation is subject to correction under Section 242.0665 and, if the violation is subject to correction under that section, a statement of:

- (A) the date on which the institution must file with the department a plan of correction to be approved by the department; and

- (B) the date on which the plan of correction must be completed to avoid assessment of the penalty; and

- (4) a statement that the person charged has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(d) Not later than the 20th day after the date on which the notice under Subsection (c) is sent, the person charged may:

- (1) give to the department written consent to the department's report, including the recommended penalty;

- (2) make a written request for a hearing; or

- (3) if the violation is subject to correction under Section 242.0665, submit a plan of correction to the department for approval.

(e) If the violation is subject to correction under Section 242.0665, and the person reports to the department that the violation has been corrected, the department shall inspect the correction or take any other step necessary to confirm that the violation has been corrected and shall notify the person that:

- (1) the correction is satisfactory and that a penalty is not assessed; or

- (2) the correction is not satisfactory and that a penalty is recommended.

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

notice under Subsection (e)(2) is sent, the person charged may:

(1) give to the department written consent to the department's report, including the recommended penalty; or

(2) make a written request for a hearing.

(g) If the person charged with the violation consents to the administrative penalty recommended by the department, does not timely respond to a notice sent under Subsection (c) or (e), or fails to correct the violation to the department's satisfaction, the commissioner or the commissioner's designee shall assess the administrative penalty recommended by the department

(h) If the commissioner or the commissioner's designee assesses the recommended penalty, the department shall give written notice to the person charged of the decision and the person shall pay the penalty.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.087, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1159, Sec. 1.18, eff. Sept. 1, 1997.

Sec. 242.068. HEARINGS ON ADMINISTRATIVE PENALTIES.

(a) An administrative law judge shall order a hearing and give notice of the hearing if a person charged under Section 242.067(c) requests a hearing.

(b) The hearing shall be held before an administrative law judge.

(c) The administrative law judge shall make findings of fact and conclusions of law regarding the occurrence of a violation of this chapter or a rule or order adopted or license issued under this chapter.

(d) Based on the findings of fact and conclusions of law, the administrative law judge by order shall find:

(1) a violation has occurred and assess an administrative penalty; or

(2) a violation has not occurred.

(e) Proceedings under this section are subject to Chapter 2001, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 8.088, eff. Sept. 1,

1995; Acts 1997, 75th Leg., ch. 1159, Sec. 1.18, eff. Sept. 1, 1997.

Sec. 242.069. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; INTEREST; REFUND. (a) The commissioner shall give notice of the decision taken under Section 242.068(d) to the person charged. If the commissioner finds that a violation has occurred and has assessed an administrative penalty, the commissioner shall give written notice to the person charged of:

- (1) the findings;
- (2) the amount of the penalty;
- (3) the rate of interest payable with respect to the penalty and the date on which interest begins to accrue;
- (4) whether payment of the penalty or other action under Section 242.071 is required; and
- (5) the person's right to judicial review of the order.

(b) Not later than the 30th day after the date on which the commissioner's order is final, the person charged with the penalty shall:

- (1) pay the full amount of the penalty; or
- (2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, the failure to correct the violation to the department's satisfaction, or all of the above.

(c) Notwithstanding Subsection (b), the department may permit the person to pay the penalty in installments or may require the person to use the amount of the penalty under the department's supervision in accordance with Section 242.071.

(d) If the person does not pay the penalty within the 30-day period:

- (1) the penalty is subject to interest; and
- (2) the department may refer the matter to the attorney general for collection of the penalty and interest.

(e) If a penalty is reduced or not assessed, the commissioner shall:

- (1) remit to the person charged the appropriate amount of any penalty payment plus accrued interest; or

(2) execute a release of the supersedeas bond if one has been posted.

(f) Accrued interest on amounts remitted by the commissioner under Subsection (e)(1) shall be paid:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the date the penalty is paid under Subsection (b) and ending on the date the penalty is remitted.

(g) Interest under Subsection (d) shall be paid:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the date the notice of the commissioner's order is received by the person and ending on the date the penalty is paid.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.089, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 1049, Sec. 3, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1159, Sec. 1.18, eff. Sept. 1, 1997.

Sec. 242.0695. USE OF ADMINISTRATIVE PENALTY. Money from 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 2005, 79th Leg., Ch. 786, Sec. 2, eff. September 1, 2005.

Sec. 242.070. APPLICATION OF OTHER LAW. The department may not assess more than one monetary penalty under this chapter and Chapter 32, Human Resources Code, for a violation arising out of the same act or failure to act, except as provided by Section 242.0665(c). The department may assess the greater of a monetary penalty under this chapter or a monetary penalty under Chapter 32, Human Resources Code, for the same act or failure to act.

Added by Acts 1995, 74th Leg., ch. 1049, Sec. 4, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.18, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 198, Sec. 2.60(a), eff. Sept. 1,

2003.

Sec. 242.071. AMELIORATION OF VIOLATION. (a) In lieu of demanding payment of an administrative penalty assessed under Section 242.066, the commissioner may, in accordance with this section, allow the person to use, under the supervision of the department, any portion of the penalty to ameliorate the violation or to improve services, other than administrative services, in the institution 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 an institution resident.

(c) The department may not offer amelioration to a person if:

(1) the person has been charged with a violation which is subject to correction under Section 242.0665; or

(2) the department determines that the charged violation constitutes immediate jeopardy to the health and safety of an institution 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 242.068.

(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 242.068 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 institution that will improve services to or quality of care of residents of the institution;

(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 institution;

(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 242.067(d).

(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 immediate corrective action is necessary because the institution'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 institution.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.19, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 619, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1284, Sec. 8.01, eff. June 15, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 10.002, eff. Sept. 1, 2003.

Sec. 242.072. OTHER REMEDIES. (a) If the commissioner finds that an institution has committed an act for which a civil penalty may be imposed under Section 242.065, the commissioner may, as appropriate under the circumstances, order the institution to immediately suspend admissions.

(b) A suspension of admissions ordered under Subsection (a) is effective on the date a representative of the institution receives notice of the order and of the manner in which the order may be appealed. The department must provide an opportunity for a hearing with respect to an appeal of the order not later than the 14th day after the date the suspension becomes effective.

(c) During the period that an institution is ordered to suspend admissions, the institution shall post a notice of the suspension on all doors providing ingress to and egress from the institution. The notice shall be posted in the form required by the department.

(d) A person commits an offense if the person knowingly:

- (1) violates Subsection (c); or
- (2) removes a notice posted under Subsection (c) before the facility is allowed to admit residents.

(e) An offense under Subsection (d) is a Class C misdemeanor.

(f) A court having jurisdiction of a judicial review of the matter may not order arbitration, whether on motion of any party or on the court's own motion, to resolve a dispute involving an order suspending admissions under this section or the conduct with respect to which the order suspending admissions is sought.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.19, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1094, Sec. 3, eff. Sept. 1, 1999.

Sec. 242.073. LEGAL ACTION BY THE ATTORNEY GENERAL.

(a) The department and the attorney general shall work in close cooperation throughout any legal proceedings requested by the department.

(b) The commissioner must approve any settlement agreement

to a suit brought under this chapter or any other law relating to the health and safety of residents in institutions.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.19, eff. Sept. 1, 1997.

Sec. 242.074. NOTIFICATION OF CHANGE IN FINANCIAL CONDITION. (a) An institution shall notify the department of a significant change in the institution's financial position, cash flow, or results of operation that could adversely affect the institution's delivery of essential services, including nursing services, dietary services, and utilities, to residents of the institution.

(b) The department may verify the financial condition of an institution in order to identify any risk to the institution's ability to deliver essential services.

(c) A person that knowingly files false information under this section may be prosecuted under the Penal Code.

(d) The department shall adopt rules to implement this section. The rules shall include the conditions that constitute a significant change in an institution's financial condition that are required to be reported under Subsection (a).

(e) The information obtained by the department under this section is confidential and is not subject to disclosure under Chapter 552, Government Code. The department may release the information to:

- (1) the institution; or
- (2) a person other than the institution if the institution consents in writing to the disclosure.

(f) A person who knowingly discloses information in violation of Subsection (e) commits an offense. An offense under this subsection is a Class A misdemeanor.

(g) The provisions in Subsection (e) relating to the confidentiality of records do not apply to:

- (1) an institution whose license has been revoked or suspended; or
- (2) the use of information in an administrative proceeding initiated by the department or in a judicial proceeding.

SUBCHAPTER D. TRUSTEES FOR NURSING OR CONVALESCENT HOMES

Sec. 242.091. FINDINGS AND PURPOSE. (a) The legislature finds that the closing of a nursing or convalescent home for violations of laws and rules may:

(1) in certain circumstances, have an adverse effect on both the home's residents and their families; and

(2) in some cases, result in a lack of readily available funds 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 home 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.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.092. DEFINITION. In this subchapter, "home" means a nursing or convalescent home.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.093. APPOINTMENT BY AGREEMENT. (a) A person holding a controlling interest in a home may, at any time, request the department to assume the operation of the home 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 home under conditions considered appropriate by both parties if the department considers the appointment desirable.

(c) An agreement under this section must:

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

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

(d) The agreement terminates at the time specified by the

parties or when either party notifies the other in writing that the party wishes to terminate the appointment agreement.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.094. INVOLUNTARY APPOINTMENT. (a) The department may request the attorney general to bring an action in the name and on behalf of the state for the appointment of a trustee to operate a home if:

(1) the home is operating without a license;

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

(3) license suspension or revocation procedures against the home 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 home is closing and arrangements for relocation of the residents to other licensed institutions have not been made before closure.

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

(c) After a hearing, a court shall appoint a trustee to take charge of a home 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 institutional medical administration.

Text of subsection (e) as added by Acts 1993, 73rd Leg., ch. 583,
Sec. 2

(e) Venue for an action brought under this section is in Travis County.

Text of subsection (e) as added by Acts 1993, 73rd Leg., ch. 815,

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

(f) A court having jurisdiction of a judicial review of the matter may not order arbitration, whether on motion of any party or on the court's own motion, to resolve the legal issues of a dispute involving the:

(1) appointment of a trustee under this section; or

(2) conduct with respect to which the appointment of trustee is sought.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 583, Sec. 2, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 815, Sec. 3, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 1094, Sec. 4, eff. Sept. 1, 1999.

Sec. 242.0945. QUALIFICATIONS OF TRUSTEES. (a) A court may appoint a person to serve as a trustee under this subchapter only if the proposed trustee can demonstrate to the court that the proposed trustee will be:

(1) present at the home as required to perform the duties of a trustee; and

(2) available on call to appropriate staff at the home, the department, and the court as necessary during the time the trustee is not present at the home.

(b) A trustee shall report to the court in the event that the trustee is unable to satisfy the requirements of Subsection (a)(1) or (2).

(c) On the motion of any party or on the court's own motion, the court may replace a trustee who is unable to satisfy the requirements of Subsection (a)(1) or (2).

(d) A trustee's charges must separately identify personal hours worked for which compensation is claimed. A trustee's claim for personal compensation may include only compensation for activities related to the trusteeship and performed in or on behalf of the home.

Added by Acts 1999, 76th Leg., ch. 439, Sec. 1, eff. Sept. 1, 1999.

Sec. 242.0946. NEPOTISM PROHIBITION. A person serving as a trustee under this subchapter may not employ or otherwise appoint an individual to work with the trustee in the home who is related to the trustee within the third degree of consanguinity or affinity, as determined under Chapter 573, Government Code.
Added by Acts 1999, 76th Leg., ch. 439, Sec. 1, eff. Sept. 1, 1999.

Sec. 242.095. FEE; RELEASE OF FUNDS. (a) A trustee appointed under this subchapter is entitled to a reasonable fee as determined by the court. In determining the trustee's personal compensation for nursing facility administrator activities, the court shall consider reasonable a rate that is equal to 150 percent of the maximum allowable rate for an owner-administrator under the state's Medicaid reimbursement rules. The court shall determine the reasonableness of the trustee's personal compensation for other duties. On the motion of any party, the court shall review the reasonableness of the trustee's fees. The court shall reduce the amount if the court determines that the fees are not reasonable.

(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 the Texas Department of Human Services at the recommendation of the department.

(c) Withheld payments may include payments withheld by a governmental agency or other entity during the appointment of the trustee, such as payments:

- (1) for Medicaid, Medicare, or insurance;
- (2) by another third party; or
- (3) for medical expenses borne by the resident.

(d) If the department appoints a trustee under this subchapter for a veterans home as defined by Section 164.002, Natural Resources Code, the Veterans' Land Board is responsible for the trustee's fee under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 439, Sec. 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 166, Sec. 1, eff. May 27, 2003.

Sec. 242.096. NURSING AND CONVALESCENT HOME TRUST FUND AND EMERGENCY ASSISTANCE FUNDS. (a) The nursing and convalescent home trust fund is with the comptroller and shall be made available to the department for expenditures without legislative appropriation to make emergency assistance funds available to a home.

(b) A trustee of a home may use the emergency assistance funds only to alleviate an immediate threat to the health or safety of the residents. The use may include payments for:

- (1) food;
- (2) medication;
- (3) sanitation services;
- (4) minor repairs;
- (5) supplies necessary for personal hygiene; or
- (6) services necessary for the personal care, health, and safety of the residents.

(c) A court may order the department to disburse emergency assistance funds to a home if the court finds that:

- (1) the home has inadequate funds accessible to the trustee for the operation of the home;
- (2) there exists an emergency that presents an immediate threat to the health and safety of the residents; and
- (3) it is in the best interests of the health and safety of the residents that funds are immediately available.

(d) The department shall disburse money from the nursing and convalescent home trust fund as ordered by the court in accordance with board rules.

(e) Any unencumbered amount in the nursing and convalescent home trust fund in excess of \$10,000,000 at the end of each fiscal year shall be transferred to the credit of the general revenue fund and may be appropriated only to the department for its use in administering and enforcing this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.20, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 10.04, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1019, Sec. 1, eff. Aug. 30, 1999.

Sec. 242.0965. ASSISTED LIVING FACILITY TRUST FUND AND EMERGENCY ASSISTANCE FUNDS. (a) The assisted living facility trust fund is a trust fund with the comptroller and shall be made available to the department for expenditures without legislative appropriation to make emergency assistance funds available to an assisted living facility.

(b) A trustee of an assisted living facility may use the emergency assistance funds only to alleviate an immediate threat to the health or safety of the residents. The use may include payments for:

- (1) food;
- (2) medication;
- (3) sanitation services;
- (4) minor repairs;
- (5) supplies necessary for personal hygiene; or
- (6) services necessary for the personal care, health, and safety of the residents.

(c) A court may order the department to disburse emergency assistance funds to an assisted living facility if the court finds that:

- (1) the assisted living facility has inadequate funds accessible to the trustee for the operation of the assisted living facility;
- (2) an emergency exists that presents an immediate threat to the health and safety of the residents; and
- (3) it is in the best interests of the health and safety of the residents that funds are immediately available.

(d) The department shall disburse money from the assisted living facility trust fund as ordered by the court in accordance with board rules.

(e) Any unencumbered amount in the assisted living facility trust fund in excess of \$500,000 at the end of each fiscal year shall be transferred to the credit of the general revenue fund and may be appropriated only to the department for its use in administering and enforcing Chapter 247.

Added by Acts 2001, 77th Leg., ch. 723, Sec. 1, eff. June 13, 2001;

Acts 2001, 77th Leg., ch. 1248, Sec. 15, eff. Sept. 1, 2001.

Sec. 242.097. ADDITIONAL LICENSE FEE--NURSING AND CONVALESCENT HOMES. (a) In addition to the license fee provided by Section 242.034, the department shall adopt an annual fee to be charged and collected if the amount of the nursing and convalescent home trust fund is less than \$10,000,000. The fee shall be deposited to the credit of the nursing and convalescent home trust fund created by this subchapter.

(b) The department may charge and collect a fee under this section more than once each year only if necessary to ensure that the amount in the nursing and convalescent home trust fund is sufficient to make the disbursements required under Section 242.096. If the department makes a second or subsequent assessment under this subsection in any year, the department shall notify the governor and the members of the Legislative Budget Board.

(c) The department shall set the fee for each nursing and convalescent home at \$1 for each licensed unit of capacity or bed space in that home or in an amount necessary to provide not more than \$10,000,000 in the fund. The total fees assessed in a year may not exceed \$20 for each licensed unit of capacity or bed space in a home.

(d) This section does not apply to a veterans home as defined by Section 164.002, Natural Resources Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.21, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1019, Sec. 2, eff. Aug. 30, 1999; Acts 2001, 77th Leg., ch. 723, Sec. 2, eff. June 13, 2001; Acts 2001, 77th Leg., ch; 1248, Sec. 16, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 166, Sec. 2, eff. May 27, 2003.

Sec. 242.0975. ADDITIONAL LICENSE FEE--ASSISTED LIVING FACILITIES. (a) In addition to the license fee provided by Section 247.024, the department shall adopt an annual fee to be charged and collected if the amount of the assisted living facility trust fund is less than \$500,000. The fee shall be deposited to the credit of the assisted living facility trust fund created by this

subchapter.

(b) The department may charge and collect a fee under this section more than once each year only if necessary to ensure that the amount in the assisted living facility trust fund is sufficient to make the disbursements required under Section 242.0965. If the department makes a second or subsequent assessment under this subsection in any year, the department shall notify the governor and the Legislative Budget Board.

(c) The department shall set the fee on the basis of the number of beds in assisted living facilities required to pay the fee and in an amount necessary to provide not more than \$500,000 in the assisted living facility trust fund.

Added by Acts 2001, 77th Leg., ch. 723, Sec. 1, eff. June 13, 2001; Acts 2001, 77th Leg., ch. 1248, Sec. 15, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10.003, eff. Sept. 1, 2003.

Sec. 242.098. REIMBURSEMENT. (a) A home that receives emergency assistance funds 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 funds were disbursed to the home. The rate of interest is the rate determined under Section 304.003, Finance Code, to be applicable to judgments rendered during the month in which the money was disbursed to the home.

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

(d) The amount that remains unreimbursed on the expiration of one year after the date on which the funds were received is delinquent and the Texas Department of Human Services may determine that the home 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 the funds due under this section at the request of the department. Venue for an action brought under this section is in

Travis County.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1396, Sec. 35, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 7.64, eff. Sept. 1, 1999.

Sec. 242.099. APPLICABILITY OF OTHER LAW. Subtitle D, Title 10, Government Code does not apply to any payments made by a trustee under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 17.19(13), eff. Sept. 1, 1997.

Sec. 242.100. NOTIFICATION OF CLOSING. (a) A home that is closing temporarily or permanently, or 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 closing.

(b) If the closing of a home is ordered by the department or is in any other way involuntary, the home shall make the notification, orally or in writing, immediately on receiving notice of the closing.

(c) If the closing of a home is voluntary, the home shall make the notification not later than one week after the date on which the decision to close is made.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.101. CRIMINAL PENALTY. (a) A home commits an offense if the home fails or refuses to comply with Section 242.100.

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

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.102. INELIGIBILITY FOR LICENSE. (a) A license holder or controlling person who operates a home for which a trustee is appointed under this subchapter and with respect to which emergency assistance funds, other than funds used to pay the expenses of the trustee, are used under this subchapter is subject

to exclusion from eligibility for:

(1) issuance of an original license for a home for which the person has not previously held a license; or

(2) renewal of the license for the home for which the trustee is appointed.

(b) Exclusion under this section is governed by Section 242.0615.

Added by Acts 1999, 76th Leg., ch. 439, Sec. 3, eff. Sept. 1, 1999.

SUBCHAPTER E. REPORTS OF ABUSE AND NEGLECT

Sec. 242.121. 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.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.122. REPORTING OF ABUSE AND NEGLECT. (a) A person, including an owner or employee of an institution, 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 in accordance with this subchapter.

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

(c) A person shall make an oral report immediately on learning of the 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.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.123. 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.

(c) Except for an anonymous report under Section 242.124, a report of abuse or neglect under Section 242.122 or of other conduct or conditions under Section 242.1225 should also include the address or phone number of the person making the report so that an investigator can contact the person for any necessary additional information. The phone number and address as well as the name of the person making the report must be deleted from any copy of any type of report that is released to the public, to the institution, or to an owner or agent of the institution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 261, Sec. 1, eff. May 28, 1999.

Sec. 242.124. 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) An anonymous report about a specific individual that accuses the individual of abuse or neglect need not be investigated.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.125. PROCESSING OF REPORTS. (a) A report of abuse or neglect shall be made to the department or a local or state law enforcement agency. A report made by an owner or employee of an institution relating to abuse or neglect or another complaint described by Section 242.126(c)(1) shall be made to the department and to the law enforcement agency described by Section 242.135(a).

(b) Except as provided by Section 242.135, 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.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 1210, Sec. 1, eff. Sept. 1, 2003.

Sec. 242.126. INVESTIGATION AND REPORT OF DEPARTMENT OR DESIGNATED AGENCY. (a) The department or the designated agency shall make a thorough investigation after receiving an oral or written report of abuse or neglect under Section 242.122 or another complaint alleging abuse or neglect.

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

(c) The agency shall begin the investigation:

(1) within 24 hours of receipt of the report or other allegation, if the report of abuse or neglect or other complaint alleges that:

(A) a resident's health or safety is in imminent danger;

(B) a resident has recently died because of conduct alleged in the report of abuse or neglect or other complaint;

(C) a resident has been hospitalized or been treated in an emergency room because of conduct alleged in the report of abuse or neglect or other complaint;

(D) a resident has been a victim of any act or attempted act described by Section 21.02, 21.11, 22.011, or 22.021, Penal Code; or

(E) a resident has suffered bodily injury, as that term is defined by Section 1.07, Penal Code, because of conduct alleged in the report of abuse or neglect or other complaint; or

(2) before the end of the next working day after the date of receipt of the report of abuse or neglect or other complaint, if the report or complaint alleges the existence of circumstances that could result in abuse or neglect and that could place a resident's health or safety in imminent danger.

(d) The department shall adopt rules governing the conduct of investigations, including procedures to ensure that the complainant and the resident, the resident's next of kin, and any person designated to receive information concerning the resident receive periodic information regarding the investigation.

(e) In investigating the report of abuse or neglect or other complaint, the investigator for the investigating agency shall:

(1) make an unannounced visit to the institution to determine the nature and cause of the alleged abuse or neglect of the resident;

(2) interview each available witness, including the resident that suffered the alleged abuse or neglect if the resident is able to communicate or another resident or other witness identified by any source as having personal knowledge relevant to the report of abuse or neglect or other complaint;

(3) personally inspect any physical circumstance that is relevant and material to the report of abuse or neglect or other complaint and that may be objectively observed;

(4) make a photographic record of any injury to a resident, subject to Subsection (n); and

(5) write an investigation report that includes:

(A) the investigator's personal observations;

(B) a review of relevant documents and records;

(C) a summary of each witness statement, including the statement of the resident that suffered the alleged abuse or neglect and any other resident interviewed in the investigation; and

(D) a statement of the factual basis for the findings for each incident or problem alleged in the report or other allegation.

(f) An investigator for an investigating agency shall conduct an interview under Subsection (e)(2) in private unless the witness expressly requests that the interview not be private.

(g) Not later than the 30th day after the date the investigation is complete, the investigator shall prepare the written report required by Subsection (e). The department shall make the investigation report available to the public on request after the date the department's letter of determination is complete. The department shall delete from any copy made available to the public:

(1) the name of:

(A) any resident, unless the department receives written authorization from a resident or the resident's legal representative requesting the resident's name be left in the

report;

(B) the person making the report of abuse or neglect or other complaint; and

(C) an individual interviewed in the investigation; and

(2) photographs of any injury to the resident.

(h) 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 institution environment; and

(6) any other information required by the department.

(i) 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.

(j) 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.

(k) The department or the designated agency shall make a complete final written report of the investigation and submit the report and its recommendations to the district attorney and, if a law enforcement agency has not investigated the report of abuse or neglect or other complaint, to the appropriate law enforcement agency.

(l) Within 24 hours of receipt of a report of abuse or neglect or other complaint described by Subsection (c)(1), the department or designated agency shall report the report or

complaint to the law enforcement agency described by Section 242.135(a). The department or designated agency shall cooperate with that law enforcement agency in the investigation of the report or complaint as described by Section 242.135.

(m) The inability or unwillingness of a local law enforcement agency to conduct a joint investigation under Section 242.135 does not constitute grounds to prevent or prohibit the department from performing its duties under this chapter. The department shall document any instance in which a law enforcement agency is unable or unwilling to conduct a joint investigation under Section 242.135.

(n) If the department determines that, before a photographic record of an injury to a resident may be made under Subsection (e), consent is required under state or federal law, the investigator:

(1) shall seek to obtain any required consent; and

(2) may not make the photographic record unless the consent is obtained.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 815, Sec. 4, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 8.090, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1159, Sec. 1.23, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1210, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 593, Sec. 3.43, eff. September 1, 2007.

Sec. 242.127. CONFIDENTIALITY. A report, record, or working paper used or developed in an investigation made under this subchapter and the name, address, and phone number of any person making a report under this subchapter are confidential and may be disclosed only for purposes consistent with the rules adopted by the board or the designated agency. The report, record, or working paper and the name, address, and phone number of the person making the report shall be disclosed to a law enforcement agency as necessary to permit the law enforcement agency to investigate a report of abuse or neglect or other complaint in accordance with

Section 242.135.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.24, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 261, Sec. 2, eff. May 28, 1999; Acts 2003, 78th Leg., ch. 1210, Sec. 3, eff. Sept. 1, 2003.

Sec. 242.128. IMMUNITY. (a) A person who reports 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.

(c) This section does not apply to a person who reports in bad faith or with malice.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.129. 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.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

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

(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.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.131. 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 242.122.

(b) An offense under this section is a Class A misdemeanor.
Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.132. 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.
Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.133. RETALIATION AGAINST EMPLOYEES PROHIBITED.

(a) In this section, "employee" means a person who is an employee
of an institution or any other person who provides services for an
institution for compensation, including a contract laborer for the
institution.

(b) An employee has a cause of action against an
institution, or the owner or another employee of the institution,
that suspends or terminates the employment of the person or
otherwise disciplines or discriminates or retaliates against the
employee for reporting to the employee's supervisor, an
administrator of the institution, 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 for initiating
or cooperating in any investigation or proceeding of a governmental
entity relating to care, services, or conditions at the
institution.

(c) The petitioner 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 institution 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 institution shall require each employee of the institution, as a condition of employment with the institution, 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 242.122. If an institution does not require an employee to read and sign the statement, the periods under 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.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1991, 72nd Leg., ch. 14, Sec. 91, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1159, Sec. 1.25, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 324, Sec. 1, eff. Sept. 1, 1999.

Sec. 242.1335. RETALIATION AGAINST VOLUNTEERS, RESIDENTS, OR FAMILY MEMBERS OR GUARDIANS OF RESIDENTS. (a) An institution 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 care, services, or conditions at the institution.

(b) A volunteer, a resident, or a family member or guardian of a resident who is retaliated or discriminated against 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 institution is located or in a district court of Travis County.

Added by Acts 1995, 74th Leg., ch. 864, Sec. 1, eff. June 16, 1995.

Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.26, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 324, Sec. 2, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 192, Sec. 2, eff. Sept. 1, 2001.

Sec. 242.134. REPORTS RELATING TO RESIDENT DEATHS. (a) An institution licensed under this chapter shall submit a report to the department concerning deaths of residents of the institution. The report must be submitted within 10 working days after the last day of each month in which a resident of the institution dies. The report must also include the death of a resident occurring within 24 hours after the resident is transferred from the institution to a hospital.

(b) The institution 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 institution in which the deceased resided.

(d) Except as provided by Subsection (e), 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 the elderly and in specific institutions. Information developed under this subsection is public.

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

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 92, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., ch. 437, Sec. 1, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(88), eff. Sept. 1,

1995.

Sec. 242.135. DUTIES OF LAW ENFORCEMENT; JOINT INVESTIGATION. (a) A department or designated agency shall investigate a report of abuse or neglect or other complaint described by Section 242.126(c)(1) jointly with:

(1) the municipal law enforcement agency, if the institution is located within the territorial boundaries of a municipality; or

(2) the sheriff's department of the county in which the institution is located, if the institution is not located within the territorial boundaries of a municipality.

(b) The law enforcement agency described by Subsection (a) shall acknowledge the report of abuse or neglect or other complaint and begin the joint investigation required by this section within 24 hours of receipt of the report or complaint. The law enforcement agency shall cooperate with the department or designated agency and report to the department or designated agency the results of the investigation.

(c) The requirement that the law enforcement agency and the department or designated agency conduct a joint investigation under this section does not require that a representative of each agency be physically present during all phases of the investigation or that each agency participate equally in each activity conducted in the course of the investigation.

Added by Acts 2003, 78th Leg., ch. 1210, Sec. 4, eff. Sept. 1, 2003.

SUBCHAPTER F. MEDICAL, NURSING, AND DENTAL SERVICES OTHER THAN
ADMINISTRATION OF MEDICATION

Sec. 242.151. PHYSICIAN SERVICES. (a) An institution shall have at least one medical director who is licensed as a physician in this state.

(b) The attending physician is responsible for a resident's assessment and comprehensive plan of care and shall review, revise, and sign orders relating to any medication or treatment in the plan of care. The responsibilities imposed on the attending physician by this subsection may be performed by an advanced practice nurse or

a physician assistant pursuant to protocols jointly developed with the attending physician.

(c) Each resident has the right to choose a personal attending physician.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.152. PHYSICIAN SERVICES FOR RESIDENTS YOUNGER THAN 18 YEARS OF AGE. (a) An institution shall use appropriate pediatric consultative services for a resident younger than 18 years of age, in accordance with the resident's assessment and comprehensive plan of care.

(b) A pediatrician or other physician with training or expertise in the clinical care of children with complex medical needs shall participate in all aspects of the resident's medical care.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.153. DIRECTOR OF NURSING SERVICES. An institution shall have a director of nursing services who shall be a registered nurse. The director of nursing services is responsible for:

(1) coordinating each resident's comprehensive plan of care; and

(2) ensuring that only personnel with an appropriate license or permit administer medication.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.154. NURSING SERVICES. (a) An institution shall provide the nursing care required to allow each resident to achieve and maintain the highest possible degree of function and independence medically possible.

(b) The institution shall maintain sufficient staff to provide nursing and related services:

(1) in accordance with each resident's plan of care; and

(2) to obtain and maintain the physical, mental, and psychosocial functions of each resident at the highest practicable level, as determined by the resident's assessment and plan of care. Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.155. PEDIATRIC NURSING SERVICES. An institution shall ensure that:

(1) nursing services for a resident younger than 18 years of age are provided by a staff member who has been instructed and has demonstrated competence in the care of children; and

(2) consultative pediatric nursing services are available to the staff if the institution has a resident younger than 18 years of age.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.156. REQUIRED MEDICAL EXAMINATION. (a) Except as required by federal law, the department shall require that each resident 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. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.157. DENTAL EXAMINATION. (a) The department shall require that each resident of an institution or the resident's custodian be asked at least once each year if the resident desires a dental examination and possible treatment at the resident's own expense.

(b) Each institution shall be encouraged to use all reasonable efforts to arrange for a dental examination for each resident who desires one.

(c) The institution is not liable for any costs relating to a dental examination under this section.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.158. IDENTIFICATION OF CERTAIN NURSING HOME RESIDENTS REQUIRING MENTAL HEALTH OR MENTAL RETARDATION SERVICES.

(a) Each resident of a nursing home who is considering making a transition to a community-based care setting shall be identified to determine the presence of a mental illness or mental retardation, regardless of whether the resident is receiving treatment or services for a mental illness or mental retardation.

(b) In identifying residents having a mental illness or mental retardation, the department shall use an identification process that is at least as effective as the mental health and mental retardation identification process established by federal law. The results of the identification process may not be used to prevent a resident from remaining in the nursing home unless the nursing home is unable to provide adequate care for the resident.

(c) The department shall compile and provide to the Texas Department of Mental Health and Mental Retardation information regarding each resident identified as having a mental illness or mental retardation before the resident makes a transition from the nursing home to a community-based care setting.

(d) The Texas Department of Mental Health and Mental Retardation shall use the information provided under Subsection (c) solely for the purposes of:

(1) determining the need for and funding levels of mental health and mental retardation services for residents making a transition from a nursing home to a community-based care setting;

(2) providing mental health or mental retardation services to an identified resident after the resident makes that transition; and

(3) referring an identified resident to a local mental health or mental retardation authority or private provider for additional mental health or mental retardation services.

(e) This section does not authorize the department to decide for a resident of a nursing home that the resident will make a transition from the nursing home to a community-based care setting.

Added by Acts 2001, 77th Leg., ch. 423, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER G. RESPITE CARE

Sec. 242.181. DEFINITIONS. In this subchapter:

(1) "Handicapped person" means a person whose physical or mental functioning is impaired to the extent that the person needs medical attention, counseling, physical therapy, therapeutic or corrective equipment, or another person's attendance and supervision.

(2) "Plan of care" means a written description of the medical care or the supervision and nonmedical care needed by a person during respite care.

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

(A) room and board; and

(B) care at the level ordinarily provided for permanent residents.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.182. RESPITE CARE. (a) An institution licensed under this chapter may provide respite care for an elderly or handicapped person according to a plan of care.

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

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.183. PLAN OF CARE. (a) The institution and the person arranging the care must agree on the plan of care and the plan must be filed at the institution before the institution 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 institution may keep an agreed plan of care for a person for not longer than six months from the date on which it is received. During that period, the institution may admit the person

as frequently as is needed and as accommodations are available.
Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.184. NOTIFICATION. An institution that offers respite care shall notify the department in writing that it offers respite care.
Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.185. INSPECTIONS. The department, at the time of an ordinary licensing inspection or at other times determined necessary by the department, shall inspect an institution'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.
Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.186. SUSPENSION. (a) The department may require an institution 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 institution cannot comply with those standards in the respite care it provides.

(b) The department may suspend the license of an institution that continues to provide respite care after receiving a written order from the department to cease.
Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER H. CARE FOR RESIDENTS WITH ALZHEIMER'S DISEASE AND RELATED DISORDERS

Sec. 242.201. SCOPE OF SUBCHAPTER. This subchapter applies only to an institution that advertises, markets, or otherwise promotes that the institution provides services to residents with Alzheimer's disease and related disorders.
Added by Acts 1995, 74th Leg., ch. 38, Sec. 1, eff. May 5, 1995.

Sec. 242.202. DISCLOSURE REQUIRED. (a) An institution

covered by this subchapter shall provide a disclosure statement disclosing the nature of its care or treatment of residents with Alzheimer's disease and related disorders to:

(1) an individual seeking placement as a resident with Alzheimer's disease or a related disorder;

(2) an individual attempting to place another individual as a resident with Alzheimer's disease or a related disorder; or

(3) a person seeking information about the institution's care or treatment of residents with Alzheimer's disease and related disorders.

(b) The disclosure statement must be displayed with the institution's license as it is posted under Section 242.042.

(c) The institution must file the disclosure statement with the department as part of the report filed under Section 242.033(d). The department shall verify contents of the disclosure statement as part of the license renewal process.

(d) The disclosure statement must contain the following categories of information:

(1) the institution's philosophy of care;

(2) the preadmission, admission, and discharge process;

(3) resident assessment, care planning, and implementation of the care plan;

(4) staffing patterns, such as resident-to-staff ratios, and staff training;

(5) the physical environment of the institution;

(6) resident activities;

(7) program costs;

(8) systems for evaluation of the institution's programs for residents;

(9) family involvement in resident care; and

(10) the toll-free telephone number maintained by the department for acceptance of complaints against the institution.

(e) The institution must update the disclosure statement as needed to reflect changes in the operation of the institution.

Added by Acts 1995, 74th Leg., ch. 38, Sec. 1, eff. May 5, 1995.

Sec. 242.203. VIOLATION. (a) An institution that violates this subchapter is subject to an administrative penalty under Subchapter C.

(b) The department may not revoke or suspend the license of an institution for a violation of this subchapter.

Added by Acts 1995, 74th Leg., ch. 38, Sec. 1, eff. May 5, 1995.

Sec. 242.204. RULES. The board shall adopt rules governing:

(1) the content of the disclosure statement required by this subchapter, consistent with the information categories required by Section 242.202(d); and

(2) the amount of an administrative penalty to be assessed for a violation of this subchapter.

Added by Acts 1995, 74th Leg., ch. 38, Sec. 1, eff. May 5, 1995.

SUBCHAPTER H-1. AUTOMATED MEDICAID PATIENT CARE AND REIMBURSEMENT SYSTEM

Sec. 242.221. AUTOMATED SYSTEM FOR MEDICAID PATIENT CARE AND REIMBURSEMENT. (a) The department shall acquire and develop an automated system for providing reimbursements to nursing facilities under the state Medicaid program, subject to the availability of funds appropriated for that purpose.

(b) The department shall select an automated system that will allow the addition of other components of the state Medicaid program, including components administered by other state agencies.

(c) The department and the Health and Human Services Commission shall work together to apply for all available federal funds to help pay for the automated system.

(d) To the extent possible, the department shall assist nursing facilities to make systems compatible with the automated system selected by the department.

(e) The department shall charge a fee to nursing facilities that do not receive their Medicaid reimbursements electronically. The department shall set the fee in an amount necessary to cover the

costs of manually processing and sending the reimbursements.

Added by Acts 1995, 74th Leg., ch. 189, Sec. 1, eff. Aug. 28, 1995.

Renumbered from Health and Safety Code Sec. 242.201 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(55), eff. Sept. 1, 1997; amended by Acts 1997, 75th Leg., ch. 530, Sec. 1, eff. Sept. 1, 1997.

Sec. 242.222. DATA USED BY SYSTEM. The automated patient care and reimbursement system must use a form designed by the United States Health Care Financing Administration for nursing facility use.

Added by Acts 1995, 74th Leg., ch. 189, Sec. 1, eff. Aug. 28, 1995.

Renumbered from Health and Safety Code Sec. 242.202 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(55), eff. Sept. 1, 1997; amended by Acts 1997, 75th Leg., ch. 530, Sec. 1, eff. Sept. 1, 1997.

Sec. 242.223. FREQUENCY OF DATA SUBMISSION. Nursing facilities must complete and electronically submit the designated form to the department at least quarterly for reimbursement.

Added by Acts 1997, 75th Leg., ch. 530, Sec. 1, eff. Sept. 1, 1997.

Sec. 242.224. ELECTRONIC CLAIMS FOR REIMBURSEMENT. The automated reimbursement system must be able to link the department electronically with nursing facilities making claims for reimbursement. When the system is operational, each nursing facility shall make claims electronically.

Added by Acts 1995, 74th Leg., ch. 189, Sec. 1, eff. Aug. 28, 1995.

Renumbered from Health and Safety Code Sec. 242.203 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(55), eff. Sept. 1, 1997; amended by Acts 1997, 75th Leg., ch. 530, Sec. 1, eff. Sept. 1, 1997.

Sec. 242.225. DATE OF REIMBURSEMENT. The department shall pay Medicaid nursing facility reimbursement claims that are made electronically not later than the 30th day after the date the claim is made.

Added by Acts 1995, 74th Leg., ch. 189, Sec. 1, eff. Aug. 28, 1995.

Renumbered from Health and Safety Code Sec. 242.204 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(55), eff. Sept. 1, 1997; amended by

Acts 1997, 75th Leg., ch. 530, Sec. 1, eff. Sept. 1, 1997.

Sec. 242.226. RULES. The department shall adopt rules and make policy changes as necessary to improve the efficiency of the reimbursement process and to maximize the automated reimbursement system's capabilities.

Added by Acts 1995, 74th Leg., ch. 189, Sec. 1, eff. Aug. 28, 1995. Renumbered from Health and Safety Code Sec. 242.205 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(55), eff. Sept. 1, 1997; amended by Acts 1997, 75th Leg., ch. 530, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER J. ARBITRATION OF CERTAIN DISPUTES

Sec. 242.251. SCOPE OF SUBCHAPTER. This subchapter applies to any dispute between an institution licensed under this chapter and the department relating to:

- (1) renewal of a license under Section 242.033;
- (2) suspension or revocation of a license under Section 242.061;
- (3) assessment of a civil penalty under Section 242.065;
- (4) assessment of a monetary penalty under Section 242.066; or
- (5) assessment of a penalty as described by Section 32.021(k), Human Resources Code.

Added by Acts 1995, 74th Leg., ch. 1049, Sec. 5, eff. Sept. 1, 1995.

Sec. 242.252. ELECTION OF ARBITRATION. (a) Except as provided by Subsection (d), an affected institution may elect binding arbitration of any dispute to which this subchapter applies. Arbitration under this subchapter is an alternative to a contested case hearing or to a judicial proceeding relating to the assessment of a civil penalty.

(b) An affected institution may elect arbitration under this subchapter by filing the election with the court in which the lawsuit is pending and sending notice of the election to the department and the office of the attorney general. The election must be filed not later than the 10th day after the date on which the

answer is due or the date on which the answer is filed, whichever is sooner. If a civil penalty is requested after the initial filing of a Section 242.094 lawsuit through the filing of an amended or supplemental pleading, an affected institution must elect arbitration not later than the 10th day after the date on which the amended or supplemental pleading is served on the affected institution or its counsel.

(c) The department may elect arbitration under this subchapter by filing the election with the court in which the lawsuit is pending and by notifying the institution of the election not later than the date that the institution may elect arbitration under Subsection (b).

(d) Arbitration may not be used to resolve a dispute related to an affected institution that has had an award levied against it in the previous five years.

(e) If arbitration is not permitted under this subchapter or the election of arbitration is not timely filed:

(1) the court will dismiss the arbitration election and retain jurisdiction of the lawsuit; and

(2) the State Office of Administrative Hearings shall dismiss the arbitration and has no jurisdiction over the lawsuit.

(f) An election to engage in arbitration under this subchapter is irrevocable and binding on the institution and the department.

Added by Acts 1995, 74th Leg., ch. 1049, Sec. 5, eff. Sept. 1, 1995.
Amended by Acts 1999, 76th Leg., ch. 1095, Sec. 1, eff. Sept. 1, 1999.

Sec. 242.253. ARBITRATION PROCEDURES. (a) The arbitration shall be conducted by an arbitrator.

(b) The arbitration and the appointment of the arbitrator shall be conducted in accordance with rules adopted by the chief administrative law judge of the State Office of Administrative Hearings. Before adopting rules under this subsection, the chief administrative law judge shall consult with the department and shall consider appropriate rules developed by any nationally recognized association that performs arbitration services.

(c) The party that elects arbitration shall pay the cost of the arbitration. The total fees and expenses paid for an arbitrator for a day may not exceed \$500.

(d) The State Office of Administrative Hearings may designate a nationally recognized association that performs arbitration services to conduct arbitrations under this subchapter and may, after consultation with the department, contract with that association for the arbitrations.

(e) On request by the department, the attorney general may represent the department in the arbitration.

Added by Acts 1995, 74th Leg., ch. 1049, Sec. 5, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.28, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 13, Sec. 2, eff. May 3, 1999.

Sec. 242.254. ARBITRATOR; QUALIFICATIONS. Each arbitrator must be on an approved list of a nationally recognized association that performs arbitration services or be otherwise qualified as provided in the rules adopted under Section 242.253(b).

Added by Acts 1995, 74th Leg., ch. 1049, Sec. 5, eff. Sept. 1, 1995.

Sec. 242.255. ARBITRATOR; SELECTION. The arbitrator shall be appointed in accordance with the rules adopted under Section 242.253(b).

Added by Acts 1995, 74th Leg., ch. 1049, Sec. 5, eff. Sept. 1, 1995.

Sec. 242.256. DUTIES OF ARBITRATOR. The arbitrator shall:

(1) protect the interests of the department and the institution;

(2) ensure that all relevant evidence has been disclosed to the arbitrator, department, and institution; and

(3) render an order consistent with this chapter and the rules adopted under this chapter.

Added by Acts 1995, 74th Leg., ch. 1049, Sec. 5, eff. Sept. 1, 1995.

Sec. 242.257. SCHEDULING OF ARBITRATION. (a) The arbitrator conducting the arbitration shall schedule arbitration

to be held not later than the 90th day after the date the arbitrator is selected and shall notify the department and the institution of the scheduled date.

(b) The arbitrator may grant a continuance of the arbitration at the request of the department or institution. The arbitrator may not unreasonably deny a request for a continuance.
Added by Acts 1995, 74th Leg., ch. 1049, Sec. 5, eff. Sept. 1, 1995.

Sec. 242.258. EXCHANGE AND FILING OF INFORMATION. Not later than the seventh day before the first day of arbitration, the department and the institution shall exchange and file with the arbitrator:

(1) all documentary evidence not previously exchanged and filed that is relevant to the dispute; and

(2) information relating to a proposed resolution of the dispute.

Added by Acts 1995, 74th Leg., ch. 1049, Sec. 5, eff. Sept. 1, 1995.

Sec. 242.259. ATTENDANCE REQUIRED. (a) The arbitrator may proceed in the absence of any party or representative of a party who, after notice of the proceeding, fails to be present or to obtain a postponement.

(b) An arbitrator may not make an order solely on the default of a party and shall require the party who is present to submit evidence, as required by the arbitrator, before making an award.

Added by Acts 1995, 74th Leg., ch. 1049, Sec. 5, eff. Sept. 1, 1995.

Sec. 242.260. TESTIMONY; RECORD. (a) The arbitrator may require witnesses to testify under oath and shall require testimony under oath if requested by the department or the institution.

(b) The department shall make an electronic recording of the proceeding.

(c) An official stenographic record of the proceeding is not required, but the department or the institution may make a stenographic record. The party that makes the stenographic record shall pay the expense of having the record made.

Added by Acts 1995, 74th Leg., ch. 1049, Sec. 5, eff. Sept. 1, 1995.

Sec. 242.261. EVIDENCE. (a) The department or the institution may offer evidence as they desire and shall produce additional evidence as the arbitrator considers necessary to understand and resolve the dispute.

(b) The arbitrator is the judge of the relevance and materiality of the evidence offered. Strict conformity to rules applicable to judicial proceedings is not required.

Added by Acts 1995, 74th Leg., ch. 1049, Sec. 5, eff. Sept. 1, 1995.

Sec. 242.262. CLOSING STATEMENTS; BRIEFS. The department and the institution may present closing statements as they desire, but the record may not remain open for written briefs unless requested by the arbitrator.

Added by Acts 1995, 74th Leg., ch. 1049, Sec. 5, eff. Sept. 1, 1995.

Sec. 242.263. EX PARTE CONTACTS PROHIBITED. (a) Except as provided by Subsection (b), the department and the institution may not communicate with an arbitrator other than at an oral hearing unless the parties and the arbitrator agree otherwise.

(b) Any oral or written communication, other than a communication authorized under Subsection (a), from the parties to an arbitrator shall be directed to the association that is conducting the arbitration or, if there is no association conducting the arbitration, to the State Office of Administrative Hearings, for transmittal to the arbitrator.

Added by Acts 1995, 74th Leg., ch. 1049, Sec. 5, eff. Sept. 1, 1995.

Sec. 242.264. ORDER. (a) The arbitrator may enter any order that may be entered by the department, board, commissioner, or court under this chapter in relation to a dispute described by Section 242.251.

(b) The arbitrator shall enter the order not later than the 60th day after the last day of the arbitration.

(c) The arbitrator shall base the order on the facts established at arbitration, including stipulations of the parties,

and on the law as properly applied to those facts.

(d) The order must:

(1) be in writing;

(2) be signed and dated by the arbitrator; and

(3) include a statement of the arbitrator's decision on the contested issues and the department's and institution's stipulations on uncontested issues.

(e) The arbitrator shall file a copy of the order with the department and shall notify the department and the institution in writing of the decision.

Added by Acts 1995, 74th Leg., ch. 1049, Sec. 5, eff. Sept. 1, 1995.

Sec. 242.265. EFFECT OF ORDER. An order of an arbitrator under this subchapter is final and binding on all parties. Except as provided by Section 242.267, there is no right to appeal.

Added by Acts 1995, 74th Leg., ch. 1049, Sec. 5, eff. Sept. 1, 1995.

Sec. 242.266. CLERICAL ERROR. For the purpose of correcting a clerical error, an arbitrator retains jurisdiction of the award for 20 days after the date of the award.

Added by Acts 1995, 74th Leg., ch. 1049, Sec. 5, eff. Sept. 1, 1995.

Sec. 242.267. COURT VACATING ORDER. (a) On a finding described by Subsection (b), a court shall:

(1) on application of an institution, vacate an arbitrator's order with respect to an arbitration conducted at the election of the department; or

(2) on application of the department, vacate an arbitrator's order with respect to an arbitration conducted at the election of an institution.

(b) A court shall vacate an arbitrator's order under Subsection (a) only on a finding that:

(1) the order was procured by corruption, fraud, or misrepresentation;

(2) the decision of the arbitrator was arbitrary or capricious and against the weight of the evidence; or

(3) the order exceeded the jurisdiction of the

arbitrator under Section 242.264(a).

(c) If the order is vacated, the dispute shall be remanded to the department for another arbitration proceeding.

(d) A suit to vacate an arbitrator's order must be filed not later than the 30th day after:

(1) the date of the award; or

(2) the date the institution or department knew or should have known of a basis for suit under this section, but in no event later than the first anniversary of the date of the order.

(e) Venue for a suit to vacate an arbitrator's order is in the county in which the arbitration was conducted.

Added by Acts 1995, 74th Leg., ch. 1049, Sec. 5, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.29, eff. Sept. 1, 1997.

Sec. 242.268. NO ARBITRATION IN CASE OF EMERGENCY ORDER OR CLOSING ORDER. This subchapter does not apply to an order issued under Section 242.062 or 242.072, and neither the department nor the institution may elect to arbitrate a dispute if the subject matter of the dispute is part of the basis for:

(1) revocation, denial, or suspension of an institution's license;

(2) issuance of a closing order under Section 242.062;
or

(3) suspension of admissions under Section 242.072.

Added by Acts 1995, 74th Leg., ch. 1049, Sec. 5, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.29, eff. Sept. 1, 1997.

Sec. 242.269. ENFORCEMENT OF CERTAIN ARBITRATION ORDERS.

(a) This section applies only to a suit for the assessment of a civil penalty under Section 242.065 in which binding arbitration has been elected under this subchapter as an alternative to the judicial proceeding.

(b) On application of a party to the suit, the district court in which the underlying suit has been filed shall enter a judgment in accordance with the arbitrator's order unless, within

the time limit prescribed by Section 242.267(d)(1), a motion is made to the court to vacate the arbitrator's order in accordance with Section 242.267.

(c) A judgment filed under Subsection (b) is enforceable in the same manner as any other judgment of the court. The court may award costs for an application made under Subsection (b) and for any proceedings held after the application is made.

(d) Subsection (b) does not affect the right of a party, in accordance with Section 242.267 and within the time limit prescribed by Section 242.267(d)(2), if applicable, to make a motion to the court or initiate a proceeding in court as provided by law to vacate the arbitrator's order or to vacate a judgment of the court entered in accordance with the arbitrator's order.

Added by Acts 1999, 76th Leg., ch. 1093, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER I. NURSING FACILITY ADMINISTRATION

Subchapter I, consisting of Secs. 242.301 to 242.322, was added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01.

For another Subchapter I, consisting of Secs. 242.301 to 242.327, added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01, see Sec. 242.301 et seq. post.

Text of subchapter effective until federal determination of failure to comply with federal regulations

Sec. 242.301. DEFINITIONS. In this subchapter:

(1) "Nursing facility" means an institution or facility that is licensed as a nursing home, nursing facility, or skilled nursing facility by the department under this chapter.

(2) "Nursing facility administrator" or "administrator" means a person who engages in the practice of nursing facility administration, without regard to whether the person has an ownership interest in the facility or whether the functions and duties are shared with any other person.

(3) "Practice of nursing facility administration" means the performance of the acts of administering, managing, supervising, or being in general administrative charge of a nursing facility.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1,

1997.

Sec. 242.302. POWERS AND DUTIES OF DEPARTMENT. (a) The board may adopt rules consistent with this subchapter.

(b) The department shall:

(1) adopt and publish a code of ethics for nursing facility administrators;

(2) establish the qualifications of applicants for licenses and the renewal of licenses issued under this subchapter;

(3) spend funds necessary for the proper administration of the department's assigned duties under this subchapter;

(4) establish reasonable and necessary fees for the administration and implementation of this subchapter; and

(5) establish a minimum number of hours of continuing education required to renew a license issued under this subchapter and periodically assess the continuing education needs of license holders to determine whether specific course content should be required.

(c) The department is the licensing agency for the healing arts, as provided by 42 U.S.C. Section 1396g.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.303. NURSING FACILITY ADMINISTRATORS ADVISORY COMMITTEE. (a) The Nursing Facility Administrators Advisory Committee is appointed by the governor.

(b) Members of the committee serve for staggered terms of six years, with the terms of three members expiring on February 1 of each odd-numbered year.

(c) The committee shall consist of:

(1) three licensed nursing facility administrators, at least one of whom shall represent a not-for-profit nursing facility;

(2) one physician with experience in geriatrics who is not employed by a nursing facility;

(3) one registered nurse with experience in geriatrics

who is not employed by a nursing facility;

(4) one social worker with experience in geriatrics who is not employed by a nursing facility; and

(5) three public members with experience working with the chronically ill and infirm as provided by 42 U.S.C. Section 1396g.

(d) The committee shall advise the board on the licensing of nursing facility administrators, including the content of applications for licensure and of the examination administered to license applicants under Section 242.306. The committee shall review and recommend rules and minimum standards of conduct for the practice of nursing facility administration. The committee shall review all complaints against administrators and make recommendations to the department regarding disciplinary actions. Failure of the committee to review complaints and make recommendations in a timely manner shall not prevent the department from taking disciplinary action.

(e) Appointments to the committee shall be made without regard to the race, color, disability, sex, religion, or national origin of the person appointed.

(f) A member of the committee receives no compensation but is entitled to reimbursement for actual and necessary expenses incurred in performing the member's duties under this section.

(g) The department shall pay the expenses of the committee and shall supply necessary personnel and supplies.

(h) A vacancy in a position on the committee shall be filled in the same manner in which the position was originally filled and shall be filled by a person who meets the qualifications of the vacated position.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.304. FEES; FUNDS. (a) The board by rule shall set reasonable and necessary fees in amounts necessary to cover the cost of administering this subchapter. The board by rule may set different licensing fees for different categories of licenses.

(b) The department shall receive and account for funds

received under this subchapter. The funds shall be deposited in the state treasury to the credit of the general revenue fund.

(c) The department may receive and disburse funds received from any federal source for the furtherance of the department's functions under this subchapter.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.305. PRACTICING WITHOUT A LICENSE. A person may not act as a nursing facility administrator or represent to others that the person is a nursing facility administrator unless the person is licensed under this subchapter.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.306. LICENSE APPLICATION; QUALIFICATIONS.

(a) An applicant for a nursing facility administrator's license must submit a sworn application that is accompanied by the application fee.

(b) The board shall prescribe the form of the application and may by rule establish dates by which applications and fees must be received.

(c) An applicant for a nursing facility administrator's license must take a licensing examination under this subchapter. To qualify for the licensing examination, the applicant must have satisfactorily completed a course of instruction and training prescribed by the board that is conducted by or in cooperation with an accredited postsecondary educational institution and that is designed and administered to provide sufficient knowledge of:

- (1) the needs served by nursing facilities;
- (2) the laws governing the operation of nursing facilities and the protection of the interests of facility residents; and
- (3) the elements of nursing facility administration.

(d) An applicant who has not completed the course of instruction and training described by Subsection (c) must present evidence satisfactory to the department of having completed

sufficient education, training, and experience in the fields described by Subsection (c) to enable the applicant to engage in the practice of nursing facility administration.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.307. EXAMINATION. (a) The licensing examination shall be prepared or approved by the department and shall be administered by the department to qualified applicants at least twice each calendar year. The department shall have the written portion of the examination, if any, validated by a testing professional.

(b) Not later than the 30th day after the date on which a licensing examination is administered under this subchapter, the department shall notify each examinee of the results of the examination. If an examination is graded or reviewed by a national or state testing service, the department shall notify examinees of the results of the examination not later than two weeks after the date the department receives the results from the testing service. If the notice of the examination results will be delayed for more than 90 days after the examination date, the department shall notify the examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails the licensing examination, the department shall furnish the person with an analysis of the person's performance on the examination.

(d) The board may establish by rule additional educational requirements to be met by an applicant who fails the examination three times.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.308. LICENSES; TEMPORARY LICENSE; INACTIVE STATUS. (a) A person who meets the requirements for licensing under this subchapter is entitled to receive a license. A nursing facility administrator's license is not transferable.

(b) A person licensed under this subchapter must notify the department of the license holder's correct mailing address.

(c) A license is valid for two years. The board by rule may adopt a system under which licenses expire on various dates during the two-year period. For the year in which a license expiration date is changed, license fees payable on the original expiration date shall be prorated on a monthly basis so that each license holder shall pay only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

(d) The board by rule may provide for the issuance of a temporary license. Rules adopted under this section shall include a time limit for a licensee to practice under a temporary license.

(e) The board by rule may provide for a license holder to be placed on inactive status.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.309. PROVISIONAL LICENSE. (a) The board shall issue a provisional license to an applicant currently licensed in another jurisdiction who seeks a license in this state and who:

(1) has been licensed in good standing as a nursing facility administrator for at least two years in another jurisdiction, including a foreign country, that has licensing requirements that are substantially equivalent to the requirements of this subchapter;

(2) has passed a national or other examination recognized by the board relating to the practice of nursing facility administration; and

(3) is sponsored by a person licensed by the board under this subchapter with whom the provisional license holder will practice during the time the person holds a provisional license.

(b) The board may waive the requirement of Subsection (a)(3) for an applicant if the board determines that compliance with that subsection would be a hardship to the applicant.

(c) A provisional license is valid until the date the board approves or denies the provisional license holder's application for a license. The board shall issue a license under this subchapter to

the provisional license holder if:

(1) the provisional license holder is eligible to be licensed under Section 242.306; or

(2) the provisional license holder passes the part of the examination under Section 242.307 that relates to the applicant's knowledge and understanding of the laws and rules relating to the practice of nursing facility administration in this state and:

(A) the board verifies that the provisional license holder meets the academic and experience requirements for a license under this subchapter; and

(B) the provisional license holder satisfies all other license requirements under this subchapter.

(d) The board must approve or deny a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The board may extend the 180-day period if the results of an examination have not been received by the board before the end of that period.

(e) The board may establish a fee for provisional licenses in an amount reasonable and necessary to cover the cost of issuing the license.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1505, Sec. 1.20, eff. Sept. 1, 1999.

Sec. 242.310. LICENSE RENEWAL. (a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the department before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the department a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(c) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the department a renewal fee that is equal to two times the normally

required renewal fee.

(d) A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license.

(e) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexamination. The person must pay to the department a fee that is equal to two times the normally required renewal fee for the license.

(f) Not later than the 31st day before the date a person's license is scheduled to expire, the department shall send written notice of the impending expiration to the person at the person's last known address according to the records of the department.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1505, Sec. 1.21, eff. Sept. 1, 1999.

Sec. 242.311. MANDATORY CONTINUING EDUCATION. (a) The board by rule shall establish a minimum number of hours of continuing education required to renew a license under this subchapter. The department may assess the continuing education needs of license holders and may require license holders to attend continuing education courses specified by the board.

(b) The board shall identify the key factors for the competent performance by a license holder of the license holder's professional duties. The department shall adopt a procedure to assess a license holder's participation in continuing education programs.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.312. COMPLAINT RECEIPT, INVESTIGATION, AND DISPOSITION. (a) The department shall keep an information file concerning each complaint filed with the department regarding a person licensed under this subchapter. The department's

information file shall be kept current and shall contain a record for each complaint of:

(1) all persons contacted in relation to the complaint;

(2) a summary of findings made at each step of the complaint process;

(3) an explanation of the legal basis and reason for a complaint that is dismissed; and

(4) other relevant information.

(b) If a written complaint is filed with the department that the department has authority to resolve, the department, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(c) The board by rule shall adopt a form to standardize information concerning complaints made to the department. The board by rule shall prescribe information to be provided to a person when the person files a complaint with the department.

(d) The department shall provide reasonable assistance to a person who wishes to file a complaint with the department.

(e) The board shall adopt rules concerning the investigation of complaints filed with the department. The rules adopted under this subsection shall:

(1) distinguish between categories of complaints;

(2) ensure that complaints are not dismissed without appropriate consideration;

(3) require that the board be advised at least quarterly of complaints that have been dismissed and require that a letter be sent to each person who has filed a complaint that is dismissed explaining the action taken on the complaint;

(4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint; and

(5) prescribe guidelines concerning the categories of complaints that may require the use of a private investigator and the procedures to be followed by the department in obtaining the services of a private investigator.

(f) The department shall dispose of all complaints in a timely manner. The board by rule shall establish a schedule for initiating a complaint investigation that is under the control of the department not later than the 30th day after the date the complaint is received by the department. The schedule shall be kept in the information file for the complaint, and all parties shall be notified of the projected time requirements for pursuing the complaint. A change in the schedule must be noted in the complaint information file and all parties to the complaint must be notified not later than the seventh day after the date the change is made.

(g) The commissioner shall notify the board at least quarterly of complaints that have extended beyond the time prescribed by the board for resolving complaints so that the department may take any necessary corrective actions on the processing of complaints.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.313. SANCTIONS. (a) The department may revoke, suspend, or refuse to renew a nursing facility administrator's license, assess an administrative penalty, issue a written reprimand, require participation in continuing education, or place an administrator on probation, after due notice and hearing, on proof of any of the following grounds:

(1) the license holder has wilfully or repeatedly violated a provision of this subchapter or a rule adopted under this subchapter;

(2) the license holder has wilfully or repeatedly acted in a manner inconsistent with the health and safety of the residents of a facility of which the license holder is an administrator;

(3) the license holder obtained or attempted to obtain a license through misrepresentation or deceit or by making a material misstatement of fact on a license application;

(4) the license holder's use of alcohol or drugs creates a hazard to the residents of a facility;

(5) a judgment of a court of competent jurisdiction

finds that the license holder is mentally incapacitated;

(6) the license holder has been convicted in a court of competent jurisdiction of a misdemeanor or felony involving moral turpitude; or

(7) the license holder has been negligent or incompetent in the license holder's duties as a nursing facility administrator.

(b) If a license sanction is probated, the department may require the license holder to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the department; or

(3) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

(c) A license holder is entitled to a hearing in accordance with rules promulgated by the board before a sanction is imposed under this section.

(d) The board by rule shall adopt a broad schedule of sanctions for violations under this subchapter. The department shall use the schedule for any sanction imposed as the result of a hearing conducted in accordance with the rules.

(e) The department shall by rule establish criteria to determine whether deficiencies from a facility's survey warrant action against an administrator. The criteria shall include a determination of whether the survey indicates substandard quality of care related to an act or failure to act by the administrator, and whether a deficiency is related to an act or failure to act by the administrator. If a deficiency on which a disciplinary action against an administrator is initiated or completed is not substantiated, the disciplinary action shall be reversed.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.314. WRITTEN REPRIMAND AND CONTINUING EDUCATION AS

SANCTIONS. In addition to the other disciplinary actions authorized under this subchapter, the department may issue a written reprimand to a license holder who violates this subchapter or may require that a license holder who violates this subchapter participate in continuing education programs. The department shall specify the continuing education programs that may be attended and the number of hours that must be completed by a license holder to fulfill the requirements of this section.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.315. ADMINISTRATIVE PENALTY AS SANCTION.

(a) The department may impose an administrative penalty against a person licensed or regulated under this subchapter who violates this subchapter or a rule adopted by the board under this subchapter.

(b) The penalty for a violation may be in an amount not to exceed \$1,000. Each day a violation occurs or continues is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violations; and

(6) any other matter that justice may require.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.316. NOTICE AND HEARING. (a) If the department determines that a violation has occurred, the department shall give written notice of the determination to the person alleged to have committed the violation. The notice may be given by certified mail.

The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a 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) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and the penalty recommended by the department or may make a written request for 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.

(c) If the person accepts the determination and the penalty recommended by the department, the department shall impose the recommended penalty.

(d) If the person requests a hearing or fails to respond timely to the notice, the department shall set a hearing and give notice of the hearing to the person. The hearing shall be held in accordance with the department's rules on contested case hearings.

(e) The notice of the hearing decision given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the decision.

(f) Within 30 days after the date the department's decision is final as provided by Section 2001.144, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and 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; or

(3) without paying the amount of the penalty, 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.

(g) Within the 30-day period, a person who acts under Subsection (f)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of 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 department's decision is 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) sending a copy of the affidavit to the department by certified mail.

(h) If the department receives a copy of an affidavit under Subsection (g)(2), the department may file with the court, within five 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 amount of the penalty and to give a supersedeas bond.

(i) If the person does not pay the amount of 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 amount of the penalty.

(j) Judicial review of the decision of the department:

(1) is instituted by filing a petition as provided by Section 2001.176, Government Code; and

(2) is under the substantial evidence rule.

(k) 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.

(l) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount

of the penalty 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 amount of the penalty is not upheld by the court, the court shall order the release of the 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.

(m) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(n) All proceedings under this section are subject to Chapter 2001, Government Code.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.317. INFORMAL PROCEEDINGS. (a) The department by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) informal proceedings held in compliance with Section 2001.054, Government Code.

(b) Rules adopted under this section must provide the complainant and the license holder an opportunity to be heard.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.318. MONITORING OF LICENSE HOLDER. The department by rule shall develop a system for monitoring a license holder's compliance with the requirements of this subchapter. Rules adopted under this section shall include procedures for monitoring a license holder who is required by the department to perform certain acts to ascertain that the license holder performs the required acts and to identify and monitor license holders who represent a

risk to the public.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.319. CIVIL PENALTY. A person who violates this subchapter is liable to the state for a civil penalty of \$1,000 for each day of violation. At the request of the department, the attorney general shall bring an action to recover a civil penalty established by this section.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.320. ASSISTANCE OF ATTORNEY GENERAL. The attorney general shall provide legal assistance as necessary in enforcing the provisions of this subchapter. This requirement does not relieve a local prosecuting officer of any of the prosecuting officer's duties under the law.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.321. OFFENSE. (a) A person commits an offense if the person knowingly or intentionally violates Section 242.305.

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

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.322. PROTECTION FOR REFUSAL TO ENGAGE IN CERTAIN CONDUCT. (a) A person may not suspend, terminate, or otherwise discipline or discriminate against a licensed nursing facility administrator who refuses to engage in an act or omission relating to the administrator's job duties or responsibilities that would constitute a violation of this subchapter or of a rule adopted under this subchapter, if the administrator notifies the person at the time of the refusal that the reason for refusing is that the act or omission constitutes a violation of this subchapter or of a rule adopted under this subchapter.

(b) An act by a person under Subsection (a) does not

constitute a violation of this section if:

(1) the act or omission the administrator refused to commit was not conduct that constitutes a violation of this subchapter or of a rule adopted under this subchapter; or

(2) the act or omission the administrator refused to commit was conduct that constitutes a violation of this subchapter or of a rule adopted under this subchapter, and the person rescinds any disciplinary or discriminatory action taken against the administrator, compensates the administrator for lost wages, and restores any lost benefits to the administrator.

(c) A violation of this section is an unlawful employment practice, and a civil action may be brought by a licensed nursing facility administrator against a person for the violation. The relief available in a civil action shall be the same as the relief available to complainants in a civil action for violations of Chapter 21, Labor Code. In no event may any action be brought pursuant to this section more than two years after the date of the administrator's refusal to engage in an act or omission that would constitute a violation of this subchapter or of a rule adopted under this subchapter.

(d) In this section, "person" includes an individual, organization, corporation, agency, facility, or other entity.
Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

SUBCHAPTER I. NURSING FACILITY ADMINISTRATION

Subchapter I, consisting of Secs. 242.301 to 242.327, was added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

For another Subchapter I, consisting of Secs. 242.301 to 242.322, added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, see Sec. 242.301 et seq. post.

Text of subchapter effective upon federal determination of failure to comply with federal regulations

Sec. 242.301. DEFINITIONS. In this subchapter:

(1) "Board" means the Texas Board of Nursing Facility Administrators.

(2) "Nursing facility" means an institution or

facility that is licensed as a nursing home, nursing facility, or skilled nursing facility by the department under this chapter.

(3) "Nursing facility administrator" or "administrator" means a person who engages in the practice of nursing facility administration, without regard to whether the person has an ownership interest in the facility or whether the functions and duties are shared with any other person.

(4) "Practice of nursing facility administration" means the performance of the acts of administering, managing, supervising, or being in general administrative charge of a nursing facility.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.302. TEXAS BOARD OF NURSING FACILITY ADMINISTRATORS. (a) The Texas Board of Nursing Facility Administrators is within the department.

(b) The board is composed of nine members appointed by the governor as follows:

(1) three licensed nursing facility administrators, at least one of whom shall represent a not-for-profit nursing facility;

(2) one physician with experience in geriatrics who is not employed by a nursing facility;

(3) one registered nurse with experience in geriatrics who is not employed by a nursing facility;

(4) one social worker with experience in geriatrics who is not employed by a nursing facility; and

(5) three public members with experience working with the chronically ill and infirm as provided by 42 U.S.C. Section 1396g.

(c) Members of the board serve staggered six-year terms, with the terms of three members expiring on February 1 of each odd-numbered year. A person appointed to fill a vacancy on the board shall serve for the unexpired portion of the term for which the person is appointed.

(d) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, or national origin

of the person appointed.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.303. MEMBERSHIP REQUIREMENTS. (a) A member of the board who is an administrator must:

(1) be a resident of this state and a citizen of the United States;

(2) be licensed under this subchapter and currently serving as a nursing facility administrator or have direct supervisory responsibility on a daily basis over an administrator who works in a nursing facility; and

(3) hold a degree from an accredited four-year college or university.

(b) An administrator who does not have a degree as required by Subsection (a)(3) may be qualified to serve as a member of the board if the administrator has two years of practical experience as an administrator for every year less than four that the administrator has completed at a four-year college or university.

(c) A member or employee of the board may not:

(1) be an officer, employee, or paid consultant of a trade association in the nursing facility industry; or

(2) be related within the second degree by affinity or within the third degree by consanguinity to an officer, employee, or paid consultant of a trade association in the nursing facility industry.

(d) A member of the board who represents the general public may not have a financial interest, other than as a consumer, in a nursing facility as an officer, director, partner, owner, employee, attorney, or paid consultant or be related within the second degree by affinity or within the third degree by consanguinity to a person who has a financial interest, other than as a consumer, in a nursing facility as an officer, director, partner, owner, employee, attorney, or paid consultant.

(e) A person who is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board may not serve on the board.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.304. GROUND FOR REMOVAL. It is a ground for removal from the board if a member:

(1) does not have at the time of appointment the qualifications required by Section 242.303 for appointment to the board;

(2) does not maintain during service on the board the qualifications required by Section 242.303 for appointment to the board;

(3) violates a prohibition established by Section 242.303;

(4) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.305. BOARD OFFICERS; MEETINGS; QUORUM; EXPENSES. (a) The board shall elect from its members a presiding officer and assistant presiding officer who serve according to rules adopted by the board.

(b) The board shall hold at least two regular meetings each year as provided by rules adopted by the board.

(c) A majority of the members constitutes a quorum.

(d) Each member of the board is entitled to compensation for transportation expenses as provided by the General Appropriations Act.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.306. APPLICATION OF OPEN MEETINGS AND ADMINISTRATIVE PROCEDURE ACT. The board is subject to Chapters 551 and 2001, Government Code.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.307. POWERS AND DUTIES OF THE BOARD. (a) The board may adopt rules consistent with this subchapter.

(b) The board shall:

(1) adopt and publish a code of ethics for nursing facility administrators;

(2) establish the qualifications of applicants for licenses and the renewal of licenses issued under this subchapter;

(3) spend funds necessary for the proper administration of the department's assigned duties under this subchapter;

(4) establish reasonable and necessary fees for the administration and implementation of this subchapter; and

(5) establish a minimum number of hours of continuing education required to renew a license issued under this subchapter and periodically assess the continuing education needs of license holders to determine whether specific course content should be required.

(c) The board is the licensing authority for the healing arts, as provided by 42 U.S.C. Section 1396g, and shall meet the requirements of a state licensing agency for nursing facility practitioners, as provided by 42 C.F.R. Part 431, Subpart N.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.308. ADMINISTRATIVE FUNCTIONS. The department shall serve as the administrator of the licensing activities under this subchapter and shall provide staff as necessary for the licensing and regulation of nursing facility administrators under this subchapter. If necessary to the administration of this subchapter, the department may secure and provide for compensation for services that the department considers necessary and may employ and compensate within available appropriations professional consultants, technical assistants, and employees on a full-time or part-time basis.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.309. FEES; FUNDS. (a) The board by rule shall set reasonable and necessary fees in amounts necessary to cover the

cost of administering this subchapter. The board by rule may set different licensing fees for different categories of licenses.

(b) The department shall receive and account for funds received under this subchapter. The funds shall be deposited in the state treasury to the credit of the general revenue fund.

(c) The department may receive and disburse funds received from any federal source for the furtherance of the department's functions under this subchapter.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.310. PRACTICING WITHOUT A LICENSE. A person may not act as a nursing facility administrator or represent to others that the person is a nursing facility administrator unless the person is licensed under this subchapter.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.311. LICENSE APPLICATION; QUALIFICATIONS.

(a) An applicant for a nursing facility administrator's license must submit a sworn application that is accompanied by the application fee.

(b) The board shall prescribe the form of the application and may by rule establish dates by which applications and fees must be received.

(c) An applicant for a nursing facility administrator's license must take a licensing examination under this subchapter. To qualify for the licensing examination, the applicant must have satisfactorily completed a course of instruction and training prescribed by the board that is conducted by or in cooperation with an accredited postsecondary educational institution and that is designed and administered to provide sufficient knowledge of:

- (1) the needs served by nursing facilities;
- (2) the laws governing the operation of nursing facilities and the protection of the interests of facility residents; and
- (3) the elements of nursing facility administration.

(d) An applicant who has not completed the course of instruction and training described by Subsection (c) must present

evidence satisfactory to the board of having completed sufficient education, training, and experience in the fields described by Subsection (c) to enable the applicant to engage in the practice of nursing facility administration.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.312. EXAMINATION. (a) The licensing examination shall be prepared or approved by the board and shall be administered by the board to qualified applicants at least twice each calendar year. The board shall have the written portion of the examination, if any, validated by a testing professional.

(b) Not later than the 30th day after the date on which a licensing examination is administered under this subchapter, the board shall notify each examinee of the results of the examination. If an examination is graded or reviewed by a national or state testing service, the board shall notify examinees of the results of the examination not later than two weeks after the date the board receives the results from the testing service. If the notice of the examination results will be delayed for more than 90 days after the examination date, the board shall notify the examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails the licensing examination, the board shall furnish the person with an analysis of the person's performance on the examination.

(d) The board may establish by rule additional educational requirements to be met by an applicant who fails the examination three times.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.313. LICENSES; TEMPORARY LICENSE; INACTIVE STATUS. (a) A person who meets the requirements for licensing under this subchapter is entitled to receive a license. A nursing facility administrator's license is not transferable.

(b) A person licensed under this subchapter must notify the board of the license holder's correct mailing address.

(c) A license is valid for two years. The board by rule may adopt a system under which licenses expire on various dates during

the two-year period. For the year in which a license expiration date is changed, license fees payable on the original expiration date shall be prorated on a monthly basis so that each license holder shall pay only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

(d) The board by rule may provide for the issuance of a temporary license. Rules adopted under this section shall include a time limit for a licensee to practice under a temporary license.

(e) The board by rule may provide for a license holder to be placed on inactive status.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.314. PROVISIONAL LICENSE. (a) The board shall issue a provisional license to an applicant currently licensed in another jurisdiction who seeks a license in this state and who:

(1) has been licensed in good standing as a nursing facility administrator for at least two years in another jurisdiction, including a foreign country, that has licensing requirements that are substantially equivalent to the requirements of this subchapter;

(2) has passed a national or other examination recognized by the board relating to the practice of nursing facility administration; and

(3) is sponsored by a person licensed by the board under this subchapter with whom the provisional license holder will practice during the time the person holds a provisional license.

(b) The board may waive the requirement of Subsection (a)(3) for an applicant if the board determines that compliance with that subsection would be a hardship to the applicant.

(c) A provisional license is valid until the date the board approves or denies the provisional license holder's application for a license. The board shall issue a license under this subchapter to the provisional license holder if:

(1) the provisional license holder is eligible to be licensed under Section 242.311; or

(2) the provisional license holder passes the part of the examination under Section 242.312 that relates to the applicant's knowledge and understanding of the laws and rules relating to the practice of nursing facility administration in this state and:

(A) the board verifies that the provisional license holder meets the academic and experience requirements for a license under this subchapter; and

(B) the provisional license holder satisfies any other license requirements under this subchapter.

(d) The board must approve or deny a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The board may extend the 180-day period if the results of an examination have not been received by the board before the end of that period.

(e) The board may establish a fee for provisional licenses in an amount reasonable and necessary to cover the cost of issuing the license.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01. Amended by Acts 1999, 76th Leg., ch. 1505, Sec. 1.22, eff. Sept. 1, 1999.

Sec. 242.315. LICENSE RENEWAL. (a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the board before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the board a renewal fee that is equal to 1-1/2 times the normally required fee.

(c) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the board a renewal fee that is equal to two times the normally required renewal fee.

(d) A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including the

examination requirements, for obtaining an original license.

(e) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexamination. The person must pay to the board a fee that is equal to two times the normally required renewal fee for the license.

(f) Not later than the 31st day before the date a person's license is scheduled to expire, the board shall send written notice of the impending expiration to the person at the person's last known address according to the records of the board.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01. Amended by Acts 1999, 76th Leg., ch. 1505, Sec. 1.23, eff. Sept. 1, 1999.

Sec. 242.316. MANDATORY CONTINUING EDUCATION. (a) The board by rule shall establish a minimum number of hours of continuing education required to renew a license under this subchapter. The board may assess the continuing education needs of license holders and may require license holders to attend continuing education courses specified by the board.

(b) The board shall identify the key factors for the competent performance by a license holder of the license holder's professional duties. The board shall adopt a procedure to assess a license holder's participation in continuing education programs.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.317. COMPLAINT RECEIPT, INVESTIGATION, AND DISPOSITION. (a) The board shall keep an information file about each complaint filed with the board regarding a person licensed under this subchapter. The board's information file shall be kept current and contain a record for each complaint of:

(1) all persons contacted in relation to the complaint;

(2) a summary of findings made at each step of the complaint process;

(3) an explanation of the legal basis and reason for a complaint that is dismissed; and

(4) other relevant information.

(b) If a written complaint is filed with the board that the board has authority to resolve, the board, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(c) The board by rule shall adopt a form to standardize information concerning complaints made to the board. The board by rule shall prescribe information to be provided to a person when the person files a complaint with the board.

(d) The board shall provide reasonable assistance to a person who wishes to file a complaint with the board.

(e) The board shall adopt rules concerning the investigation of complaints filed with the board. The rules adopted under this subsection shall:

(1) distinguish between categories of complaints;

(2) ensure that complaints are not dismissed without appropriate consideration;

(3) require that the board be advised at least quarterly of complaints that have been dismissed and require that a letter be sent to each person who has filed a complaint that is dismissed explaining the action taken on the complaint;

(4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint; and

(5) prescribe guidelines concerning the categories of complaints that may require the use of a private investigator and the procedures for the board to obtain the services of a private investigator.

(f) The board shall dispose of all complaints in a timely manner. The board by rule shall establish a schedule for initiating a complaint investigation that is under the control of the board not later than the 30th day after the date the complaint is received by the board. The schedule shall be kept in the information file for the complaint, and all parties shall be notified of the projected time requirements for pursuing the complaint. A change in the schedule must be noted in the complaint information file and all

parties to the complaint must be notified not later than the seventh day after the date the change is made.

(g) The department shall notify the board at least quarterly of complaints that have extended beyond the time prescribed by the board for resolving complaints so that the department may take any necessary corrective actions on the processing of complaints.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.318. SANCTIONS. (a) The board may revoke, suspend, or refuse to renew a nursing facility administrator's license, assess an administrative penalty, issue a written reprimand, require participation in continuing education, or place an administrator on probation, after due notice and hearing, on proof of any of the following grounds:

(1) the license holder has wilfully or repeatedly violated a provision of this subchapter or a rule adopted under this subchapter;

(2) the license holder has wilfully or repeatedly acted in a manner inconsistent with the health and safety of the residents of a facility of which the license holder is an administrator;

(3) the license holder obtained or attempted to obtain a license through misrepresentation or deceit or by making a material misstatement of fact on a license application;

(4) the license holder's use of alcohol or drugs creates a hazard to the residents of a facility;

(5) a judgment of a court of competent jurisdiction finds that the license holder is mentally incapacitated;

(6) the license holder has been convicted in a court of competent jurisdiction of a misdemeanor or felony involving moral turpitude; or

(7) the license holder has been negligent or incompetent in the license holder's duties as a nursing facility administrator.

(b) If a license sanction is probated, the board may require the license holder to:

(1) report regularly to the board on matters that are

the basis of the probation;

(2) limit practice to the areas prescribed by the department; or

(3) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

(c) A license holder is entitled to a hearing in accordance with rules promulgated by the board before a sanction is imposed under this section.

(d) The board by rule shall adopt a broad schedule of sanctions for violations under this subchapter. The board shall use the schedule for any sanction imposed as the result of a hearing conducted in accordance with the rules.

(e) The department shall by rule establish criteria to determine whether deficiencies from a facility's survey warrant action against an administrator. The criteria shall include a determination of whether the survey indicates substandard quality of care and whether a deficiency is related to an act or failure to act by the administrator. If a deficiency on which a disciplinary action against an administrator is initiated or completed is not substantiated, the disciplinary action shall be reversed.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.319. WRITTEN REPRIMAND AND CONTINUING EDUCATION AS SANCTIONS. In addition to the other disciplinary actions authorized under this subchapter, the board may issue a written reprimand to a license holder who violates this subchapter or require that a license holder who violates this subchapter participate in continuing education programs. The board shall specify the continuing education programs that may be attended and the number of hours that must be completed by a license holder to fulfill the requirements of this section.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.320. ADMINISTRATIVE PENALTY AS SANCTION.

(a) The department may impose an administrative penalty against a

person licensed or regulated under this subchapter who violates this subchapter or a rule adopted by the board under this subchapter.

(b) The penalty for a violation may be in an amount not to exceed \$1,000. Each day a violation occurs or continues is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violations; and

(6) any other matter that justice may require.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.321. NOTICE AND HEARING. (a) If the department determines that a violation has occurred, the department shall give written notice of the determination to the person alleged to have committed the violation. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a 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) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and the penalty recommended by the department or may make a written request for 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.

(c) If the person accepts the determination and the penalty recommended by the department, the department shall impose the recommended penalty.

(d) If the person requests a hearing or fails to respond timely to the notice, the department shall set a hearing and give notice of the hearing to the person. The hearing shall be held in accordance with the department's rules on contested case hearings.

(e) The notice of the hearing decision given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the decision.

(f) Within 30 days after the date the department's decision is final as provided by Section 2001.144, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and 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; or

(3) without paying the amount of the penalty, 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.

(g) Within the 30-day period, a person who acts under Subsection (f)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of 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 department's decision is 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.

(h) If the department receives a copy of an affidavit under

Subsection (g)(2), the department may file with the court, within five 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 amount of the penalty and to give a supersedeas bond.

(i) If the person does not pay the amount of 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 amount of the penalty.

(j) Judicial review of the decision of the department:

(1) is instituted by filing a petition as provided by Section 2001.176, Government Code; and

(2) is under the substantial evidence rule.

(k) 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.

(l) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty 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 amount of the penalty is not upheld by the court, the court shall order the release of the 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.

(m) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(n) All proceedings under this section are subject to Chapter 2001, Government Code.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.322. INFORMAL PROCEEDINGS. (a) The department by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) informal proceedings held in compliance with Section 2001.054, Government Code.

(b) Rules adopted under this section must provide the complainant and the license holder an opportunity to be heard.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.323. MONITORING OF LICENSE HOLDER. The board by rule shall develop a system for monitoring a license holder's compliance with the requirements of this subchapter. Rules adopted under this section shall include procedures for monitoring a license holder who is required by the board to perform certain acts to ascertain that the license holder performs the required acts and to identify and monitor license holders who represent a risk to the public.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.324. CIVIL PENALTY. A person who violates this subchapter is liable to the state for a civil penalty of \$1,000 for each day of violation. At the request of the department, the attorney general shall bring an action to recover a civil penalty established by this section.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.325. ASSISTANCE OF ATTORNEY GENERAL. The attorney general shall provide legal assistance as necessary in enforcing the provisions of this subchapter. This requirement does not relieve a local prosecuting officer of any of the prosecuting officer's duties under the law.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.326. OFFENSE. (a) A person commits an offense if the person knowingly or intentionally violates Section 242.310.

(b) An offense under this section is a Class B misdemeanor. Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.327. PROTECTION FOR REFUSAL TO ENGAGE IN CERTAIN CONDUCT. (a) A person may not suspend, terminate, or otherwise discipline or discriminate against a licensed nursing facility administrator who refuses to engage in an act or omission relating to the administrator's job duties or responsibilities that would constitute a violation of this subchapter or of a rule adopted under this subchapter, if the administrator notifies the person at the time of the refusal that the reason for refusing is that the act or omission constitutes a violation of this subchapter or of a rule adopted under this subchapter.

(b) An act by a person under Subsection (a) does not constitute a violation of this section if:

(1) the act or omission the administrator refused to commit was not conduct that constitutes a violation of this subchapter or of a rule adopted under this subchapter; or

(2) the act or omission the administrator refused to commit was conduct that constitutes a violation of this subchapter or of a rule adopted under this subchapter, and the person rescinds any disciplinary or discriminatory action taken against the administrator, compensates the administrator for lost wages, and restores any lost benefits to the administrator.

(c) A violation of this section is an unlawful employment practice, and a civil action may be brought by a licensed nursing facility administrator against a person for the violation. The relief available in a civil action shall be the same as the relief available to complainants in a civil action for violations of Chapter 21, Labor Code. In no event may any action be brought pursuant to this section more than two years after the date of the administrator's refusal to engage in an act or omission that would constitute a violation of this subchapter or of a rule adopted under this subchapter.

(d) In this section, "person" includes an individual, organization, corporation, agency, facility, or other entity.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

SUBCHAPTER K. QUALITY OF CARE

Sec. 242.401. QUALITY OF LIFE. (a) An institution shall care for its residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life and dignity. An institution that admits a resident who is younger than 18 years of age must provide care to meet the resident's unique medical and developmental needs.

(b) A resident of an institution has the right to reside and receive services in the institution with reasonable accommodation of individual needs, except to the extent the health or safety of the resident or other residents would be endangered.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.402. QUALITY OF CARE. An institution shall provide to each resident the necessary care or service needed to enable the resident to attain and maintain the highest practicable level of physical, emotional, and social well-being, in accordance with:

(1) each resident's individual assessment and comprehensive plan of care; and

(2) the rules and standards relating to quality of care adopted under this chapter.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.403. STANDARDS FOR QUALITY OF LIFE AND QUALITY OF CARE. (a) The department shall adopt standards to implement Sections 242.401 and 242.402. Those standards must, at a minimum, address:

(1) admission of residents;

(2) care of residents younger than 18 years of age;

(3) an initial assessment and comprehensive plan of

care for residents;

- (4) transfer or discharge of residents;
- (5) clinical records;
- (6) infection control at the institution;
- (7) rehabilitative services;
- (8) food services;
- (9) nutrition services provided by a director of food

services who is licensed by the Texas State Board of Examiners of Dietitians or, if not so licensed, who is in scheduled consultation with a person who is so licensed as frequently and for such time as the department shall determine necessary to assure each resident a diet that meets the daily nutritional and special dietary needs of each resident;

(10) social services and activities;

(11) prevention of pressure sores;

(12) bladder and bowel retraining programs for residents;

(13) prevention of complications from nasogastric or gastrostomy tube feedings;

(14) relocation of residents within an institution;

(15) postmortem procedures; and

(16) appropriate use of chemical and physical restraints.

(b) The department may require an institution to submit information to the department, including Minimum Data Set Resident Assessments, necessary to ensure the quality of care in institutions. Information submitted to the department that identifies a resident of an institution is confidential and not subject to disclosure under Chapter 552, Government Code.

(c) The department may adopt standards in addition to those required by Subsection (a) to implement Sections 242.401 and 242.402.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 667, Sec. 1, eff. September 1, 2005.

Sec. 242.404. POLICIES, PROCEDURES, AND PRACTICES FOR QUALITY OF CARE AND QUALITY OF LIFE. (a) Each institution shall comply with the standards adopted under this subchapter and shall develop written operating policies to implement those standards.

(b) The policies and procedures must be available to each physician, staff member, resident, and resident's next of kin or guardian and to the public.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

SUBCHAPTER L. RIGHTS OF RESIDENTS

Sec. 242.501. RESIDENT'S RIGHTS. (a) The department by rule shall adopt a statement of the rights of a resident. The statement must be consistent with Chapter 102, Human Resources Code, but shall reflect the unique circumstances of a resident at an institution. At a minimum, the statement of the rights of a resident must address the resident's constitutional, civil, and legal rights and the resident's right:

- (1) to be free from abuse and exploitation;
- (2) to safe, decent, and clean conditions;
- (3) to be treated with courtesy, consideration, and respect;
- (4) to not be subjected to discrimination based on age, race, religion, sex, nationality, or disability and to practice the resident's own religious beliefs;
- (5) to place in the resident's room an electronic monitoring device that is owned and operated by the resident or provided by the resident's guardian or legal representative;
- (6) to privacy, including privacy during visits and telephone calls;
- (7) to complain about the institution and to organize or participate in any program that presents residents' concerns to the administrator of the institution;
- (8) to have information about the resident in the possession of the institution maintained as confidential;
- (9) to retain the services of a physician the resident chooses, at the resident's own expense or through a health care

plan, and to have a physician explain to the resident, in language that the resident understands, the resident's complete medical condition, the recommended treatment, and the expected results of the treatment, including reasonably expected effects, side effects, and risks associated with psychoactive medications;

(10) to participate in developing a plan of care, to refuse treatment, and to refuse to participate in experimental research;

(11) to a written statement or admission agreement describing the services provided by the institution and the related charges;

(12) to manage the resident's own finances or to delegate that responsibility to another person;

(13) to access money and property that the resident has deposited with the institution and to an accounting of the resident's money and property that are deposited with the institution and of all financial transactions made with or on behalf of the resident;

(14) to keep and use personal property, secure from theft or loss;

(15) to not be relocated within the institution, except in accordance with standards adopted by the department under Section 242.403;

(16) to receive visitors;

(17) to receive unopened mail and to receive assistance in reading or writing correspondence;

(18) to participate in activities inside and outside the institution;

(19) to wear the resident's own clothes;

(20) to discharge himself or herself from the institution unless the resident is an adjudicated mental incompetent;

(21) to not be discharged from the institution except as provided in the standards adopted by the department under Section 242.403;

(22) to be free from any physical or chemical restraints imposed for the purposes of discipline or convenience,

and not required to treat the resident's medical symptoms; and

(23) to receive information about prescribed psychoactive medication from the person prescribing the medication or that person's designee, to have any psychoactive medications prescribed and administered in a responsible manner, as mandated by Section 242.505, and to refuse to consent to the prescription of psychoactive medications.

(b) A right of a resident may be restricted only to the extent necessary to protect:

(1) a right of another resident, particularly a right of the other resident relating to privacy and confidentiality; or

(2) the resident or another person from danger or harm.

(c) The department may adopt rights of residents in addition to those required by Subsection (a) and may consider additional rights applicable to residents in other jurisdictions.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 919, Sec. 1, eff. June 14, 2001; Acts 2001, 77th Leg., ch. 1224, Sec. 2, eff. June 15, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 10.004, eff. Sept. 1, 2003.

Sec. 242.502. RIGHTS CUMULATIVE. The rights established under this subchapter are cumulative of the rights established under any other law.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.503. DUTIES OF INSTITUTION. (a) An institution shall develop and implement policies to protect resident rights.

(b) An institution and the staff of an institution may not violate a right adopted under this subchapter.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.504. INFORMATION ABOUT RESIDENT'S RIGHTS AND VIOLATIONS. (a) An institution shall inform each resident and the

resident's next of kin or guardian of the rights adopted under this subchapter and shall explain the rights to the resident and the resident's next of kin or guardian. The institution shall provide a written statement of:

(1) all of the resident's rights; and

(2) any additional rules adopted by the institution involving resident rights and responsibilities.

(b) The institution shall provide a copy of the written statement to:

(1) each resident;

(2) the next of kin or guardian of each resident; and

(3) each member of the staff of the institution.

(c) The institution shall maintain a copy of the statement, signed by the resident or the resident's next of kin or guardian, in the institution's records.

(d) The institution shall post the written statement in the manner required by Section 242.042.

(e) An institution that has been cited by the department for a violation of any right adopted under this subchapter shall include a notice of the citation in the informational materials required by Section 242.042(a)(8). The notice of citation must continue to be included in the informational materials until any regulatory action or proceeding with respect to the violation is complete and the department has determined that the institution is in full compliance with the applicable requirement.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.505. PRESCRIPTION OF PSYCHOACTIVE MEDICATION.

(a) In this section:

(1) "Medication-related emergency" means a situation in which it is immediately necessary to administer medication to a resident to prevent:

(A) imminent probable death or substantial bodily harm to the resident; or

(B) imminent physical or emotional harm to another because of threats, attempts, or other acts the resident

overtly or continually makes or commits.

(2) "Psychoactive medication" means a medication that is prescribed for the treatment of symptoms of psychosis or other severe mental or emotional disorders and that is used to exercise an effect on the central nervous system to influence and modify behavior, cognition, or affective state when treating the symptoms of mental illness. The term includes the following categories when used as described by this subdivision:

- (A) antipsychotics or neuroleptics;
- (B) antidepressants;
- (C) agents for control of mania or depression;
- (D) antianxiety agents;
- (E) sedatives, hypnotics, or other sleep-promoting drugs; and
- (F) psychomotor stimulants.

(b) A person may not administer a psychoactive medication to a resident who does not consent to the prescription unless:

- (1) the resident is having a medication-related emergency; or
- (2) the person authorized by law to consent on behalf of the resident has consented to the prescription.

(c) Consent to the prescription of psychoactive medication given by a resident or by a person authorized by law to consent on behalf of the resident is valid only if:

- (1) the consent is given voluntarily and without coercive or undue influence;
- (2) the person prescribing the medication or that person's designee provided the following information, in a standard format approved by the department, to the resident and, if applicable, to the person authorized by law to consent on behalf of the resident:

- (A) the specific condition to be treated;
- (B) the beneficial effects on that condition expected from the medication;
- (C) the probable clinically significant side effects and risks associated with the medication; and
- (D) the proposed course of the medication;

(3) the resident and, if appropriate, the person authorized by law to consent on behalf of the resident are informed in writing that consent may be revoked; and

(4) the consent is evidenced in the resident's clinical record by a signed form prescribed by the facility or by a statement of the person prescribing the medication or that person's designee that documents that consent was given by the appropriate person and the circumstances under which the consent was obtained.

(d) A resident's refusal to consent to receive psychoactive medication shall be documented in the resident's clinical record.

(e) If a person prescribes psychoactive medication to a resident without the resident's consent because the resident is having a medication-related emergency:

(1) the person shall document in the resident's clinical record in specific medical or behavioral terms the necessity of the order; and

(2) treatment of the resident with the psychoactive medication shall be provided in the manner, consistent with clinically appropriate medical care, least restrictive of the resident's personal liberty.

(f) A physician or a person designated by the physician is not liable for civil damages or an administrative penalty and is not subject to disciplinary action for a breach of confidentiality of medical information for a disclosure of the information provided under Subsection (c)(2) made by the resident or the person authorized by law to consent on behalf of the resident that occurs while the information is in the possession or control of the resident or the person authorized by law to consent on behalf of the resident.

Added by Acts 2001, 77th Leg., ch. 919, Sec. 2, eff. June 14, 2001.

SUBCHAPTER M. COMPLAINT INSPECTIONS

Sec. 242.551. COMPLAINT REQUESTING INSPECTION. (a) A person may request an inspection of an institution in accordance with this chapter by making a complaint notifying the department of an alleged violation of law and requesting an inspection.

(b) The department shall encourage a person who makes an

oral complaint under Subsection (a) to submit a written, signed complaint.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.552. DISCLOSURE OF SUBSTANCE OF COMPLAINT. The department may not provide information to the institution relating to the substance of a complaint made under this subchapter before an on-site inspection is begun in accordance with this subchapter.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.553. CONFIDENTIALITY. The name of the person making the complaint is confidential and may not be released to the institution or any other person, unless the person making the complaint specifically requests that the person's name be released.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.554. PRELIMINARY REVIEW OF COMPLAINT; INSPECTION. (a) On receipt of a complaint under this subchapter, the department shall make a preliminary review of the complaint.

(b) Within a reasonable time after receipt of the complaint, the department shall make an on-site inspection or otherwise respond to the complaint unless the department determines that:

(1) the person making the complaint made the complaint to harass the institution;

(2) the complaint is without any reasonable basis; or

(3) sufficient information in the possession of the department indicates that corrective action has been taken.

(c) The department shall promptly notify the person making the complaint of the department's proposed course of action under Subsection (b) and the reasons for that action.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

SUBCHAPTER N. ADMINISTRATION OF MEDICATION

Sec. 242.601. MEDICATION ADMINISTRATION. (a) An institution must establish medication administration procedures.

(b) The medication administration procedures must comply with this subchapter and the rules adopted by the board under Section 242.608.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.61, eff. Sept. 1, 2003.

Sec. 242.602. PHARMACIST SERVICES. (a) An institution shall:

(1) employ a licensed pharmacist responsible for operating the institution's pharmacy; or

(2) contract, in writing, with a licensed pharmacist to advise the institution on ordering, storage, administration, and disposal of medications and biologicals and related recordkeeping.

(b) The institution shall allow residents to choose their pharmacy provider from any pharmacy that is qualified to perform the services.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.603. STORAGE AND DISPOSAL OF MEDICATIONS. (a) An institution shall store medications under appropriate conditions of sanitation, temperature, light, moisture, ventilation, segregation, and security.

(b) The institution shall properly dispose of:

(1) any medication that is discontinued or outdated, except as provided by Subsection (c); and

(2) any medication in a container with a worn or illegible label or missing a label.

(c) A discontinued medication that has not been destroyed must be reinstated if reordered.

(d) An institution shall release the medications of a resident who is transferred directly to another institution or who is discharged to home to the new institution or to the resident or resident's next of kin or guardian, as appropriate. The

institution may release a medication to a resident only on the written or verbal authorization of the attending physician.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.62, eff. Sept. 1, 2003.

Sec. 242.604. REPORTS OF MEDICATION ERRORS AND ADVERSE REACTIONS. An institution's nursing staff must report medication errors and adverse reactions to the resident's physician in a timely manner, as warranted by an assessment of the resident's condition, and record the errors and reactions in the resident's clinical record.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.605. MEDICATION REFERENCE SOURCES. An institution shall maintain updated medication reference texts or sources. If the institution has a resident younger than 18 years of age, these texts or sources must include information on pediatric medications, dosages, sites, routes, techniques of administration of medications, desired effects, and possible side effects.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.606. PERMITS TO ADMINISTER MEDICATION. A person may not administer medication to a resident unless the person:

(1) holds a license under state law that authorizes the person to administer medication; or

(2) holds a permit issued under Section 242.610 and acts under the authority of a person who holds a license under state law that authorizes the person to administer medication.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Redesignated from V.T.C.A, Health and Safety Code Sec. 242.151 and amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.607. EXEMPTIONS FOR NURSING STUDENTS AND

MEDICATION AIDE TRAINEES. (a) Sections 242.606 and 242.614 do not apply to:

(1) a graduate nurse holding a temporary permit issued by the Texas Board of Nursing;

(2) a student enrolled in an accredited school of nursing or program for the education of registered nurses who is administering medications as part of the student's clinical experience;

(3) a graduate vocational nurse holding a temporary permit issued by the Texas Board of Nursing;

(4) a student enrolled in an accredited school of vocational nursing or program for the education of vocational nurses who is administering medications as part of the student's clinical experience; or

(5) a trainee in a medication aide training program approved by the department under this subchapter who is administering medications as part of the trainee's clinical experience.

(b) The administration of medications by persons exempted under Subdivisions (1) through (4) of Subsection (a) is governed by the terms of the memorandum of understanding executed by the department and the Texas Board of Nursing.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 31, Sec. 1, eff. June 19, 1990. Redesignated from Health and Safety Code Sec. 242.1511 and amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 553, Sec. 2.011, eff. Feb. 1, 2004.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889, Sec. 69, eff. September 1, 2007.

Sec. 242.608. RULES FOR ADMINISTRATION OF MEDICATION. The board by rule shall establish:

(1) minimum requirements for the issuance, denial, renewal, suspension, emergency suspension, and revocation of a permit to administer medication to a resident;

(2) curricula to train persons to administer

medication to a resident;

(3) minimum standards for the approval of programs to train persons to administer medication to a resident and for rescinding approval; and

(4) the acts and practices that are allowed or prohibited to a permit holder.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Redesignated from V.T.C.A, Health and Safety Code Sec. 242.152 and amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.609. TRAINING PROGRAMS TO ADMINISTER MEDICATION.

(a) An application for the approval of a training program must be made to the department on a form and under rules prescribed by the board.

(b) The department shall approve a training program that meets the minimum standards adopted under Section 242.608. The department may review the approval annually.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Redesignated from V.T.C.A, Health and Safety Code Sec. 242.153 and amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.610. ISSUANCE AND RENEWAL OF PERMIT TO ADMINISTER MEDICATION. (a) To be issued or to have renewed a permit to administer medication, a person shall apply to the department on a form prescribed and under rules adopted by the board.

(b) The department shall prepare and conduct, at the site of the training program, an examination for the issuance of a permit. The results of the examination shall be reported in accordance with Section 242.6101.

(c) The department shall require a permit holder to satisfactorily complete a continuing education course approved by the department for renewal of the permit.

(d) Subject to Subsections (h)-(m), the department shall issue a permit or renew a permit to an applicant who:

(1) meets the minimum requirements adopted under

Section 242.608;

(2) successfully completes the examination or the continuing education requirements; and

(3) pays a nonrefundable application fee determined by the board.

(e) Except as provided by Subsection (g), a permit is valid for one year and is not transferable.

(f) The department may issue a permit to an employee of a state or federal agency listed in Section 242.003(a)(6)(B).

(g) The board by rule may adopt a system under which permits expire on various dates during the year. For the year in which the permit expiration date is changed, the department shall prorate permit fees on a monthly basis so that each permit holder pays only that portion of the permit fee that is allocable to the number of months during which the permit is valid. On renewal of the permit on the new expiration date, the total permit renewal fee is payable.

(h) A person who is otherwise eligible to renew a permit may renew an unexpired permit by paying the required renewal fee to the department before the expiration date of the permit. A person whose permit has expired may not engage in activities that require a permit until the permit has been renewed.

(i) A person whose permit has been expired for 90 days or less may renew the permit by paying to the department a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(j) A person whose permit has been expired for more than 90 days but less than one year may renew the permit by paying to the department a renewal fee that is equal to two times the normally required renewal fee.

(k) A person whose permit has been expired for one year or more may not renew the permit. The person may obtain a new permit by complying with the requirements and procedures, including the examination requirements, for obtaining an original permit.

(l) A person who was issued a permit in this state, moved to another state, currently holds a valid permit or license issued by the other state, and has been in practice in that state for the two years preceding the date of application may obtain a new permit without reexamination. The person must pay to the department a fee

that is equal to two times the normally required renewal fee for the permit.

(m) Not later than the 30th day before the date a person's permit is scheduled to expire, the department shall send written notice of the impending expiration to the person at the person's last known address according to the records of the department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 93, eff. Sept. 1, 1991. Redesignated from V.T.C.A, Health and Safety Code Sec. 242.154 and amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 453, Sec. 1, eff. June 18, 1999; Acts 2003, 78th Leg., ch. 1169, Sec. 15, eff. Sept. 1, 2003.

Sec. 242.6101. RESULTS OF EXAMINATION FOR ISSUANCE OF PERMIT. (a) Not later than the 30th day after the date a person takes an examination for the issuance of a permit under this subchapter, the department shall notify the person of the results of the examination.

(b) If the examination is graded or reviewed by a testing service:

(1) the department shall notify the person of the results of the examination not later than the 14th day after the date the department receives the results from the testing service; and

(2) if notice of the examination results will be delayed for longer than 90 days after the examination date, the department shall notify the person of the reason for the delay before the 90th day.

(c) The department may require a testing service to notify a person of the results of the person's examination.

(d) If requested in writing by a person who fails an examination for the issuance of a permit administered under this subchapter, the department shall furnish the person with an analysis of the person's performance on the examination.

Added by Acts 2003, 78th Leg., ch. 1169, Sec. 16, eff. Sept. 1, 2003.

Sec. 242.611. FEES FOR ISSUANCE AND RENEWAL OF PERMIT TO ADMINISTER MEDICATION. The board shall set the fees in amounts reasonable and necessary to recover the amount projected by the department as required to administer its functions. Except as otherwise provided by Section 242.610, the fees may not exceed:

(1) \$25 for a combined permit application and examination fee; and

(2) \$15 for a renewal permit application fee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Redesignated from V.T.C.A, Health and Safety Code Sec. 242.155 and amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1169, Sec. 17, eff. Sept. 1, 2003.

Sec. 242.612. VIOLATION OF PERMITS TO ADMINISTER MEDICATION. (a) The board shall revoke, suspend, or refuse to renew a permit or shall reprimand a permit holder for a violation of this subchapter or a rule of the board adopted under this subchapter. In addition, the board may suspend a permit in an emergency or rescind training program approval.

(b) Except as provided by Section 242.613, the procedure by which the department takes a disciplinary action and the procedure by which a disciplinary action is appealed are governed by the department's rules for a formal hearing and by Chapter 2001, Government Code.

(c) The board may place on probation a person whose permit is suspended. If a permit suspension is probated, the board may require the person:

(1) to report regularly to the department on matters that are the basis of the probation;

(2) to limit practice to the areas prescribed by the board; or

(3) to continue or review professional education until the person attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995. Redesignated from V.T.C.A, Health and Safety Code Sec. 242.156 and

amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1169, Sec. 18, eff. Sept. 1, 2003.

Sec. 242.613. EMERGENCY SUSPENSION OF PERMITS TO ADMINISTER MEDICATION. (a) The department shall issue an order to suspend a permit issued under this subchapter if the department has reasonable cause to believe that the conduct of the permit holder creates an imminent danger to the public health or safety.

(b) An emergency suspension is effective immediately without a hearing on notice to the permit holder.

(c) If requested in writing by a permit holder whose permit is suspended, the department shall conduct a hearing to continue, modify, or rescind the emergency suspension.

(d) The hearing must be held not earlier than the 10th day or later than the 30th day after the date on which the hearing request is received.

(e) The hearing and an appeal from a disciplinary action related to the hearing are governed by the department's rules for a formal hearing and Chapter 2001, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995. Redesignated from V.T.C.A, Health and Safety Code Sec. 242.157 and amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.614. ADMINISTRATION OF MEDICATION; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly administers medication to a resident and the person:

(1) does not hold a license under state law that authorizes the person to administer medication; or

(2) does not hold a permit issued by the department under this subchapter.

(b) An offense under this section is a Class B misdemeanor. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from V.T.C.A, Health and Safety Code Sec. 242.158 and amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

SUBCHAPTER R. ELECTRONIC MONITORING OF RESIDENT'S ROOM

Sec. 242.841. DEFINITIONS. In this subchapter:

(1) "Authorized electronic monitoring" means the placement of an electronic monitoring device in the room of a resident of an institution and making tapes or recordings with the device after making a request to the institution to allow electronic monitoring.

(2) "Electronic monitoring device":

(A) includes:

(i) video surveillance cameras installed in the room of a resident; and

(ii) audio devices installed in the room of a resident designed to acquire communications or other sounds occurring in the room; and

(B) does not include an electronic, mechanical, or other device that is specifically used for the nonconsensual interception of wire or electronic communications.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.

Sec. 242.842. CRIMINAL AND CIVIL LIABILITY. (a) It is a defense to prosecution under Section 16.02, Penal Code, or any other statute of this state under which it is an offense to intercept a communication or disclose or use an intercepted communication, that the communication was intercepted by an electronic monitoring device placed in the room of a resident of an institution.

(b) This subchapter does not affect whether a person may be held to be civilly liable under other law in connection with placing an electronic monitoring device in the room of a resident of an institution or in connection with using or disclosing a tape or recording made by the device except:

(1) as specifically provided by this subchapter; or

(2) to the extent that liability is affected by:

(A) a consent or waiver signed under this subchapter; or

(B) the fact that authorized electronic

monitoring is required to be conducted with notice to persons who enter a resident's room.

(c) A communication or other sound acquired by an audio electronic monitoring device installed under the provisions of this subchapter concerning authorized electronic monitoring is not considered to be:

(1) an oral communication as defined by Section 1, Article 18.20, Code of Criminal Procedure; or

(2) a communication as defined by Section 123.001, Civil Practice and Remedies Code.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.

Sec. 242.843. COVERT USE OF ELECTRONIC MONITORING DEVICE; LIABILITY OF DEPARTMENT OR INSTITUTION. (a) For purposes of this subchapter, the placement and use of an electronic monitoring device in the room of a resident is considered to be covert if:

(1) the placement and use of the device is not open and obvious; and

(2) the institution and the department are not informed about the device by the resident, by a person who placed the device in the room, or by a person who is using the device.

(b) The department and the institution may not be held to be civilly liable in connection with the covert placement or use of an electronic monitoring device in the room of a resident.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.

Sec. 242.844. REQUIRED FORM ON ADMISSION. The department by rule shall prescribe a form that must be completed and signed on a resident's admission to an institution by or on behalf of the resident. The form must state:

(1) that a person who places an electronic monitoring device in the room of a resident or who uses or discloses a tape or other recording made by the device may be civilly liable for any unlawful violation of the privacy rights of another;

(2) that a person who covertly places an electronic monitoring device in the room of a resident or who consents to or acquiesces in the covert placement of the device in the room of a

resident has waived any privacy right the person may have had in connection with images or sounds that may be acquired by the device;

(3) that a resident or the resident's guardian or legal representative is entitled to conduct authorized electronic monitoring under Subchapter R, Chapter 242, Health and Safety Code, and that if the institution refuses to permit the electronic monitoring or fails to make reasonable physical accommodations for the authorized electronic monitoring that the person should contact the Texas Department of Human Services;

(4) the basic procedures that must be followed to request authorized electronic monitoring;

(5) the manner in which this chapter affects the legal requirement to report abuse or neglect when electronic monitoring is being conducted; and

(6) any other information regarding covert or authorized electronic monitoring that the department considers advisable to include on the form.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.

Sec. 242.845. AUTHORIZED ELECTRONIC MONITORING: WHO MAY REQUEST. (a) If a resident has capacity to request electronic monitoring and has not been judicially declared to lack the required capacity, only the resident may request authorized electronic monitoring under this subchapter, notwithstanding the terms of any durable power of attorney or similar instrument.

(b) If a resident has been judicially declared to lack the capacity required for taking an action such as requesting electronic monitoring, only the guardian of the resident may request electronic monitoring under this subchapter.

(c) If a resident does not have capacity to request electronic monitoring but has not been judicially declared to lack the required capacity, only the legal representative of the resident may request electronic monitoring under this subchapter. The department by rule shall prescribe:

(1) guidelines that will assist institutions, family members of residents, advocates for residents, and other interested persons to determine when a resident lacks the required capacity;

and

(2) who may be considered to be a resident's legal representative for purposes of this subchapter, including:

(A) persons who may be considered the legal representative under the terms of an instrument executed by the resident when the resident had capacity; and

(B) persons who may become the legal representative for the limited purpose of this subchapter under a procedure prescribed by the department.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.

Sec. 242.846. AUTHORIZED ELECTRONIC MONITORING: FORM OF REQUEST; CONSENT OF OTHER RESIDENTS IN ROOM. (a) A resident or the guardian or legal representative of a resident who wishes to conduct authorized electronic monitoring must make the request to the institution on a form prescribed by the department.

(b) The form prescribed by the department must require the resident or the resident's guardian or legal representative to:

(1) release the institution from any civil liability for a violation of the resident's privacy rights in connection with the use of the electronic monitoring device;

(2) choose, when the electronic monitoring device is a video surveillance camera, whether the camera will always be unobstructed or whether the camera should be obstructed in specified circumstances to protect the dignity of the resident; and

(3) obtain the consent of other residents in the room, using a form prescribed for this purpose by the department, if the resident resides in a multiperson room.

(c) Consent under Subsection (b)(3) may be given only:

(1) by the other resident or residents in the room;

(2) by the guardian of a person described by Subdivision (1), if the person has been judicially declared to lack the required capacity; or

(3) by the legal representative who under Section 242.845(c) may request electronic monitoring on behalf of a person described by Subdivision (1), if the person does not have capacity

to sign the form but has not been judicially declared to lack the required capacity.

(d) The form prescribed by the department under Subsection (b)(3) must condition the consent of another resident in the room on the other resident also releasing the institution from any civil liability for a violation of the person's privacy rights in connection with the use of the electronic monitoring device.

(e) Another resident in the room may:

(1) when the proposed electronic monitoring device is a video surveillance camera, condition consent on the camera being pointed away from the consenting resident; and

(2) condition consent on the use of an audio electronic monitoring device being limited or prohibited.

(f) If authorized electronic monitoring is being conducted in the room of a resident and another resident is moved into the room who has not yet consented to the electronic monitoring, authorized electronic monitoring must cease until the new resident has consented in accordance with this section.

(g) The department may include other information that the department considers to be appropriate on either of the forms that the department is required to prescribe under this section.

(h) The department may adopt rules prescribing the place or places that a form signed under this section must be maintained and the period for which it must be maintained.

(i) Authorized electronic monitoring:

(1) may not commence until all request and consent forms required by this section have been completed and returned to the institution; and

(2) must be conducted in accordance with any limitation placed on the monitoring as a condition of the consent given by or on behalf of another resident in the room.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.

Sec. 242.847. AUTHORIZED ELECTRONIC MONITORING: GENERAL PROVISIONS. (a) An institution shall permit a resident or the resident's guardian or legal representative to monitor the room of the resident through the use of electronic monitoring devices.

(b) The institution shall require a resident who conducts authorized electronic monitoring or the resident's guardian or legal representative to post and maintain a conspicuous notice at the entrance to the resident's room. The notice must state that the room is being monitored by an electronic monitoring device.

(c) Authorized electronic monitoring conducted under this subchapter is not compulsory and may be conducted only at the request of the resident or the resident's guardian or legal representative.

(d) An institution may not refuse to admit an individual to residency in the institution and may not remove a resident from the institution because of a request to conduct authorized electronic monitoring. An institution may not remove a resident from the institution because covert electronic monitoring is being conducted by or on behalf of a resident.

(e) An institution shall make reasonable physical accommodation for authorized electronic monitoring, including:

(1) providing a reasonably secure place to mount the video surveillance camera or other electronic monitoring device; and

(2) providing access to power sources for the video surveillance camera or other electronic monitoring device.

(f) The resident or the resident's guardian or legal representative must pay for all costs associated with conducting electronic monitoring, other than the costs of electricity. The resident or the resident's guardian or legal representative is responsible for:

(1) all costs associated with installation of equipment; and

(2) maintaining the equipment.

(g) An institution may require an electronic monitoring device to be installed in a manner that is safe for residents, employees, or visitors who may be moving about the room. The department may adopt rules regarding the safe placement of an electronic monitoring device.

(h) If authorized electronic monitoring is conducted, the institution may require the resident or the resident's guardian or

legal representative to conduct the electronic monitoring in plain view.

(i) An institution may but is not required to place a resident in a different room to accommodate a request to conduct authorized electronic monitoring.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.

Sec. 242.848. REPORTING ABUSE AND NEGLECT. (a) For purposes of the duty to report abuse or neglect under Section 242.122 and the criminal penalty for the failure to report abuse or neglect under Section 242.131, a person who is conducting electronic monitoring on behalf of a resident under this subchapter is considered to have viewed or listened to a tape or recording made by the electronic monitoring device on or before the 14th day after the date the tape or recording is made.

(b) If a resident who has capacity to determine that the resident has been abused or neglected and who is conducting electronic monitoring under this subchapter gives a tape or recording made by the electronic monitoring device to a person and directs the person to view or listen to the tape or recording to determine whether abuse or neglect has occurred, the person to whom the resident gives the tape or recording is considered to have viewed or listened to the tape or recording on or before the seventh day after the date the person receives the tape or recording for purposes of the duty to report abuse or neglect under Section 242.122 and of the criminal penalty for the failure to report abuse or neglect under Section 242.131.

(c) A person is required to report abuse based on the person's viewing of or listening to a tape or recording only if the incident of abuse is acquired on the tape or recording. A person is required to report neglect based on the person's viewing of or listening to a tape or recording only if it is clear from viewing or listening to the tape or recording that neglect has occurred.

(d) If abuse or neglect of the resident is reported to the institution and the institution requests a copy of any relevant tape or recording made by an electronic monitoring device, the person who possesses the tape or recording shall provide the

institution with a copy at the institution's expense.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.

Sec. 242.849. USE OF TAPE OR RECORDING BY AGENCY OR COURT.

(a) Subject to applicable rules of evidence and procedure and the requirements of this section, a tape or recording created through the use of covert or authorized electronic monitoring described by this subchapter may be admitted into evidence in a civil or criminal court action or administrative proceeding.

(b) A court or administrative agency may not admit into evidence a tape or recording created through the use of covert or authorized electronic monitoring or take or authorize action based on the tape or recording unless:

(1) if the tape or recording is a video tape or recording, the tape or recording shows the time and date that the events acquired on the tape or recording occurred;

(2) the contents of the tape or recording have not been edited or artificially enhanced; and

(3) if the contents of the tape or recording have been transferred from the original format to another technological format, the transfer was done by a qualified professional and the contents of the tape or recording were not altered.

(c) A person who sends more than one tape or recording to the department shall identify for the department each tape or recording on which the person believes that an incident of abuse or evidence of neglect may be found. The department may adopt rules encouraging persons who send a tape or recording to the department to identify the place on the tape or recording that an incident of abuse or evidence of neglect may be found.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.

Sec. 242.850. NOTICE AT ENTRANCE TO INSTITUTION. Each institution shall post a notice at the entrance to the institution stating that the rooms of some residents may be being monitored electronically by or on behalf of the residents and that the monitoring is not necessarily open and obvious. The department by rule shall prescribe the format and the precise content of the

notice.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.

Sec. 242.851. ENFORCEMENT. (a) The department may impose appropriate sanctions under this chapter on an administrator of an institution who knowingly:

(1) refuses to permit a resident or the resident's guardian or legal representative to conduct authorized electronic monitoring;

(2) refuses to admit an individual to residency or allows the removal of a resident from the institution because of a request to conduct authorized electronic monitoring;

(3) allows the removal of a resident from the institution because covert electronic monitoring is being conducted by or on behalf of the resident; or

(4) violates another provision of this subchapter.

(b) The department may assess an administrative penalty under Section 242.066 against an institution that:

(1) refuses to permit a resident or the resident's guardian or legal representative to conduct authorized electronic monitoring;

(2) refuses to admit an individual to residency or allows the removal of a resident from the institution because of a request to conduct authorized electronic monitoring;

(3) allows the removal of a resident from the institution because covert electronic monitoring is being conducted by or on behalf of the resident; or

(4) violates another provision of this subchapter.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.

Sec. 242.852. CRIMINAL OFFENSE. (a) A person who intentionally hampers, obstructs, tampers with, or destroys an electronic monitoring device installed in a resident's room in accordance with this subchapter or a tape or recording made by the device commits an offense. An offense under this section is a Class B misdemeanor.

(b) It is a defense to prosecution under Subsection (a) that

the person took the action with the effective consent of the resident on whose behalf the electronic monitoring device was installed or the resident's guardian or legal representative.
Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.

SUBCHAPTER S. FAMILY COUNCIL

Sec. 242.901. DEFINITIONS. In this subchapter:

(1) "Department" means the Department of Aging and Disability Services.

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

(3) "Family council" means a group of family members, friends, or legal guardians of residents, who organize and meet privately or openly.

Added by Acts 2007, 80th Leg., R.S., Ch. 798, Sec. 3, eff. September 1, 2008.

Sec. 242.902. FAMILY COUNCIL. A family council may:

(1) make recommendations to the institution proposing policy and operational decisions affecting resident care and quality of life; and

(2) promote educational programs and projects that will promote the health and happiness of residents.

Added by Acts 2007, 80th Leg., R.S., Ch. 798, Sec. 3, eff. September 1, 2008.

Sec. 242.903. DUTIES OF INSTITUTION. (a) An institution shall consider the views and recommendations of the family council and make a reasonable effort to resolve the council's grievances.

(b) An institution may not:

(1) prohibit the formation of a family council;

(2) terminate an existing family council;

(3) deny a family council the opportunity to accept help from an outside person;

(4) limit the rights of a resident, family member, or family council member to meet with an outside person, including:

(A) an employee of the institution during

nonworking hours if the employee agrees; and

(B) a member of a nonprofit or government organization;

(5) prevent or interfere with the family council receiving outside correspondence addressed to the council;

(6) open family council mail; or

(7) wilfully interfere with the formation, maintenance, or operation of a family council, including interfering by:

(A) discriminating or retaliating against a family council participant; and

(B) wilfully scheduling events in conflict with previously scheduled family council meetings if the institution has other scheduling options.

(c) On admission of a resident, an institution shall inform the resident's family members in writing of:

(1) the family members' right to form a family council;

or

(2) if a family council already exists, the council's:

(A) meeting time, date, and location; and

(B) contact person.

(d) An institution shall:

(1) include notice of a family council in a mailing that occurs at least semiannually;

(2) permit a representative of a family council to discuss concerns with an individual conducting an inspection or survey of the facility;

(3) provide a family council with adequate space on a prominent bulletin board to post notices and other information;

(4) provide a designated staff person to act as liaison for a family council; and

(5) respond in writing to a written request by a family council within five working days.

Added by Acts 2007, 80th Leg., R.S., Ch. 798, Sec. 3, eff. September 1, 2008.

Sec. 242.904. MEETINGS. (a) On written request, an

institution shall allow a family council to meet in a common meeting room of the institution at least once a month during hours mutually agreed upon by the family council and the institution.

(b) Institution employees or visitors may attend a family council meeting only at the council's invitation.

Added by Acts 2007, 80th Leg., R.S., Ch. 798, Sec. 3, eff. September 1, 2008.

Sec. 242.905. VISITING. A family council member may authorize in writing another member to visit and observe a resident represented by the authorizing member unless the resident objects.

Added by Acts 2007, 80th Leg., R.S., Ch. 798, Sec. 3, eff. September 1, 2008.

Sec. 242.906. ADMINISTRATION; RULES. (a) The department shall administer this subchapter.

(b) The executive commissioner shall adopt rules necessary to implement this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 798, Sec. 3, eff. September 1, 2008.