

HEALTH AND SAFETY CODE

TITLE 4. HEALTH FACILITIES

SUBTITLE B. LICENSING OF HEALTH FACILITIES

CHAPTER 248. SPECIAL CARE FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 248.001. SHORT TITLE. This chapter may be cited as the Texas Special Care Facility Licensing Act.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.

Sec. 248.002. DEFINITIONS. In this chapter:

- (1) "Board" means the Texas Board of Health.
- (2) "Department" means the Texas Department of Health.
- (3) "Medical care" means care that is:

(A) required for improving life span and quality of life, for comfort, for prevention and treatment of illness, and for maintenance of bodily and mental function;

(B) under the continued supervision of a physician; and

(C) provided by a registered nurse or licensed vocational nurse available to carry out a physician's plan of care for a resident.

(4) "Nursing care" means services provided by nursing personnel as prescribed by a physician, including services to:

(A) promote and maintain health;

(B) prevent illness and disability;

(C) manage health care during acute and chronic phases of illness;

(D) provide guidance and counseling of individuals and families; and

(E) provide referrals to physicians, other health care providers, and community resources when appropriate.

(5) "Person" means an individual, organization, establishment, or association of any kind.

(6) "Resident" means an individual accepted for care in a special care facility.

(7) "Services" means the provision of medical or nursing care, assistance, or treatment by special care facility personnel, volunteers, or other qualified individuals, agencies, or staff of an organization or other entity to meet a resident's medical, nursing, social, spiritual, and emotional needs.

(8) "Special care facility" means an institution or establishment that provides a continuum of nursing or medical care or services primarily to persons with acquired immune deficiency syndrome or other terminal illnesses. The term includes a special residential care facility.

(9) "Bereavement services" has the meaning assigned by Section 142.001.

(10) "Palliative care" has the meaning assigned by Section 142.001.

(11) "Support services" has the meaning assigned by Section 142.001.

(12) "Residential AIDS hospice" means a facility licensed and designated as a residential AIDS hospice under this chapter.

(13) "Residential AIDS hospice care" means hospice services provided in a residential AIDS hospice.

(14) "AIDS" means acquired immune deficiency syndrome.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 30, eff. Sept. 1, 1993.

Sec. 248.003. EXEMPTIONS. This chapter does not apply to:

(1) a home and community support services agency required to be licensed under Chapter 142;

(2) a person required to be licensed under Chapter 241 (Texas Hospital Licensing Law);

(3) an institution required to be licensed under Chapter 242;

(4) an ambulatory surgical center required to be licensed under Chapter 243 (Texas Ambulatory Surgical Center Licensing Act);

(5) a birthing center required to be licensed under Chapter 244 (Texas Birthing Center Licensing Act);

(6) a facility required to be licensed under Chapter 245 (Texas Abortion Facility Reporting and Licensing Act);

(7) a child care institution, foster group home, foster family home, and child-placing agency, for children in foster care or other residential care who are under the conservatorship of the Department of Protective and Regulatory Services; or

(8) a person providing medical or nursing care or services under a license or permit issued under other state law.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 504, Sec. 1, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 800, Sec. 29, eff. Sept. 1, 1993.

SUBCHAPTER B. LICENSING, FEES, AND INSPECTIONS

Sec. 248.021. LICENSE REQUIRED. A person may not establish or operate a special care facility unless the person holds a license issued under this chapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.

Sec. 248.022. APPLICATION. (a) An applicant for a license must submit an application to the department on a form prescribed by the department and in accordance with board rules.

(b) Each application must be accompanied by a nonrefundable license fee in an amount set by the board.

(c) The department may require that an application be approved by the local health authority or other local official for compliance with municipal ordinances on building construction, fire prevention, and sanitation.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.

Sec. 248.023. ISSUANCE AND RENEWAL OF LICENSE. (a) The department shall issue a license to an applicant if on inspection and investigation it finds that the applicant meets the requirements of this chapter and the rules adopted by the board.

(b) A license shall be renewed at the times and in

accordance with the rules established by the board.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.

Sec. 248.024. FEES. (a) The board shall establish a license application fee in the amount of \$25 for each facility bed or \$200, whichever is greater, but the fees may not exceed \$1,000.

(b) The board may establish other reasonable and necessary fees in amounts that are adequate, with the license application and license renewal fees, to collect sufficient revenue to meet the expenses necessary to administer this chapter. The fees may include construction plan review and inspection fees.

(c) All fees collected under this chapter are nonrefundable.

(d) All fees received by the department shall be deposited to the credit of the General Revenue Fund and may be appropriated only to the department to administer this chapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.

Sec. 248.025. NONTRANSFERABILITY; POSTING. (a) A license issued under this chapter is not transferable or assignable.

(b) A special care facility shall post in plain sight the license issued under this chapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.

Sec. 248.026. DUTIES OF BOARD. (a) The board shall adopt rules necessary to implement this chapter. The rules must establish minimum standards for special care facilities relating to:

(1) the issuance, renewal, denial, suspension, and revocation of the license required by this chapter;

(2) the qualifications, duties, and supervision of professional and nonprofessional personnel and volunteers;

(3) residents' rights;

(4) medical and nursing care and services provided by a license holder;

(5) the organizational structure, lines of authority,

delegation of responsibility, and operation of a special care facility;

(6) records of care and services kept by the license holder, including the disposal or destruction of those records;

(7) safety, fire prevention, and sanitary provisions;

(8) transfer of residents in a medically appropriate manner from or to a special care facility;

(9) construction plan approval and inspection; and

(10) any aspects of a special care facility as necessary to protect the public or residents of the facility.

(b) Subsection (a) does not authorize the board to establish the qualifications of licensed health care providers or permit the board to authorize persons to provide health care services who are not authorized to provide those services under other state law.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.

Sec. 248.027. CONSTRUCTION STANDARDS. (a) If there are no local regulations in effect or enforced in the area in which a special care facility is located, the facility's construction must conform to the minimum standards established by the board.

(b) Construction of a facility is subject to construction plan approval by the department.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.

Sec. 248.028. INSPECTIONS; INVESTIGATIONS. (a) The department may inspect a special care facility and its records at reasonable times as necessary to ensure compliance with this chapter.

(b) The department shall investigate each complaint received regarding a special care facility.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.

Sec. 248.029. RESIDENTIAL AIDS HOSPICE DESIGNATION. (a) The board by rule shall adopt standards for the designation of a special care facility licensed under this chapter as a residential AIDS hospice. Those standards shall be consistent with other standards adopted under this chapter and consistent with the

purposes for which special care facilities are created.

(b) In adopting the standards, the board shall consider rules adopted for the designation of a hospice under Chapter 142 and shall establish specific standards requiring:

(1) the provision of exclusively palliative care by a facility;

(2) the provision of bereavement services;

(3) the provision of support services to the family of a client;

(4) the participation of a registered nurse in the development of an initial plan of care for a client and periodic review of the plan of care by an interdisciplinary team of the facility; and

(5) clinical and medical review of patient care services by a physician who acts as a medical consultant.

(c) A special care facility licensed under this chapter that satisfies the standards adopted under this section shall be designated as a residential AIDS hospice.

(d) Notwithstanding Chapter 142, a special care facility licensed and issued a designation as a residential AIDS hospice under this chapter may use the term "residential AIDS hospice" or a similar term or language in its title or in a description or representation of the facility if the similar term or language clearly identifies the facility as a facility regulated under this chapter and clearly distinguishes the facility from a hospice regulated under Chapter 142.

(e) A special care facility licensed under this chapter on July 1, 1994, on notice to the department that it is in compliance with the standards adopted for designation as a residential AIDS hospice, shall be issued that designation by the department, and that designation is valid until the date the license of the facility expires or is renewed.

Added by Acts 1993, 73rd Leg., ch. 800, Sec. 31, eff. Sept. 1, 1993.

SUBCHAPTER C. GENERAL ENFORCEMENT

Sec. 248.051. LICENSE DENIAL, SUSPENSION, PROBATION, OR REVOCATION. (a) The department may deny, revoke, or suspend a

license issued under this chapter for a violation of this chapter or the rules adopted under this chapter.

(b) Except as provided by Section 248.052, the procedures by which the department denies, revokes, or suspends a license and by which those actions are appealed are governed by the department's rules for a contested case hearing and by Chapter 2001, Government Code.

(c) If the department finds that a special care facility is in repeated noncompliance with this chapter or rules adopted under this chapter but that the noncompliance does not endanger public health and safety, the department may schedule the facility for probation rather than suspending or revoking the facility's license. The department shall provide notice to the facility of the probation and of the items of noncompliance not later than the 10th day before the date the probation period begins. The department shall designate a period of not less than 30 days during which the facility will remain under probation. During the probation period, the facility must correct the items that were in noncompliance and report the corrections to the department for approval.

(d) The department may suspend or revoke the license of a special care facility that does not correct items that were in noncompliance or that does not comply with this chapter or the rules adopted under this chapter within the applicable probation period. Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 802, Sec. 9, 10, eff. June 20, 2003.

Sec. 248.052. EMERGENCY SUSPENSION. The department may issue an emergency order to suspend any license issued under this chapter if the department has reasonable cause to believe that the conduct of a license holder creates an immediate danger to the public health and safety. An emergency suspension is effective immediately without a hearing on notice to the license holder. On written request of the license holder, the department shall conduct a hearing not earlier than the 10th day or later than the 30th day after the date the hearing request is received to determine if the

emergency suspension is to be continued, modified, or rescinded. The hearing and any appeal are governed by the department's rules for a contested case hearing and Chapter 2001, Government Code. Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 248.053. INJUNCTION. (a) The department may request that the attorney general petition a district court to restrain a license holder or other person from continuing to violate this chapter or any rule adopted by the board under this chapter. Venue for a suit for injunctive relief is in Travis County.

(b) On application for injunctive relief and a finding that a license holder or other person has violated this chapter or board rules, the district court shall grant the injunctive relief that the facts warrant.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.

Sec. 248.054. CIVIL PENALTY. A license holder or person who violates this chapter or a rule adopted by the board under this chapter is liable for a civil penalty, to be imposed by a district court, of not more than \$1,000 for each day of violation. All penalties collected under this section shall be deposited to the credit of the General Revenue Fund.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.

Sec. 248.0545. VIOLATION OF LAW RELATING TO ADVANCE DIRECTIVES. (a) The department shall assess an administrative penalty against a special care facility that violates Section 166.004.

(b) A penalty assessed under this section shall be \$500.

(c) The penalty shall be assessed in accordance with department rules. The rules must provide for notice and an opportunity for a hearing.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 2.06, eff. Sept. 1, 1999.

Sec. 248.055. CRIMINAL PENALTY. (a) A person who knowingly establishes or operates a special care facility without a license issued under this chapter commits an offense.

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

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

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.

SUBCHAPTER D. ADMINISTRATIVE PENALTY

Sec. 248.101. IMPOSITION OF PENALTY. (a) The department of health may impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter.

(b) A penalty collected under this subchapter shall be deposited in the state treasury in the general revenue fund.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.

Sec. 248.102. AMOUNT OF PENALTY. (a) The amount of the penalty may not exceed \$1,000 for each violation, and each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The total amount of the penalty assessed for a violation continuing or occurring on separate days under this subsection may not exceed \$5,000.

(b) The amount shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the threat to health or safety caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) whether the violator demonstrated good faith, including when applicable whether the violator made good faith efforts to correct the violation; and

(6) any other matter that justice may require.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.

Sec. 248.103. REPORT AND NOTICE OF VIOLATION AND PENALTY.

(a) If the department initially determines that a violation occurred, the department shall give written notice of the report by certified mail to the person.

(b) The notice must:

- (1) include a brief summary of the alleged violation;
- (2) state the amount of the recommended penalty; and
- (3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.

Sec. 248.104. PENALTY TO BE PAID OR HEARING REQUESTED.

(a) Within 20 days after the date the person receives the notice sent under Section 248.103, the person in writing may:

- (1) accept the determination and recommended penalty of the department; or
- (2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the commissioner of public health by order shall approve the determination and impose the recommended penalty.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.

Sec. 248.105. HEARING. (a) If the person requests a hearing, the commissioner of public health shall refer the matter to the State Office of Administrative Hearings, which shall promptly set a hearing date and give written notice of the time and place of the hearing to the person. An administrative law judge of the State Office of Administrative Hearings shall conduct the hearing.

(b) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the commissioner of

public health a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.

Sec. 248.106. DECISION BY COMMISSIONER. (a) Based on the findings of fact, conclusions of law, and proposal for a decision, the commissioner of public health by order may:

(1) find that a violation occurred and impose a penalty; or

(2) find that a violation did not occur.

(b) The notice of the commissioner's order under Subsection (a) that is sent to the person in accordance with Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.

Sec. 248.107. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Within 30 days after the date the order of the commissioner of public health under Section 248.106 that imposes an administrative penalty becomes final, the person shall:

(1) pay the penalty; or

(2) file a petition for judicial review of the commissioner's order contesting the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.

Sec. 248.108. STAY OF ENFORCEMENT OF PENALTY. (a) Within the 30-day period prescribed by Section 248.107, a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and
(ii) is effective until all judicial review of the commissioner's order 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 penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the commissioner of public health by certified mail.

(b) If the commissioner of public health receives a copy of an affidavit under Subsection (a)(2), the commissioner 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 penalty or to give a supersedeas bond.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.

Sec. 248.109. COLLECTION OF PENALTY. (a) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the penalty may be collected.

(b) The attorney general may sue to collect the penalty.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.

Sec. 248.110. DECISION BY COURT. (a) If the court sustains the finding that a violation occurred, 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.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1,

1999.

Sec. 248.111. REMITTANCE OF PENALTY AND INTEREST. (a) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person within 30 days after the date that the judgment of the court becomes final.

(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.

Sec. 248.112. RELEASE OF BOND. (a) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(b) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.

Sec. 248.113. ADMINISTRATIVE PROCEDURE. A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.