

## **BILL ANALYSIS**

Senate Research Center

S.B. 1248  
By: Madla  
Health & Human Services  
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### **DIGEST**

Currently, the Intermediate Care Facilities and Mental Retardation Program is codified in Chapter 242 of the Health and Safety Code, relating to the regulation of nursing home programs in the state. Over the years, national trends and changes in philosophy regarding services to people with mental retardation have significantly changed. In contrast, the trends in services to individuals residing in nursing facilities have changed little over the years. This bill would set forth Chapter 252, Health and Safety Code, pertaining to the direct regulation and governance of intermediate care facilities for the mentally retarded by the Texas Department of Human Services and Texas Board of Human Services.

### **PURPOSE**

As proposed, S.B. 1248 sets forth Chapter 252, Health and Safety Code, containing the regulations and guidelines for intermediate care facilities for the mentally retarded.

### **RULEMAKING AUTHORITY**

Rulemaking authority is granted to the Texas Board of Human Services (board) in SECTION 1 (Sections 252.034, 252.036, 252.037, 252.038(b), 252.061(b), 252.065(g) and (h), 252.066, 252.129(b), 252.134(d), and 252.182(b), Health and Safety Code); to the Texas Department of Human Services (department) in SECTION 1 (Sections 252.008, 252.033(e), 252.040(d), and 252.151, Health and Safety Code), to the board or a designated agency in SECTION 1 (Section 252.126, Health and Safety Code), and to the department and designee of the department in SECTION 1 (Section 252.007(a), Health and Safety Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Title 4B, Health and Safety Code, by adding Chapter 252, as follows:

**CHAPTER 252. INTERMEDIATE CARE FACILITIES FOR THE MENTALLY  
RETARDED  
SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 252.001. **PURPOSE.** Provides that the purpose of this chapter is to promote the public health, safety, and welfare by providing for the development, establishment, and enforcement of standards for the provision of services to individuals residing in intermediate care facilities for the mentally retarded and the establishment, construction, maintenance, and operation of facilities providing this service that will promote quality in the delivery of services and treatment of residents.

Sec. 252.002. **DEFINITIONS.** Defines "board," "department," "designee," "facility," "governmental unit," "person," and "resident."

Sec. 252.003. **EXEMPTIONS.** Sets forth the establishments that, except as otherwise provided by this chapter, do not apply to this chapter.

Sec. 252.004. **ALLOCATED FEDERAL MONEY.** Authorizes the Department of Human Services (department) to accept and use any money allocated by the federal government to the department for administrative expenses.

Sec. 252.005. LANGUAGE REQUIREMENTS PROHIBITED. Prohibits a facility from prohibiting a resident or employee from communicating in the person's native language with another resident or employee for the purpose of acquiring care, training, or treatment.

Sec. 252.006. RIGHTS OF RESIDENTS. Requires each facility to implement and enforce Chapter 102, Human Resources Code.

Sec. 252.007. PAPERWORK REDUCTION RULES. Requires the department and any designee of the department to adopt rules to reduce the amount of paperwork a facility must complete and retain; and attempt to reduce the amount of paperwork to the minimum amount required by state and federal law unless the reduction would jeopardize resident safety. Requires the department, any designee of the department, and each facility to work together to review rules and propose changes in paperwork requirements so that additional time is available for direct residential care.

Sec. 252.008. RULES GENERALLY. Requires the department to adopt rules related to the administration and implementation of this chapter.

Sec. 252.009. CONTINUATION AND COORDINATION. Requires the department to use the services of and consult with state and local agencies in carrying out the department's functions; and use the facilities of the department or a designee of the department. Authorizes the department to cooperate with local public health officials of a municipality or county and to delegate to those officials the power to make inspections and recommendations to the department. Authorizes the department to coordinate its personnel and facilities with a local agency of a municipality or county and to 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.

Sec. 252.010. CHANGE OF ADMINISTRATORS; FEE. Sets forth the actions which a facility that hires a new administrator or other person designated as the chief management officer for the facility is required to do upon such a hiring.

Sec. 252.011. PROHIBITION OF RENUMERATION. Prohibits a facility from receiving monetary or other remuneration from a person or agency that furnishes services or materials to the facility or residents for a fee. Authorizes the department to revoke the license of a facility that violates this section.

#### SUBCHAPTER B. LICENSING, FEES, AND INSPECTIONS

Sec. 252.031. LICENSE REQUIRED. Prohibits a person or governmental unit from establishing, conducting, or maintaining a facility in this state without a license.

Sec. 252.032. LICENSE APPLICATION. Provides that an application for a license is made to the department on a form provided by the department and must be accompanied by the license fee adopted under Section 252.034. Requires the application to contain information that the department requires. Authorizes the department to require affirmative evidence of ability to comply with the standards and rules adopted under this chapter.

Sec. 252.033. ISSUANCE AND RENEWAL OF LICENSE. Requires the department to issue a license if it finds that the applicant and facility meet the requirements established under this chapter. Authorizes the department to issue a license only for the premises and persons or governmental unit named in the application; and the maximum number of beds specified in the application. Prohibits a license from being transferred or assigned. Provides that a license is renewable on the second anniversary of issuance or renewal of the license after certain conditions are met. Requires the renewal report to be filed in accordance with certain rules adopted by the department. Prohibits the department from issuing a license under this chapter unless the beds provided under the license are approved under the state's plan on long-term care facilities for persons with mental retardation. Provides that a license or

renewal fee imposed under this chapter is an allowable cost for reimbursement under the state Medicaid program. Requires an increase in the amount of a fee to be reflected in reimbursement rates prospectively.

Sec. 252.034. LICENSE FEES. Authorizes the Board of Human Services (board), by rule, to adopt a fee for a license issued under this chapter. Sets forth the maximum amount of the fee. Requires the license fee to be paid with each application for an initial license or for a renewal or change of ownership of a license. Provides that a facility operated by the state is not required to pay a license fee. Authorize the board to adopt an additional fee for the approval of an increase in bed space. Requires all license fees collected under this section to be deposited in the state treasury to the credit of the department.

Sec. 252.035. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. Authorizes the department to deny, suspend, or revoke a license if the department finds that the applicant or license holder has substantially failed to comply with the requirements established under this chapter. Provides that the status of an applicant for a license or a license holder is preserved until final disposition of the contested matters, except as the court may order in the public interest for the welfare and safety of the residents.

Sec. 252.036. MINIMUM STANDARDS. Authorizes the board to adopt, publish, and enforce certain minimum standards relating to the facility and the facility's residents.

Sec. 252.037. REASONABLE TIME TO COMPLY. Requires the board, by rule, to give a facility that is in operation when a rule or standard is adopted under this chapter a reasonable time to comply with the rule or standard.

Sec. 252.038. FIRE SAFETY REQUIREMENTS. Requires a facility to comply with the fire requirements established under this section. Requires the board, by rule, to adopt the fire safety standards applicable to the facility. Requires the standards to be the same as the fire safety standards established by an edition of the Life Safety Code of the National Fire Protection Association. Authorizes the edition selected, if required by federal law or regulation, to be different for facilities or portions of facilities operated or approved for construction at different times. Requires a facility that is licensed under applicable law on September 1, 1997, to comply with the fire safety standards applicable to the facility on that date. Provides that the rules adopted under this section do not prevent a facility 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. Authorizes a municipality to enact additional and more stringent fire safety standards applicable to new construction begun on or after September 1, 1997.

Sec. 252.039. POSTING. Requires each facility to prominently and conspicuously post for display in a public area of the facility that is readily available to residents, employers, and visitors certain items relating to the operation and regulation of the facility.

Sec. 252.040. INSPECTIONS. Authorizes the department or its designee to make any inspection, survey, or investigation that it considers necessary and to enter the premises of a facility at reasonable times to make an inspection, survey, or investigation. Provides that the department is entitled to access certain documents maintained by or on behalf of a facility to the extent necessary to enforce this chapter and the rules adopted under this chapter. Provides that a license holder or an applicant for a license is considered to have consented to entry and inspection of the facility by a representative of the department. Requires the department to establish procedures to preserve all relevant evidence of conditions that the department finds during an inspection, survey, or investigation that the department reasonably believes threaten a resident. Authorizes the procedures to include photography or photocopying of relevant documents. Requires the department to respect the privacy of the resident to the greatest extent possible; and prohibits making the identity of the resident known to the public. Provides that a facility, an officer or employee of a facility, and a resident's attending physician are not civilly liable for surrendering confidential or private material under this section. Requires the department to establish a form to summarize each

inspection report and complaint investigation report. Requires the department to 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.

Sec. 252.041. UNANNOUNCED INSPECTIONS. Requires the department to conduct at least two unannounced inspections of each facility during each licensing period. Requires the department to randomly select a sufficient percentage of facilities for unannounced inspections to be conducted between 5 p.m. and 8 a.m. in order to ensure compliance. Requires the inspections to be cursory. Authorizes the department to require additional inspections. Authorize the department to invite at least one person as a citizen advocate to participate in inspections. Requires the advocate to be an individual who has an interest in or who is employed by or affiliated with an organization or entity that represents, advocates for, or serves individuals with mental retardation or a related condition.

Sec. 252.042. DISCLOSURE OF UNANNOUNCED INSPECTIONS; CRIMINAL PENALTY. Provides that a person commits a Class B misdemeanor if the person intentionally, knowingly, or recklessly discloses to an unauthorized person facts about an unannounced inspection of a facility before the inspection occurs. Sets forth persons who are not included within the definition of "unauthorized person." Provides that a person convicted under this section is not eligible for state employment.

Sec. 252.043. LICENSING SURVEYS. Requires the department to provide a team to conduct surveys to validate findings of licensing surveys. Provides that the purpose of such a survey is to assure that survey teams survey in a fair and consistent manner. Requires a facility subjected to a validation survey to correct deficiencies cited by the validation team but is not subject to punitive action for those deficiencies.

#### SUBCHAPTER C. GENERAL ENFORCEMENT

Sec. 252.061. EMERGENCY SUSPENSION OR CLOSING ORDER. Requires the department to suspend a facility's license or order an immediate closing of part of the facility if certain conditions are found by the department. Requires the board, by rule, to provide for the placement of residents during the facility's suspension or closing to ensure their health and safety. Provides that an order suspending a license or closing a part of a facility under this section is immediately effective on the date on which the license holder receives written notice or a later date specified in the court order. Provides that an order suspending a license or ordering an immediate closing of a part of a facility is valid for 10 days after the effective date of the order.

Sec. 252.062. INJUNCTION. Authorizes the department to petition a district court for a temporary restraining order to restrain a person from continuing a violation of the standards if the department finds that the violation creates an immediate threat to the health and safety of the facility's residents. Authorizes the district court, by injunction, to prohibit a person from continuing a violation of the standards or licensing requirements prescribed by this chapter; to restrain or prevent the establishment, conduct, management, or operation of a facility without a license issued under this chapter; or to grant the injunctive relief warranted by the facts on a finding by the court that a person is violating the standards or licensing requirements prescribed by this chapter. Authorizes the attorney general, on request by the department, to bring and conduct on behalf of the state a suit authorized by this section. Requires a suit for a temporary restraining order or other injunctive relief to be brought in the county in which the alleged violation occurs.

Sec. 252.063. LICENSE REQUIREMENTS; CRIMINAL PENALTY. Provides that a person commits an offense if the person violates Section 252.031. Provides that 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. Provides that each day of a continuing violation after conviction is a separate offense.

Sec. 252.064. CIVIL PENALTY. Provides that a person who violates this chapter or a rule adopted under this chapter is liable for a civil penalty of not less than \$100 or more than \$10,000 for each violation if the department determines the violation threatens the health and safety of a resident. Provides that each day of a continuing violation constitutes a separate ground for recovery. Requires the attorney general, on request of the department, to bring and conduct a suit to collect a civil penalty. Requires the amount collected to be remitted to the comptroller for deposit to the credit of the general revenue fund.

Sec. 252.065. ADMINISTRATIVE PENALTY. (a) Authorizes the board to impose an administrative penalty against a person licensed under this chapter or a rule or order adopted under this chapter.

(b) Authorizes the penalty for a violation to be in an amount not to exceed \$5,000. Provides that each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) Requires the amount of the penalty to be based on certain conditions.

(d) Authorize the executive director, upon determining that a violation has occurred, to issue a report to the board that states the facts on which the determination is based and the director's recommendation on the imposition of a penalty

(e) Requires the executive director, within 14 days after the date the report is issued, to give written notice of the report to the person. Authorize the notice to be given by certified mail. Sets forth the required contents of the penalty.

(f) Authorizes a person, within 20 days after the date the person receives the notice, to accept the determination and recommended penalty or to make a written request for hearing on the occurrence of the violation, the amount of the penalty, or both.

(g) Requires the board, by order, to approve the determination and impose the recommended penalty upon the person accepting the determination and recommended penalty of the executive director.

(h) Sets forth the guidelines for a hearing if the person requests a hearing or fails to respond timely to the notice.

(i) Sets forth the required contents of the notice of the board's order given to the person under Chapter 2001, Government Code.

(j) Sets forth the options from which a person is required to choose, within 30 days after the date the board's order becomes final.

(k) Sets forth the options from which a person is authorized to choose, within the 30-day period in order to stay enforcement of the penalty.

(l) Authorizes the executive director, upon receipt of a copy of a certain affidavit, to file with the court, within five days after the date the copy is received, a contest to the affidavit. Requires the court to hold a hearing on the facts alleged in the affidavit as soon as practicable and to stay the enforcement of the penalty on finding that the alleged facts are true. Provides that 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.

(m) Authorizes the executive director to refer the matter to the attorney general for collection of the amount of the penalty if the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed.

(n) Provides that judicial review of the order of the board is instituted by filing a petition

as provided by Chapter 2001G, Government Code; and is under the substantial evidence rule.

(o) Authorizes the court to uphold or reduce the amount of the penalty and order the person to pay that amount if the court sustains the occurrence of the violation. Requires the court to order that no penalty is owed if the court does not sustain the occurrence of the violation.

(p) Sets forth the required guidelines under which the court is to proceed when the judgment of the court becomes final.

(q) Requires a penalty collected under this section to be remitted to the comptroller for deposit in the general revenue fund.

(r) Provides that all proceedings to impose a penalty under this section are subject to Chapter 2001, Government Code.

Sec. 252.066. RULES REGARDING ADMINISTRATIVE PENALTY. Requires the board to adopt rules governing the assessment of administrative penalties under this chapter, including rules providing for giving notice of a violation to a facility; and governing payment and refund of the penalty. Requires rules adopted under this section to include specific and objective criteria for determining the scope and severity of a violation and specific penalty ranges that correspond to violations. Sets forth required guidelines for the penalties. Requires the rules to establish a system to ensure standard and consistent application of penalties. Authorizes the department to prescribe a penalty for each day of a continuing violation. Provides that if a facility notifies the department that a violation has been corrected, the notification is prima facie evidence that the violation has been corrected. Prohibits the department from assessing a penalty for a continuing violation after the date on which the department receives notification that the violation has been corrected unless the department finds that the violation in fact continued after that date. Defines "immediate and serious threat," for purposes of this section.

#### SUBCHAPTER D. TRUSTEES FOR FACILITIES

Sec. 252.091. FINDINGS AND PURPOSE. Provides that the legislature finds that closing a facility for a violation of a law or rule may have an adverse effect on the facility's residents and their families; and result in a lack of readily available financial resources to meet the basic needs of the residents for food, shelter, medication, and personal services. Provides that the purpose of this subchapter is to provide for the appointment of a trustee to assume the operations of the facility in a manner that emphasizes resident care and reduces resident trauma; and a fund to assist a court-appointed trustee in meeting the basic needs of the residents.

Sec. 252.092. APPOINTMENT BY AGREEMENT. Authorizes a person who holds a controlling interest in a facility to request the department to assume the operation of the facility through the appointment of a trustee under this subchapter. Authorizes the department to enter into an agreement providing for the appointment of a trustee to take charge of the facility under conditions both parties consider appropriate if the department considers the appointment desirable. Sets forth the required conditions of an agreement. Sets forth the termination date of the agreement.

Sec. 252.093. INVOLUNTARY APPOINTMENT. Authorizes the department to request the attorney general to bring an action on behalf of the state for the appointment of a trustee to operate a facility under certain circumstances. Authorizes an appointed trustee to only assure an orderly and safe relocation of the facility's residents as quickly as possible. Requires a court to appoint a trustee to take charge of a facility if the court finds that involuntary appointment of a trustee is necessary. Requires the court, if possible, to appoint as trustee an individual whose background includes mental retardation service administration. Provides that an action under this section must be brought in Travis County.

Sec. 252.094. FEE; RELEASE OF MONEY. Provides that a trustee appointed under this subchapter is entitled to a reasonable fee as determined by the court. Authorizes the trustee to 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.

Sec. 252.095. EMERGENCY ASSISTANCE FEE. Authorizes the department to collect an annual fee to be used to make emergency assistance money available to a facility licensed under this chapter. Requires the fee collected under this section to be in the amount prescribed by Section 242.097(b) and to be deposited to the credit of the nursing and convalescent home trust fund established under Section 242.096. Authorizes the department to disburse money to a trustee for a facility licensed under this chapter to alleviate an immediate threat to the health or safety of the facility's residents. Authorizes payments to include payments described by Section 242.096(b). Authorizes a court to order the department to disburse emergency assistance money to a trustee for a facility licensed under this chapter if the court makes the findings provided by Section 242.096(c).

Sec. 252.096. REIMBURSEMENT. Requires a facility that receives emergency assistance money under this subchapter to reimburse the department for the amount received. Provides that the interest on unreimbursed amounts begins to accrue on the date on which the money is disbursed to the facility. Sets forth the rate of interest. Provides that the owner of the facility when the trustee is appointed is responsible for the reimbursement. Provides that the amount that remains unreimbursed on the first anniversary of the date on which the money is received is delinquent and the department may determine that the facility is ineligible for a Medicaid provider contract. Requires the department to deposit the reimbursement and interest received under this section to the credit of the nursing and convalescent home trust fund. Requires the attorney general to institute an action to collect money due under this section at the request of the department. Requires an action to be brought in Travis County.

Sec. 252.097. NOTIFICATION OF CLOSURE; CRIMINAL PENALTY. Requires a facility that is closing to 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 facility closes. Requires the facility to make the notification immediately on receiving a notice of the closing, if the department orders a facility to close or the facility's closure is in any other way involuntary. Requires the facility, if the closure is voluntary, to make the notification by one week after the date on which the decision to close is made.

Sec. 252.098. CRIMINAL PENALTY FOR FAILURE TO NOTIFY. Provides that a facility commits a Class A misdemeanor if the facility knowingly fails to comply with Section 252.097.

#### SUBCHAPTER E. REPORTS OF ABUSE AND NEGLECT

Sec. 252.121. DEFINITION. Defines "designated agency."

Sec. 252.122. REPORTING OF ABUSE AND NEGLECT. Requires a person 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 to report the abuse or neglect to the department, to a designated agency, or to both. Requires each facility to require each employee of the facility to sign a statement that the employee realizes that the employee may be criminally liable for failure to report abuse or neglect. Requires a person to make an oral report immediately on learning of abuse or neglect and to make a written report to the same agency by the fifth day after the oral report is made.

Sec. 252.123. CONTENTS OF REPORT. Provides that 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. Sets forth the required contents of the report.

Sec. 252.124. ANONYMOUS REPORTS OF ABUSE OR NEGLECT. Requires an anonymous report of abuse or neglect to be received and acted on in the same manner as an acknowledged report. Requires a local or state law enforcement agency that receives a report of abuse or neglect to refer the report to the department or the designated agency.

Sec. 252.125. INVESTIGATION AND REPORT OF RECEIVING AGENCY. Requires the department or the designated agency to make a thorough investigation promptly after receiving a report. Provides that the primary purpose of the investigation is the protection of the resident. Sets forth the facts and information the department or the designated agency is required to determine in the investigation. Authorizes the investigation to include a visit to the resident's facility and an interview with the resident. Requires a probate or county court under certain circumstances to order the person responsible for the care of a resident or the person in charge of a place where the resident is located to allow for the investigation and any interview with the resident. Requires the department to 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. Requires the department or the designated agency to make a complete written report of the investigation and submit the report and its recommendations to the district attorney and the appropriate law enforcement agency and to the department on the department's request.

Sec. 252.126. CONFIDENTIALITY. Provides that a report, record, or working paper used or developed in an investigation made under this subchapter is confidential and may be disclosed only for purposes consistent with the rules adopted by the board or the designated agency.

Sec. 252.127. IMMUNITY. Provides that a person who reports an act of abuse or neglect as provided by this subchapter is immune from civil or criminal liability that, in the absence of immunity, might result from making the report. Provides that the immunity provided by this section extends to participation in any judicial proceeding that results from the report.

Sec. 252.128. PRIVILEGED COMMUNICATIONS. Prohibits evidence in a proceeding regarding the abuse or neglect of a resident or the cause of any abuse or neglect from being excluded on the ground of privileged communication except in the case of a communication between an attorney and client.

Sec. 252.129. CENTRAL REGISTRY. Requires the department to maintain in the city of Austin a central registry of reported cases of resident abuse or neglect. Authorizes the board to adopt rules necessary to carry out this section. Requires the rules to provide for cooperation with hospitals and clinics in the exchange of reports of resident abuse or neglect.

Sec. 252.130. FAILURE TO REPORT; CRIMINAL PENALTY. Provides that a person commits a Class A misdemeanor 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 252.122.

Sec. 252.131. BAD FAITH, MALICIOUS, OR RECKLESS REPORTING; CRIMINAL PENALTY. Provides that a person commits a Class A misdemeanor if the person reports under this subchapter in bad faith, maliciously, or recklessly. Provides that the criminal penalty provided by this section is in addition to any civil penalties for which the person may be liable.

Sec. 252.132. SUIT FOR RETALIATION. Prohibits a facility from suspending or terminating the employment of, or from disciplining or otherwise discriminating against, an employee for reporting to the employee's supervisor, an administrator of the facility, a state regulatory agency, or a law enforcement agency the abuse or neglect of a resident. Provides that a facility that violates this section is liable to the person against whom the facility discriminated. Authorizes a person against whom a facility discriminates in violation of this section to sue for injunctive relief, damages, or both. Sets forth the damages a plaintiff who



prevails in a suit is authorized to recover. Provides that a person whose employment is suspended or terminated is entitled to reinstatement in the person's former position. Requires the petitioner to bring suit or notify the Texas Workforce Commission (commission) of the petitioner's intent to sue by a certain date. Requires a petitioner who notifies the commission to bring suit by a certain date after delivery of the notice to the commission. Requires the commission, upon receipt of notice, to notify the facility of the petitioner's intent to bring suit under this section. Provides that 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. Sets forth the venue options for a suit in district court under this section. Requires each facility to require each employee of the facility to sign a statement that the employee understands the employee's rights under this section. Requires the statement to be part of the statement required under Section 252.122(b). Requires the petitioner to bring suit by the second anniversary of the date on which the person's employment is suspended or terminated if a facility does not require an employee to read and sign the statement.

Sec. 252.133. **SUIT FOR RETALIATION AGAINST RESIDENT.** Prohibits a facility from retaliating or discriminating against a resident if the resident, the resident's guardian, or any other person reports abuse or neglect in accordance with this subchapter. Provides that a resident against whom a facility retaliates or discriminates is entitled to sue for certain relief, damages, court costs, and attorney's fees. Requires a resident who seeks relief under this section to report the alleged violation by the 180th day after the date on which the alleged violation of this section occurred or was discovered by the resident through reasonable diligence. Authorizes a suit to be brought in the district court of the county in which the facility is located or in a district court of Travis County.

Sec. 252.134. **REPORTS RELATING TO RESIDENT DEATHS.** Requires a facility licensed under this chapter to submit a report to the department concerning the death of a resident of the facility and a former resident that occurs 24 hours or less after the former resident is transferred from the facility to the hospital. Requires the report to be submitted by the 10th working day after the last day of each month in which a resident of the facility dies. Requires the facility to make the report on a form prescribed by the department. Requires the report to contain the name and social security number of the deceased. Requires the department to correlate reports under this section with death certificate information to develop data relating to certain information. Provides that unless specified by board rule, a record under this section is confidential and not subject to the provisions of Chapter 552, Government Code.

#### SUBCHAPTER F. MEDICAL CARE

Sec. 252.151. **ADMINISTRATION OF MEDICATION.** Requires the department to adopt rules relating to the administration of medication in intermediate care facilities.

Sec. 252.152. **APPLICATION OF OTHER LAW.** Provides that except as provided by Subsection (c), Chapter 242F applies to a facility. Defines "resident" and "institution." Provides that Section 242.160 does not apply to a facility.

#### SUBCHAPTER G. RESPITE CARE

Sec. 252.181. **DEFINITIONS.** Defines "plan of care" and "respite care."

Sec. 252.182. **RESPITE CARE.** Authorizes a facility licensed under this chapter to provide respite care for an individual who has a diagnosis of mental retardation or a related condition without regard to whether the individual is eligible to receive intermediate care services under federal law. Authorizes the board to adopt rules for the regulation of respite care provided by a facility licensed under this chapter.

Sec. 252.183. **PLAN OF CARE.** Requires the facility and the person arranging the care to

agree on the plan of care and requires the plan to be filed at the facility before the facility admits the person for the care. Sets forth who must sign the plan of care. Authorizes the facility to keep an agreed plan of care for a person for no longer than six months from the date on which it is received. Requires the facility to review and update the plan of care after each admission. Authorizes a facility to admit the person as frequently as is needed and as accommodations are available during that period.

Sec. 252.184. NOTIFICATION. Requires a facility that offers respite care to notify the department in writing that it offers respite care.

Sec. 252.185. INSPECTIONS. Requires the department to inspect a facility'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.

Sec. 252.186. SUSPENSION. Authorizes the department to require a facility 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 facility cannot comply with those standards in the respite care it provides. Authorizes the department to suspend the license of a facility that continues to provide respite care after receiving a written order from the department to cease.

SECTION 2. Amends Section 242.002(6), Health and Safety Code, to redefine "institution."

SECTION 3. Amends Section 242.003, Health and Safety Code, to provide that except as otherwise provided, this chapter does not apply to, among others, a facility licensed under Chapter 251 or exempt from licensure under Section 251.003. Deletes a provision providing that an institution described by Section 242.002(6)(c) is subject to licensing under this chapter under certain conditions.

SECTION 4. (a) Effective date: September 1, 1997.

(b) Provides that changes made to Section 242.002(6), Health and Safety Code, by this Act, take effect January 1, 1998.

SECTION 5. (a) Provides that notwithstanding Sections 252.031 and 252.063, Health and Safety Code, as added by this Act, a facility is not required to be licensed under Chapter 252, Health and Safety Code, as added by this Act, before January 1, 1998; and a facility that is required to be licensed under that chapter and that is, on the effective date of this Act, licensed under Chapter 242, Health and Safety Code, may continue to operate under the license issued under Chapter 242 until the later of December 31, 1997, or the date on which the license is subject to renewal.

(b) Prohibits a license issued under Chapter 242, Health and Safety Code, to an institution that is required to be licensed as a facility under Chapter 252, Health and Safety Code, as added by this Act, from being renewed after December 1, 1997.

(c) Provides that a facility licensed under Chapter 252, Health and Safety Code, as added by this Act, is not subject to Chapter 48, Human Resources Code.

SECTION 6. Emergency clause.