

IMPACTFUL LEGISLATION SUMMARY

87th Texas Legislative Session

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SUMMARY

The 87th Texas Legislative Session officially began on January 12th and ended on May 31st, 2021. Over the course of the Legislative Session, legislators filed 6,927 bills. 1,053 bills passed through all necessary steps to become law. The Texas Assisted Living Association tracked 126 bills which had either a direct or indirect impact on assisted living communities, and TALA testified in committee more than 27 times.

Governor Abbott has convened a special session to tackle priority legislative items, and he is expected to convene a separate special session for the allocation of American Rescue Plan funds and redistricting in the fall.

This document covers the legislation which has the greatest impact on assisted living.

For more information or any questions, please email our VP of Public Policy, Carmen Tilton at carmen.tilton@tala.org

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TALA PRIORITY LEGISLATION

Senate Bill 6- Pandemic Limited Liability

Status: Signed by the Governor; takes effect immediately

This broad limited liability bill covers all health care facilities, including hospitals, nursing homes, and assisted living communities. The liability limitation applies to pandemic-related adverse events during a declared pandemic disaster. It was drafted with COVID-19 in mind, but it applies to all future declared pandemic disasters. The willful and wanton standard in the Pandemic Liability Protection Bill minors the standard which applies in Texas' Good Samaritan law and in the emergency care protections which have been in effect since 2003. Senate Bill 6 does not protect bad actors who are grossly negligent, engage in willful misconduct or are consciously indifferent to their residents or patient's welfare and safety.

Senate Bill 271- Out-of-State Name-Based Background Checks

Status: Signed by the Governor; effective Sept. 1, 2021 and will need additional rules developed by the Texas Health and Human Services Commission

This bill closes a loophole in the Texas background check system without requiring providers to move to a more costly fingerprint background check process. The bill requires employers to conduct a name-based background check in each state where the applicant has lived within the past 5 years. The applicant would be required to sign an affidavit affirming that the individual has provided the new employer with previous residential history, and the new employee would be allowed to begin work in a non-direct care staff capacity while the name-based background checks are completed.



OTHER IMPACTFUL LEGISLATION

[Senate Bill 25](#) and [Senate Joint Resolution 19](#)- Right to Essential Caregivers

Status: Signed by the Governor; effective Sept. 1, 2021 and will need additional rules developed by the Texas Health and Human Services Commission

Senate Bill 25 establishes a resident's right to a designated essential caregiver and is modeled off of the existing emergency rules for essential caregivers in assisted living communities. One of the most important elements of the new law is a provision which states that essential caregivers cannot be required to adhere to conditions more restrictive than similar direct care staff. For example, a community cannot require essential caregivers to wear N95 masks if all direct care staff are wearing surgical facemasks. The bill also limits the length of time a community can suspend in-person visitation. Under SB 25, a community can request an initial seven-day suspension of in-person visitation with a request for an additional seven-day extension. No community can suspend in-person visitation for more than fourteen consecutive days or a total of 45 days in a year.

The Senate Joint Resolution will be on the ballot Nov 2, 2021, and it would further enshrine the right to an essential caregiver in the Texas Constitution.

[House Bill 3961](#)- Ombudsman Information on AL Website

Status: Signed by the Governor; the requirement takes effect Jan. 1, 2022

The law requires an assisted living community to post the phone number to the Long-Term Care Ombudsman on the community's website or on the parent company's website if appropriate. The language does not mandate where on the website the information shall be located, and assisted living communities have till Jan. 1, 2022 to add the information.

[House Bill 1681](#)- Prohibition of New Construction in a 100-Year Floodplain in Harris County

Status: Signed by the Governor; the prohibition applies to new construction beginning after Sept. 1, 2021

The law prohibits the new construction of an assisted living community in a 100-year floodplain within Harris County. This law for assisted living communities is now consistent with new construction prohibitions for both nursing homes and hospitals. The law does not impact existing communities located in a floodplain, which would like to renovate, remodel, or expand.

[Senate Bill 383](#)- Alzheimer's Certification Disclosure for Communities Advertising Memory Care Services

Status: Signed by the Governor; effective Sept. 1, 2021 and will need additional rules developed by the Texas Health and Human Services Commission

The new law directs the Health and Human Services Commission to adopt rules for improving the clarity of whether an assisted living community advertising "memory care services" is Alzheimer's Certified. Currently, all communities provide prospective residents with a form developed by the state agency which indicates whether the community is Alzheimer's Certified. HHSC is likely to redesign this form.

Senate Bill 930- Public Disclosure of Communicable Diseases

Status: Signed by the Governor; effective Sept. 1, 2021

The law is a codification of an Attorney General opinion, which said that the presence and aggregate number of a communicable disease in an assisted living community or other long-term care setting is not considered private health information. The bill does not change which diseases must be reported, nor does it modify the process for reporting cases.

Senate Bill 199- Automatic External Defibrillator Limited Liability

Status: Signed by the Governor; effective Sept. 1, 2021

A company, including an assisted living community, which has an AED in good, working order is not liable for someone using the device in an emergency. The community is not required to have a particular maintenance contract, but the machine cannot be in obvious disrepair.

Senate Bill 437- Personal Protective Equipment Stockpile Allocation Committee

Status: Signed by the Governor; effective immediately

The law establishes a committee to oversee the state's stockpile of personal protective equipment, which will hopefully result in better/faster PPE distribution to long-term care communities.

Senate Bill 968- Pandemic Response and Vaccine Passport Prohibition

Status: Signed by the Governor; effective immediately

Senate Bill 968 includes a wide range of pandemic-related provisions for different state agencies and health care providers. A provision on page 14 of the PDF prohibits the use of a vaccine passport for "customers." HHSC, historically, has not considered staff to be customers. Residents, however, are considered customers of an assisted living community. Side note: guidance from HHSC prohibits an assisted living community from requiring proof of a vaccine from any visitor entering an AL's building.

Senate Bill 572- Religious Clergy Visitation

Status: Signed by the Governor; effective immediately

The law is a codification of an earlier Attorney General opinion which allows clergy to enter a community at the request of a resident or the resident's legally authorized representative. The visit may be conditioned on adherence to the personal protective equipment and infection prevention and control policies established by the assisted living community.

House Bill 1423- Nursing Facility Inspections and Study on Emergency Power Generation

Status: Signed by the Governor; HHSC must complete the survey by Sept. 1, 2022

House Bill 1423 includes two main provisions. The first portion of the bill does not apply to assisted living communities. The second portion, however, directs the Health and Human Services Commission to survey all assisted living communities asking if they have backup power generation on-site and to report that information broken down by assisted living type and geographic location to the Texas Legislature.

RELEVANT BUDGET ITEMS

[Senate Bill 1](#) is the budget for the state of Texas for fiscal years 2022 and 2023. The [Legislative Budget Board](#) develops and organizes documents related to the Texas budget for each legislative session and has created a handful of analytical tools to visualize changes in appropriations from session to session. Assisted living communities will be most directly impacted by the two riders listed below.

Rider 147- Study on Assisted Living Facility Resident Quality of Care and Resident Satisfaction

Out of funds appropriated above in Strategy H.1.1, Facility/Community-based Regulation, the Health and Human Services Commission (HHSC) shall conduct a study of assisted living facility (ALF) residents' quality of care and quality of life. In conducting the study, HHSC shall review at least 30.0 percent of ALFs in the state, and include facilities of various licensed capacities and license types. HHSC shall conduct onsite case reviews of the care of ALF residents and interviews with residents, facility staff, and long-term care ombudsmen. HHSC shall prepare a report that includes an evaluation of facility policies, including policies that relate to residents' rights, and facility disclosure statements. The report will also evaluate preventable occurrences and any adverse outcomes related to issues including medication errors, inappropriate use of antipsychotic medication, falls, inappropriate placement in a locked unit, and healthcare-acquired infections. HHSC shall submit the report to the Governor, the Legislative Budget Board, the Lieutenant Governor, and the Speaker of the House of Representatives not later than December 1, 2022.

Rider 149- Allocation of Federal Funds for Long-Term Care Surveyors

Included in amounts appropriated in Strategy H.1.1, Facility/Community-based Regulation, and contingent on federal funds being made available for this purpose, is \$2,759,448 in Federal Funds and 31.7 full-time-equivalents (FTEs) in fiscal year 2022 and \$2,520,915 in Federal Funds and 31.7 FTEs in fiscal year 2023 to address a backlog of surveys and intakes for long-term care facilities.

