

By: Davis of Harris

H.B. No. 1715

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of certain long-term care facilities,  
including the establishment of late fees and changes to  
administrative penalties, and relating to the office of long-term  
care ombudsman.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 32.021(m), Human Resources Code, is  
amended to read as follows:

(m) Notwithstanding any provision of law to the contrary,  
the department may ~~[shall]~~ terminate a nursing facility's provider  
agreement if the department has imposed required Category 2 or  
Category 3 remedies on the facility three times within a 24-month  
period unless the department makes an affirmative finding that good  
cause exists to waive this requirement to facilitate a change in  
ownership to protect residents of a facility. In this subsection,  
"Category 2 remedies" and "Category 3 remedies" have the meanings  
assigned by 42 C.F.R. Section 488.408.

SECTION 2. Section 101.051(2), Human Resources Code, is  
amended to read as follows:

(2) "Long-term care facility" means a facility that  
serves persons who are 60 years of age or older and that is licensed  
or regulated or that is required to be licensed or regulated by the  
~~[Texas]~~ Department of Aging and Disability ~~[Human]~~ Services under  
Chapter 242 or 247, Health and Safety Code.

SECTION 3. Section 103.006(b), Human Resources Code, is amended to read as follows:

(b) The license expires two years [~~one year~~] from the date of its issuance. The executive commissioner of the Health and Human Services Commission 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, the department shall prorate the license fee on a monthly basis. Each license holder shall pay only that portion of the license fee allocable to the number of months for which the license is valid. A license holder shall pay the total license renewal fee at the time of renewal.

SECTION 4. Section 103.007, Human Resources Code, is amended by amending Subsections (a) and (c) and adding Subsection (d) to read as follows:

(a) An applicant for a license to operate an adult day-care facility must file an application on a form prescribed by the department together with a license fee of \$50 [~~\$25~~].

(c) A person who operates a facility that is licensed under this chapter must file an application for a renewal license not later than the 45th day before the expiration date of the current license on a form prescribed by the department together with a renewal fee of \$50 [~~\$25~~].

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

SECTION 5. Section 142.006(b), Health and Safety Code, is

amended to read as follows:

(b) A license issued under this chapter expires two years ~~[one year]~~ after the date of issuance. The executive commissioner of the Health and Human Services Commission 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, the department shall prorate the license fee on a monthly basis. Each license holder shall pay only that portion of the license fee allocable to the number of months for which the license is valid. A license holder shall pay the total license renewal fee at the time of renewal. The department may issue an initial license for a shorter term ~~[of less than one year]~~ to conform expiration dates for a locality or an applicant. The department~~[, in accordance with board rules,~~] may issue a temporary license to an applicant for an initial license.

SECTION 6. Section 142.010(a), Health and Safety Code, is amended to read as follows:

(a) The department ~~[board]~~ shall set license fees for home and community support services agencies in amounts that are reasonable to meet the costs of administering this chapter, except that the fees may not be less than \$600 ~~[\$300]~~ or more than \$2,000 ~~[\$1,000]~~ for a license to provide home health, hospice, or personal assistance services.

SECTION 7. Section 142.0105, Health and Safety Code, is amended to read as follows:

Sec. 142.0105. LICENSE RENEWAL. (a) A person who is otherwise eligible to renew a license may renew an unexpired

license by submitting a completed application for renewal and  
 paying the required renewal fee to the department not later than the  
45th day 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) An applicant for a license renewal who submits an  
application later than the 45th day before the expiration date of  
the license is subject to a late fee in accordance with department  
rules [~~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 may obtain a new license by complying with the requirements~~  
~~and procedures for obtaining an original license.~~

[~~(d)~~] Not later than the 120th [~~60th~~] 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. The written notice must include an application for  
license renewal and instructions for completing the application.

SECTION 8. Section 142.017, Health and Safety Code, is  
 amended by amending Subsection (e) and adding Subsection (j) to  
 read as follows:

(e) Except as provided by Subsection (j), the [~~The~~]  
 department by rule shall provide the home and community support  
 services agency with a reasonable period of time following the  
 first day of a violation to correct the violation before assessing

an administrative penalty if a plan of correction has been implemented.

(j) The department may assess an administrative penalty without providing a reasonable period of time to the agency to correct the violation if the violation:

(1) results in serious harm or death;

(2) constitutes a serious threat to health or safety;

(3) substantially limits the agency's capacity to provide care;

(4) is a violation in which a person:

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

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

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

(B) refuses to allow a representative of the department to inspect a book, record, or file required to be maintained by an agency;

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

(D) 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;

(E) fails to pay a penalty assessed by the

1 department under this chapter not later than the 10th day after the  
2 date the assessment of the penalty becomes final; or

3 (F) fails to submit:

4 (i) a plan of correction not later than the  
5 10th day after the date the person receives a statement of licensing  
6 violations; or

7 (ii) an acceptable plan of correction not  
8 later than the 30th day after the date the person receives  
9 notification from the department that the previously submitted plan  
10 of correction is not acceptable;

11 (5) is a violation of Section 142.0145; or

12 (6) involves the rights of the elderly under Chapter  
13 102, Human Resources Code.

14 SECTION 9. Section 242.032, Health and Safety Code, is  
15 amended by adding Subsection (f) to read as follows:

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

19 SECTION 10. Section 242.034, Health and Safety Code, is  
20 amended by adding Subsection (i) to read as follows:

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

25 SECTION 11. Section 242.066(a), Health and Safety Code, is  
26 amended to read as follows:

27 (a) The department may assess an administrative penalty

1 against a person who:

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

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

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

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

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

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

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

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

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

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

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

SECTION 12. Section 242.0665(b), Health and Safety Code, is amended to read as follows:

(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) [~~242.066(a)(2)-(6)~~];

(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.

SECTION 13. Sections 247.023(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The department shall issue a license if, after inspection and investigation, it finds that the applicant, the assisted living facility, and all controlling persons with respect to the applicant or facility meet the requirements of this chapter and the standards adopted under this chapter. The license expires on the second anniversary of the date of its issuance. The executive commissioner of the Health and Human Services Commission 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, the department shall prorate the



1 license fee on a monthly basis. Each license holder shall pay only  
2 that portion of the license fee allocable to the number of months  
3 during which the license is valid. A license holder shall pay the  
4 total license renewal fee at the time of renewal.

5 (b) To renew a license, the license holder must submit to  
6 the department the [~~annual~~] license renewal fee.

7 SECTION 14. Section 247.024, Health and Safety Code, is  
8 amended by amending Subsection (a) and adding Subsection (e) to  
9 read as follows:

10 (a) The department [~~board~~] shall set license fees imposed by  
11 this chapter:

12 (1) on the basis of the number of beds in assisted  
13 living facilities required to pay the fee; and

14 (2) in amounts reasonable and necessary to defray the  
15 cost of administering this chapter, but not to exceed \$1,500  
16 [~~\$750~~].

17 (e) An applicant who submits a license renewal later than  
18 the 45th day before the expiration date of a current license may be  
19 subject to a late fee in accordance with department rules.

20 SECTION 15. Section 247.0451(a), Health and Safety Code, is  
21 amended to read as follows:

22 (a) The department may assess an administrative penalty  
23 against a person who:

24 (1) violates this chapter or a rule, standard, or  
25 order adopted under this chapter or a term of a license issued under  
26 this chapter;

27 (2) makes a false statement, that the person knows or

1 should know is false, of a material fact:

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

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

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

8 (A) a book, record, or file required to be  
9 maintained by an assisted living facility; or

10 (B) any portion of the premises of an assisted  
11 living facility;

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

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

19 (6) fails to pay a penalty assessed under this chapter  
20 not later than the 30th day after the date the assessment of the  
21 penalty becomes final; or

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

24 SECTION 16. Section 247.0452(b), Health and Safety Code, is  
25 amended to read as follows:

26 (b) Subsection (a) does not apply:

27 (1) to a violation that the department determines

1 results in serious harm to or death of a resident;

2 (2) to a violation described by Sections  
3 247.0451(a)(2)-(7) [~~247.0451(a)(2)-(6)~~];

4 (3) to a second or subsequent violation of:

5 (A) a right of the same resident under Section  
6 247.064; or

7 (B) the same right of all residents under Section  
8 247.064; or

9 (4) to a violation described by Section 247.066, which  
10 contains its own right to correct provisions.

11 SECTION 17. Section 252.034, Health and Safety Code, is  
12 amended by adding Subsection (f) to read as follows:

13 (f) An applicant who submits an application for license  
14 renewal later than the 45th day before the expiration date of a  
15 current license may be subject to a late fee in accordance with  
16 department rules.

17 SECTION 18. Sections 252.065(a) and (e), Health and Safety  
18 Code, are amended to read as follows:

19 (a) The department may assess an administrative penalty  
20 against a person who:

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

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

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

27 (B) with respect to a matter under investigation

1 by the department;

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

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

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

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

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

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

18 (7) fails to submit a plan of correction within 10 days  
19 after receiving a statement of licensing violations; or

20 (8) fails to notify the department of a change in  
21 ownership before the effective date of that change of ownership  
22 [~~facility that violates this chapter or a rule adopted under this~~  
23 ~~chapter~~].

24 (e) The department by rule shall provide the facility with a  
25 reasonable period of time, not less than 45 days, following the  
26 first day of a violation to correct the violation before assessing  
27 an administrative penalty if a plan of correction has been

1 implemented. This subsection does not apply to a violation  
2 described by Subsection (a)(2)-(8) or to a violation that the  
3 department determines:

4 (1) has resulted in serious harm to or the death of a  
5 resident;

6 (2) [~~or~~] constitutes a serious threat to the health or  
7 safety of a resident; or

8 (3) substantially limits the institution's capacity to  
9 provide care.

10 SECTION 19. If before implementing any provision of this  
11 Act a state agency determines that a waiver or authorization from a  
12 federal agency is necessary for implementation of that provision,  
13 the agency affected by the provision shall request the waiver or  
14 authorization and may delay implementing that provision until the  
15 waiver or authorization is granted.

16 SECTION 20. (a) Except as provided by Subsection (b) of  
17 this section, this Act applies only to a license issued or renewed  
18 on or after September 1, 2007. A license issued or renewed before  
19 September 1, 2007, is governed by the law as it existed immediately  
20 before the effective date of this Act, and that law is continued in  
21 effect for that purpose.

22 (b) The changes in law made by this Act relating to the time  
23 for filing an application for a license renewal and the  
24 applicability of a late fee to an application for a license renewal  
25 apply only to an application for a license renewal filed on or after  
26 November 1, 2007. An application for a license renewal filed before  
27 November 1, 2007, is governed by the law as it existed immediately

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1 before the effective date of this Act, and that law is continued in  
2 effect for that purpose.

3 SECTION 21. This Act takes effect September 1, 2007.