

By: Janek

S.B. No. 1318

A BILL TO BE ENTITLED

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AN ACT

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

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

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

(m) Notwithstanding any provision of law to the contrary, the department 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. The executive director of the Health and Human Services Commission by rule shall establish criteria under which the requirement to terminate the provider agreement may be waived ~~[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. Subdivision (2), Section 101.051, 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

1 or regulated or that is required to be licensed or regulated by the
2 [~~Texas~~] Department of Aging and Disability [~~Human~~] Services under
3 Chapter 242 or 247, Health and Safety Code.

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

6 (b) The license expires two years [~~one year~~] from the date
7 of its issuance. The executive commissioner of the Health and Human
8 Services Commission by rule may adopt a system under which licenses
9 expire on various dates during the two-year period. For the year in
10 which a license expiration date is changed, the department shall
11 prorate the license fee on a monthly basis. Each license holder
12 shall pay only that portion of the license fee allocable to the
13 number of months for which the license is valid. A license holder
14 shall pay the total license renewal fee at the time of renewal.

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

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

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

26 (d) An applicant for a license renewal who submits an
27 application later than the 45th day before the expiration date of

1 the license is subject to a late fee in accordance with department
2 rules.

3 SECTION 5. Subsection (b), Section 142.006, Health and
4 Safety Code, is amended to read as follows:

5 (b) A license issued under this chapter expires two years
6 ~~[one year]~~ after the date of issuance. The executive commissioner
7 of the Health and Human Services Commission by rule may adopt a
8 system under which licenses expire on various dates during the
9 two-year period. For the year in which a license expiration date is
10 changed, the department shall prorate the license fee on a monthly
11 basis. Each license holder shall pay only that portion of the
12 license fee allocable to the number of months for which the license
13 is valid. A license holder shall pay the total license renewal fee
14 at the time of renewal. The department may issue an initial license
15 for a shorter term ~~[of less than one year]~~ to conform expiration
16 dates for a locality or an applicant. The department~~[, in~~
17 ~~accordance with board rules,~~] may issue a temporary license to an
18 applicant for an initial license.

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

21 (a) The department ~~[board]~~ shall set license fees for home
22 and community support services agencies in amounts that are
23 reasonable to meet the costs of administering this chapter, except
24 that the fees may not be less than \$600 ~~[\$300]~~ or more than \$2,000
25 ~~[\$1,000]~~ for a license to provide home health, hospice, or personal
26 assistance services.

27 SECTION 7. Section 142.0105, Health and Safety Code, is

1 amended to read as follows:

2 Sec. 142.0105. LICENSE RENEWAL. (a) A person who is
3 otherwise eligible to renew a license may renew an unexpired
4 license by submitting a completed application for renewal and
5 paying the required renewal fee to the department not later than the
6 45th day before the expiration date of the license. A person whose
7 license has expired may not engage in activities that require a
8 license [~~until the license has been renewed~~].

9 (b) An applicant for a license renewal who submits an
10 application later than the 45th day before the expiration date of
11 the license is subject to a late fee in accordance with department
12 rules [~~A person whose license has been expired for 90 days or less~~
13 ~~may renew the license by paying to the department a renewal fee that~~
14 ~~is equal to 1-1/2 times the normally required renewal fee~~].

15 (c) [~~A person whose license has been expired for more than~~
16 ~~90 days may obtain a new license by complying with the requirements~~
17 ~~and procedures for obtaining an original license.~~

18 [~~(d)~~] Not later than the 120th [~~60th~~] day before the date a
19 person's license is scheduled to expire, the department shall send
20 written notice of the impending expiration to the person at the
21 person's last known address according to the records of the
22 department. The written notice must include an application for
23 license renewal and instructions for completing the application.

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

27 (e) Except as provided by Subsection (j), the [~~The~~]

1 department by rule shall provide the home and community support
2 services agency with a reasonable period of time following the
3 first day of a violation to correct the violation before assessing
4 an administrative penalty if a plan of correction has been
5 implemented.

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

9 (1) results in serious harm or death;

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

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

13 (4) is a violation in which a person:

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

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

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

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

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

26 (D) wilfully interferes with a representative of
27 the department preserving evidence of a violation of this chapter

1 or a rule, standard, or order adopted or license issued under this
2 chapter;

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

6 (F) fails to submit:

7 (i) a plan of correction not later than the
8 10th day after the date the person receives a statement of licensing
9 violations; or

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

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

15 (6) involves the rights of the elderly under Chapter
16 102, Human Resources Code.

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

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

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

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

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

3 (a) The department may assess an administrative penalty
4 against a person who:

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

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

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

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

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

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

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

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

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

26 (6) fails to pay a penalty assessed by the department
27 under this chapter not later than the 10th day after the date the

1 assessment of the penalty becomes final; or

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

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

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

7 (1) to a violation that the department determines:

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

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

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

14 (2) to a violation described by Sections
15 242.066(a)(2)-(7) [~~242.066(a)(2)-(6)~~];

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

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

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

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

1 by rule may adopt a system under which licenses expire on various
2 dates during the two-year period. For the year in which a license
3 expiration date is changed, the department shall prorate the
4 license fee on a monthly basis. Each license holder shall pay only
5 that portion of the license fee allocable to the number of months
6 during which the license is valid. A license holder shall pay the
7 total license renewal fee at the time of renewal.

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

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

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

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

17 (2) in amounts reasonable and necessary to defray the
18 cost of administering this chapter, but not to exceed \$1,500
19 [~~\$750~~].

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

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

25 (a) The department may assess an administrative penalty
26 against a person who:

27 (1) violates this chapter or a rule, standard, or

1 order adopted under this chapter or a term of a license issued under
2 this chapter;

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

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

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

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

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

13 (B) any portion of the premises of an assisted
14 living facility;

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

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

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

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

27 SECTION 16. Subsection (b), Section 247.0452, Health and

1 Safety Code, is amended to read as follows:

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

3 (1) to a violation that the department determines
4 results in serious harm to or death of a resident;

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

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

8 (A) a right of the same resident under Section
9 247.064; or

10 (B) the same right of all residents under Section
11 247.064; or

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

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

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

20 SECTION 18. Subsections (a) and (e), Section 252.065,
21 Health and Safety Code, are 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 or license issued under this chapter;

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

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

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

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

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

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

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

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

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

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

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

27 (e) The department by rule shall provide the facility with a

1 reasonable period of time, not less than 45 days, following the
2 first day of a violation to correct the violation before assessing
3 an administrative penalty if a plan of correction has been
4 implemented. This subsection does not apply to a violation
5 described by Subsections (a)(2)-(8) or to a violation that the
6 department determines:

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

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

11 (3) substantially limits the institution's capacity to
12 provide care.

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

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

25 (b) The changes in law made by this Act relating to the time
26 for filing an application for a license renewal and the
27 applicability of a late fee to an application for a license renewal

1 apply only to an application for a license renewal filed on or after
2 November 1, 2007. An application for a license renewal filed before
3 November 1, 2007, is governed by the law as it existed immediately
4 before the effective date of this Act, and that law is continued in
5 effect for that purpose.

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