

By: Janek

S.B. No. 1318

A BILL TO BE ENTITLED

1 AN ACT

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

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

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

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

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

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

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

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

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

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

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

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

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

1 amended to read as follows:

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

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

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

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

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

1 license by submitting a completed application for renewal and
2 paying the required renewal fee to the department not later than the
3 45th day before the expiration date of the license. A person whose
4 license has expired may not engage in activities that require a
5 license [~~until the license has been renewed~~].

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

12 (c) [~~A person whose license has been expired for more than~~
13 ~~90 days may obtain a new license by complying with the requirements~~
14 ~~and procedures for obtaining an original license.~~

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

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

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

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

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

6 (1) results in serious harm or death;

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

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

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

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

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

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

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

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

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

27 (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.

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

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

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

5 (A) results in serious harm to or death of a
6 resident;

7 (B) constitutes a serious threat to the health or
8 safety of a resident; or

9 (C) substantially limits the institution's
10 capacity to provide care;

11 (2) to a violation described by Sections
12 242.066(a)(2)-(7) [~~242.066(a)(2)-(6)~~];

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

14 (4) to a violation of a right of a resident adopted
15 under Subchapter L.

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

18 (a) The department shall issue a license if, after
19 inspection and investigation, it finds that the applicant, the
20 assisted living facility, and all controlling persons with respect
21 to the applicant or facility meet the requirements of this chapter
22 and the standards adopted under this chapter. The license expires
23 on the second anniversary of the date of its issuance. The
24 executive commissioner of the Health and Human Services Commission
25 by rule may adopt a system under which licenses expire on various
26 dates during the two-year period. For the year in which a license
27 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 is
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 is 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.