

1-1 By: Janek S.B. No. 1318  
1-2 (In the Senate - Filed March 7, 207; March 19, 2007, read  
1-3 first time and referred to Committee on Health and Human Services;  
1-4 April 17, 2007, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 8, Nays 0; April 17, 2007,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1318 By: Janek

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the regulation of adult day-care facilities and certain  
1-11 long-term care facilities, including the establishment of late fees  
1-12 and changes to administrative penalties, and relating to the office  
1-13 of the state long-term care ombudsman.

1-14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-15 SECTION 1. Subsection (m), Section 32.021, Human Resources  
1-16 Code, is amended to read as follows:

1-17 (m) Notwithstanding any provision of law to the contrary,  
1-18 the department shall terminate a nursing facility's provider  
1-19 agreement if the department has imposed required Category 2 or  
1-20 Category 3 remedies on the facility three times within a 24-month  
1-21 period. The executive director of the Health and Human Services  
1-22 Commission by rule shall establish criteria under which the  
1-23 requirement to terminate the provider agreement may be waived  
1-24 [unless the department makes an affirmative finding that good cause  
1-25 exists to waive this requirement to facilitate a change in  
1-26 ownership to protect residents of a facility]. In this subsection,  
1-27 "Category 2 remedies" and "Category 3 remedies" have the meanings  
1-28 assigned by 42 C.F.R. Section 488.408.

1-29 SECTION 2. Subdivision (2), Section 101.051, Human  
1-30 Resources Code, is amended to read as follows:

1-31 (2) "Long-term care facility" means a facility that  
1-32 serves persons who are 60 years of age or older and that is licensed  
1-33 or regulated or that is required to be licensed or regulated by the  
1-34 [~~Texas~~] Department of Aging and Disability [~~Human~~] Services under  
1-35 Chapter 242 or 247, Health and Safety Code.

1-36 SECTION 3. Subsection (b), Section 103.006, Human  
1-37 Resources Code, is amended to read as follows:

1-38 (b) The license expires two years [~~one year~~] from the date  
1-39 of its issuance. The executive commissioner of the Health and Human  
1-40 Services Commission by rule may adopt a system under which licenses  
1-41 expire on various dates during the two-year period. For the year in  
1-42 which a license expiration date is changed, the department shall  
1-43 prorate the license fee on a monthly basis. Each license holder  
1-44 shall pay only that portion of the license fee allocable to the  
1-45 number of months for which the license is valid. A license holder  
1-46 shall pay the total license renewal fee at the time of renewal.

1-47 SECTION 4. Section 103.007, Human Resources Code, is  
1-48 amended by amending Subsections (a) and (c) and adding Subsection  
1-49 (d) to read as follows:

1-50 (a) An applicant for a license to operate an adult day-care  
1-51 facility must file an application on a form prescribed by the  
1-52 department together with a license fee of \$50 [~~\$25~~].

1-53 (c) A person who operates a facility that is licensed under  
1-54 this chapter must file an application for a renewal license not  
1-55 later than the 45th day before the expiration date of the current  
1-56 license on a form prescribed by the department together with a  
1-57 renewal fee of \$50 [~~\$25~~].

1-58 (d) An applicant for a license renewal who submits an  
1-59 application later than the 45th day before the expiration date of  
1-60 the license is subject to a late fee in accordance with department  
1-61 rules.

1-62 SECTION 5. Subsection (b), Section 142.006, Health and  
1-63 Safety Code, is amended to read as follows:

2-1 (b) A license issued under this chapter expires two years  
2-2 ~~[one year]~~ after the date of issuance. The executive commissioner  
2-3 of the Health and Human Services Commission by rule may adopt a  
2-4 system under which licenses expire on various dates during the  
2-5 two-year period. For the year in which a license expiration date is  
2-6 changed, the department shall prorate the license fee on a monthly  
2-7 basis. Each license holder shall pay only that portion of the  
2-8 license fee allocable to the number of months for which the license  
2-9 is valid. A license holder shall pay the total license renewal fee  
2-10 at the time of renewal. The department may issue an initial license  
2-11 for a shorter term [of less than one year] to conform expiration  
2-12 dates for a locality or an applicant. The department[~~, in~~  
2-13 accordance with board rules,] may issue a temporary license to an  
2-14 applicant for an initial license.

2-15 SECTION 6. Subsection (a), Section 142.010, Health and  
2-16 Safety Code, is amended to read as follows:

2-17 (a) The department [board] shall set license fees for home  
2-18 and community support services agencies in amounts that are  
2-19 reasonable to meet the costs of administering this chapter, except  
2-20 that the fees may not be less than \$600 [~~\$300~~] or more than \$2,000  
2-21 [~~\$1,000~~] for a license to provide home health, hospice, or personal  
2-22 assistance services.

2-23 SECTION 7. Section 142.0105, Health and Safety Code, is  
2-24 amended to read as follows:

2-25 Sec. 142.0105. LICENSE RENEWAL. (a) A person who is  
2-26 otherwise eligible to renew a license may renew an unexpired  
2-27 license by submitting a completed application for renewal and  
2-28 paying the required renewal fee to the department not later than the  
2-29 45th day before the expiration date of the license. A person whose  
2-30 license has expired may not engage in activities that require a  
2-31 license [~~until the license has been renewed~~].

2-32 (b) An applicant for a license renewal who submits an  
2-33 application later than the 45th day before the expiration date of  
2-34 the license is subject to a late fee in accordance with department  
2-35 rules [A person whose license has been expired for 90 days or less  
2-36 may renew the license by paying to the department a renewal fee that  
2-37 is equal to 1-1/2 times the normally required renewal fee].

2-38 (c) [~~A person whose license has been expired for more than~~  
2-39 ~~90 days may obtain a new license by complying with the requirements~~  
2-40 ~~and procedures for obtaining an original license.~~

2-41 [~~(d)~~] Not later than the 120th [60th] day before the date a  
2-42 person's license is scheduled to expire, the department shall send  
2-43 written notice of the impending expiration to the person at the  
2-44 person's last known address according to the records of the  
2-45 department. The written notice must include an application for  
2-46 license renewal and instructions for completing the application.

2-47 SECTION 8. Section 142.017, Health and Safety Code, is  
2-48 amended by amending Subsection (e) and adding Subsection (j) to  
2-49 read as follows:

2-50 (e) Except as provided by Subsection (j), the [The]  
2-51 department by rule shall provide the home and community support  
2-52 services agency with a reasonable period of time following the  
2-53 first day of a violation to correct the violation before assessing  
2-54 an administrative penalty if a plan of correction has been  
2-55 implemented.

2-56 (j) The department may assess an administrative penalty  
2-57 without providing a reasonable period of time to the agency to  
2-58 correct the violation if the violation:

- 2-59 (1) results in serious harm or death;
- 2-60 (2) constitutes a serious threat to health or safety;
- 2-61 (3) substantially limits the agency's capacity to  
2-62 provide care;

2-63 (4) is a violation in which a person:  
2-64 (A) makes a false statement, that the person  
2-65 knows or should know is false, of a material fact:

- 2-66 (i) on an application for issuance or  
2-67 renewal of a license or in an attachment to the application; or
- 2-68 (ii) with respect to a matter under  
2-69 investigation by the department;

3-1 (B) refuses to allow a representative of the  
3-2 department to inspect a book, record, or file required to be  
3-3 maintained by an agency;

3-4 (C) wilfully interferes with the work of a  
3-5 representative of the department or the enforcement of this  
3-6 chapter;

3-7 (D) wilfully interferes with a representative of  
3-8 the department preserving evidence of a violation of this chapter  
3-9 or a rule, standard, or order adopted or license issued under this  
3-10 chapter;

3-11 (E) fails to pay a penalty assessed by the  
3-12 department under this chapter not later than the 10th day after the  
3-13 date the assessment of the penalty becomes final; or

3-14 (F) fails to submit:  
3-15 (i) a plan of correction not later than the  
3-16 10th day after the date the person receives a statement of licensing  
3-17 violations; or

3-18 (ii) an acceptable plan of correction not  
3-19 later than the 30th day after the date the person receives  
3-20 notification from the department that the previously submitted plan  
3-21 of correction is not acceptable;

3-22 (5) is a violation of Section 142.0145; or

3-23 (6) involves the rights of the elderly under Chapter  
3-24 102, Human Resources Code.

3-25 SECTION 9. Section 242.032, Health and Safety Code, is  
3-26 amended by adding Subsection (f) to read as follows:

3-27 (f) Information obtained under this section regarding an  
3-28 applicant's or license holder's financial condition is confidential  
3-29 and may not be disclosed to the public.

3-30 SECTION 10. Section 242.034, Health and Safety Code, is  
3-31 amended by adding Subsection (i) to read as follows:

3-32 (i) An applicant for license renewal who submits an  
3-33 application later than the 45th day before the expiration date of a  
3-34 current license is subject to a late fee in accordance with  
3-35 department rules.

3-36 SECTION 11. Subsection (a), Section 242.066, Health and  
3-37 Safety Code, is amended to read as follows:

3-38 (a) The department may assess an administrative penalty  
3-39 against a person who:

3-40 (1) violates this chapter or a rule, standard, or  
3-41 order adopted or license issued under this chapter;

3-42 (2) makes a false statement, that the person knows or  
3-43 should know is false, of a material fact:

3-44 (A) on an application for issuance or renewal of  
3-45 a license or in an attachment to the application; or

3-46 (B) with respect to a matter under investigation  
3-47 by the department;

3-48 (3) refuses to allow a representative of the  
3-49 department to inspect:

3-50 (A) a book, record, or file required to be  
3-51 maintained by an institution; or

3-52 (B) any portion of the premises of an  
3-53 institution;

3-54 (4) wilfully interferes with the work of a  
3-55 representative of the department or the enforcement of this  
3-56 chapter;

3-57 (5) wilfully interferes with a representative of the  
3-58 department preserving evidence of a violation of this chapter or a  
3-59 rule, standard, or order adopted or license issued under this  
3-60 chapter; ~~or~~

3-61 (6) fails to pay a penalty assessed by the department  
3-62 under this chapter not later than the 10th day after the date the  
3-63 assessment of the penalty becomes final; or

3-64 (7) fails to notify the department of a change of  
3-65 ownership before the effective date of the change of ownership.

3-66 SECTION 12. Subsection (b), Section 242.0665, Health and  
3-67 Safety Code, is amended to read as follows:

3-68 (b) Subsection (a) does not apply:  
3-69 (1) to a violation that the department determines:

- 4-1 (A) results in serious harm to or death of a
- 4-2 resident;
- 4-3 (B) constitutes a serious threat to the health or
- 4-4 safety of a resident; or
- 4-5 (C) substantially limits the institution's
- 4-6 capacity to provide care;
- 4-7 (2) to a violation described by Sections
- 4-8 242.066(a)(2)-(7) [~~242.066(a)(2)-(6)~~];
- 4-9 (3) to a violation of Section 242.133 or 242.1335; or
- 4-10 (4) to a violation of a right of a resident adopted
- 4-11 under Subchapter L.

4-12 SECTION 13. Subsections (a) and (b), Section 247.023,

4-13 Health and Safety Code, are amended to read as follows:

4-14 (a) The department shall issue a license if, after

4-15 inspection and investigation, it finds that the applicant, the

4-16 assisted living facility, and all controlling persons with respect

4-17 to the applicant or facility meet the requirements of this chapter

4-18 and the standards adopted under this chapter. The license expires

4-19 on the second anniversary of the date of its issuance. The

4-20 executive commissioner of the Health and Human Services Commission

4-21 by rule may adopt a system under which licenses expire on various

4-22 dates during the two-year period. For the year in which a license

4-23 expiration date is changed, the department shall prorate the

4-24 license fee on a monthly basis. Each license holder shall pay only

4-25 that portion of the license fee allocable to the number of months

4-26 during which the license is valid. A license holder shall pay the

4-27 total license renewal fee at the time of renewal.

4-28 (b) To renew a license, the license holder must submit to

4-29 the department the [~~annual~~] license renewal fee.

4-30 SECTION 14. Section 247.024, Health and Safety Code, is

4-31 amended by amending Subsection (a) and adding Subsection (e) to

4-32 read as follows:

4-33 (a) The department [~~board~~] shall set license fees imposed by

4-34 this chapter:

4-35 (1) on the basis of the number of beds in assisted

4-36 living facilities required to pay the fee; and

4-37 (2) in amounts reasonable and necessary to defray the

4-38 cost of administering this chapter, but not to exceed \$1,500

4-39 [~~\$750~~].

4-40 (e) An applicant who submits a license renewal later than

4-41 the 45th day before the expiration date of a current license is

4-42 subject to a late fee in accordance with department rules.

4-43 SECTION 15. Subsection (a), Section 247.0451, Health and

4-44 Safety Code, is amended to read as follows:

4-45 (a) The department may assess an administrative penalty

4-46 against a person who:

4-47 (1) violates this chapter or a rule, standard, or

4-48 order adopted under this chapter or a term of a license issued under

4-49 this chapter;

4-50 (2) makes a false statement, that the person knows or

4-51 should know is false, of a material fact:

4-52 (A) on an application for issuance or renewal of

4-53 a license or in an attachment to the application; or

4-54 (B) with respect to a matter under investigation

4-55 by the department;

4-56 (3) refuses to allow a representative of the

4-57 department to inspect:

4-58 (A) a book, record, or file required to be

4-59 maintained by an assisted living facility; or

4-60 (B) any portion of the premises of an assisted

4-61 living facility;

4-62 (4) wilfully interferes with the work of a

4-63 representative of the department or the enforcement of this

4-64 chapter;

4-65 (5) wilfully interferes with a representative of the

4-66 department preserving evidence of a violation of this chapter or a

4-67 rule, standard, or order adopted under this chapter or a term of a

4-68 license issued under this chapter; [~~or~~]

4-69 (6) fails to pay a penalty assessed under this chapter

not later than the 30th day after the date the assessment of the penalty becomes final; or

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

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

(b) Subsection (a) does not apply:

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

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

(3) to a second or subsequent violation of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) 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;

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

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

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

(e) The department by rule shall provide the facility with a reasonable period of time, not less than 45 days, following the first day of a violation to correct the violation before assessing an administrative penalty if a plan of correction has been implemented. This subsection does not apply to a violation described by Subsections (a)(2)-(8) or to a violation that the department determines:

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

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

6-1 (3) substantially limits the institution's capacity to  
6-2 provide care.

6-3 SECTION 19. If before implementing any provision of this  
6-4 Act a state agency determines that a waiver or authorization from a  
6-5 federal agency is necessary for implementation of that provision,  
6-6 the agency affected by the provision shall request the waiver or  
6-7 authorization and may delay implementing that provision until the  
6-8 waiver or authorization is granted.

6-9 SECTION 20. (a) Except as provided by Subsection (b) of  
6-10 this section, this Act applies only to a license issued or renewed  
6-11 on or after September 1, 2007. A license issued or renewed before  
6-12 September 1, 2007, is governed by the law as it existed immediately  
6-13 before the effective date of this Act, and that law is continued in  
6-14 effect for that purpose.

6-15 (b) The changes in law made by this Act relating to the time  
6-16 for filing an application for a license renewal and the  
6-17 applicability of a late fee to an application for a license renewal  
6-18 apply only to an application for a license renewal filed on or after  
6-19 November 1, 2007. An application for a license renewal filed before  
6-20 November 1, 2007, is governed by the law as it existed immediately  
6-21 before the effective date of this Act, and that law is continued in  
6-22 effect for that purpose.

6-23 SECTION 21. This Act takes effect September 1, 2007.

6-24 \* \* \* \* \*