

By: Schwertner, et al.
(Price, Naishtat, Raymond)

S.B. No. 1385

Substitute the following for S.B. No. 1385:

By: Raymond

C.S.S.B. No. 1385

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the authorization of the imposition of administrative
3 penalties on providers participating in certain Medicaid waiver
4 programs.

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

6 SECTION 1. Subchapter D, Chapter 161, Human Resources Code,
7 is amended by adding Section 161.088 to read as follows:

8 Sec. 161.088. ADMINISTRATIVE PENALTIES. (a) This section
9 applies to the following waiver programs established under Section
10 1915(c), Social Security Act (42 U.S.C. Section 1396n(c)), and
11 administered by the department to serve persons with an
12 intellectual or developmental disability:

13 (1) the home and community-based services (HCS) waiver
14 program; and

15 (2) the Texas home living (TxHmL) waiver program.

16 (b) The department may assess and collect an administrative
17 penalty against a provider who participates in a program to which
18 this section applies for a violation of a law or rule relating to
19 the program. If the department assesses an administrative penalty
20 against a provider for a violation of a law or rule, the department
21 may not impose a payment hold against or otherwise withhold
22 contract payments from the provider for the same violation of a law
23 or rule.

24 (c) After consulting with appropriate stakeholders, the

1 executive commissioner shall develop and adopt rules regarding the
2 imposition of administrative penalties under this section. The
3 rules must:

4 (1) specify the types of violations that warrant
5 imposition of an administrative penalty;

6 (2) establish a schedule of progressive
7 administrative penalties in accordance with the relative type,
8 frequency, and seriousness of a violation;

9 (3) prescribe reasonable amounts to be imposed for
10 each violation giving rise to an administrative penalty, subject to
11 Subdivision (4);

12 (4) authorize the imposition of an administrative
13 penalty in an amount not to exceed \$5,000 for each violation;

14 (5) provide that a provider commits a separate
15 violation each day the provider continues to violate the law or
16 rule;

17 (6) ensure standard and consistent application of
18 administrative penalties throughout the state; and

19 (7) provide for an administrative appeals process to
20 adjudicate claims and appeals relating to the imposition of an
21 administrative penalty under this section that is in accordance
22 with Chapter 2001, Government Code.

23 (d) In specifying the types of violations that warrant
24 imposition of an administrative penalty under Subsection (c), the
25 executive commissioner shall specify the types of minor violations
26 that allow a provider an opportunity to take corrective action
27 before a penalty is imposed.

1 (e) In establishing the schedule of progressive
2 administrative penalties and penalty amounts under Subsection (c),
3 the executive commissioner must consider:

4 (1) the seriousness of a violation, including:

5 (A) the nature, circumstances, extent, and
6 gravity of the violation; and

7 (B) the hazard to the health or safety of
8 recipients resulting from the violation;

9 (2) the provider's history of previous violations;

10 (3) whether the provider:

11 (A) had prior knowledge of the violation,
12 including whether the provider identified the violation through the
13 provider's internal quality assurance process; and

14 (B) made any efforts to mitigate or correct the
15 identified violation;

16 (4) the penalty amount necessary to deter future
17 violations; and

18 (5) any other matter justice may require.

19 (f) In lieu of imposing an administrative penalty under this
20 section, the department shall allow a provider found to have
21 committed a minor violation specified by rule in accordance with
22 Subsection (d) to have a reasonable period of time that is not less
23 than 45 days after the date the department sends notice to the
24 provider of the violation to take corrective action regarding the
25 violation. The department may not allow time for corrective action
26 for any violation that is not a minor violation.

27 SECTION 2. The Department of Aging and Disability Services

1 may impose an administrative penalty in accordance with Section
2 161.088, Human Resources Code, as added by this Act, only for
3 conduct that occurs on or after the effective date of this Act.

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

10 SECTION 4. This Act takes effect September 1, 2015.