

AN ACT

1
2 relating to the regulation of certain long-term care facilities,
3 including facilities that provide care to persons with Alzheimer's
4 disease or related disorders; authorizing an administrative
5 penalty.

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

7 SECTION 1. Sections 531.058(a) and (a-1), Government Code,
8 are amended to read as follows:

9 (a) The executive commissioner by rule shall establish an
10 informal dispute resolution process in accordance with this
11 section. The process must provide for adjudication by an
12 appropriate disinterested person of disputes relating to a proposed
13 enforcement action or related proceeding of the commission under
14 Section 32.021(d), Human Resources Code, or the Department of Aging
15 and Disability Services or its successor agency under Chapter 242,
16 247, or 252, Health and Safety Code. The informal dispute
17 resolution process must require:

18 (1) an institution or facility to request informal
19 dispute resolution not later than the 10th calendar day after
20 notification by the commission or department, as applicable, of the
21 violation of a standard or standards; and

22 (2) the commission to complete the process not later
23 than:

24 (A) the 30th calendar day after receipt of a

1 request from an institution or facility, other than an assisted
2 living facility, for informal dispute resolution; or

3 (B) the 90th calendar day after receipt of a
4 request from an assisted living facility for informal dispute
5 resolution.

6 (a-1) As part of the informal dispute resolution process
7 established under this section, the commission shall contract with
8 an appropriate disinterested person [~~who is a nonprofit~~
9 ~~organization~~] to adjudicate disputes between an institution or
10 facility licensed under Chapter [242](#) or [247](#), Health and Safety Code,
11 and the Department of Aging and Disability Services or its
12 successor agency concerning a statement of violations prepared by
13 the department in connection with a survey conducted by the
14 department of the institution or facility. Section [2009.053](#) does
15 not apply to the selection of an appropriate disinterested person
16 under this subsection. The person with whom the commission
17 contracts shall adjudicate all disputes described by this
18 subsection.

19 SECTION 2. Subchapter B, Chapter [531](#), Government Code, is
20 amended by adding Section 531.0585 to read as follows:

21 Sec. 531.0585. ISSUANCE OF MATERIALS TO CERTAIN LONG-TERM
22 CARE FACILITIES. The executive commissioner shall review the
23 commission's methods for issuing informational letters, policy
24 updates, policy clarifications, and other related materials to an
25 entity licensed under Chapter [103](#), Human Resources Code, or Chapter
26 [242](#), [247](#), [248A](#), or [252](#), Health and Safety Code, and develop and
27 implement more efficient methods to issue those materials as

1 appropriate.

2 SECTION 3. Section 242.066, Health and Safety Code, is
3 amended by amending Subsections (a) and (e) and adding Subsection
4 (i) to read as follows:

5 (a) The commission [~~department~~] may assess an
6 administrative penalty against a person who:

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

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

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

13 (B) with respect to a matter under investigation
14 by the commission [~~department~~];

15 (3) refuses to allow a representative of the
16 commission [~~department~~] to inspect:

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

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

21 (4) wilfully interferes with the work of a
22 representative of the commission [~~department~~] or the enforcement of
23 this chapter;

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

1 (6) fails to pay a penalty assessed by the commission
2 ~~[department]~~ under this chapter not later than the 10th day after
3 the date the assessment of the penalty becomes final; or

4 (7) fails to notify the commission ~~[department]~~ of a
5 change of ownership before the effective date of the change of
6 ownership.

7 (e) In determining the amount of a penalty, the commission
8 ~~[department]~~ shall consider any matter that justice may require,
9 including:

10 (1) the gradations of penalties established under
11 Subsection (d);

12 (2) the seriousness of the violation, including the
13 nature, circumstances, extent, and gravity of the prohibited act
14 and the hazard or potential hazard created by the act to the health
15 or safety of the public;

16 (3) the history of previous violations;

17 (4) deterrence of future violations; and

18 (5) efforts to correct the violation.

19 (i) The commission shall develop and use a system to record
20 and track the scope and severity of each violation of this chapter
21 or a rule, standard, or order adopted under this chapter for the
22 purpose of assessing an administrative penalty for the violation or
23 taking some other enforcement action against the appropriate
24 institution to deter future violations. The system:

25 (1) must be comparable to the system used by the
26 Centers for Medicare and Medicaid Services to categorize the scope
27 and severity of violations for nursing homes; and

1 (2) may be modified, as appropriate, to reflect
2 changes in industry practice or changes made to the system used by
3 the Centers for Medicare and Medicaid Services.

4 SECTION 4. Section 242.0665, Health and Safety Code, is
5 amended to read as follows:

6 Sec. 242.0665. RIGHT TO CORRECT. (a) The commission
7 [~~department~~] may not collect an administrative penalty against an
8 institution under this subchapter if, not later than the 45th day
9 after the date the institution receives notice under Section
10 242.067(c), the institution corrects the violation.

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

12 (1) to a violation that the commission [~~department~~]
13 determines:

14 (A) represents a pattern of violation that
15 results in actual [~~serious~~] harm [~~to or death of a resident~~];

16 (B) is widespread in scope and results in actual
17 harm;

18 (C) is widespread in scope, constitutes a
19 potential for actual harm, and relates to:

20 (i) residents' rights;

21 (ii) treatment of residents;

22 (iii) resident behavior and institution
23 practices;

24 (iv) quality of care;

25 (v) medication errors;

26 (vi) standard menus and nutritional
27 adequacy;

1 (vii) physician visits;

2 (viii) infection control;

3 (ix) life safety from fire; or

4 (x) emergency preparedness and response;

5 (D) [~~B~~] constitutes an immediate [~~a serious~~]
6 threat to the health or safety of a resident; or

7 (E) [~~C~~] substantially limits the institution's
8 capacity to provide care;

9 (2) to a violation described by Sections
10 [242.066](#)(a)(2)-(7);

11 (3) to a violation of Section [260A.014](#) or [260A.015](#);
12 [~~or~~]

13 (4) to a violation of a right of a resident adopted
14 under Subchapter L; or

15 (5) to a second or subsequent violation of Section
16 326.002 that occurs before the second anniversary of the date of the
17 first violation.

18 (c) An institution that corrects a violation under
19 Subsection (a) must maintain the correction. If the institution
20 fails to maintain the correction until at least the first
21 anniversary of the date the correction was made, the commission
22 [~~department~~] may assess an administrative penalty under this
23 subchapter for the subsequent violation. A penalty assessed under
24 this subsection shall be equal to three times the amount of the
25 penalty assessed but not collected under Subsection (a). The
26 commission [~~department~~] is not required to provide the institution
27 an opportunity to correct the subsequent violation under this

1 section.

2 (d) In this section:

3 (1) "Actual harm" means a negative outcome that
4 compromises a resident's physical, mental, or emotional
5 well-being.

6 (2) "Immediate threat to the health or safety of a
7 resident" means a situation that causes, or is likely to cause,
8 serious injury, harm, or impairment to or the death of a resident.

9 (3) "Pattern of violation" means repeated, but not
10 pervasive, failures of an institution to comply with this chapter
11 or a rule, standard, or order adopted under this chapter that:

12 (A) result in a violation; and

13 (B) are found throughout the services provided by
14 the institution or that affect or involve the same residents or
15 institution employees.

16 (4) "Widespread in scope" means a violation of this
17 chapter or a rule, standard, or order adopted under this chapter
18 that:

19 (A) is pervasive throughout the services
20 provided by the institution; or

21 (B) represents a systemic failure by the
22 institution that affects or has the potential to affect a large
23 portion of or all of the residents of the institution.

24 SECTION 5. Section 247.023, Health and Safety Code, is
25 amended to read as follows:

26 Sec. 247.023. ISSUANCE AND RENEWAL OF LICENSE. (a) The
27 commission [~~department~~] shall issue a license if, after inspection

1 and investigation, it finds that the applicant, the assisted living
2 facility, and all controlling persons with respect to the applicant
3 or facility meet the requirements of this chapter and the standards
4 adopted under this chapter. The license expires on the third
5 ~~[second]~~ anniversary of the date of its issuance. The executive
6 commissioner by rule shall ~~[may]~~ adopt a system under which
7 licenses expire on staggered ~~[various]~~ dates during each three-year
8 ~~[the two-year]~~ period. The commission shall prorate the license
9 fee as appropriate if the expiration date of a license changes as a
10 result of this subsection ~~[For the year in which a license~~
11 ~~expiration date is changed, the department shall prorate the~~
12 ~~license fee on a monthly basis. Each license holder shall pay only~~
13 ~~that portion of the license fee allocable to the number of months~~
14 ~~during which the license is valid. A license holder shall pay the~~
15 ~~total license renewal fee at the time of renewal].~~

16 (b) To renew a license, the license holder must submit to
17 the commission ~~[department]~~ the license renewal fee.

18 (c) The commission ~~[department]~~ may require participation
19 in a continuing education program as a condition of renewal of a
20 license. The executive commissioner shall adopt rules to implement
21 this subsection.

22 SECTION 6. Sections [247.024](#)(a), (d), and (e), Health and
23 Safety Code, are amended to read as follows:

24 (a) The executive commissioner by rule shall set license
25 fees imposed by this chapter:

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

1 (2) in amounts reasonable and necessary to defray the
2 cost of administering this chapter, but not to exceed \$2,250
3 [~~\$1,500~~].

4 (d) Investigation fees or attorney's fees may not be
5 assessed against or collected from an assisted living facility by
6 or on behalf of the commission [~~department~~] or another state agency
7 unless the commission [~~department~~] or other state agency assesses
8 and collects a penalty authorized by this chapter from the
9 facility.

10 (e) An applicant who submits a license renewal later than
11 the 45th day before the expiration date of a current license is
12 subject to a late fee in accordance with commission [~~department~~]
13 rules.

14 SECTION 7. Section 247.027, Health and Safety Code, is
15 amended to read as follows:

16 Sec. 247.027. INSPECTIONS. (a) In addition to the
17 inspection required under Section 247.023(a), the commission:

18 (1) shall [~~department may~~] inspect each [~~an~~] assisted
19 living facility at least every two years following the initial
20 inspection required under Section 247.023(a); [~~annually~~] and

21 (2) may inspect a facility at other reasonable times
22 as necessary to assure compliance with this chapter.

23 (b) The commission [~~department~~] shall establish an
24 inspection checklist based on the minimum standards that describes
25 the matters subject to inspection. The commission [~~department~~]
26 shall use the inspection checklist in conducting inspections under
27 this section and Section 247.023(a).

1 SECTION 8. Section 247.0451, Health and Safety Code, is
2 amended by amending Subsections (a), (b), (d), and (f) and adding
3 Subsections (g) and (h) to read as follows:

4 (a) The commission [~~department~~] may assess an
5 administrative penalty against a person who:

6 (1) violates this chapter or a rule, standard, or
7 order adopted under this chapter or a term of a license issued under
8 this chapter;

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

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

13 (B) with respect to a matter under investigation
14 by the commission [~~department~~];

15 (3) refuses to allow a representative of the
16 commission [~~department~~] to inspect:

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

19 (B) any portion of the premises of an assisted
20 living facility;

21 (4) wilfully interferes with the work of a
22 representative of the commission [~~department~~] or the enforcement of
23 this chapter;

24 (5) wilfully interferes with a representative of the
25 commission [~~department~~] preserving evidence of a violation of this
26 chapter or a rule, standard, or order adopted under this chapter or
27 a term of a license issued under this chapter;

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

4 (7) fails to notify the commission [~~department~~] of a
5 change of ownership before the effective date of the change of
6 ownership.

7 (b) Except as provided by Section 247.0452(c), the penalty
8 may not exceed:

9 (1) \$5,000 for each violation that:

10 (A) represents a pattern of violation that
11 results in actual harm or is widespread in scope and results in
12 actual harm; or

13 (B) constitutes an immediate threat to the health
14 or safety of a resident; or

15 (2) \$1,000 for each other violation.

16 (d) In determining the amount of a penalty, the commission
17 [~~department~~] shall consider any matter that justice may require,
18 but must consider each of the following and make a record of the
19 extent to which each of the following was considered:

20 (1) the gradations of penalties established under
21 Subsection (c);

22 (2) the seriousness of the violation, including the
23 nature, circumstances, extent, and gravity of the prohibited act
24 and the hazard or potential hazard created by the act to the health
25 or safety of the public;

26 (3) the history of previous violations;

27 (4) deterrence of future violations;

1 (5) efforts to correct the violation; and

2 (6) the size of the facility and of the business entity
3 that owns the facility.

4 (f) The commission [~~department~~] may not assess a penalty
5 under this section against a resident of an assisted living
6 facility unless the resident is also an employee of the facility or
7 a controlling person.

8 (g) The commission shall develop and use a system to record
9 and track the scope and severity of each violation of this chapter
10 or a rule, standard, or order adopted under this chapter for the
11 purpose of assessing an administrative penalty for the violation or
12 taking some other enforcement action against the appropriate
13 assisted living facility to deter future violations. The system:

14 (1) must be comparable to the system used by the
15 Centers for Medicare and Medicaid Services to categorize the scope
16 and severity of violations for nursing homes; and

17 (2) may be modified, as appropriate, to reflect
18 changes in industry practice or changes made to the system used by
19 the Centers for Medicare and Medicaid Services.

20 (h) In this section, "actual harm," "immediate threat to the
21 health or safety of a resident," "pattern of violation," and
22 "widespread in scope" have the meanings assigned by Section
23 [247.0452](#).

24 SECTION 9. Section [247.0452](#), Health and Safety Code, is
25 amended to read as follows:

26 Sec. 247.0452. RIGHT TO CORRECT. (a) The commission
27 [~~department~~] may not collect an administrative penalty from an

1 assisted living facility under Section 247.0451 if, not later than
2 the 45th day after the date the facility receives notice under
3 Section 247.0453(c), the facility corrects the violation.

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

5 (1) to a violation that the commission [~~department~~]
6 determines represents a pattern of violation that results in actual
7 [~~serious~~] harm [~~to or death of a resident~~];

8 (2) to a violation that the commission determines is
9 widespread in scope and results in actual harm;

10 (3) to a violation that the commission determines is
11 widespread in scope, constitutes a potential for actual harm, and
12 relates to:

13 (A) resident assessment;

14 (B) staffing, including staff training;

15 (C) administration of medication;

16 (D) infection control;

17 (E) restraints; or

18 (F) emergency preparedness and response;

19 (4) to a violation that the commission determines
20 constitutes an immediate threat to the health or safety of a
21 resident;

22 (5) [~~2~~] to a violation described by Sections
23 247.0451(a)(2)-(7) or a violation of Section 260A.014 or 260A.015;

24 (6) [~~3~~] to a second or subsequent violation of:

25 (A) a right of the same resident under Section
26 247.064; or

27 (B) the same right of all residents under Section

1 247.064; ~~[or]~~

2 (7) ~~[(4)]~~ to a violation described by Section 247.066,
3 which contains its own right to correct provisions; or

4 (8) to a second or subsequent violation of Section
5 326.002 that occurs before the second anniversary of the date of the
6 first violation.

7 (c) An assisted living facility that corrects a violation
8 must maintain the correction. If the facility fails to maintain the
9 correction until at least the first anniversary of the date the
10 correction was made, the commission ~~[department]~~ may assess and
11 collect an administrative penalty for the subsequent violation. An
12 administrative penalty assessed under this subsection is equal to
13 three times the amount of the original penalty assessed but not
14 collected. The commission ~~[department]~~ is not required to provide
15 the facility with an opportunity under this section to correct the
16 subsequent violation.

17 (d) In this section:

18 (1) "Actual harm" means a negative outcome that
19 compromises a resident's physical, mental, or emotional
20 well-being.

21 (2) "Immediate threat to the health or safety of a
22 resident" means a situation that causes, or is likely to cause,
23 serious injury, harm, or impairment to or the death of a resident.

24 (3) "Pattern of violation" means repeated, but not
25 pervasive, failures of an assisted living facility to comply with
26 this chapter or a rule, standard, or order adopted under this
27 chapter that:

1 (A) result in a violation; and

2 (B) are found throughout the services provided by
3 the facility or that affect or involve the same residents or
4 facility employees.

5 (4) "Widespread in scope" means a violation of this
6 chapter or a rule, standard, or order adopted under this chapter
7 that:

8 (A) is pervasive throughout the services
9 provided by the assisted living facility; or

10 (B) represents a systemic failure by the assisted
11 living facility that affects or has the potential to affect a large
12 portion of or all of the residents of the facility.

13 SECTION 10. Section 248A.053, Health and Safety Code, is
14 amended to read as follows:

15 Sec. 248A.053. INITIAL OR RENEWAL LICENSE TERM; RENEWAL;
16 NOTIFICATION. (a) An initial or renewal license issued under this
17 chapter expires on the third [~~second~~] anniversary of the date of
18 issuance. The executive commissioner by rule shall adopt a system
19 under which licenses expire on staggered dates during each
20 three-year period. The commission shall prorate the license fee as
21 appropriate if the expiration date of a license changes as a result
22 of this subsection.

23 (b) A person applying to renew a center license shall:

24 (1) submit a renewal application to the commission
25 [~~department~~] on a prescribed form [~~the form~~] [~~by the department~~] at
26 least 60 days but not more than 120 days before expiration of the
27 license;

1 (2) submit the renewal fee in the amount required by
2 agency [~~department~~] rule; and

3 (3) comply with any other requirements specified by
4 agency [~~department~~] rule.

5 (c) The commission [~~department~~] shall assess a \$50 per day
6 late fee to a license holder who submits a renewal application after
7 the date required by Subsection (b)(1), except that the total
8 amount of a late fee may not exceed the lesser of 50 percent of the
9 license renewal fee or \$500.

10 (d) At least 120 days before expiration of a center license,
11 the commission [~~department~~] shall notify the owner or operator of
12 the center of the license expiration.

13 SECTION 11. Subchapter F, Chapter 248A, Health and Safety
14 Code, is amended by adding Section 248A.2515 to read as follows:

15 Sec. 248A.2515. SYSTEM FOR ASSESSMENT OF PENALTY. The
16 commission shall develop and use a system to record and track the
17 scope and severity of each violation of this chapter or a rule or
18 standard adopted or order issued under this chapter for the purpose
19 of assessing an administrative penalty for the violation or taking
20 some other enforcement action against the appropriate center to
21 deter future violations. The system:

22 (1) must be comparable to the system used by the
23 Centers for Medicare and Medicaid Services to categorize the scope
24 and severity of violations for nursing homes; and

25 (2) may be modified, as appropriate, to reflect
26 changes in industry practice or changes made to the system used by
27 the Centers for Medicare and Medicaid Services.

1 SECTION 12. Sections 252.033(a), (b), (d), (f), and (h),
2 Health and Safety Code, are amended to read as follows:

3 (a) After receiving the application, the commission
4 [~~department~~] shall issue a license if, after inspection and
5 investigation, it finds that the applicant and facility meet the
6 requirements established under this chapter.

7 (b) The commission [~~department~~] may issue a license only
8 for:

9 (1) the premises and persons or governmental unit
10 named in the application; and

11 (2) the maximum number of beds specified in the
12 application.

13 (d) A license is renewable on the third [~~second~~] anniversary
14 of issuance or renewal of the license after:

15 (1) an inspection;

16 (2) filing and approval of a renewal report; and

17 (3) payment of the renewal fee.

18 (f) The commission [~~department~~] may not issue a license for
19 new beds or an expansion of an existing facility under this chapter
20 unless the addition of new beds or the expansion is included in the
21 plan approved by the commission in accordance with Section
22 533A.062.

23 (h) The executive commissioner by rule shall:

24 (1) define specific, appropriate, and objective
25 criteria on which the commission [~~department~~] may deny an initial
26 license application or license renewal or revoke a license; and

27 (2) adopt a system under which:

1 (A) licenses expire on staggered dates during
2 each three-year period; and

3 (B) the commission prorates the license fee as
4 appropriate if the expiration date of a license changes as a result
5 of the system adopted under Paragraph (A).

6 SECTION 13. Sections 252.034(a), (e), and (f), Health and
7 Safety Code, are amended to read as follows:

8 (a) The executive commissioner by rule may adopt a fee for a
9 license issued under this chapter. The fee may not exceed \$225
10 [~~\$150~~] plus \$7.50 [~~\$5~~] for each unit of capacity or bed space for
11 which the license is sought.

12 (e) All license fees collected under this section shall be
13 deposited in the state treasury to the credit of the commission
14 [~~department~~] and may be appropriated to the commission [~~department~~]
15 to administer and enforce this chapter.

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 commission [~~department~~] rules.

20 SECTION 14. Section 252.041, Health and Safety Code, is
21 amended to read as follows:

22 Sec. 252.041. UNANNOUNCED INSPECTIONS. (a) Each
23 licensing period, the commission [~~department~~] shall conduct at
24 least three [~~two~~] unannounced inspections of each facility.

25 (b) In order to ensure continuous compliance, the
26 commission [~~department~~] shall randomly select a sufficient
27 percentage of facilities for unannounced inspections to be

1 conducted between 5 p.m. and 8 a.m. Those inspections must be
2 cursory to avoid to the greatest extent feasible any disruption of
3 the residents.

4 (c) The commission [~~department~~] may require additional
5 inspections.

6 (d) As considered appropriate and necessary by the
7 commission [~~department~~], the commission [~~department~~] may invite at
8 least one person as a citizen advocate to participate in
9 inspections. The invited advocate must be an individual who has an
10 interest in or who is employed by or affiliated with an organization
11 or entity that represents, advocates for, or serves individuals
12 with an intellectual disability or a related condition.

13 SECTION 15. Section 252.065, Health and Safety Code, is
14 amended by amending Subsections (a), (b), (e), (f), (i), and (j) and
15 adding Subsections (l) and (m) to read as follows:

16 (a) The commission [~~department~~] may assess an
17 administrative penalty against a person who:

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

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

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

24 (B) with respect to a matter under investigation
25 by the commission [~~department~~];

26 (3) refuses to allow a representative of the
27 commission [~~department~~] to inspect:

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

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

5 (4) wilfully interferes with the work of a
6 representative of the commission [~~department~~] or the enforcement of
7 this chapter;

8 (5) wilfully interferes with a representative of the
9 commission [~~department~~] preserving evidence of a violation of this
10 chapter or a rule, standard, or order adopted or license issued
11 under this chapter;

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

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

17 (8) fails to notify the commission [~~department~~] of a
18 change in ownership before the effective date of that change of
19 ownership.

20 (b) The penalty for a facility with fewer than 60 beds shall
21 be not less than \$100 or more than \$1,000 for each violation. The
22 penalty for a facility with 60 beds or more shall be not less than
23 \$100 or more than \$5,000 for each violation. [~~The total amount of~~
24 ~~the penalty assessed for a violation continuing or occurring on~~
25 ~~separate days under this subsection may not exceed \$5,000 for a~~
26 ~~facility with fewer than 60 beds or \$25,000 for a facility with 60~~
27 ~~beds or more.] Each day a violation occurs or continues is a~~

1 separate violation for purposes of imposing a penalty.

2 (e) The executive commissioner by rule shall provide the
3 facility with a reasonable period of time, not less than 45 days,
4 following the first day of a violation to correct the violation
5 before the commission [~~department~~] may assess an administrative
6 penalty if a plan of correction has been implemented. This
7 subsection does not apply to a violation described by Subsections
8 (a)(2)-(8) or to a violation that the commission [~~department~~]
9 determines:

10 (1) represents a pattern of violation that results
11 [~~has resulted~~] in actual [~~serious~~] harm [~~to or the death of a~~
12 ~~resident~~];

13 (2) is widespread in scope and results in actual harm;

14 (3) is widespread in scope, constitutes a potential
15 for actual harm, and relates to:

16 (A) staff treatment of a resident;

17 (B) active treatment;

18 (C) client behavior and facility practices;

19 (D) health care services;

20 (E) drug administration;

21 (F) infection control;

22 (G) food and nutrition services; or

23 (H) emergency preparedness and response;

24 (4) [~~2~~] constitutes an immediate [~~a serious~~] threat
25 to the health or safety of a resident; or

26 (5) [~~3~~] substantially limits the facility's
27 [~~institution's~~] capacity to provide care.

1 (f) The commission [~~department~~] may not assess an
2 administrative penalty for a minor violation if the person corrects
3 the violation not later than the 46th day after the date the person
4 receives notice of the violation.

5 (i) The commission [~~department~~] may not assess an
6 administrative penalty against a state agency.

7 (j) Notwithstanding any other provision of this section, an
8 administrative penalty ceases to be incurred on the date a
9 violation is corrected. The administrative penalty ceases to be
10 incurred only if the facility:

11 (1) notifies the commission [~~department~~] in writing of
12 the correction of the violation and of the date the violation was
13 corrected; and

14 (2) shows later that the violation was corrected.

15 (1) The commission shall develop and use a system to record
16 and track the scope and severity of each violation of this chapter
17 or a rule, standard, or order adopted under this chapter for the
18 purpose of assessing an administrative penalty for the violation or
19 taking some other enforcement action against the appropriate
20 facility to deter future violations. The system:

21 (1) must be comparable to the system used by the
22 Centers for Medicare and Medicaid Services to categorize the scope
23 and severity of violations for nursing homes; and

24 (2) may be modified, as appropriate, to reflect
25 changes in industry practice or changes made to the system used by
26 the Centers for Medicare and Medicaid Services.

27 (m) In this section:

1 (1) "Actual harm" means a negative outcome that
2 compromises a resident's physical, mental, or emotional
3 well-being.

4 (2) "Immediate threat to the health or safety of a
5 resident" means a situation that causes, or is likely to cause,
6 serious injury, harm, or impairment to or the death of a resident.

7 (3) "Pattern of violation" means repeated, but not
8 pervasive, failures of a facility to comply with this chapter or a
9 rule, standard, or order adopted under this chapter that:

10 (A) result in a violation; and

11 (B) are found throughout the services provided by
12 the facility or that affect or involve the same residents or
13 facility employees.

14 (4) "Widespread in scope" means a violation of this
15 chapter or a rule, standard, or order adopted under this chapter
16 that:

17 (A) is pervasive throughout the services
18 provided by the facility; or

19 (B) that affects or has the potential to affect a
20 large portion of or all of the residents of the facility.

21 SECTION 16. Subtitle G, Title 4, Health and Safety Code, is
22 amended by adding Chapter 326 to read as follows:

23 CHAPTER 326. STAFFING REQUIREMENTS FOR FACILITIES PROVIDING CARE TO
24 PERSONS WITH ALZHEIMER'S DISEASE OR RELATED DISORDERS

25 Sec. 326.001. DEFINITIONS. In this chapter:

26 (1) "Commission" means the Health and Human Services
27 Commission.

1 (2) "Facility" means:

2 (A) a nursing facility licensed under Chapter
3 242;

4 (B) a continuing care facility regulated under
5 Chapter 246;

6 (C) an assisted living facility licensed under
7 Chapter 247;

8 (D) a day activity and health services facility
9 licensed under Chapter 103, Human Resources Code;

10 (E) an establishment subject to Chapter 105,
11 Human Resources Code;

12 (F) a community home qualified under Chapter 123,
13 Human Resources Code; and

14 (G) an adult foster care provider that contracts
15 with the commission.

16 Sec. 326.002. WRITTEN POLICY REQUIRED. A facility shall
17 adopt, implement, and enforce a written policy that:

18 (1) requires a facility employee who provides direct
19 care to a person with Alzheimer's disease or a related disorder to
20 successfully complete training in the provision of care to persons
21 with Alzheimer's disease and related disorders; and

22 (2) ensures the care and services provided by a
23 facility employee to a person with Alzheimer's disease or a related
24 disorder meet the specific identified needs of the person relating
25 to the person's diagnosis of Alzheimer's disease or a related
26 disorder.

27 Sec. 326.003. ENFORCEMENT. (a) The commission may assess

1 an administrative penalty against a facility for a violation of
2 Section 326.002.

3 (b) The commission is not required to provide a facility an
4 opportunity to correct a second or subsequent violation of Section
5 326.002 that occurs before the second anniversary of the date of the
6 first violation.

7 (c) A violation of Section 326.002 constitutes a violation
8 of the law regulating a facility, and the commission may initiate
9 for the violation any other enforcement action authorized by that
10 law against the facility, including an adult foster care facility
11 with three or fewer beds.

12 Sec. 326.004. RULES. The executive commissioner shall
13 adopt rules related to the administration and implementation of
14 this chapter.

15 SECTION 17. Section 103.003, Human Resources Code, is
16 amended by amending Subdivision (1) and adding Subdivisions (1-a)
17 and (4-b) to read as follows:

18 (1) "Commission" means the Health and Human Services
19 Commission.

20 (1-a) "Day activity and health services facility"
21 means a facility that provides services under a day activity and
22 health services program on a daily or regular basis but not
23 overnight to four or more elderly persons or persons with
24 disabilities who are not related by blood, marriage, or adoption to
25 the owner of the facility.

26 (4-b) "Facility" means a day activity and health
27 services facility.

1 SECTION 18. Sections 103.006(a) and (b), Human Resources
2 Code, are amended to read as follows:

3 (a) The commission [~~department~~] shall issue a license to
4 operate a day activity and health services facility to a person who
5 has met the application requirements and received approval after an
6 on-site inspection.

7 (b) The license expires three [~~two~~] years from the date of
8 its issuance. The executive commissioner by rule shall [~~may~~] adopt
9 a system under which licenses expire on staggered [~~various~~] dates
10 during the three-year [~~two-year~~] period. The commission shall
11 prorate the license fee as appropriate if the expiration date of a
12 license changes as a result of this subsection [~~For the year in~~
13 ~~which a license expiration date is changed, the department shall~~
14 ~~prorate the license fee on a monthly basis. Each license holder~~
15 ~~shall pay only that portion of the license fee allocable to the~~
16 ~~number of months for which the license is valid. A license holder~~
17 ~~shall pay the total license renewal fee at the time of renewal].~~

18 SECTION 19. Section 103.007, Human Resources Code, is
19 amended to read as follows:

20 Sec. 103.007. LICENSE APPLICATION. (a) An applicant for a
21 license to operate a day activity and health services facility must
22 file an application on a form prescribed by the commission
23 [~~department~~] together with a license fee of \$75 [~~\$50~~].

24 (b) The applicant must provide evidence of:

25 (1) the ability to comply with the requirements of the
26 commission [~~department~~];

27 (2) responsible management; and

1 (3) qualified professional staff and personnel.

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

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

11 SECTION 20. Section 103.008, Human Resources Code, is
12 amended to read as follows:

13 Sec. 103.008. INSPECTIONS. (a) In addition to the
14 inspection required under Section 103.006(a), the commission:

15 (1) shall inspect each facility every two years
16 following the initial inspection required under Section
17 103.006(a); and

18 (2) [The department] may inspect [enter the premises
19 of] a facility at other reasonable times as [and make an inspection]
20 necessary to ensure compliance with this chapter [issue a license
21 or renew a license].

22 (b) Any person may request an inspection of a facility by
23 notifying the commission [~~department~~] in writing of an alleged
24 violation of a licensing requirement. The complaint shall be as
25 detailed as possible and signed by the complainant. The commission
26 [~~department~~] shall perform an on-site inspection as soon as
27 feasible but no later than 30 days after receiving the complaint

1 unless after an investigation the complaint is found to be
2 frivolous. The commission [~~department~~] shall respond to a
3 complainant in writing. The commission [~~department~~] shall also
4 receive and investigate anonymous complaints.

5 SECTION 21. Section 103.012, Human Resources Code, is
6 amended by amending Subsections (a) and (e) and adding Subsection
7 (g) to read as follows:

8 (a) The commission [~~department~~] may assess an
9 administrative penalty against a person who:

10 (1) violates this chapter, a rule, standard, or order
11 adopted under this chapter, or a term of a license issued under this
12 chapter;

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

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

17 (B) with respect to a matter under investigation
18 by the commission [~~department~~];

19 (3) refuses to allow a representative of the
20 commission [~~department~~] to inspect:

21 (A) a book, record, or file required to be
22 maintained by a day activity and health services facility; or

23 (B) any portion of the premises of a day activity
24 and health services facility;

25 (4) wilfully interferes with the work of a
26 representative of the commission [~~department~~] or the enforcement of
27 this chapter;

1 (5) wilfully interferes with a representative of the
2 commission [~~department~~] preserving evidence of a violation of this
3 chapter, a rule, standard, or order adopted under this chapter, or a
4 term of a license issued under this chapter;

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

8 (7) fails to notify the commission [~~department~~] of a
9 change of ownership before the effective date of the change of
10 ownership.

11 (e) In determining the amount of a penalty, the commission
12 [~~department~~] shall consider any matter that justice may require,
13 including:

14 (1) the gradations of penalties established under
15 Subsection (d);

16 (2) the seriousness of the violation, including the
17 nature, circumstances, extent, and gravity of the prohibited act
18 and the hazard or potential hazard created by the act to the health
19 or safety of the public;

20 (3) the history of previous violations;

21 (4) the deterrence of future violations; and

22 (5) the efforts to correct the violation.

23 (g) The commission shall develop and use a system to record
24 and track the scope and severity of each violation of this chapter
25 or a rule, standard, or order adopted under this chapter for the
26 purpose of assessing an administrative penalty for the violation or
27 taking some other enforcement action against the appropriate

1 facility to deter future violations. The system:

2 (1) must be comparable to the system used by the
3 Centers for Medicare and Medicaid Services to categorize the scope
4 and severity of violations for nursing homes; and

5 (2) may be modified, as appropriate, to reflect
6 changes in industry practice or changes made to the system used by
7 the Centers for Medicare and Medicaid Services.

8 SECTION 22. Section 103.013, Human Resources Code, is
9 amended to read as follows:

10 Sec. 103.013. RIGHT TO CORRECT BEFORE IMPOSITION OF
11 ADMINISTRATIVE PENALTY. (a) The commission [~~department~~] may not
12 collect an administrative penalty from a day activity and health
13 services facility under Section 103.012 if, not later than the 45th
14 day after the date the facility receives notice under Section
15 103.014(c), the facility corrects the violation.

16 (b) Subsection (a) does not apply to:

17 (1) a violation that the commission [~~department~~]
18 determines:

19 (A) represents a pattern of violation that
20 results in actual [~~serious~~] harm [~~to or death of a person attending~~
21 ~~the facility~~];

22 (B) is widespread in scope and results in actual
23 harm;

24 (C) is widespread in scope, constitutes a
25 potential for actual harm, and relates to:

26 (i) staffing, including staff training,
27 ratio, and health;

1 (ii) administration of medication; or

2 (iii) emergency preparedness and response;

3 (D) [~~(B)~~] constitutes an immediate [~~a serious~~]
4 threat to the health or [~~and~~] safety of an elderly person or a
5 person with a disability receiving services at a [~~a person~~
6 ~~attending the~~] facility; or

7 (E) [~~(C)~~] substantially limits the facility's
8 capacity to provide care;

9 (2) a violation described by Sections
10 103.012(a)(2)-(7); [~~or~~]

11 (3) a violation of Section 103.011; or

12 (4) a second or subsequent violation of Section
13 326.002, Health and Safety Code, that occurs before the second
14 anniversary of the date of the first violation.

15 (c) A day activity and health services facility that
16 corrects a violation must maintain the correction. If the facility
17 fails to maintain the correction until at least the first
18 anniversary after the date the correction was made, the commission
19 [~~department~~] may assess and collect an administrative penalty for
20 the subsequent violation. An administrative penalty assessed under
21 this subsection is equal to three times the amount of the original
22 penalty assessed but not collected. The commission [~~department~~] is
23 not required to provide the facility with an opportunity under this
24 section to correct the subsequent violation.

25 (d) In this section:

26 (1) "Actual harm" means a negative outcome that
27 compromises the physical, mental, or emotional well-being of an

1 elderly person or a person with a disability receiving services at a
2 facility.

3 (2) "Immediate threat to the health or safety of an
4 elderly person or a person with a disability" means a situation that
5 causes, or is likely to cause, serious injury, harm, or impairment
6 to or the death of an elderly person or a person with a disability
7 receiving services at a facility.

8 (3) "Pattern of violation" means repeated, but not
9 pervasive, failures of a facility to comply with this chapter or a
10 rule, standard, or order adopted under this chapter that:

11 (A) result in a violation; and

12 (B) are found throughout the services provided by
13 the facility or that affect or involve the same elderly persons or
14 persons with disabilities receiving services at the facility or the
15 same facility employees.

16 (4) "Widespread in scope" means a violation of this
17 chapter or a rule, standard, or order adopted under this chapter
18 that:

19 (A) is pervasive throughout the services
20 provided by the facility; or

21 (B) represents a systemic failure by the facility
22 that affects or has the potential to affect a large portion of or
23 all of the elderly persons or persons with disabilities receiving
24 services at the facility.

25 SECTION 23. Section 247.0025, Health and Safety Code, is
26 repealed.

27 SECTION 24. The changes in law made by this Act apply only

1 to actions taken by the Health and Human Services Commission and
2 license holders under Chapter 103, Human Resources Code, and
3 Chapters 242, 247, 248A, and 252, Health and Safety Code, on or
4 after the effective date of this Act. An action taken before the
5 effective date of this Act is governed by the law in effect at that
6 time, and the former law is continued in effect for that purpose.

7 SECTION 25. Chapter 326, Health and Safety Code, as added by
8 this Act, does not affect the terms of a contract entered into
9 before the effective date of this Act, except that if the contract
10 is renewed, modified, or extended on or after the effective date of
11 this Act, Chapter 326 applies to the contract beginning on the date
12 of renewal, modification, or extension.

13 SECTION 26. This Act takes effect September 1, 2017.

President of the Senate

Speaker of the House

I certify that H.B. No. 2025 was passed by the House on May 9, 2017, by the following vote: Yeas 132, Nays 13, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2025 on May 26, 2017, by the following vote: Yeas 139, Nays 5, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2025 was passed by the Senate, with amendments, on May 24, 2017, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor