

1-1 By: Raymond (Senate Sponsor - Zaffirini) H.B. No. 2590
 1-2 (In the Senate - Received from the House May 1, 2017;
 1-3 May 11, 2017, read first time and referred to Committee on Health &
 1-4 Human Services; May 22, 2017, reported adversely, with favorable
 1-5 Committee Substitute by the following vote: Yeas 8, Nays 0;
 1-6 May 22, 2017, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15			X	
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR H.B. No. 2590 By: Watson

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to the administrative penalty, amelioration, and informal
 1-22 dispute resolution processes for providers participating in
 1-23 certain Medicaid waiver programs.

1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-25 SECTION 1. Section 161.088, Human Resources Code, as added
 1-26 by Chapters 826 (H.B. 4001) and 1200 (S.B. 1385), Acts of the 84th
 1-27 Legislature, Regular Session, 2015, is redesignated as Section
 1-28 161.089, Human Resources Code, and amended to read as follows:

1-29 Sec. 161.089 [~~161.088~~]. ADMINISTRATIVE PENALTIES. (a)
 1-30 This section applies to the following waiver programs established
 1-31 under Section 1915(c), Social Security Act (42 U.S.C. Section
 1-32 1396n(c)), and administered by the commission [~~department~~] to serve
 1-33 persons with an intellectual or developmental disability:

1-34 (1) the home and community-based services (HCS) waiver
 1-35 program; and

1-36 (2) the Texas home living (TxHmL) waiver program.

1-37 (b) The commission [~~department~~] may assess and collect an
 1-38 administrative penalty against a provider who participates in a
 1-39 program to which this section applies for a violation of a law or
 1-40 rule relating to the program. If the commission [~~department~~]
 1-41 assesses an administrative penalty against a provider for a
 1-42 violation of a law or rule, the commission [~~department~~] may not
 1-43 impose a payment hold against or otherwise withhold contract
 1-44 payments from the provider for the same violation of a law or rule.

1-45 (c) After consulting with appropriate stakeholders, the
 1-46 executive commissioner shall develop and adopt rules regarding the
 1-47 imposition of administrative penalties under this section. The
 1-48 rules must:

1-49 (1) specify the types of violations that warrant
 1-50 imposition of an administrative penalty;

1-51 (2) establish a schedule of progressive
 1-52 administrative penalties in accordance with the relative type,
 1-53 frequency, and seriousness of a violation;

1-54 (3) prescribe reasonable amounts to be imposed for
 1-55 each violation giving rise to an administrative penalty, subject to
 1-56 Subdivision (4);

1-57 (4) authorize the imposition of an administrative
 1-58 penalty in an amount not to exceed \$5,000 for each violation;

1-59 (5) provide that a provider commits a separate
 1-60 violation each day the provider continues to violate the law or

2-1 rule;

2-2 (6) ensure standard and consistent application of
2-3 administrative penalties throughout the state; and

2-4 (7) provide for an administrative appeals process to
2-5 adjudicate claims and appeals relating to the imposition of an
2-6 administrative penalty under this section that is in accordance
2-7 with Chapter 2001, Government Code.

2-8 (d) ~~[In specifying the types of violations that warrant~~
2-9 ~~imposition of an administrative penalty under Subsection (c), the~~
2-10 ~~executive commissioner shall specify the types of minor violations~~
2-11 ~~that allow a provider an opportunity to take corrective action~~
2-12 ~~before a penalty is imposed.~~

2-13 [(e)] In determining the types of violations that warrant
2-14 imposition of an administrative penalty and in establishing the
2-15 schedule of progressive administrative penalties and penalty
2-16 amounts under Subsection (c), the executive commissioner must
2-17 consider:

2-18 (1) the seriousness of a violation, including:

2-19 (A) the nature, circumstances, extent, and
2-20 gravity of the violation; and

2-21 (B) the hazard to the health or safety of
2-22 recipients resulting from the violation;

2-23 (2) the provider's history of previous violations;

2-24 (3) whether the provider:

2-25 (A) had prior knowledge of the violation,
2-26 including whether the provider identified the violation through the
2-27 provider's internal quality assurance process; and

2-28 (B) made any efforts to mitigate or correct the
2-29 identified violation;

2-30 (4) the penalty amount necessary to deter future
2-31 violations; and

2-32 (5) any other matter justice may require.

2-33 (e) Except as provided by Subsection (f), the executive
2-34 commissioner by rule ~~[(f) In lieu of imposing an administrative~~
2-35 ~~penalty under this section, the department]~~ shall provide to
2-36 [allow] a provider who has implemented a plan of correction ~~[found~~
2-37 ~~to have committed a minor violation specified by rule in accordance~~
2-38 ~~with Subsection (d) to have]~~ a reasonable period of time following
2-39 [that is not less than 45 days after] the date the commission
2-40 [department] sends notice to the provider of the violation to
2-41 correct ~~[take corrective action regarding]~~ the violation before the
2-42 commission may assess an administrative penalty. The period may
2-43 not be less than 45 days ~~[department may not allow time for~~
2-44 ~~corrective action for any violation that is not a minor violation].~~

2-45 (f) The commission may assess an administrative penalty
2-46 without providing a reasonable period of time to a provider to
2-47 correct the violation if the violation:

2-48 (1) represents a pattern of violation that results in
2-49 actual harm;

2-50 (2) is widespread in scope and results in actual harm;

2-51 (3) is widespread in scope and constitutes a potential
2-52 for actual harm;

2-53 (4) constitutes an immediate threat to the health or
2-54 safety of a recipient;

2-55 (5) substantially limits the provider's ability to
2-56 provide care; or

2-57 (6) is a violation in which a provider:

2-58 (A) wilfully interferes with the work of a
2-59 representative of the commission or the enforcement of a law
2-60 relating to a program to which this section applies;

2-61 (B) fails to pay a penalty assessed by the
2-62 commission under this section not later than the 10th day after the
2-63 date the assessment of the penalty becomes final, subject to
2-64 Section 161.0891; or

2-65 (C) fails to submit a plan of correction not
2-66 later than the 10th day after the date the provider receives a
2-67 statement of the violation.

2-68 (g) Notwithstanding any other provision of this section, an
2-69 administrative penalty ceases to be incurred on the date a

3-1 violation is corrected.
 3-2 (h) In this section:
 3-3 (1) "Actual harm" means an observed, documented,
 3-4 measured, or diagnosed injury or outcome that causes a serious or
 3-5 significant impairment or reduction of a recipient's physical,
 3-6 mental, or emotional well-being, including death. The term does
 3-7 not include a physical, emotional, or financial injury that
 3-8 constitutes minor harm.
 3-9 (2) "Immediate threat to the health or safety of a
 3-10 recipient" means a situation that caused, or is likely to cause,
 3-11 actual harm to a recipient.
 3-12 (3) "Minor harm" means a physical, emotional, or
 3-13 financial injury that is:
 3-14 (A) temporary in duration and transient in
 3-15 effect, including:
 3-16 (i) a temporary change in mood; and
 3-17 (ii) a temporary reduction in self-esteem
 3-18 that does not have a permanent or prolonged effect on the
 3-19 recipient's behavior; or
 3-20 (B) limited in scope or impact, including:
 3-21 (i) an injury that does not represent a risk
 3-22 of self-harm, harm to others, or damage to property; and
 3-23 (ii) a financial loss that represents less
 3-24 than 10 percent of a recipient's financial resources or personal
 3-25 property.
 3-26 (4) "Pattern of violation" means repeated, but not
 3-27 pervasive, failures of a provider to comply with a law relating to a
 3-28 program to which this section applies that:
 3-29 (A) result in a violation; and
 3-30 (B) are found throughout the services provided by
 3-31 the provider or that affect or involve the same recipients or
 3-32 provider employees or volunteers.
 3-33 (5) "Recipient" means a person served by a program to
 3-34 which this section applies.
 3-35 (6) "Widespread in scope" means a violation of a law
 3-36 relating to a program to which this section applies that:
 3-37 (A) is pervasive throughout the services
 3-38 provided by the provider; or
 3-39 (B) represents a systemic failure by the provider
 3-40 that affects or has the potential to affect a large portion of or
 3-41 all of the recipients.
 3-42 SECTION 2. Subchapter D, Chapter 161, Human Resources Code,
 3-43 is amended by adding Sections 161.0891 and 161.0892 to read as
 3-44 follows:
 3-45 Sec. 161.0891. AMELIORATION PROCESS. (a) In lieu of
 3-46 demanding payment of an administrative penalty assessed under
 3-47 Section 161.089, the commission may, in accordance with this
 3-48 section, allow the provider subject to the penalty to use, under the
 3-49 supervision of the commission, any portion of the amount of the
 3-50 penalty to ameliorate the violation or to improve services in the
 3-51 waiver program in which the provider participates.
 3-52 (b) The commission shall offer amelioration to a provider
 3-53 under this section not later than the 10th day after the date the
 3-54 provider receives from the commission a final notification of the
 3-55 assessment of an administrative penalty that is sent to the
 3-56 provider after an informal dispute resolution process but before an
 3-57 administrative hearing.
 3-58 (c) A provider to whom amelioration has been offered must
 3-59 file a plan for amelioration not later than the 45th day after the
 3-60 date the provider receives the offer of amelioration from the
 3-61 commission. In submitting the plan, the provider must agree to
 3-62 waive the provider's right to an administrative hearing if the
 3-63 commission approves the plan.
 3-64 (d) At a minimum, a plan for amelioration must:
 3-65 (1) propose changes to the management or operation of
 3-66 the waiver program in which the provider participates that will
 3-67 improve services to or quality of care for recipients under the
 3-68 program;
 3-69 (2) identify, through measurable outcomes, the ways in

4-1 which and the extent to which the proposed changes will improve
4-2 services to or quality of care for recipients under the waiver
4-3 program;

4-4 (3) establish clear goals to be achieved through the
4-5 proposed changes;

4-6 (4) establish a timeline for implementing the proposed
4-7 changes; and

4-8 (5) identify specific actions necessary to implement
4-9 the proposed changes.

4-10 (e) The commission may require that an amelioration plan
4-11 propose changes that would result in conditions that exceed the
4-12 requirements of a law or rule relating to the waiver program in
4-13 which the provider participates.

4-14 (f) The commission shall approve or deny an amelioration
4-15 plan not later than the 45th day after the date the commission
4-16 receives the plan. On approval of a provider's plan, the commission
4-17 or the State Office of Administrative Hearings, as appropriate,
4-18 shall deny a pending request for a hearing submitted by the
4-19 provider.

4-20 (g) The commission may not offer amelioration to a provider:

4-21 (1) more than three times in a two-year period; or

4-22 (2) more than one time in a two-year period for the
4-23 same or similar violation.

4-24 Sec. 161.0892. INFORMAL DISPUTE RESOLUTION. (a) The
4-25 executive commissioner by rule shall establish an informal dispute
4-26 resolution process in accordance with this section. The process
4-27 must provide for adjudication by an appropriate disinterested
4-28 person of disputes relating to a proposed enforcement action or
4-29 related proceeding of the commission against a provider
4-30 participating in a waiver program described by Section 161.089.
4-31 The informal dispute resolution process must require:

4-32 (1) a provider participating in a waiver program
4-33 described by Section 161.089 to request informal dispute resolution
4-34 not later than the 10th calendar day after the date of notification
4-35 by the commission of the violation of a law or rule relating to the
4-36 program; and

4-37 (2) the commission to complete the process not later
4-38 than the 30th calendar day after the date of receipt of a request
4-39 from a provider for informal dispute resolution.

4-40 (b) As part of the informal dispute resolution process
4-41 established under this section, the commission shall contract with
4-42 an appropriate disinterested person who is a nonprofit organization
4-43 to adjudicate disputes between a provider participating in a
4-44 program described by Section 161.089 and the commission concerning
4-45 a statement of violations prepared by the commission. Section
4-46 2009.053, Government Code, does not apply to the selection of an
4-47 appropriate disinterested person under this subsection. The person
4-48 with whom the commission contracts shall adjudicate all disputes
4-49 described by this subsection.

4-50 (c) The executive commissioner shall adopt rules to
4-51 adjudicate claims in contested cases.

4-52 (d) The commission may not delegate its responsibility to
4-53 administer the informal dispute resolution process established by
4-54 this section to another state agency.

4-55 SECTION 3. As soon as practicable after the effective date
4-56 of this Act, the executive commissioner of the Health and Human
4-57 Services Commission shall adopt the rules necessary to implement
4-58 the changes in law made by this Act.

4-59 SECTION 4. This Act takes effect September 1, 2017.

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