

1-1 By: Sheffield, et al. (Senate Sponsor - Hinojosa) H.B. No. 2766  
1-2 (In the Senate - Received from the House May 12, 2017;  
1-3 May 18, 2017, read first time and referred to Committee on Health &  
1-4 Human Services; May 23, 2017, reported adversely, with favorable  
1-5 Committee Substitute by the following vote: Yeas 6, Nays 3;  
1-6 May 23, 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. 2766 By: Schwertner

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

1-21 relating to the regulation of certain long-term care facilities.  
1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:  
1-23 SECTION 1. Chapter 242, Health and Safety Code, is amended  
1-24 by adding Subchapter P to read as follows:

1-25 SUBCHAPTER P. REINVESTMENT ALLOWANCE

1-26 Sec. 242.701. DEFINITIONS. In this subchapter:

1-27 (1) "Gross receipts" means the gross inpatient revenue  
1-28 received by a facility from services provided to facility  
1-29 residents. Gross receipts exclude revenue from nonresident care,  
1-30 including beauty and barber services, vending facilities,  
1-31 interest, charitable contributions, the sale of meals, and  
1-32 outpatient services.

1-33 (2) "Non-Medicare patient day" means a day on which  
1-34 the primary payer for a facility resident is not Medicare Part A or  
1-35 a Medicare Advantage or special needs plan.

1-36 Sec. 242.702. APPLICABILITY. This subchapter does not  
1-37 apply to:

1-38 (1) a state-owned veterans nursing facility; or  
1-39 (2) a facility that provides on a single campus a  
1-40 combination of services, which may include independent living  
1-41 services, licensed assisted living services, or licensed nursing  
1-42 facility care services, and that either:

1-43 (A) holds a certificate of authority to operate a  
1-44 continuing care retirement community under Chapter 246; or

1-45 (B) had during the previous 12 months a combined  
1-46 number of patient days of service provided to independent living  
1-47 and assisted living residents, excluding services provided to  
1-48 persons occupying facility beds in a licensed nursing facility,  
1-49 that exceeded the number of patient days of service provided to  
1-50 nursing facility residents.

1-51 Sec. 242.703. REINVESTMENT ALLOWANCE; COMPUTATION. (a)  
1-52 The commission shall impose a reinvestment allowance on each  
1-53 facility licensed under this chapter. The reinvestment allowance  
1-54 is:

1-55 (1) the product of the amount established under  
1-56 Subsection (b) multiplied by the number of a facility's  
1-57 non-Medicare patient days calculated under Section 242.704;

1-58 (2) payable monthly; and

1-59 (3) in addition to other amounts imposed under this  
1-60 chapter.

2-1 (b) The executive commissioner shall establish for each  
 2-2 non-Medicare patient day an amount for use in calculating the  
 2-3 reinvestment allowance sufficient to produce annual revenues from  
 2-4 all facilities not to exceed the maximum amount that may be assessed  
 2-5 within the indirect guarantee threshold provided under 42 C.F.R.  
 2-6 Section 433.68(f)(3)(i).

2-7 (c) The commission shall determine the amount described by  
 2-8 Subsection (b) using non-Medicare patient days and gross receipts:

2-9 (1) reported to the commission; and

2-10 (2) covering a period of at least six months.

2-11 (d) A facility may not list the reinvestment allowance as a  
 2-12 separate charge on a resident's billing statement or otherwise  
 2-13 directly or indirectly attempt to charge the reinvestment allowance  
 2-14 to a resident.

2-15 Sec. 242.704. PATIENT DAYS. For each calendar day, a  
 2-16 facility shall determine the number of non-Medicare patient days by  
 2-17 adding:

2-18 (1) the number of non-Medicare residents occupying a  
 2-19 bed in the facility immediately before midnight of that day plus the  
 2-20 number of residents admitted that day, less the number of residents  
 2-21 discharged that day, except a resident is included in the count  
 2-22 under this subdivision if:

2-23 (A) the resident is admitted and discharged on  
 2-24 the same day; or

2-25 (B) the resident is discharged that day because  
 2-26 of the resident's death; and

2-27 (2) the number of beds that are on hold that day and  
 2-28 that have been placed on hold for a period not to exceed three  
 2-29 consecutive calendar days during which a resident is:

2-30 (A) in the hospital; or

2-31 (B) on therapeutic home leave.

2-32 Sec. 242.705. COLLECTION AND REPORTING. (a) The  
 2-33 commission shall collect the reinvestment allowance.

2-34 (b) Not later than the 25th day after the last day of a  
 2-35 month, each facility shall:

2-36 (1) file with the commission a report stating the  
 2-37 total non-Medicare patient days for the month; and

2-38 (2) pay the reinvestment allowance.

2-39 Sec. 242.706. RULES; ADMINISTRATIVE PENALTY. (a) The  
 2-40 executive commissioner shall adopt rules to administer this  
 2-41 subchapter, including rules related to imposing and collecting the  
 2-42 reinvestment allowance.

2-43 (b) Notwithstanding Section 242.066, an administrative  
 2-44 penalty assessed under that section for a violation of this  
 2-45 subchapter may not exceed the greater of:

2-46 (1) one-half of the amount of the facility's  
 2-47 outstanding reinvestment allowance; or

2-48 (2) \$20,000.

2-49 (c) An administrative penalty assessed for a violation of  
 2-50 this subchapter is in addition to the facility's outstanding  
 2-51 reinvestment allowance.

2-52 Sec. 242.707. NURSING FACILITY REINVESTMENT ALLOWANCE  
 2-53 TRUST FUND. (a) The nursing facility reinvestment allowance trust  
 2-54 fund is established as a trust fund to be held by the comptroller  
 2-55 outside of the state treasury and administered by the commission as  
 2-56 trustee. Interest and income from the assets of the trust fund  
 2-57 shall be credited to and deposited in the trust fund. The commission  
 2-58 may use money in the fund only as provided by Section 242.708.

2-59 (b) The commission shall remit the reinvestment allowance  
 2-60 collected under this subchapter and federal matching funds received  
 2-61 by this state to the comptroller for deposit in the trust fund.

2-62 Sec. 242.708. REIMBURSEMENT OF FACILITIES. (a) The  
 2-63 commission may use money in the nursing facility reinvestment  
 2-64 allowance trust fund, including any federal matching funds, only  
 2-65 for the following purposes:

2-66 (1) paying any commission cost to develop and  
 2-67 administer systems for managing the reinvestment allowance;

2-68 (2) reimbursing the Medicaid share of the reinvestment  
 2-69 allowance as an allowable cost in the Medicaid daily rate; and

3-1 (3) increasing reimbursement rates paid under the  
 3-2 state Medicaid program to facilities.

3-3 (b) The commission shall allocate 50 percent of the money  
 3-4 described by Subsection (a)(3) for increased reimbursement rate  
 3-5 payments based on the total rating of the Centers for Medicare and  
 3-6 Medicaid Services five-star quality rating system.

3-7 (c) The commission shall devise a formula by which amounts  
 3-8 received under this subchapter increase the reimbursement rates  
 3-9 paid to facilities under the state Medicaid program, including a  
 3-10 phase-in of the program described by Subsection (b) beginning on  
 3-11 September 1, 2018. The commission must include in the formula  
 3-12 consideration of the total rating described by Subsection (b).

3-13 (d) Money in the nursing facility reinvestment allowance  
 3-14 trust fund may not be used to expand Medicaid eligibility under the  
 3-15 Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as  
 3-16 amended by the Health Care and Education Reconciliation Act of 2010  
 3-17 (Pub. L. No. 111-152).

3-18 Sec. 242.709. INVALIDITY; FEDERAL FUNDS. If any provision  
 3-19 of or procedure under this subchapter is held invalid by a final  
 3-20 court order that is not subject to appeal, or if the commission  
 3-21 determines that the imposition of the reinvestment allowance and  
 3-22 the expenditure of amounts collected as prescribed by this  
 3-23 subchapter will not entitle the state to receive federal matching  
 3-24 funds under the Medicaid program or will be inconsistent with the  
 3-25 objectives described by Section 537.002(b)(7), Government Code,  
 3-26 the commission shall:

3-27 (1) stop collection of the reinvestment allowance; and

3-28 (2) not later than the 30th day after the date  
 3-29 collection is stopped, return to each facility, in proportion to  
 3-30 the total amount paid by the facility, any money deposited to the  
 3-31 credit of the nursing facility reinvestment allowance trust fund  
 3-32 but not spent.

3-33 Sec. 242.710. AUTHORITY TO ACCOMPLISH PURPOSES OF  
 3-34 SUBCHAPTER. The executive commissioner by rule may adopt a  
 3-35 definition, a method of computation, or a rate that differs from  
 3-36 those expressly provided by or expressly authorized by this  
 3-37 subchapter to the extent the difference is necessary to accomplish  
 3-38 the purposes of this subchapter.

3-39 Sec. 242.711. ANNUAL REPORT. Not later than January 1 of  
 3-40 each year, the commission shall prepare and deliver to the  
 3-41 governor, the lieutenant governor, and the speaker of the house of  
 3-42 representatives a report relating to the status of the nursing  
 3-43 facility reinvestment allowance program, including fees collected,  
 3-44 federal funding applied for and received, quality-based payments  
 3-45 made, information on the overall quality of care in the Texas  
 3-46 nursing home system, whether quality-based payments are  
 3-47 contributing to quality improvements, and any other relevant  
 3-48 information necessary for assessing the effectiveness of the  
 3-49 nursing facility reinvestment allowance program. The report should  
 3-50 include any information associated with the role of the comptroller  
 3-51 and the Medicaid managed care participating plans. The report must  
 3-52 be posted on the commission's Internet website.

3-53 Sec. 242.712. PROGRAM EVALUATION. Not later than November  
 3-54 1, 2020, the commission shall prepare and deliver to the governor,  
 3-55 the lieutenant governor, and the speaker of the house of  
 3-56 representatives a report that assesses whether and to what degree  
 3-57 payments associated with quality-based care are resulting in  
 3-58 improvements to overall nursing home quality.

3-59 Sec. 242.713. EXPIRATION. This subchapter expires August  
 3-60 31, 2021.

3-61 SECTION 2. (a) Sections 531.058(a) and (a-1), Government  
 3-62 Code, are amended to read as follows:

3-63 (a) The executive commissioner by rule shall establish an  
 3-64 informal dispute resolution process in accordance with this  
 3-65 section. The process must provide for adjudication by an  
 3-66 appropriate disinterested person of disputes relating to a proposed  
 3-67 enforcement action or related proceeding of the commission under  
 3-68 Section 32.021(d), Human Resources Code, or the Department of Aging  
 3-69 and Disability Services or its successor agency under Chapter 242,

4-1 247, or 252, Health and Safety Code. The informal dispute  
4-2 resolution process must require:

4-3 (1) an institution or facility to request informal  
4-4 dispute resolution not later than the 10th calendar day after  
4-5 notification by the commission or department, as applicable, of the  
4-6 violation of a standard or standards; and

4-7 (2) the commission to complete the process not later  
4-8 than:

4-9 (A) the 30th calendar day after receipt of a  
4-10 request from an institution or facility, other than an assisted  
4-11 living facility, for informal dispute resolution; or

4-12 (B) the 90th calendar day after receipt of a  
4-13 request from an assisted living facility for informal dispute  
4-14 resolution.

4-15 (a-1) As part of the informal dispute resolution process  
4-16 established under this section, the commission shall contract with  
4-17 an appropriate disinterested person [~~who is a nonprofit~~  
4-18 ~~organization~~] to adjudicate disputes between an institution or  
4-19 facility licensed under Chapter 242 or 247, Health and Safety Code,  
4-20 and the Department of Aging and Disability Services or its  
4-21 successor agency concerning a statement of violations prepared by  
4-22 the department in connection with a survey conducted by the  
4-23 department of the institution or facility. Section 2009.053 does  
4-24 not apply to the selection of an appropriate disinterested person  
4-25 under this subsection. The person with whom the commission  
4-26 contracts shall adjudicate all disputes described by this  
4-27 subsection.

4-28 (b) Subchapter B, Chapter 531, Government Code, is amended  
4-29 by adding Section 531.0585 to read as follows:

4-30 Sec. 531.0585. ISSUANCE OF MATERIALS TO CERTAIN LONG-TERM  
4-31 CARE FACILITIES. The executive commissioner shall review the  
4-32 commission's methods for issuing informational letters, policy  
4-33 updates, policy clarifications, and other related materials to an  
4-34 entity licensed under Chapter 103, Human Resources Code, or Chapter  
4-35 242, 247, 248A, or 252, Health and Safety Code, and develop and  
4-36 implement more efficient methods to issue those materials as  
4-37 appropriate.

4-38 (c) Section 242.066, Health and Safety Code, is amended by  
4-39 amending Subsections (a) and (e) and adding Subsection (i) to read  
4-40 as follows:

4-41 (a) The commission [~~department~~] may assess an  
4-42 administrative penalty against a person who:

4-43 (1) violates this chapter or a rule, standard, or  
4-44 order adopted or license issued under this chapter;

4-45 (2) makes a false statement, that the person knows or  
4-46 should know is false, of a material fact:

4-47 (A) on an application for issuance or renewal of  
4-48 a license or in an attachment to the application; or

4-49 (B) with respect to a matter under investigation  
4-50 by the commission [~~department~~];

4-51 (3) refuses to allow a representative of the  
4-52 commission [~~department~~] to inspect:

4-53 (A) a book, record, or file required to be  
4-54 maintained by an institution; or

4-55 (B) any portion of the premises of an  
4-56 institution;

4-57 (4) wilfully interferes with the work of a  
4-58 representative of the commission [~~department~~] or the enforcement of  
4-59 this chapter;

4-60 (5) wilfully interferes with a representative of the  
4-61 commission [~~department~~] preserving evidence of a violation of this  
4-62 chapter or a rule, standard, or order adopted or license issued  
4-63 under this chapter;

4-64 (6) fails to pay a penalty assessed by the commission  
4-65 [~~department~~] under this chapter not later than the 10th day after  
4-66 the date the assessment of the penalty becomes final; or

4-67 (7) fails to notify the commission [~~department~~] of a  
4-68 change of ownership before the effective date of the change of  
4-69 ownership.

5-1 (e) In determining the amount of a penalty, the commission  
5-2 [~~department~~] shall consider any matter that justice may require,  
5-3 including:

5-4 (1) the gradations of penalties established under  
5-5 Subsection (d);

5-6 (2) the seriousness of the violation, including the  
5-7 nature, circumstances, extent, and gravity of the prohibited act  
5-8 and the hazard or potential hazard created by the act to the health  
5-9 or safety of the public;

5-10 (3) the history of previous violations;

5-11 (4) deterrence of future violations; and

5-12 (5) efforts to correct the violation.

5-13 (i) The commission shall develop and use a system to record  
5-14 and track the scope and severity of each violation of this chapter  
5-15 or a rule, standard, or order adopted under this chapter for the  
5-16 purpose of assessing an administrative penalty for the violation or  
5-17 taking some other enforcement action against the appropriate  
5-18 institution to deter future violations. The system:

5-19 (1) must be comparable to the system used by the  
5-20 Centers for Medicare and Medicaid Services to categorize the scope  
5-21 and severity of violations for nursing homes; and

5-22 (2) may be modified, as appropriate, to reflect  
5-23 changes in industry practice or changes made to the system used by  
5-24 the Centers for Medicare and Medicaid Services.

5-25 (d) Section 242.0665, Health and Safety Code, is amended to  
5-26 read as follows:

5-27 Sec. 242.0665. RIGHT TO CORRECT. (a) The commission  
5-28 [~~department~~] may not collect an administrative penalty against an  
5-29 institution under this subchapter if, not later than the 45th day  
5-30 after the date the institution receives notice under Section  
5-31 242.067(c), the institution corrects the violation.

5-32 (b) Subsection (a) does not apply:

5-33 (1) to a violation that the commission [~~department~~]  
5-34 determines:

5-35 (A) represents a pattern of violation that  
5-36 results in actual [~~serious~~] harm [~~to or death of a resident~~];

5-37 (B) is widespread in scope and results in actual  
5-38 harm;

5-39 (C) is widespread in scope, constitutes a  
5-40 potential for actual harm, and relates to:

5-41 (i) residents' rights;

5-42 (ii) treatment of residents;

5-43 (iii) resident behavior and institution  
5-44 practices;

5-45 (iv) quality of care;

5-46 (v) medication errors;

5-47 (vi) standard menus and nutritional  
5-48 adequacy;

5-49 (vii) physician visits;

5-50 (viii) infection control;

5-51 (ix) life safety from fire; or

5-52 (x) emergency preparedness and response;

5-53 (D) [~~B~~] constitutes an immediate [~~a serious~~]  
5-54 threat to the health or safety of a resident; or

5-55 (E) [~~C~~] substantially limits the institution's  
5-56 capacity to provide care;

5-57 (2) to a violation described by Sections  
5-58 242.066(a)(2)-(7);

5-59 (3) to a violation of Section 260A.014 or 260A.015; or

5-60 (4) to a violation of a right of a resident adopted  
5-61 under Subchapter L.

5-62 (c) An institution that corrects a violation under  
5-63 Subsection (a) must maintain the correction. If the institution  
5-64 fails to maintain the correction until at least the first  
5-65 anniversary of the date the correction was made, the commission  
5-66 [~~department~~] may assess an administrative penalty under this  
5-67 subchapter for the subsequent violation. A penalty assessed under  
5-68 this subsection shall be equal to three times the amount of the  
5-69 penalty assessed but not collected under Subsection (a). The

6-1 commission [department] is not required to provide the institution  
 6-2 an opportunity to correct the subsequent violation under this  
 6-3 section.

6-4 (d) In this section:

6-5 (1) "Actual harm" means a negative outcome that  
 6-6 compromises a resident's physical, mental, or emotional  
 6-7 well-being.

6-8 (2) "Immediate threat to the health or safety of a  
 6-9 resident" means a situation that causes, or is likely to cause,  
 6-10 serious injury, harm, or impairment to or the death of a resident.

6-11 (3) "Pattern of violation" means repeated, but not  
 6-12 pervasive, failures of an institution to comply with this chapter  
 6-13 or a rule, standard, or order adopted under this chapter that:

6-14 (A) result in a violation; and

6-15 (B) are found throughout the services provided by  
 6-16 the institution or that affect or involve the same residents or  
 6-17 institution employees.

6-18 (4) "Widespread in scope" means a violation of this  
 6-19 chapter or a rule, standard, or order adopted under this chapter  
 6-20 that:

6-21 (A) is pervasive throughout the services  
 6-22 provided by the institution; or

6-23 (B) represents a systemic failure by the  
 6-24 institution that affects or has the potential to affect a large  
 6-25 portion of or all of the residents of the institution.

6-26 (e) Section 247.023, Health and Safety Code, is amended to  
 6-27 read as follows:

6-28 Sec. 247.023. ISSUANCE AND RENEWAL OF LICENSE. (a) The  
 6-29 commission [department] shall issue a license if, after inspection  
 6-30 and investigation, it finds that the applicant, the assisted living  
 6-31 facility, and all controlling persons with respect to the applicant  
 6-32 or facility meet the requirements of this chapter and the standards  
 6-33 adopted under this chapter. The license expires on the third  
 6-34 [second] anniversary of the date of its issuance. The executive  
 6-35 commissioner by rule shall [may] adopt a system under which  
 6-36 licenses expire on staggered [various] dates during each [the]  
 6-37 three-year [two-year] period. The commission shall prorate the  
 6-38 license fee as appropriate if the expiration date of a license  
 6-39 changes as a result of this subsection [For the year in which a  
 6-40 license expiration date is changed, the department shall prorate  
 6-41 the license fee on a monthly basis. Each license holder shall pay  
 6-42 only that portion of the license fee allocable to the number of  
 6-43 months during which the license is valid. A license holder shall  
 6-44 pay the total license renewal fee at the time of renewal].

6-45 (b) To renew a license, the license holder must submit to  
 6-46 the commission [department] the license renewal fee.

6-47 (c) The commission [department] may require participation  
 6-48 in a continuing education program as a condition of renewal of a  
 6-49 license. The executive commissioner shall adopt rules to implement  
 6-50 this subsection.

6-51 (f) Sections 247.024(a), (d), and (e), Health and Safety  
 6-52 Code, are amended to read as follows:

6-53 (a) The executive commissioner by rule shall set license  
 6-54 fees imposed by this chapter:

6-55 (1) on the basis of the number of beds in assisted  
 6-56 living facilities required to pay the fee; and

6-57 (2) in amounts reasonable and necessary to defray the  
 6-58 cost of administering this chapter, but not to exceed \$2,250  
 6-59 [\$1,500].

6-60 (d) Investigation fees or attorney's fees may not be  
 6-61 assessed against or collected from an assisted living facility by  
 6-62 or on behalf of the commission [department] or another state agency  
 6-63 unless the commission [department] or other state agency assesses  
 6-64 and collects a penalty authorized by this chapter from the  
 6-65 facility.

6-66 (e) An applicant who submits a license renewal later than  
 6-67 the 45th day before the expiration date of a current license is  
 6-68 subject to a late fee in accordance with commission [department]  
 6-69 rules.

7-1 (g) Section 247.027, Health and Safety Code, is amended to  
7-2 read as follows:

7-3 Sec. 247.027. INSPECTIONS. (a) In addition to the  
7-4 inspection required under Section 247.023(a), the commission:

7-5 (1) shall ~~[department may]~~ inspect each ~~[an]~~ assisted  
7-6 living facility at least every two years following the initial  
7-7 inspection required under Section 247.023(a); ~~[annually]~~ and

7-8 (2) may inspect a facility at other reasonable times  
7-9 as necessary to assure compliance with this chapter.

7-10 (b) The commission ~~[department]~~ shall establish an  
7-11 inspection checklist based on the minimum standards that describes  
7-12 the matters subject to inspection. The commission ~~[department]~~  
7-13 shall use the inspection checklist in conducting inspections under  
7-14 this section and Section 247.023(a).

7-15 (h) Section 247.0451, Health and Safety Code, is amended by  
7-16 amending Subsections (a), (b), (d), and (f) and adding Subsections  
7-17 (g) and (h) to read as follows:

7-18 (a) The commission ~~[department]~~ may assess an  
7-19 administrative penalty against a person who:

7-20 (1) violates this chapter or a rule, standard, or  
7-21 order adopted under this chapter or a term of a license issued under  
7-22 this chapter;

7-23 (2) makes a false statement, that the person knows or  
7-24 should know is false, of a material fact:

7-25 (A) on an application for issuance or renewal of  
7-26 a license or in an attachment to the application; or

7-27 (B) with respect to a matter under investigation  
7-28 by the commission ~~[department]~~;

7-29 (3) refuses to allow a representative of the  
7-30 commission ~~[department]~~ to inspect:

7-31 (A) a book, record, or file required to be  
7-32 maintained by an assisted living facility; or

7-33 (B) any portion of the premises of an assisted  
7-34 living facility;

7-35 (4) wilfully interferes with the work of a  
7-36 representative of the commission ~~[department]~~ or the enforcement of  
7-37 this chapter;

7-38 (5) wilfully interferes with a representative of the  
7-39 commission ~~[department]~~ preserving evidence of a violation of this  
7-40 chapter or a rule, standard, or order adopted under this chapter or  
7-41 a term of a license issued under this chapter;

7-42 (6) fails to pay a penalty assessed under this chapter  
7-43 not later than the 30th day after the date the assessment of the  
7-44 penalty becomes final; or

7-45 (7) fails to notify the commission ~~[department]~~ of a  
7-46 change of ownership before the effective date of the change of  
7-47 ownership.

7-48 (b) Except as provided by Section 247.0452(c), the penalty  
7-49 may not exceed:

7-50 (1) \$5,000 for each violation that:

7-51 (A) represents a pattern of violation that  
7-52 results in actual harm or is widespread in scope and results in  
7-53 actual harm; or

7-54 (B) constitutes an immediate threat to the health  
7-55 or safety of a resident; or

7-56 (2) \$1,000 for each other violation.

7-57 (d) In determining the amount of a penalty, the commission  
7-58 ~~[department]~~ shall consider any matter that justice may require,  
7-59 but must consider each of the following and make a record of the  
7-60 extent to which each of the following was considered:

7-61 (1) the gradations of penalties established under  
7-62 Subsection (c);

7-63 (2) the seriousness of the violation, including the  
7-64 nature, circumstances, extent, and gravity of the prohibited act  
7-65 and the hazard or potential hazard created by the act to the health  
7-66 or safety of the public;

7-67 (3) the history of previous violations;

7-68 (4) deterrence of future violations;

7-69 (5) efforts to correct the violation; and

8-1 (6) the size of the facility and of the business entity  
8-2 that owns the facility.

8-3 (f) The commission [~~department~~] may not assess a penalty  
8-4 under this section against a resident of an assisted living  
8-5 facility unless the resident is also an employee of the facility or  
8-6 a controlling person.

8-7 (g) The commission shall develop and use a system to record  
8-8 and track the scope and severity of each violation of this chapter  
8-9 or a rule, standard, or order adopted under this chapter for the  
8-10 purpose of assessing an administrative penalty for the violation or  
8-11 taking some other enforcement action against the appropriate  
8-12 assisted living facility to deter future violations. The system:

8-13 (1) must be comparable to the system used by the  
8-14 Centers for Medicare and Medicaid Services to categorize the scope  
8-15 and severity of violations for nursing homes; and

8-16 (2) may be modified, as appropriate, to reflect  
8-17 changes in industry practice or changes made to the system used by  
8-18 the Centers for Medicare and Medicaid Services.

8-19 (h) In this section, "actual harm," "immediate threat to the  
8-20 health or safety of a resident," "pattern of violation," and  
8-21 "widespread in scope" have the meanings assigned by Section  
8-22 247.0452.

8-23 (i) Section 247.0452, Health and Safety Code, is amended to  
8-24 read as follows:

8-25 Sec. 247.0452. RIGHT TO CORRECT. (a) The commission  
8-26 [~~department~~] may not collect an administrative penalty from an  
8-27 assisted living facility under Section 247.0451 if, not later than  
8-28 the 45th day after the date the facility receives notice under  
8-29 Section 247.0453(c), the facility corrects the violation.

8-30 (b) Subsection (a) does not apply:

8-31 (1) to a violation that the commission [~~department~~]  
8-32 determines represents a pattern of violation that results in actual  
8-33 [serious] harm [~~to or death of a resident~~];

8-34 (2) to a violation that the commission determines is  
8-35 widespread in scope and results in actual harm;

8-36 (3) to a violation that the commission determines is  
8-37 widespread in scope, constitutes a potential for actual harm, and  
8-38 relates to:

- 8-39 (A) resident assessment;
- 8-40 (B) staffing, including staff training;
- 8-41 (C) administration of medication;
- 8-42 (D) infection control;
- 8-43 (E) restraints; or
- 8-44 (F) emergency preparedness and response;

8-45 (4) to a violation that the commission determines  
8-46 constitutes an immediate threat to the health or safety of a  
8-47 resident;

8-48 (5) [~~2~~] to a violation described by Sections  
8-49 247.0451(a) (2)-(7) or a violation of Section 260A.014 or 260A.015;

8-50 (6) [~~3~~] to a second or subsequent violation of:

8-51 (A) a right of the same resident under Section  
8-52 247.064; or

8-53 (B) the same right of all residents under Section  
8-54 247.064; or

8-55 (7) [~~4~~] to a violation described by Section 247.066,  
8-56 which contains its own right to correct provisions.

8-57 (c) An assisted living facility that corrects a violation  
8-58 must maintain the correction. If the facility fails to maintain the  
8-59 correction until at least the first anniversary of the date the  
8-60 correction was made, the commission [~~department~~] may assess and  
8-61 collect an administrative penalty for the subsequent violation. An  
8-62 administrative penalty assessed under this subsection is equal to  
8-63 three times the amount of the original penalty assessed but not  
8-64 collected. The commission [~~department~~] is not required to provide  
8-65 the facility with an opportunity under this section to correct the  
8-66 subsequent violation.

8-67 (d) In this section:

8-68 (1) "Actual harm" means a negative outcome that  
8-69 compromises a resident's physical, mental, or emotional

9-1 well-being.  
 9-2 (2) "Immediate threat to the health or safety of a  
 9-3 resident" means a situation that causes, or is likely to cause,  
 9-4 serious injury, harm, or impairment to or the death of a resident.  
 9-5 (3) "Pattern of violation" means repeated, but not  
 9-6 pervasive, failures of an assisted living facility to comply with  
 9-7 this chapter or a rule, standard, or order adopted under this  
 9-8 chapter that:  
 9-9 (A) result in a violation; and  
 9-10 (B) are found throughout the services provided by  
 9-11 the facility or that affect or involve the same residents or  
 9-12 facility employees.  
 9-13 (4) "Widespread in scope" means a violation of this  
 9-14 chapter or a rule, standard, or order adopted under this chapter  
 9-15 that:  
 9-16 (A) is pervasive throughout the services  
 9-17 provided by the assisted living facility; or  
 9-18 (B) represents a systemic failure by the assisted  
 9-19 living facility that affects or has the potential to affect a large  
 9-20 portion of or all of the residents of the facility.  
 9-21 (j) Section 248A.053, Health and Safety Code, is amended to  
 9-22 read as follows:  
 9-23 Sec. 248A.053. INITIAL OR RENEWAL LICENSE TERM; RENEWAL;  
 9-24 NOTIFICATION. (a) An initial or renewal license issued under this  
 9-25 chapter expires on the third [~~second~~] anniversary of the date of  
 9-26 issuance. The executive commissioner by rule shall adopt a system  
 9-27 under which licenses expire on staggered dates during each  
 9-28 three-year period. The commission shall prorate the license fee as  
 9-29 appropriate if the expiration date of a license changes as a result  
 9-30 of this subsection.  
 9-31 (b) A person applying to renew a center license shall:  
 9-32 (1) submit a renewal application to the commission  
 9-33 [~~department~~] on a [~~the form~~] prescribed form [~~by the department~~] at  
 9-34 least 60 days but not more than 120 days before expiration of the  
 9-35 license;  
 9-36 (2) submit the renewal fee in the amount required by  
 9-37 agency [~~department~~] rule; and  
 9-38 (3) comply with any other requirements specified by  
 9-39 agency [~~department~~] rule.  
 9-40 (c) The commission [~~department~~] shall assess a \$50 per day  
 9-41 late fee to a license holder who submits a renewal application after  
 9-42 the date required by Subsection (b)(1), except that the total  
 9-43 amount of a late fee may not exceed the lesser of 50 percent of the  
 9-44 license renewal fee or \$500.  
 9-45 (d) At least 120 days before expiration of a center license,  
 9-46 the commission [~~department~~] shall notify the owner or operator of  
 9-47 the center of the license expiration.  
 9-48 (k) Subchapter F, Chapter 248A, Health and Safety Code, is  
 9-49 amended by adding Section 248A.2515 to read as follows:  
 9-50 Sec. 248A.2515. SYSTEM FOR ASSESSMENT OF PENALTY. The  
 9-51 commission shall develop and use a system to record and track the  
 9-52 scope and severity of each violation of this chapter or a rule or  
 9-53 standard adopted or order issued under this chapter for the purpose  
 9-54 of assessing an administrative penalty for the violation or taking  
 9-55 some other enforcement action against the appropriate center to  
 9-56 deter future violations. The system:  
 9-57 (1) must be comparable to the system used by the  
 9-58 Centers for Medicare and Medicaid Services to categorize the scope  
 9-59 and severity of violations for nursing homes; and  
 9-60 (2) may be modified, as appropriate, to reflect  
 9-61 changes in industry practice or changes made to the system used by  
 9-62 the Centers for Medicare and Medicaid Services.  
 9-63 (l) Sections 252.033(a), (b), (d), (f), and (h), Health and  
 9-64 Safety Code, are amended to read as follows:  
 9-65 (a) After receiving the application, the commission  
 9-66 [~~department~~] shall issue a license if, after inspection and  
 9-67 investigation, it finds that the applicant and facility meet the  
 9-68 requirements established under this chapter.  
 9-69 (b) The commission [~~department~~] may issue a license only

10-1 for:

10-2 (1) the premises and persons or governmental unit  
10-3 named in the application; and

10-4 (2) the maximum number of beds specified in the  
10-5 application.

10-6 (d) A license is renewable on the third [~~second~~] anniversary  
10-7 of issuance or renewal of the license after:

10-8 (1) an inspection;

10-9 (2) filing and approval of a renewal report; and

10-10 (3) payment of the renewal fee.

10-11 (f) The commission [~~department~~] may not issue a license for  
10-12 new beds or an expansion of an existing facility under this chapter  
10-13 unless the addition of new beds or the expansion is included in the  
10-14 plan approved by the commission in accordance with Section  
10-15 533A.062.

10-16 (h) The executive commissioner by rule shall:

10-17 (1) define specific, appropriate, and objective  
10-18 criteria on which the commission [~~department~~] may deny an initial  
10-19 license application or license renewal or revoke a license; and

10-20 (2) adopt a system under which:

10-21 (A) licenses expire on staggered dates during  
10-22 each three-year period; and

10-23 (B) the commission prorates the license fee as  
10-24 appropriate if the expiration date of a license changes as a result  
10-25 of the system adopted under Paragraph (A).

10-26 (m) Sections 252.034(a), (e), and (f), Health and Safety  
10-27 Code, are amended to read as follows:

10-28 (a) The executive commissioner by rule may adopt a fee for a  
10-29 license issued under this chapter. The fee may not exceed \$225  
10-30 [~~\$150~~] plus \$7.50 [~~\$5~~] for each unit of capacity or bed space for  
10-31 which the license is sought.

10-32 (e) All license fees collected under this section shall be  
10-33 deposited in the state treasury to the credit of the commission  
10-34 [~~department~~] and may be appropriated to the commission [~~department~~]  
10-35 to administer and enforce this chapter.

10-36 (f) An applicant who submits an application for license  
10-37 renewal later than the 45th day before the expiration date of a  
10-38 current license is subject to a late fee in accordance with  
10-39 commission [~~department~~] rules.

10-40 (n) Section 252.041, Health and Safety Code, is amended to  
10-41 read as follows:

10-42 Sec. 252.041. UNANNOUNCED INSPECTIONS. (a) Each  
10-43 licensing period, the commission [~~department~~] shall conduct at  
10-44 least three [~~two~~] unannounced inspections of each facility.

10-45 (b) In order to ensure continuous compliance, the  
10-46 commission [~~department~~] shall randomly select a sufficient  
10-47 percentage of facilities for unannounced inspections to be  
10-48 conducted between 5 p.m. and 8 a.m. Those inspections must be  
10-49 cursory to avoid to the greatest extent feasible any disruption of  
10-50 the residents.

10-51 (c) The commission [~~department~~] may require additional  
10-52 inspections.

10-53 (d) As considered appropriate and necessary by the  
10-54 commission [~~department~~], the commission [~~department~~] may invite at  
10-55 least one person as a citizen advocate to participate in  
10-56 inspections. The invited advocate must be an individual who has an  
10-57 interest in or who is employed by or affiliated with an organization  
10-58 or entity that represents, advocates for, or serves individuals  
10-59 with an intellectual disability or a related condition.

10-60 (o) Section 252.065, Health and Safety Code, is amended by  
10-61 amending Subsections (a), (b), (e), (f), (i), and (j) and adding  
10-62 Subsections (l) and (m) to read as follows:

10-63 (a) The commission [~~department~~] may assess an  
10-64 administrative penalty against a person who:

10-65 (1) violates this chapter or a rule, standard, or  
10-66 order adopted or license issued under this chapter;

10-67 (2) makes a false statement, that the person knows or  
10-68 should know is false, of a material fact:

10-69 (A) on an application for issuance or renewal of

11-1 a license or in an attachment to the application; or  
 11-2 (B) with respect to a matter under investigation  
 11-3 by the commission [~~department~~];  
 11-4 (3) refuses to allow a representative of the  
 11-5 commission [~~department~~] to inspect:  
 11-6 (A) a book, record, or file required to be  
 11-7 maintained by the institution; or  
 11-8 (B) any portion of the premises of an  
 11-9 institution;  
 11-10 (4) wilfully interferes with the work of a  
 11-11 representative of the commission [~~department~~] or the enforcement of  
 11-12 this chapter;  
 11-13 (5) wilfully interferes with a representative of the  
 11-14 commission [~~department~~] preserving evidence of a violation of this  
 11-15 chapter or a rule, standard, or order adopted or license issued  
 11-16 under this chapter;  
 11-17 (6) fails to pay a penalty assessed by the commission  
 11-18 [~~department~~] under this chapter not later than the 10th day after  
 11-19 the date the assessment of the penalty becomes final;  
 11-20 (7) fails to submit a plan of correction within 10 days  
 11-21 after receiving a statement of licensing violations; or  
 11-22 (8) fails to notify the commission [~~department~~] of a  
 11-23 change in ownership before the effective date of that change of  
 11-24 ownership.  
 11-25 (b) The penalty for a facility with fewer than 60 beds shall  
 11-26 be not less than \$100 or more than \$1,000 for each violation. The  
 11-27 penalty for a facility with 60 beds or more shall be not less than  
 11-28 \$100 or more than \$5,000 for each violation. [~~The total amount of~~  
 11-29 ~~the penalty assessed for a violation continuing or occurring on~~  
 11-30 ~~separate days under this subsection may not exceed \$5,000 for a~~  
 11-31 ~~facility with fewer than 60 beds or \$25,000 for a facility with 60~~  
 11-32 ~~beds or more.] Each day a violation occurs or continues is a  
 11-33 separate violation for purposes of imposing a penalty.  
 11-34 (e) The executive commissioner by rule shall provide the  
 11-35 facility with a reasonable period of time, not less than 45 days,  
 11-36 following the first day of a violation to correct the violation  
 11-37 before the commission [~~department~~] may assess an administrative  
 11-38 penalty if a plan of correction has been implemented. This  
 11-39 subsection does not apply to a violation described by Subsections  
 11-40 (a)(2)-(8) or to a violation that the commission [~~department~~]  
 11-41 determines:  
 11-42 (1) represents a pattern of violation that results  
 11-43 [~~has resulted~~] in actual [~~serious~~] harm [~~to or the death of a~~  
 11-44 ~~resident~~];  
 11-45 (2) is widespread in scope and results in actual harm;  
 11-46 (3) is widespread in scope, constitutes a potential  
 11-47 for actual harm, and relates to:  
 11-48 (A) staff treatment of a resident;  
 11-49 (B) active treatment;  
 11-50 (C) client behavior and facility practices;  
 11-51 (D) health care services;  
 11-52 (E) drug administration;  
 11-53 (F) infection control;  
 11-54 (G) food and nutrition services; or  
 11-55 (H) emergency preparedness and response;  
 11-56 (4) [~~(2)~~] constitutes an immediate [~~a serious~~] threat  
 11-57 to the health or safety of a resident; or  
 11-58 (5) [~~(3)~~] substantially limits the facility's  
 11-59 [~~institution's~~] capacity to provide care.  
 11-60 (f) The commission [~~department~~] may not assess an  
 11-61 administrative penalty for a minor violation if the person corrects  
 11-62 the violation not later than the 46th day after the date the person  
 11-63 receives notice of the violation.  
 11-64 (i) The commission [~~department~~] may not assess an  
 11-65 administrative penalty against a state agency.  
 11-66 (j) Notwithstanding any other provision of this section, an  
 11-67 administrative penalty ceases to be incurred on the date a  
 11-68 violation is corrected. The administrative penalty ceases to be  
 11-69 incurred only if the facility:~~

12-1 (1) notifies the commission [~~department~~] in writing of  
12-2 the correction of the violation and of the date the violation was  
12-3 corrected; and

12-4 (2) shows later that the violation was corrected.

12-5 (1) The commission shall develop and use a system to record  
12-6 and track the scope and severity of each violation of this chapter  
12-7 or a rule, standard, or order adopted under this chapter for the  
12-8 purpose of assessing an administrative penalty for the violation or  
12-9 taking some other enforcement action against the appropriate  
12-10 facility to deter future violations. The system:

12-11 (1) must be comparable to the system used by the  
12-12 Centers for Medicare and Medicaid Services to categorize the scope  
12-13 and severity of violations for nursing homes; and

12-14 (2) may be modified, as appropriate, to reflect  
12-15 changes in industry practice or changes made to the system used by  
12-16 the Centers for Medicare and Medicaid Services.

12-17 (m) In this section:

12-18 (1) "Actual harm" means a negative outcome that  
12-19 compromises a resident's physical, mental, or emotional  
12-20 well-being.

12-21 (2) "Immediate threat to the health or safety of a  
12-22 resident" means a situation that causes, or is likely to cause,  
12-23 serious injury, harm, or impairment to or the death of a resident.

12-24 (3) "Pattern of violation" means repeated, but not  
12-25 pervasive, failures of a facility to comply with this chapter or a  
12-26 rule, standard, or order adopted under this chapter that:

12-27 (A) result in a violation; and

12-28 (B) are found throughout the services provided by  
12-29 the facility or that affect or involve the same residents or  
12-30 facility employees.

12-31 (4) "Widespread in scope" means a violation of this  
12-32 chapter or a rule, standard, or order adopted under this chapter  
12-33 that:

12-34 (A) is pervasive throughout the services  
12-35 provided by the facility; or

12-36 (B) affects or has the potential to affect a  
12-37 large portion of or all of the residents of the facility.

12-38 (p) Section 103.003, Human Resources Code, is amended by  
12-39 amending Subdivision (1) and adding Subdivisions (1-a) and (4-b) to  
12-40 read as follows:

12-41 (1) "Commission" means the Health and Human Services  
12-42 Commission.

12-43 (1-a) "Day activity and health services facility"  
12-44 means a facility that provides services under a day activity and  
12-45 health services program on a daily or regular basis but not  
12-46 overnight to four or more elderly persons or persons with  
12-47 disabilities who are not related by blood, marriage, or adoption to  
12-48 the owner of the facility.

12-49 (4-b) "Facility" means a day activity and health  
12-50 services facility.

12-51 (q) Sections 103.006(a) and (b), Human Resources Code, are  
12-52 amended to read as follows:

12-53 (a) The commission [~~department~~] shall issue a license to  
12-54 operate a day activity and health services facility to a person who  
12-55 has met the application requirements and received approval after an  
12-56 on-site inspection.

12-57 (b) The license expires three [~~two~~] years from the date of  
12-58 its issuance. The executive commissioner by rule shall [~~may~~] adopt  
12-59 a system under which licenses expire on staggered [~~various~~] dates  
12-60 during the three-year [~~two-year~~] period. The commission shall  
12-61 prorate the license fee as appropriate if the expiration date of a  
12-62 license changes as a result of this subsection [~~For the year in~~  
12-63 ~~which a license expiration date is changed, the department shall~~  
12-64 ~~prorate the license fee on a monthly basis. Each license holder~~  
12-65 ~~shall pay only that portion of the license fee allocable to the~~  
12-66 ~~number of months for which the license is valid. A license holder~~  
12-67 ~~shall pay the total license renewal fee at the time of renewal].~~

12-68 (r) Section 103.007, Human Resources Code, is amended to  
12-69 read as follows:

13-1 Sec. 103.007. LICENSE APPLICATION. (a) An applicant for a  
13-2 license to operate a day activity and health services facility must  
13-3 file an application on a form prescribed by the commission  
13-4 [~~department~~] together with a license fee of \$75 [~~\$50~~].

13-5 (b) The applicant must provide evidence of:  
13-6 (1) the ability to comply with the requirements of the  
13-7 commission [~~department~~];  
13-8 (2) responsible management; and  
13-9 (3) qualified professional staff and personnel.

13-10 (c) A person who operates a facility that is licensed under  
13-11 this chapter must file an application for a renewal license not  
13-12 later than the 45th day before the expiration date of the current  
13-13 license on a form prescribed by the commission [~~department~~]  
13-14 together with a renewal fee of \$50.

13-15 (d) An applicant for a license renewal who submits an  
13-16 application later than the 45th day before the expiration date of  
13-17 the license is subject to a late fee in accordance with commission  
13-18 [~~department~~] rules.

13-19 (s) Section 103.008, Human Resources Code, is amended to  
13-20 read as follows:

13-21 Sec. 103.008. INSPECTIONS. (a) In addition to the  
13-22 inspection required under Section 103.006(a), the commission:

13-23 (1) shall inspect each facility every two years  
13-24 following the initial inspection required under Section  
13-25 103.006(a); and

13-26 (2) [~~The department~~] may inspect [~~enter the premises~~  
13-27 ~~of~~] a facility at other reasonable times as [~~and make an inspection~~]  
13-28 necessary to ensure compliance with this chapter [~~issue a license~~  
13-29 ~~or renew a license~~].

13-30 (b) Any person may request an inspection of a facility by  
13-31 notifying the commission [~~department~~] in writing of an alleged  
13-32 violation of a licensing requirement. The complaint shall be as  
13-33 detailed as possible and signed by the complainant. The commission  
13-34 [~~department~~] shall perform an on-site inspection as soon as  
13-35 feasible but no later than 30 days after receiving the complaint  
13-36 unless after an investigation the complaint is found to be  
13-37 frivolous. The commission [~~department~~] shall respond to a  
13-38 complainant in writing. The commission [~~department~~] shall also  
13-39 receive and investigate anonymous complaints.

13-40 (t) Section 103.012, Human Resources Code, is amended by  
13-41 amending Subsections (a) and (e) and adding Subsection (g) to read  
13-42 as follows:

13-43 (a) The commission [~~department~~] may assess an  
13-44 administrative penalty against a person who:

13-45 (1) violates this chapter, a rule, standard, or order  
13-46 adopted under this chapter, or a term of a license issued under this  
13-47 chapter;

13-48 (2) makes a false statement of a material fact that the  
13-49 person knows or should know is false:

13-50 (A) on an application for issuance or renewal of  
13-51 a license or in an attachment to the application; or

13-52 (B) with respect to a matter under investigation  
13-53 by the commission [~~department~~];

13-54 (3) refuses to allow a representative of the  
13-55 commission [~~department~~] to inspect:

13-56 (A) a book, record, or file required to be  
13-57 maintained by a day activity and health services facility; or

13-58 (B) any portion of the premises of a day activity  
13-59 and health services facility;

13-60 (4) wilfully interferes with the work of a  
13-61 representative of the commission [~~department~~] or the enforcement of  
13-62 this chapter;

13-63 (5) wilfully interferes with a representative of the  
13-64 commission [~~department~~] preserving evidence of a violation of this  
13-65 chapter, a rule, standard, or order adopted under this chapter, or a  
13-66 term of a license issued under this chapter;

13-67 (6) fails to pay a penalty assessed under this chapter  
13-68 not later than the 30th day after the date the assessment of the  
13-69 penalty becomes final; or

14-1 (7) fails to notify the commission [~~department~~] of a  
14-2 change of ownership before the effective date of the change of  
14-3 ownership.

14-4 (e) In determining the amount of a penalty, the commission  
14-5 [~~department~~] shall consider any matter that justice may require,  
14-6 including:

14-7 (1) the gradations of penalties established under  
14-8 Subsection (d);

14-9 (2) the seriousness of the violation, including the  
14-10 nature, circumstances, extent, and gravity of the prohibited act  
14-11 and the hazard or potential hazard created by the act to the health  
14-12 or safety of the public;

14-13 (3) the history of previous violations;

14-14 (4) the deterrence of future violations; and

14-15 (5) the efforts to correct the violation.

14-16 (g) The commission shall develop and use a system to record  
14-17 and track the scope and severity of each violation of this chapter  
14-18 or a rule, standard, or order adopted under this chapter for the  
14-19 purpose of assessing an administrative penalty for the violation or  
14-20 taking some other enforcement action against the appropriate  
14-21 facility to deter future violations. The system:

14-22 (1) must be comparable to the system used by the  
14-23 Centers for Medicare and Medicaid Services to categorize the scope  
14-24 and severity of violations for nursing homes; and

14-25 (2) may be modified, as appropriate, to reflect  
14-26 changes in industry practice or changes made to the system used by  
14-27 the Centers for Medicare and Medicaid Services.

14-28 (u) Section 103.013, Human Resources Code, is amended to  
14-29 read as follows:

14-30 Sec. 103.013. RIGHT TO CORRECT BEFORE IMPOSITION OF  
14-31 ADMINISTRATIVE PENALTY. (a) The commission [~~department~~] may not  
14-32 collect an administrative penalty from a day activity and health  
14-33 services facility under Section 103.012 if, not later than the 45th  
14-34 day after the date the facility receives notice under Section  
14-35 103.014(c), the facility corrects the violation.

14-36 (b) Subsection (a) does not apply to:

14-37 (1) a violation that the commission [~~department~~]  
14-38 determines:

14-39 (A) represents a pattern of violation that  
14-40 results in actual [~~serious~~] harm [~~to or death of a person attending~~  
14-41 ~~the facility~~];

14-42 (B) is widespread in scope and results in actual  
14-43 harm;

14-44 (C) is widespread in scope, constitutes a  
14-45 potential for actual harm, and relates to:

14-46 (i) staffing, including staff training,  
14-47 ratio, and health;

14-48 (ii) administration of medication; or

14-49 (iii) emergency preparedness and response;

14-50 (D) [~~(B)~~] constitutes an immediate [~~a serious~~]  
14-51 threat to the health or [~~and~~] safety of an elderly person or a  
14-52 person with a disability receiving services at a [~~a person~~  
14-53 ~~attending the~~] facility; or

14-54 (E) [~~(C)~~] substantially limits the facility's  
14-55 capacity to provide care;

14-56 (2) a violation described by Sections  
14-57 103.012(a)(2)-(7); or

14-58 (3) a violation of Section 103.011.

14-59 (c) A day activity and health services facility that  
14-60 corrects a violation must maintain the correction. If the facility  
14-61 fails to maintain the correction until at least the first  
14-62 anniversary after the date the correction was made, the commission  
14-63 [~~department~~] may assess and collect an administrative penalty for  
14-64 the subsequent violation. An administrative penalty assessed under  
14-65 this subsection is equal to three times the amount of the original  
14-66 penalty assessed but not collected. The commission [~~department~~] is  
14-67 not required to provide the facility with an opportunity under this  
14-68 section to correct the subsequent violation.

14-69 (d) In this section:

15-1                   (1) "Actual harm" means a negative outcome that  
 15-2 compromises the physical, mental, or emotional well-being of an  
 15-3 elderly person or a person with a disability receiving services at a  
 15-4 facility.

15-5                   (2) "Immediate threat to the health or safety of an  
 15-6 elderly person or a person with a disability" means a situation that  
 15-7 causes, or is likely to cause, serious injury, harm, or impairment  
 15-8 to or the death of an elderly person or a person with a disability  
 15-9 receiving services at a facility.

15-10                  (3) "Pattern of violation" means repeated, but not  
 15-11 pervasive, failures of a facility to comply with this chapter or a  
 15-12 rule, standard, or order adopted under this chapter that:

15-13                    (A) result in a violation; and

15-14                    (B) are found throughout the services provided by  
 15-15 the facility or that affect or involve the same elderly persons or  
 15-16 persons with disabilities receiving services at the facility or the  
 15-17 same facility employees.

15-18                  (4) "Widespread in scope" means a violation of this  
 15-19 chapter or a rule, standard, or order adopted under this chapter  
 15-20 that:

15-21                    (A) is pervasive throughout the services  
 15-22 provided by the facility; or

15-23                    (B) represents a systemic failure by the facility  
 15-24 that affects or has the potential to affect a large portion of or  
 15-25 all of the elderly persons or persons with disabilities receiving  
 15-26 services at the facility.

15-27                  (v) Section 247.0025, Health and Safety Code, is repealed.

15-28                  (w) The changes in law made by this section apply only to  
 15-29 actions taken by the Health and Human Services Commission and  
 15-30 license holders under Chapter 103, Human Resources Code, and  
 15-31 Chapters 242, 247, 248A, and 252, Health and Safety Code, on or  
 15-32 after the effective date of this section. An action taken before  
 15-33 the effective date of this section is governed by the law in effect  
 15-34 at that time, and the former law is continued in effect for that  
 15-35 purpose.

15-36                  (x) This section takes effect September 1, 2017.

15-37                  SECTION 3. (a) As soon as practicable after the effective  
 15-38 date of this Act, the executive commissioner of the Health and Human  
 15-39 Services Commission shall:

15-40                    (1) adopt the rules necessary to implement Subchapter  
 15-41 P, Chapter 242, Health and Safety Code, as added by this Act; and

15-42                    (2) notwithstanding Section 242.703, Health and  
 15-43 Safety Code, as added by this Act, establish the amount of the  
 15-44 initial reinvestment allowance imposed under Subchapter P, Chapter  
 15-45 242, Health and Safety Code, as added by this Act, based on  
 15-46 available revenue and patient day information.

15-47                    (b) The amount of the initial reinvestment allowance  
 15-48 established under Subsection (a) of this section remains in effect  
 15-49 until the Health and Human Services Commission obtains the  
 15-50 information necessary to set the amount of the reinvestment  
 15-51 allowance under Section 242.703, Health and Safety Code, as added  
 15-52 by this Act.

15-53                  SECTION 4. If before implementing any provision of this Act  
 15-54 a state agency determines that a waiver or authorization from a  
 15-55 federal agency is necessary for implementation of that provision,  
 15-56 the agency affected by the provision shall request the waiver or  
 15-57 authorization and may delay implementing that provision until the  
 15-58 waiver or authorization is granted.

15-59                  SECTION 5. Notwithstanding any other law, a reinvestment  
 15-60 allowance may not be imposed under Section 242.703, Health and  
 15-61 Safety Code, as added by this Act, or collected under Section  
 15-62 242.705, Health and Safety Code, as added by this Act, until:

15-63                    (1) an amendment to the state Medicaid plan that  
 15-64 increases the rates paid to long-term care facilities licensed  
 15-65 under Chapter 242, Health and Safety Code, for providing services  
 15-66 under the state Medicaid program is approved by the Centers for  
 15-67 Medicare and Medicaid Services or another applicable federal  
 15-68 government agency; and

15-69                    (2) the executive commissioner of the Health and Human

16-1 Services Commission certifies to the Legislative Budget Board that  
16-2 the imposition and collection of a reinvestment allowance will not  
16-3 negatively impact the budget neutrality requirement of a waiver  
16-4 under Section 1115 of the federal Social Security Act (42 U.S.C.  
16-5 Section 1315) agreed to by the commission and the Centers for  
16-6 Medicare and Medicaid Services.

16-7 SECTION 6. The Health and Human Services Commission shall  
16-8 retroactively compensate long-term care facilities licensed under  
16-9 Chapter 242, Health and Safety Code, at the increased rate for  
16-10 services provided under the state Medicaid program:

16-11 (1) beginning on the date the state Medicaid plan  
16-12 amendment is approved by the Centers for Medicare and Medicaid  
16-13 Services or another applicable federal government agency; and

16-14 (2) only for the period for which the reinvestment  
16-15 allowance has been imposed and collected pursuant to the approval  
16-16 described by Subdivision (1).

16-17 SECTION 7. The Health and Human Services Commission shall  
16-18 discontinue the reinvestment allowance imposed under Subchapter P,  
16-19 Chapter 242, Health and Safety Code, as added by this Act, if the  
16-20 commission reduces Medicaid reimbursement rates, including rates  
16-21 that increased due to funds from the nursing facility reinvestment  
16-22 allowance trust fund or federal matching funds, below the rates in  
16-23 effect on September 1, 2017.

16-24 SECTION 8. This Act takes effect immediately if it receives  
16-25 a vote of two-thirds of all the members elected to each house, as  
16-26 provided by Section 39, Article III, Texas Constitution. If this  
16-27 Act does not receive the vote necessary for immediate effect, this  
16-28 Act takes effect September 1, 2017.

16-29

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