

By: Schwertner

S.B. No. 932

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the licensing of, the executive commissioner of the
3 Health and Human Services Commission's duties with respect to, and
4 the administrative penalties for certain long-term care
5 facilities.

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;

- (vii) physician visits;
- (viii) infection control;
- (ix) life safety from fire; or
- (x) emergency preparedness and response;

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

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

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

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

(4) to a violation of a right of a resident adopted under Subchapter L.

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

(d) In this section:

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

1 well-being.

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

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

8 (A) result in a violation; and

9 (B) are found throughout the services provided by
10 the institution or that affect or involve the same residents or
11 institution employees.

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

15 (A) is pervasive throughout the services
16 provided by the institution; or

17 (B) represents a systemic failure by the
18 institution that affects or has the potential to affect a large
19 portion of or all of the residents of the institution.

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

22 Sec. 247.023. ISSUANCE AND RENEWAL OF LICENSE. (a) The
23 commission [~~department~~] shall issue a license if, after inspection
24 and investigation, it finds that the applicant, the assisted living
25 facility, and all controlling persons with respect to the applicant
26 or facility meet the requirements of this chapter and the standards
27 adopted under this chapter. The license expires on the third

1 ~~[second]~~ anniversary of the date of its issuance. The executive
2 commissioner by rule shall ~~[may]~~ adopt a system under which
3 licenses expire on staggered ~~[various]~~ dates during each ~~[the]~~
4 three-year ~~[two-year]~~ period. The commission shall prorate the
5 license fee as appropriate if the expiration date of a license
6 changes as a result of this subsection ~~[For the year in which a~~
7 ~~license expiration date is changed, the department shall prorate~~
8 ~~the license fee on a monthly basis. Each license holder shall pay~~
9 ~~only that portion of the license fee allocable to the number of~~
10 ~~months during which the license is valid. A license holder shall~~
11 ~~pay the total license renewal fee at the time of renewal].~~

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

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

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

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

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

24 (2) in amounts reasonable and necessary to defray the
25 cost of administering this chapter, but not to exceed \$2,250
26 ~~[\$1,500]~~.

27 (d) Investigation fees or attorney's fees may not be

1 assessed against or collected from an assisted living facility by
2 or on behalf of the commission [~~department~~] or another state agency
3 unless the commission [~~department~~] or other state agency assesses
4 and collects a penalty authorized by this chapter from the
5 facility.

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

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

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

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

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

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

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

27 (a) The commission [~~department~~] may assess an

1 administrative penalty against a person who:

2 (1) violates this chapter or a rule, standard, or
3 order adopted under this chapter or a term of a license issued under
4 this chapter;

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

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

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

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

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

15 (B) any portion of the premises of an assisted
16 living facility;

17 (4) wilfully interferes with the work of a
18 representative of the commission [~~department~~] or the enforcement of
19 this chapter;

20 (5) wilfully interferes with a representative of the
21 commission [~~department~~] preserving evidence of a violation of this
22 chapter or a rule, standard, or order adopted under this chapter or
23 a term of a license issued under this chapter;

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

27 (7) fails to notify the commission [~~department~~] of a

1 change of ownership before the effective date of the change of
2 ownership.

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

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

6 (A) represents a pattern of violation that
7 results in actual harm or is widespread in scope and results in
8 actual harm; or

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

11 (2) \$1,000 for each other violation.

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

16 (1) the gradations of penalties established under
17 Subsection (c);

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

22 (3) the history of previous violations;

23 (4) deterrence of future violations;

24 (5) efforts to correct the violation; and

25 (6) the size of the facility and of the business entity
26 that owns the facility.

27 (f) The commission [~~department~~] may not assess a penalty

1 under this section against a resident of an assisted living
2 facility unless the resident is also an employee of the facility or
3 a controlling person.

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

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

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

16 (h) In this section, "actual harm," "immediate threat to the
17 health or safety of a resident," "pattern of violation," and
18 "widespread in scope" have the meanings assigned by Section
19 [247.0452](#).

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

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

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

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

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

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

9 (A) resident assessment;

10 (B) staffing, including staff training;

11 (C) administration of medication;

12 (D) infection control;

13 (E) restraints; or

14 (F) emergency preparedness and response;

15 (4) to a violation that the commission determines
16 constitutes an immediate threat to the health or safety of a
17 resident;

18 (5) [~~2~~] to a violation described by Sections
19 [247.0451\(a\)\(2\)-\(7\)](#) or a violation of Section [260A.014](#) or [260A.015](#);

20 (6) [~~3~~] to a second or subsequent violation of:

21 (A) a right of the same resident under Section
22 [247.064](#); or

23 (B) the same right of all residents under Section
24 [247.064](#); or

25 (7) [~~4~~] to a violation described by Section [247.066](#),
26 which contains its own right to correct provisions.

27 (c) An assisted living facility that corrects a violation

1 must maintain the correction. If the facility fails to maintain the
2 correction until at least the first anniversary of the date the
3 correction was made, the commission [~~department~~] may assess and
4 collect an administrative penalty for the subsequent violation. An
5 administrative penalty assessed under this subsection is equal to
6 three times the amount of the original penalty assessed but not
7 collected. The commission [~~department~~] is not required to provide
8 the facility with an opportunity under this section to correct the
9 subsequent violation.

10 (d) In this section:

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

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

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

21 (A) result in a violation; and

22 (B) are found throughout the services provided by
23 the facility or that affect or involve the same residents or
24 facility employees.

25 (4) "Widespread in scope" means a violation of this
26 chapter or a rule, standard, or order adopted under this chapter
27 that:

1 (A) is pervasive throughout the services
2 provided by the assisted living facility; or

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

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

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

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

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

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

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

25 (c) The commission [~~department~~] shall assess a \$50 per day
26 late fee to a license holder who submits a renewal application after
27 the date required by Subsection (b)(1), except that the total

1 amount of a late fee may not exceed the lesser of 50 percent of the
2 license renewal fee or \$500.

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

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

8 Sec. 248A.2515. SYSTEM FOR ASSESSMENT OF PENALTY. The
9 commission shall develop and use a system to record and track the
10 scope and severity of each violation of this chapter or a rule or
11 standard adopted or order issued under this chapter for the purpose
12 of assessing an administrative penalty for the violation or taking
13 some other enforcement action against the appropriate center to
14 deter future violations. The system:

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

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

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

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

27 (b) The commission [~~department~~] may issue a license only

1 for:

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

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

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

8 (1) an inspection;

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

10 (3) payment of the renewal fee.

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

16 (h) The executive commissioner by rule shall:

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

20 (2) adopt a system under which:

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

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

26 SECTION 13. Sections [252.034](#)(a), (e), and (f), Health and
27 Safety Code, are amended to read as follows:

1 (a) The executive commissioner by rule may adopt a fee for a
2 license issued under this chapter. The fee may not exceed \$225
3 [~~\$150~~] plus \$7.50 [~~\$5~~] for each unit of capacity or bed space for
4 which the license is sought.

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

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

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

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

18 (b) In order to ensure continuous compliance, the
19 commission [~~department~~] shall randomly select a sufficient
20 percentage of facilities for unannounced inspections to be
21 conducted between 5 p.m. and 8 a.m. Those inspections must be
22 cursory to avoid to the greatest extent feasible any disruption of
23 the residents.

24 (c) The commission [~~department~~] may require additional
25 inspections.

26 (d) As considered appropriate and necessary by the
27 commission [~~department~~], the commission [~~department~~] may invite at

1 least one person as a citizen advocate to participate in
2 inspections. The invited advocate must be an individual who has an
3 interest in or who is employed by or affiliated with an organization
4 or entity that represents, advocates for, or serves individuals
5 with an intellectual disability or a related condition.

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

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

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

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

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 the institution; or

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

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 or a rule, standard, or order adopted or license issued
4 under this chapter;

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

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

10 (8) fails to notify the commission [~~department~~] of a
11 change in ownership before the effective date of that change of
12 ownership.

13 (b) The penalty for a facility with fewer than 60 beds shall
14 be not less than \$100 or more than \$1,000 for each violation. The
15 penalty for a facility with 60 beds or more shall be not less than
16 \$100 or more than \$5,000 for each violation. [~~The total amount of~~
17 ~~the penalty assessed for a violation continuing or occurring on~~
18 ~~separate days under this subsection may not exceed \$5,000 for a~~
19 ~~facility with fewer than 60 beds or \$25,000 for a facility with 60~~
20 ~~beds or more.] Each day a violation occurs or continues is a
21 separate violation for purposes of imposing a penalty.~~

22 (e) The executive commissioner by rule shall provide the
23 facility with a reasonable period of time, not less than 45 days,
24 following the first day of a violation to correct the violation
25 before the commission [~~department~~] may assess an administrative
26 penalty if a plan of correction has been implemented. This
27 subsection does not apply to a violation described by Subsections

1 (a)(2)-(8) or to a violation that the commission [~~department~~]
2 determines:

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

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

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

9 (A) staff treatment of a resident;

10 (B) active treatment;

11 (C) client behavior and facility practices;

12 (D) health care services;

13 (E) drug administration;

14 (F) infection control;

15 (G) food and nutrition services; or

16 (H) emergency preparedness and response;

17 (4) [~~2~~] constitutes an immediate [~~a serious~~] threat
18 to the health or safety of a resident; or

19 (5) [~~3~~] substantially limits the facility's
20 [~~institution's~~] capacity to provide care.

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

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

27 (j) Notwithstanding any other provision of this section, an

1 administrative penalty ceases to be incurred on the date a
2 violation is corrected. The administrative penalty ceases to be
3 incurred only if the facility:

4 (1) notifies the commission [~~department~~] in writing of
5 the correction of the violation and of the date the violation was
6 corrected; and

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

8 (1) 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 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 (m) In this section:

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

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

27 (3) "Pattern of violation" means repeated, but not

1 pervasive, failures of a facility to comply with this chapter or a
2 rule, standard, or order adopted under this chapter that:

3 (A) result in a violation; and

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

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

10 (A) is pervasive throughout the services
11 provided by the facility; or

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

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

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

19 (1-a) "Day activity and health services facility"
20 means a facility that provides services under a day activity and
21 health services program on a daily or regular basis but not
22 overnight to four or more elderly persons or persons with
23 disabilities who are not related by blood, marriage, or adoption to
24 the owner of the facility.

25 (4-b) "Facility" means a day activity and health
26 services facility.

27 SECTION 17. Sections 103.006(a) and (b), Human Resources

1 Code, are amended to read as follows:

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

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

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

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

23 (b) The applicant must provide evidence of:

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

26 (2) responsible management; and

27 (3) qualified professional staff and personnel.

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

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

10 SECTION 19. Section 103.008, Human Resources Code, is
11 amended to read as follows:

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

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

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

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

1 frivolous. The commission [~~department~~] shall respond to a
2 complainant in writing. The commission [~~department~~] shall also
3 receive and investigate anonymous complaints.

4 SECTION 20. Section 103.012, Human Resources Code, is
5 amended by amending Subsections (a) and (e) and adding Subsection
6 (g) to read as follows:

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

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

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

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

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

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

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

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

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

27 (5) wilfully interferes with a representative of the

1 commission [~~department~~] preserving evidence of a violation of this
2 chapter, a rule, standard, or order adopted under this chapter, or a
3 term of a license issued under this chapter;

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

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

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

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

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

19 (3) the history of previous violations;

20 (4) the deterrence of future violations; and

21 (5) the efforts to correct the violation.

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

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

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

7 SECTION 21. Section 103.013, Human Resources Code, is
8 amended to read as follows:

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

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

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

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

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

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

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

27 (ii) administration of medication; or

1 (iii) emergency preparedness and response;

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

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

8 (2) a violation described by Sections
9 [103.012\(a\)\(2\)-\(7\)](#); or

10 (3) a violation of Section [103.011](#).

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

21 (d) In this section:

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

26 (2) "Immediate threat to the health or safety of an
27 elderly person or a person with a disability" means a situation that

1 causes, or is likely to cause, serious injury, harm, or impairment
2 to or the death of an elderly person or a person with a disability
3 receiving services at a facility.

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

7 (A) result in a violation; and

8 (B) are found throughout the services provided by
9 the facility or that affect or involve the same elderly persons or
10 persons with disabilities receiving services at the facility or the
11 same facility employees.

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

15 (A) is pervasive throughout the services
16 provided by the facility; or

17 (B) represents a systemic failure by the facility
18 that affects or has the potential to affect a large portion of or
19 all of the elderly persons or persons with disabilities receiving
20 services at the facility.

21 SECTION 22. Section 247.0025, Health and Safety Code, is
22 repealed.

23 SECTION 23. The changes in law made by this Act apply only
24 to actions taken by the Health and Human Services Commission and
25 license holders under Chapter 103, Human Resources Code, and
26 Chapters 242, 247, 248A, and 252, Health and Safety Code, on or
27 after the effective date of this Act. An action taken before the

1 effective date of this Act is governed by the law in effect at that
2 time, and the former law is continued in effect for that purpose.

3 SECTION 24. This Act takes effect September 1, 2017.