

By: Schwertner

S.B. No. 933

A BILL TO BE ENTITLED

AN ACT

relating to the licensing of, the executive commissioner of the Health and Human Services Commission's duties with respect to, and the administrative penalties for home and community support services agencies.

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

SECTION 1. Sections 142.006(a), (b), and (c), Health and Safety Code, are amended to read as follows:

(a) The commission [~~department~~] shall issue a home and community support services agency license to provide home health, hospice, habilitation, or personal assistance services for each place of business to an applicant if:

(1) the applicant:

(A) qualifies for the license to provide the type of service that is to be offered by the applicant;

(B) submits an application and license fee as required by this chapter; and

(C) complies with all applicable licensing standards required or adopted under this chapter; and

(2) any controlling person with respect to the applicant complies with all applicable licensing standards required or adopted under this chapter.

(b) A license issued under this chapter expires three [~~two~~] years after the date of issuance. The executive commissioner by

1 rule shall [~~may~~] adopt a system under which licenses expire on  
2 staggered [~~various~~] dates during each three-year [~~the two-year~~]  
3 period. The commission shall prorate the license fee as  
4 appropriate if the expiration date of a license changes as a result  
5 of this subsection [~~For the year in which a license expiration date~~  
6 ~~is changed, the department shall prorate the license fee on a~~  
7 ~~monthly basis. Each license holder shall pay only that portion of~~  
8 ~~the license fee allocable to the number of months for which the~~  
9 ~~license is valid. A license holder shall pay the total license~~  
10 ~~renewal fee at the time of renewal. The department may issue an~~  
11 ~~initial license for a shorter term to conform expiration dates for a~~  
12 ~~locality or an applicant. The department may issue a temporary~~  
13 ~~license to an applicant for an initial license]~~.

14 (c) The commission [~~department~~] may find that a home and  
15 community support services agency has satisfied the requirements  
16 for licensing if the agency is accredited by an accreditation  
17 organization, such as The Joint Commission or the Community Health  
18 Accreditation Program, and the commission [~~department~~] finds that  
19 the accreditation organization has standards that meet or exceed  
20 the requirements for licensing under this chapter. A license fee is  
21 required of the home and community support services agency at the  
22 time of a license application.

23 SECTION 2. Section [142.017](#), Health and Safety Code, is  
24 amended by amending Subsections (a), (b), (c), (e), (i), and (j) and  
25 adding Subsections (k) and (l) to read as follows:

26 (a) The commission [~~department~~] may assess an  
27 administrative penalty against a person who violates:

(1) this chapter or a rule adopted under this chapter;  
or

(2) Section 102.001, Occupations Code, if the violation relates to the provision of home health, hospice, habilitation, or personal assistance services.

(b) The penalty shall be not less than \$100 or more than \$1,000 for each violation, except that the penalty shall be not less than \$100 or more than \$5,000 for each violation that results in actual harm or that constitutes an immediate threat to the health or safety of a client. Each day of a violation that occurs before the day on which the person receives written notice of the violation from the commission ~~[department]~~ does not constitute a separate violation and shall be considered to be one violation. Each day of a continuing violation that occurs after the day on which the person receives written notice of the violation from the commission ~~[department]~~ constitutes a separate violation.

(c) The executive commissioner by rule shall specify each violation for which the commission ~~[department]~~ may assess an administrative penalty. In determining which violations warrant penalties, the commission ~~[department]~~ shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard of the violation to the health or safety of clients; and

(2) whether the affected home and community support services agency had identified the violation as a part of its internal quality assurance process and had made appropriate progress on correction.

1 (e) Except as provided by Subsection (j), the executive  
2 commissioner by rule shall provide the home and community support  
3 services agency with a reasonable period of time following the  
4 first day of a violation to correct the violation before the  
5 commission [~~department~~] assesses an administrative penalty if a  
6 plan of correction has been implemented.

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

9 (j) The commission [~~department~~] may assess an  
10 administrative penalty without providing a reasonable period of  
11 time to a home and community support services [~~the~~] agency to  
12 correct the violation if the violation:

13 (1) represents a pattern of violations that results in  
14 actual [~~serious~~] harm [~~or death~~];

15 (2) results in actual harm that is pervasive  
16 throughout the services provided by the home and community support  
17 services agency or that represents a systemic failure by the home  
18 and community support services agency that affects or has the  
19 potential to affect a large number of or all of the clients of the  
20 agency;

21 (3) is a violation in which a home and community  
22 support services agency's failure to enforce a policy constitutes a  
23 potential for actual harm that is pervasive throughout the services  
24 provided by the home and community support services agency or that  
25 represents a systemic failure by the home and community support  
26 services agency that affects or has the potential to affect a large  
27 number of or all of the clients of the agency;

1           (4) [~~(2)~~] constitutes an immediate [~~a serious~~] threat  
2 to the health or safety of a client;

3           (5) [~~(3)~~] substantially limits the agency's capacity  
4 to provide care;

5           (6) [~~(4)~~] is a violation in which a person:

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

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

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

12                 (B) refuses to allow a representative of the  
13 commission [~~department~~] to inspect a book, record, or file required  
14 to be maintained by an agency;

15                 (C) wilfully interferes with the work of a  
16 representative of the commission [~~department~~] or the enforcement of  
17 this chapter;

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

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

25                 (F) fails to submit:

26                         (i) a plan of correction not later than the  
27 10th day after the date the person receives a statement of licensing

violations; or

(ii) an acceptable plan of correction not later than the 30th day after the date the person receives notification from the commission [~~department~~] that the previously submitted plan of correction is not acceptable;

(7) [~~(5)~~] is a violation of Section 142.0145; or

(8) [~~(6)~~] involves the rights of the elderly under Chapter 102, Human Resources Code.

(k) The commission shall develop and use a system to record and track the scope and severity of each violation of this chapter or a rule adopted under this chapter for the purpose of assessing an administrative penalty for the violation or taking some other enforcement action against the appropriate home and community support services agency to deter future violations. The system:

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

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

(1) In this section:

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

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

(3) "Pattern of violations" means the repeated, but

1 not pervasive, occurrence of violations that are found throughout  
2 the services provided by a home and community support services  
3 agency or that affect or involve the same clients or agency  
4 employees or volunteers.

5         SECTION 3. The changes in law made by this Act apply only to  
6 actions taken by the Health and Human Services Commission and  
7 license holders under Chapter 142, Health and Safety Code, on or  
8 after the effective date of this Act. An action taken before the  
9 effective date of this Act is governed by the law in effect at that  
10 time, and the former law is continued in effect for that purpose.

11         SECTION 4. This Act takes effect September 1, 2017.