

House Bill 2025
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

No equivalent provision.

SENATE VERSION (CS)

CONFERENCE

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

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

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

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

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

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

(a-1) As part of the informal dispute resolution process established under this section, the commission shall contract with an appropriate disinterested person [~~who is a nonprofit organization~~] to adjudicate disputes between an institution or facility licensed under Chapter 242 or 247, Health and Safety Code, and the Department of Aging and Disability Services or its successor agency concerning a statement of violations prepared by the department in connection with a survey conducted by the department of the institution or facility. Section 2009.053 does not apply to the selection of an

House Bill 2025
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

appropriate disinterested person under this subsection. The person with whom the commission contracts shall adjudicate all disputes described by this subsection.

SECTION 2. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.0585 to read as follows:
Sec. 531.0585. ISSUANCE OF MATERIALS TO CERTAIN LONG-TERM CARE FACILITIES. The executive commissioner shall review the commission's methods for issuing informational letters, policy updates, policy clarifications, and other related materials to an entity licensed under Chapter 103, Human Resources Code, or Chapter 242, 247, 248A, or 252, Health and Safety Code, and develop and implement more efficient methods to issue those materials as appropriate.

SECTION 3. Section 242.066, Health and Safety Code, is amended by amending Subsections (a) and (e) and adding Subsection (i) to read as follows:
(a) The commission [~~department~~] may assess an administrative penalty against a person who:
(1) violates this chapter or a rule, standard, or order adopted or license issued under this chapter;
(2) makes a false statement, that the person knows or should know is false, of a material fact:
(A) on an application for issuance or renewal of a license or in an attachment to the application; or
(B) with respect to a matter under investigation by the commission [~~department~~];
(3) refuses to allow a representative of the commission [~~department~~] to inspect:
(A) a book, record, or file required to be maintained by an

No equivalent provision.

No equivalent provision.

House Bill 2025
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

institution; or
(B) any portion of the premises of an institution;
(4) wilfully interferes with the work of a representative of the commission ~~[department]~~ or the enforcement of this chapter;
(5) wilfully interferes with a representative of the commission ~~[department]~~ preserving evidence of a violation of this chapter or a rule, standard, or order adopted or license issued under this chapter;
(6) fails to pay a penalty assessed by the commission ~~[department]~~ under this chapter not later than the 10th day after the date the assessment of the penalty becomes final; or
(7) fails to notify the commission ~~[department]~~ of a change of ownership before the effective date of the change of ownership.
(e) In determining the amount of a penalty, the commission ~~[department]~~ shall consider any matter that justice may require, including:
(1) the gradations of penalties established under Subsection (d);
(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited act and the hazard or potential hazard created by the act to the health or safety of the public;
(3) the history of previous violations;
(4) deterrence of future violations; and
(5) efforts to correct the violation.
(i) 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, standard, or order adopted under this chapter for the purpose of assessing an administrative penalty for the violation or taking some other enforcement action against the appropriate institution to deter future violations. The system:

House Bill 2025
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

(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.

SECTION 1. Section 242.0665(b), Health and Safety Code, is amended to read as follows:

- (b) Subsection (a) does not apply:
- (1) to a violation that the department determines:
- (A) results in serious harm to or death of a resident;

(B) constitutes a serious threat to the health or safety of a

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

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

(b) Subsection (a) does not apply:

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

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

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

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

(i) residents' rights;

(ii) treatment of residents;

(iii) resident behavior and institution practices;

(iv) quality of care;

(v) medication errors;

(vi) standard menus and nutritional adequacy;

(vii) physician visits;

(viii) infection control;

(ix) life safety from fire; or

(x) emergency preparedness and response;

House Bill 2025
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION	SENATE VERSION (CS)	CONFERENCE
resident; or	(D) [(B)] constitutes <u>an immediate</u> [a serious] threat to the health or safety of a resident; or	
(C) substantially limits the institution's capacity to provide care;	(E) [(C)] substantially limits the institution's capacity to provide care;	
(2) to a violation described by Sections 242.066(a)(2)-(7);	(2) to a violation described by Sections 242.066(a)(2)-(7);	
(3) to a violation of Section 260A.014 or 260A.015; [or]	(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; <u>or</u>	(4) to a violation of a right of a resident adopted under Subchapter L; <u>or</u>	
<u>(5) to a second or subsequent violation of Section 326.002 that occurs before the second anniversary of the date of the first violation.</u>	<u>(5) to a second or subsequent violation of Section 326.002 that occurs before the second anniversary of the date of the first violation.</u>	
	(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 <u>commission</u> [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 <u>commission</u> [department] is not required to provide the institution an opportunity to correct the subsequent violation under this section.	
	<u>(d) In this section:</u>	
	<u>(1) "Actual harm" means a negative outcome that compromises a resident's physical, mental, or emotional well-being.</u>	
	<u>(2) "Immediate threat to the health or safety of a resident" means a situation that causes, or is likely to cause, serious injury, harm, or impairment to or the death of a resident.</u>	
	<u>(3) "Pattern of violation" means repeated, but not pervasive, failures of an institution to comply with this chapter or a rule, standard, or order adopted under this chapter that:</u>	

House Bill 2025
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

(A) result in a violation; and
(B) are found throughout the services provided by the institution or that affect or involve the same residents or institution employees.
(4) "Widespread in scope" means a violation of this chapter or a rule, standard, or order adopted under this chapter that:
(A) is pervasive throughout the services provided by the institution; or
(B) represents a systemic failure by the institution that affects or has the potential to affect a large portion of or all of the residents of the institution.

SECTION 5. Section 247.023, Health and Safety Code, is amended to read as follows:
Sec. 247.023. ISSUANCE AND RENEWAL OF LICENSE.
(a) The commission ~~[department]~~ shall issue a license if, after inspection and investigation, it finds that the applicant, the assisted living facility, and all controlling persons with respect to the applicant or facility meet the requirements of this chapter and the standards adopted under this chapter. The license expires on the third ~~[second]~~ anniversary of the date of its issuance. The executive commissioner by rule shall ~~[may]~~ adopt a system under which licenses expire on staggered ~~[various]~~ dates during each three-year ~~[the two-year]~~ period. The commission shall prorate the license fee as appropriate if the expiration date of a license changes as a result of this subsection ~~[For the year in which a license expiration date is changed, the department shall prorate the license fee on a monthly basis. Each license holder shall pay only that portion of the license fee allocable to the number of months during which the license is valid. A license holder shall pay the total license renewal fee at the time of renewal].~~

No equivalent provision.

House Bill 2025
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

- (b) To renew a license, the license holder must submit to the commission ~~[department]~~ the license renewal fee.
- (c) The commission ~~[department]~~ may require participation in a continuing education program as a condition of renewal of a license. The executive commissioner shall adopt rules to implement this subsection.

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

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

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

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

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

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

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

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

(1) shall ~~[department may]~~ inspect each ~~[an]~~ assisted living

No equivalent provision.

No equivalent provision.

House Bill 2025
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

facility at least every two years following the initial inspection required under Section 247.023(a); [annually] and
(2) may inspect a facility at other reasonable times as necessary to assure compliance with this chapter.
(b) The commission [~~department~~] shall establish an inspection checklist based on the minimum standards that describes the matters subject to inspection. The commission [~~department~~] shall use the inspection checklist in conducting inspections under this section and Section 247.023(a).

SECTION 8. Section 247.0451, Health and Safety Code, is amended by amending Subsections (a), (b), (d), and (f) and adding Subsections (g) and (h) to read as follows:
(a) The commission [~~department~~] may assess an administrative penalty against a person who:
(1) violates this chapter or a rule, standard, or order adopted under this chapter or a term of a license issued under this chapter;
(2) makes a false statement, that the person knows or should know is false, of a material fact:
(A) on an application for issuance or renewal of a license or in an attachment to the application; or
(B) with respect to a matter under investigation by the commission [~~department~~];
(3) refuses to allow a representative of the commission [~~department~~] to inspect:
(A) a book, record, or file required to be maintained by an assisted living facility; or
(B) any portion of the premises of an assisted living facility;
(4) wilfully interferes with the work of a representative of the commission [~~department~~] or the enforcement of this chapter;
(5) wilfully interferes with a representative of the commission

No equivalent provision.

House Bill 2025
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

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

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

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

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

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

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

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

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

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

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

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

(3) the history of previous violations;

(4) deterrence of future violations;

(5) efforts to correct the violation; and

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

House Bill 2025
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

the facility.

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

(g) 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, standard, or order adopted under this chapter for the purpose of assessing an administrative penalty for the violation or taking some other enforcement action against the appropriate assisted living facility 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.

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

SECTION 2. Section 247.0452(b), Health and Safety Code, is amended to read as follows:

- (b) Subsection (a) does not apply:
- (1) to a violation that the department determines results in

SECTION 9. Section 247.0452, Health and Safety Code, is amended to read as follows:

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

(b) Subsection (a) does not apply:

(1) to a violation that the commission [~~department~~]

House Bill 2025
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION	SENATE VERSION (CS)	CONFERENCE
<p>serious harm to or death of a resident;</p>	<p>determines represents a pattern of violation that results in actual [serious] harm [to or death of a resident];</p> <p>(2) to a violation that the commission determines is widespread in scope and results in actual harm;</p> <p>(3) to a violation that the commission determines is widespread in scope, constitutes a potential for actual harm, and relates to:</p> <p>(A) resident assessment;</p> <p>(B) staffing, including staff training;</p> <p>(C) administration of medication;</p> <p>(D) infection control;</p> <p>(E) restraints; or</p> <p>(F) emergency preparedness and response;</p> <p>(4) to a violation that the commission determines constitutes an immediate threat to the health or safety of a resident;</p> <p>(5) [(2)] to a violation described by Sections 247.0451(a)(2)-(7) or a violation of Section 260A.014 or 260A.015;</p> <p>(6) [(3)] to a second or subsequent violation of:</p> <p>(A) a right of the same resident under Section 247.064; or</p> <p>(B) the same right of all residents under Section 247.064; [or]</p> <p>(4) to a violation described by Section 247.066, which contains its own right to correct provisions; or</p> <p>(5) to a second or subsequent violation of Section 326.002 that occurs before the second anniversary of the date of the first violation.</p>	

House Bill 2025
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

penalty assessed but not collected. The commission ~~[department]~~ is not required to provide the facility with an opportunity under this section to correct the subsequent violation.

(d) In this section:

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

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

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

(A) result in a violation; and

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

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

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

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

SECTION 10. Section 248A.053, Health and Safety Code, is amended to read as follows:
Sec. 248A.053. INITIAL OR RENEWAL LICENSE TERM; RENEWAL; NOTIFICATION. (a) An initial or renewal license issued under this chapter expires on the third ~~[second]~~

No equivalent provision.

House Bill 2025
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

anniversary of the date of issuance. The executive commissioner by rule shall adopt a system under which licenses expire on staggered dates during each three-year period. The commission shall prorate the license fee as appropriate if the expiration date of a license changes as a result of this subsection.

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

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

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

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

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

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

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

Sec. 248A.2515. SYSTEM FOR ASSESSMENT OF PENALTY. 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 or standard adopted or order issued under this chapter for the purpose of assessing an administrative

No equivalent provision.

House Bill 2025
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

penalty for the violation or taking some other enforcement action against the appropriate center 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.

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

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

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

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

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

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

(1) an inspection;

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

(3) payment of the renewal fee.

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

(h) The executive commissioner by rule shall:

No equivalent provision.

House Bill 2025
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION	SENATE VERSION (CS)	CONFERENCE
	<p>(1) define specific, appropriate, and objective criteria on which the <u>commission</u> [department] may deny an initial license application or license renewal or revoke a license; and</p> <p>(2) <u>adopt a system under which:</u></p> <p>(A) <u>licenses expire on staggered dates during each three-year period; and</u></p> <p>(B) <u>the commission prorates the license fee as appropriate if the expiration date of a license changes as a result of the system adopted under Paragraph (A).</u></p>	
No equivalent provision.	<p>SECTION 13. Sections 252.034(a), (e), and (f), Health and Safety Code, are amended to read as follows:</p> <p>(a) The executive commissioner by rule may adopt a fee for a license issued under this chapter. The fee may not exceed <u>\$225</u> [\$150] plus <u>\$7.50</u> [\$5] for each unit of capacity or bed space for which the license is sought.</p> <p>(e) All license fees collected under this section shall be deposited in the state treasury to the credit of the <u>commission</u> [department] and may be appropriated to the <u>commission</u> [department] to administer and enforce this chapter.</p> <p>(f) An applicant who submits an application for license renewal later than the 45th day before the expiration date of a current license is subject to a late fee in accordance with <u>commission</u> [department] rules.</p>	
No equivalent provision.	<p>SECTION 14. Section 252.041, Health and Safety Code, is amended to read as follows:</p> <p>Sec. 252.041. UNANNOUNCED INSPECTIONS. (a) Each licensing period, the <u>commission</u> [department] shall conduct at least <u>three</u> [two] unannounced inspections of each facility.</p> <p>(b) In order to ensure continuous compliance, the <u>commission</u> [department] shall randomly select a sufficient percentage of</p>	

House Bill 2025
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

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

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

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

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

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

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

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

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

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

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

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

No equivalent provision.

House Bill 2025
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

(B) any portion of the premises of an institution;
(4) wilfully interferes with the work of a representative of the commission ~~[department]~~ or the enforcement of this chapter;
(5) wilfully interferes with a representative of the commission ~~[department]~~ preserving evidence of a violation of this chapter or a rule, standard, or order adopted or license issued under this chapter;
(6) fails to pay a penalty assessed by the commission ~~[department]~~ under this chapter not later than the 10th day after the date the assessment of the penalty becomes final;
(7) fails to submit a plan of correction within 10 days after receiving a statement of licensing violations; or
(8) fails to notify the commission ~~[department]~~ of a change in ownership before the effective date of that change of ownership.
(b) The penalty for a facility with fewer than 60 beds shall be not less than \$100 or more than \$1,000 for each violation. The penalty for a facility with 60 beds or more shall be not less than \$100 or more than \$5,000 for each violation. ~~[The total amount of the penalty assessed for a violation continuing or occurring on separate days under this subsection may not exceed \$5,000 for a facility with fewer than 60 beds or \$25,000 for a facility with 60 beds or more.]~~ Each day a violation occurs or continues is a separate violation for purposes of imposing a penalty.
(e) The executive commissioner by rule shall provide the facility with a reasonable period of time, not less than 45 days, following the first day of a violation to correct the violation before the commission ~~[department]~~ may assess an administrative penalty if a plan of correction has been implemented. This subsection does not apply to a violation described by Subsections (a)(2)-(8) or to a violation that the

House Bill 2025
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

commission [~~department~~] determines:

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

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

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

(A) staff treatment of a resident;

(B) active treatment;

(C) client behavior and facility practices;

(D) health care services;

(E) drug administration;

(F) infection control;

(G) food and nutrition services; or

(H) emergency preparedness and response;

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

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

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

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

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

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

(2) shows later that the violation was corrected.

House Bill 2025
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

(1) 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, standard, or order adopted under this chapter for the purpose of assessing an administrative penalty for the violation or taking some other enforcement action against the appropriate facility 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.
(m) In this section:
(1) "Actual harm" means a negative outcome that compromises a resident's physical, mental, or emotional well-being.
(2) "Immediate threat to the health or safety of a resident" means a situation that causes, or is likely to cause, serious injury, harm, or impairment to or the death of a resident.
(3) "Pattern of violation" means repeated, but not pervasive, failures of a facility to comply with this chapter or a rule, standard, or order adopted under this chapter that:
(A) result in a violation; and
(B) are found throughout the services provided by the facility or that affect or involve the same residents or facility employees.
(4) "Widespread in scope" means a violation of this chapter or a rule, standard, or order adopted under this chapter that:
(A) is pervasive throughout the services provided by the facility; or
(B) that affects or has the potential to affect a large portion of or all of the residents of the facility.

House Bill 2025
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION	SENATE VERSION (CS)	CONFERENCE
<p>SECTION 3. Subtitle G, Title 4, Health and Safety Code, is amended by adding Chapter 326 to read as follows:</p> <p><u>CHAPTER 326. STAFFING REQUIREMENTS FOR FACILITIES PROVIDING CARE TO PERSONS WITH ALZHEIMER'S DISEASE OR RELATED DISORDERS</u></p> <p><u>Sec. 326.001. DEFINITIONS. In this chapter:</u></p> <p><u>(1) "Commission" means the Health and Human Services Commission.</u></p> <p><u>(2) "Facility" means:</u></p> <p><u>(A) a nursing facility licensed under Chapter 242;</u></p> <p><u>(B) a continuing care facility regulated under Chapter 246;</u></p> <p><u>(C) an assisted living facility licensed under Chapter 247;</u></p> <p><u>(D) a day activity and health services facility licensed under Chapter 103, Human Resources Code;</u></p> <p><u>(E) an establishment subject to Chapter 105, Human Resources Code;</u></p> <p><u>(F) a community home qualified under Chapter 123, Human Resources Code; and</u></p> <p><u>(G) an adult foster care provider that contracts with the commission.</u></p> <p><u>Sec. 326.002. WRITTEN POLICY REQUIRED. A facility shall adopt, implement, and enforce a written policy that:</u></p> <p><u>(1) requires a facility employee who provides direct care to a person with Alzheimer's disease or a related disorder to successfully complete training in the provision of care to persons with Alzheimer's disease and related disorders; and</u></p> <p><u>(2) ensures the care and services provided by a facility employee to a person with Alzheimer's disease or a related disorder meet the specific identified needs of the person relating to the person's diagnosis of Alzheimer's disease or a related disorder.</u></p> <p><u>Sec. 326.003. ENFORCEMENT. (a) The commission may</u></p>	<p>SECTION 16. Same as House version.</p>	

House Bill 2025
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION	SENATE VERSION (CS)	CONFERENCE
<p><u>assess an administrative penalty against a facility for a violation of Section 326.002.</u></p> <p><u>(b) The commission is not required to provide a facility an opportunity to correct a second or subsequent violation of Section 326.002 that occurs before the second anniversary of the date of the first violation.</u></p> <p><u>(c) A violation of Section 326.002 constitutes a violation of the law regulating a facility, and the commission may initiate for the violation any other enforcement action authorized by that law against the facility, including an adult foster care facility with three or fewer beds.</u></p> <p><u>Sec. 326.004. RULES. The executive commissioner shall adopt rules related to the administration and implementation of this chapter.</u></p>		
<p>No equivalent provision.</p>	<p>SECTION 17. Section 103.003, Human Resources Code, is amended by amending Subdivision (1) and adding Subdivisions (1-a) and (4-b) to read as follows:</p> <p>(1) <u>"Commission" means the Health and Human Services Commission.</u></p> <p><u>(1-a) "Day activity and health services facility" means a facility that provides services under a day activity and health services program on a daily or regular basis but not overnight to four or more elderly persons or persons with disabilities who are not related by blood, marriage, or adoption to the owner of the facility.</u></p> <p><u>(4-b) "Facility" means a day activity and health services facility.</u></p>	
<p>No equivalent provision.</p>	<p>SECTION 18. Sections 103.006(a) and (b), Human Resources Code, are amended to read as follows:</p> <p>(a) The <u>commission</u> [department] shall issue a license to</p>	

House Bill 2025
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

operate a day activity and health services facility to a person who has met the application requirements and received approval after an on-site inspection.

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

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

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

(b) The applicant must provide evidence of:

- (1) the ability to comply with the requirements of the commission ~~[department]~~;
- (2) responsible management; and
- (3) qualified professional staff and personnel.

(c) A person who operates a facility that is licensed under this chapter must file an application for a renewal license not later than the 45th day before the expiration date of the current license on a form prescribed by the commission ~~[department]~~

No equivalent provision.

House Bill 2025
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION	SENATE VERSION (CS)	CONFERENCE
	together with a renewal fee of \$50. (d) An applicant for a license renewal who submits an application later than the 45th day before the expiration date of the license is subject to a late fee in accordance with <u>commission</u> [department] rules.	
No equivalent provision.	SECTION 20. Section 103.008, Human Resources Code, is amended to read as follows: Sec. 103.008. INSPECTIONS. (a) <u>In addition to the inspection required under Section 103.006(a), the commission:</u> <u>(1) shall inspect each facility every two years following the initial inspection required under Section 103.006(a); and</u> <u>(2) [The department] may inspect [enter the premises of] a facility at other reasonable times as [and make an inspection] necessary to ensure compliance with this chapter [issue a license or renew a license].</u> (b) Any person may request an inspection of a facility by notifying the <u>commission</u> [department] in writing of an alleged violation of a licensing requirement. The complaint shall be as detailed as possible and signed by the complainant. The <u>commission</u> [department] shall perform an on-site inspection as soon as feasible but no later than 30 days after receiving the complaint unless after an investigation the complaint is found to be frivolous. The <u>commission</u> [department] shall respond to a complainant in writing. The <u>commission</u> [department] shall also receive and investigate anonymous complaints.	
No equivalent provision.	SECTION 21. Section 103.012, Human Resources Code, is amended by amending Subsections (a) and (e) and adding Subsection (g) to read as follows:	

House Bill 2025
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

- (a) The commission [~~department~~] may assess an administrative penalty against a person who:
- (1) violates this chapter, a rule, standard, or order adopted under this chapter, or a term of a license issued under this chapter;
 - (2) makes a false statement of a material fact that the person knows or should know is false:
 - (A) on an application for issuance or renewal of a license or in an attachment to the application; or
 - (B) with respect to a matter under investigation by the commission [~~department~~];
 - (3) refuses to allow a representative of the commission [~~department~~] to inspect:
 - (A) a book, record, or file required to be maintained by a day activity and health services facility; or
 - (B) any portion of the premises of a day activity and health services facility;
 - (4) wilfully interferes with the work of a representative of the commission [~~department~~] or the enforcement of this chapter;
 - (5) wilfully interferes with a representative of the commission [~~department~~] preserving evidence of a violation of this chapter, a rule, standard, or order adopted under this chapter, or a term of a license issued under this chapter;
 - (6) fails to pay a penalty assessed under this chapter not later than the 30th day after the date the assessment of the penalty becomes final; or
 - (7) fails to notify the commission [~~department~~] of a change of ownership before the effective date of the change of ownership.
- (e) In determining the amount of a penalty, the commission [~~department~~] shall consider any matter that justice may require, including:

House Bill 2025
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION	SENATE VERSION (CS)	CONFERENCE
---------------	---------------------	------------

- (1) the gradations of penalties established under Subsection (d);
- (2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited act and the hazard or potential hazard created by the act to the health or safety of the public;
- (3) the history of previous violations;
- (4) the deterrence of future violations; and
- (5) the efforts to correct the violation.
- (g) 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, standard, or order adopted under this chapter for the purpose of assessing an administrative penalty for the violation or taking some other enforcement action against the appropriate facility 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.

SECTION 4. Section 103.013(b), Human Resources Code, is amended to read as follows:

- (b) Subsection (a) does not apply to:
- (1) a violation that the department determines:

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

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

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

House Bill 2025
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION	SENATE VERSION (CS)	CONFERENCE
(A) results in serious harm to or death of a person attending the facility;	(1) a violation that the <u>commission</u> [department] determines: (A) <u>represents a pattern of violation that results in actual</u> [serious] harm [to or death of a person attending the facility]; (B) <u>is widespread in scope and results in actual harm;</u> (C) <u>is widespread in scope, constitutes a potential for actual harm, and relates to:</u> (i) <u>staffing, including staff training, ratio, and health;</u> (ii) <u>administration of medication; or</u> (iii) <u>emergency preparedness and response;</u> (D) [(B)] constitutes <u>an immediate</u> [a serious] threat to the health <u>or</u> [and] safety of <u>an elderly person or a person with a disability receiving services at a</u> [a person attending the] facility; or (E) [(C)] substantially limits the facility's capacity to provide care;	
(B) constitutes a serious threat to the health and safety of a person attending the facility; or	(2) a violation described by Sections 103.012(a)(2)-(7); [or]	
(C) substantially limits the facility's capacity to provide care;	(3) a violation of Section 103.011; <u>or</u>	
(4) a second or subsequent violation of Section 326.002 that occurs before the second anniversary of the date of the first violation.	(4) <u>a second or subsequent violation of Section 326.002, Health and Safety Code, that occurs before the second anniversary of the date of the first violation.</u> (c) A day activity and health services facility that corrects a violation must maintain the correction. If the facility fails to maintain the correction until at least the first anniversary after the date the correction was made, the <u>commission</u> [department] may assess and collect an administrative penalty for the subsequent violation. An administrative penalty assessed under this subsection is equal to three times the amount of the original penalty assessed but not collected. The <u>commission</u> [department] is not required to provide the facility with an opportunity under this section to correct the subsequent violation. (d) <u>In this section:</u>	

House Bill 2025
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION	SENATE VERSION (CS)	CONFERENCE
	<p><u>(1) "Actual harm" means a negative outcome that compromises the physical, mental, or emotional well-being of an elderly person or a person with a disability receiving services at a facility.</u></p> <p><u>(2) "Immediate threat to the health or safety of an elderly person or a person with a disability" means a situation that causes, or is likely to cause, serious injury, harm, or impairment to or the death of an elderly person or a person with a disability receiving services at a facility.</u></p> <p><u>(3) "Pattern of violation" means repeated, but not pervasive, failures of a facility to comply with this chapter or a rule, standard, or order adopted under this chapter that:</u></p> <p><u>(A) result in a violation; and</u></p> <p><u>(B) are found throughout the services provided by the facility or that affect or involve the same elderly persons or persons with disabilities receiving services at the facility or the same facility employees.</u></p> <p><u>(4) "Widespread in scope" means a violation of this chapter or a rule, standard, or order adopted under this chapter that:</u></p> <p><u>(A) is pervasive throughout the services provided by the facility; or</u></p> <p><u>(B) represents a systemic failure by the facility that affects or has the potential to affect a large portion of or all of the elderly persons or persons with disabilities receiving services at the facility.</u></p>	
No equivalent provision.	SECTION 23. Section 247.0025, Health and Safety Code, is repealed.	
No equivalent provision.	SECTION 24. The changes in law made by this Act apply only to actions taken by the Health and Human Services Commission and license holders under Chapter 103, Human	

House Bill 2025
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION	SENATE VERSION (CS)	CONFERENCE
	Resources Code, and Chapters 242, 247, 248A, and 252, Health and Safety Code, on or after the effective date of this Act. An action taken before the effective date of this Act is governed by the law in effect at that time, and the former law is continued in effect for that purpose.	
SECTION 5. Chapter 326, Health and Safety Code, as added by this Act, does not affect the terms of a contract entered into before the effective date of this Act, except that if the contract is renewed, modified, or extended on or after the effective date of this Act, Chapter 326 applies to the contract beginning on the date of renewal, modification, or extension.	SECTION 25. Same as House version.	
SECTION 6. This Act takes effect September 1, 2017.	SECTION 26. Same as House version.	