

**House Bill 2590**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

No equivalent provision.

SENATE VERSION (IE)

CONFERENCE

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

Sec. 161.089 [~~161.088~~]. ADMINISTRATIVE PENALTIES.

(a) This section applies to the following waiver programs established under Section 1915(c), Social Security Act (42 U.S.C. Section 1396n(c)), and administered by the commission [~~department~~] to serve persons with an intellectual or developmental disability:

- (1) the home and community-based services (HCS) waiver program; and
- (2) the Texas home living (TxHmL) waiver program.

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

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

- (1) specify the types of violations that warrant imposition of an administrative penalty;
- (2) establish a schedule of progressive administrative penalties in accordance with the relative type, frequency, and seriousness of a violation;

**House Bill 2590**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

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

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

(5) provide that a provider commits a separate violation each day the provider continues to violate the law or rule;

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

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

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

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

(1) the seriousness of a violation, including:

(A) the nature, circumstances, extent, and gravity of the violation; and

(B) the hazard to the health or safety of recipients resulting from the violation;

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

(3) whether the provider:

(A) had prior knowledge of the violation, including whether the provider identified the violation through the provider's

**House Bill 2590**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

internal quality assurance process; and  
(B) made any efforts to mitigate or correct the identified violation;  
(4) the penalty amount necessary to deter future violations; and  
(5) any other matter justice may require.  
(e) Except as provided by Subsection (f), the executive commissioner by rule [(f) — In lieu of imposing an administrative penalty under this section, the department] shall provide to [allow] a provider who has implemented a plan of correction [found to have committed a minor violation specified by rule in accordance with Subsection (d) to have] a reasonable period of time following [that is not less than 45 days after] the date the commission [department] sends notice to the provider of the violation to correct [take corrective action regarding] the violation before the commission may assess an administrative penalty. The period may not be less than 45 days [department may not allow time for corrective action for any violation that is not a minor violation].  
(f) The commission may assess an administrative penalty without providing a reasonable period of time to a provider to correct the violation if the violation:  
(1) represents a pattern of violation that results in actual harm;  
(2) is widespread in scope and results in actual harm;  
(3) is widespread in scope and constitutes a potential for actual harm;  
(4) constitutes an immediate threat to the health or safety of a recipient;  
(5) substantially limits the provider's ability to provide care;  
or  
(6) is a violation in which a provider:

**House Bill 2590**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

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

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

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

(g) Notwithstanding any other provision of this section, an administrative penalty ceases to be incurred on the date a violation is corrected.

(h) In this section:

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

(2) "Immediate threat to the health or safety of a recipient" means a situation that causes, or is likely to cause, serious injury, harm, or impairment to or the death of a recipient.  
[FA1(1)]

(4) "Pattern of violation" means repeated, but not pervasive, failures of a provider to comply with a law relating to a program to which this section applies that:

(A) result in a violation; and

(B) are found throughout the services provided by the provider or that affect or involve the same recipients or provider employees or volunteers.

(5) "Recipient" means a person served by a program to which this section applies.

(6) "Widespread in scope" means a violation of a law relating to a program to which this section applies that:

**House Bill 2590**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

SECTION 1. Subchapter D, Chapter 161, Human Resources Code, is amended by adding Sections 161.0891 and 161.0892 to read as follows:

Sec. 161.0891. AMELIORATION PROCESS. (a) In lieu of demanding payment of an administrative penalty assessed under Section 161.089, the commission may, in accordance with this section, allow the provider subject to the penalty to use, under the supervision of the commission, any portion of the amount of the penalty to ameliorate the violation or to improve services in the waiver program in which the provider participates.

(b) The commission shall offer amelioration to a provider under this section not later than the 10th day after the date the provider receives from the commission a final notification of the assessment of an administrative penalty that is sent to the provider after an informal dispute resolution process but before an administrative hearing.

(c) A provider to whom amelioration has been offered must file a plan for amelioration not later than the 45th day after the date the provider receives the offer of amelioration from the commission. In submitting the plan, the provider must agree to waive the provider's right to an administrative hearing if the commission approves the plan.

(d) At a minimum, a plan for amelioration must:

(1) propose changes to the management or operation of the

(A) is pervasive throughout the services provided by the provider; or

(B) represents a systemic failure by the provider that affects or has the potential to affect a large portion of or all of the recipients.

SECTION 2. Subchapter D, Chapter 161, Human Resources Code, is amended by adding Sections 161.0891 and 161.0892 to read as follows:

Sec. 161.0891. AMELIORATION PROCESS. (a) In lieu of demanding payment of an administrative penalty assessed under Section 161.089, the commission may, in accordance with this section, allow the provider subject to the penalty to use, under the supervision of the commission, any portion of the amount of the penalty to ameliorate the violation or to improve services in the waiver program in which the provider participates.

(b) The commission shall offer amelioration to a provider under this section not later than the 10th day after the date the provider receives from the commission a final notification of the assessment of an administrative penalty that is sent to the provider after an informal dispute resolution process but before an administrative hearing.

(c) A provider to whom amelioration has been offered must file a plan for amelioration not later than the 45th day after the date the provider receives the offer of amelioration from the commission. In submitting the plan, the provider must agree to waive the provider's right to an administrative hearing if the commission approves the plan.

(d) At a minimum, a plan for amelioration must:

(1) propose changes to the management or operation of the

**House Bill 2590**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

waiver program in which the provider participates that will improve services to or quality of care for clients in the program;

(2) identify, through measurable outcomes, the ways in which and the extent to which the proposed changes will improve services to or quality of care for clients in the waiver program;

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

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

(5) identify specific actions necessary to implement the proposed changes.

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

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

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

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

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

SENATE VERSION (IE)

waiver program in which the provider participates that will improve services to or quality of care for recipients under the program;

(2) identify, through measurable outcomes, the ways in which and the extent to which the proposed changes will improve services to or quality of care for recipients under the waiver program;

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

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

(5) identify specific actions necessary to implement the proposed changes.

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

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

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

(1) more than three times in a two-year period; [FA1(2)]

(2) more than one time in a two-year period for the same or similar violation; or

(3) for a violation that resulted in hazard to the health or safety of a recipient, including serious harm or death, or that substantially limits the provider's ability to provide care.

[FA1(3)]

( ) This section expires September 1, 2023. [FA1(4)]

CONFERENCE

**House Bill 2590**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

Sec. 161.0892. INFORMAL DISPUTE RESOLUTION. (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 against a provider participating in a waiver program described by Section 161.089. The informal dispute resolution process must require:

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

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

(b) 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 a provider participating in a program described by Section 161.089 and the commission concerning a statement of violations prepared by the commission. Section 2009.053, Government Code, does not apply to the selection of an appropriate disinterested person under this subsection. The person with whom the commission contracts shall adjudicate all disputes described by this subsection.

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

(d) The commission may not delegate its responsibility to administer the informal dispute resolution process established

SENATE VERSION (IE)

Sec. 161.0892. INFORMAL DISPUTE RESOLUTION. (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 against a provider participating in a waiver program described by Section 161.089. The informal dispute resolution process must require:

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

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

(b) As part of the informal dispute resolution process established under this section, the commission shall contract with an appropriate disinterested person to adjudicate disputes between a provider participating in a waiver program described by Section 161.089 and the commission concerning a statement of violations prepared by the commission. Section 2009.053, Government Code, does not apply to the selection of an appropriate disinterested person under this subsection. The person with whom the commission contracts shall adjudicate all disputes described by this subsection. [FA1(5)-

(6)]

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

(d) The commission may not delegate its responsibility to administer the informal dispute resolution process established

CONFERENCE

**House Bill 2590**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

by this section to another state agency.

SECTION 2. Subchapter D, Chapter 161, Human Resources Code, is amended by adding Sections 161.0881 and 161.0882 to read as follows:

Sec. 161.0881. AMELIORATION PROCESS. (a) In lieu of demanding payment of an administrative penalty assessed under Section 161.088, the commission may, in accordance with this section, allow the provider subject to the penalty to use, under the supervision of the commission, any portion of the amount of the penalty to ameliorate the violation or to improve services in the waiver program in which the provider participates.

(b) The commission shall offer amelioration to a provider under this section not later than the 10th day after the date the provider receives from the commission a final notification of the assessment of an administrative penalty that is sent to the provider after an informal dispute resolution process but before an administrative hearing.

(c) A provider to whom amelioration has been offered must file a plan for amelioration not later than the 45th day after the date the provider receives the offer of amelioration from the commission. In submitting the plan, the provider must agree to waive the provider's right to an administrative hearing if the commission approves the plan.

(d) At a minimum, a plan for amelioration must:

(1) propose changes to the management or operation of the waiver program in which the provider participates that will improve services to or quality of care for clients in the program;

(2) identify, through measurable outcomes, the ways in which

SENATE VERSION (IE)

by this section to another state agency.

No equivalent provision.

CONFERENCE



**House Bill 2590**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

and the extent to which the proposed changes will improve services to or quality of care for clients in the waiver program;

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

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

(5) identify specific actions necessary to implement the proposed changes.

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

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

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

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

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

Sec. 161.0882. INFORMAL DISPUTE RESOLUTION. (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 against a provider participating in a waiver program described by Section 161.088. The informal dispute resolution process must require:

(1) a provider participating in a waiver program described by

**House Bill 2590**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

Section 161.088 to request informal dispute resolution not later than the 10th calendar day after the date of notification by the commission of the violation of a law or rule relating to the program; and

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

(b) 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 a provider participating in a program described by Section 161.088 and the commission concerning a statement of violations prepared by the commission. Section 2009.053, Government Code, does not apply to the selection of an appropriate disinterested person under this subsection. The person with whom the commission contracts shall adjudicate all disputes described by this subsection.

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

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

SECTION 3. (a) Section 1 of this Act takes effect only if the Act of the 85th Legislature, Regular Session, 2017, relating to nonsubstantive additions to and corrections in enacted codes becomes law.

(b) Section 2 of this Act takes effect only if the Act of the 85th Legislature, Regular Session, 2017, relating to nonsubstantive additions to and corrections in enacted codes

SENATE VERSION (IE)

CONFERENCE

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**House Bill 2590**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

does not become law.

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

SECTION 5. This Act takes effect September 1, 2017.

SECTION 3. Same as House version.

SECTION 4. Same as House version.