

1-1 By: Hinojosa, et al. H.B. No. 3193  
 1-2 (Senate Sponsor - Johnson, Hinojosa, Schwertner)  
 1-3 (In the Senate - Received from the House May 13, 2019;  
 1-4 May 14, 2019, read first time and referred to Committee on Health &  
 1-5 Human Services; May 20, 2019, reported adversely, with favorable  
 1-6 Committee Substitute by the following vote: Yeas 9, Nays 0;  
 1-7 May 20, 2019, sent to printer.)

1-8 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-9				
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			
1-18	X			

1-19 COMMITTEE SUBSTITUTE FOR H.B. No. 3193 By: Perry

1-20 A BILL TO BE ENTITLED  
 1-21 AN ACT

1-22 relating to the licensing of, the executive commissioner of the  
 1-23 Health and Human Services Commission's duties with respect to, and  
 1-24 the administrative penalties for home and community support  
 1-25 services agencies.

1-26 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-27 SECTION 1. Sections 142.006(a), (b), and (c), Health and  
 1-28 Safety Code, are amended to read as follows:

1-29 (a) The commission [~~department~~] shall issue a home and  
 1-30 community support services agency license to provide home health,  
 1-31 hospice, habilitation, or personal assistance services for each  
 1-32 place of business to an applicant if:

1-33 (1) the applicant:

1-34 (A) qualifies for the license to provide the type  
 1-35 of service that is to be offered by the applicant;

1-36 (B) submits an application and license fee as  
 1-37 required by this chapter; and

1-38 (C) complies with all applicable licensing  
 1-39 standards required or adopted under this chapter; and

1-40 (2) any controlling person with respect to the  
 1-41 applicant complies with all applicable licensing standards  
 1-42 required or adopted under this chapter.

1-43 (b) A license issued under this chapter expires three [~~two~~]  
 1-44 years after the date of issuance. The executive commissioner by  
 1-45 rule shall [~~may~~] adopt a system under which licenses expire on  
 1-46 staggered [~~various~~] dates during each three-year [~~the two-year~~]  
 1-47 period. The commission shall prorate the license fee as  
 1-48 appropriate if the expiration date of a license changes as a result  
 1-49 of this subsection [~~For the year in which a license expiration date~~  
 1-50 ~~is changed, the department shall prorate the license fee on a~~  
 1-51 ~~monthly basis. Each license holder shall pay only that portion of~~  
 1-52 ~~the license fee allocable to the number of months for which the~~  
 1-53 ~~license is valid. A license holder shall pay the total license~~  
 1-54 ~~renewal fee at the time of renewal. The department may issue an~~  
 1-55 ~~initial license for a shorter term to conform expiration dates for a~~  
 1-56 ~~locality or an applicant. The department may issue a temporary~~  
 1-57 ~~license to an applicant for an initial license].~~

1-58 (c) The commission [~~department~~] may find that a home and  
 1-59 community support services agency has satisfied the requirements  
 1-60 for licensing if the agency is accredited by an accreditation

2-1 organization, such as The Joint Commission or the Community Health  
2-2 Accreditation Program, and the commission [~~department~~] finds that  
2-3 the accreditation organization has standards that meet or exceed  
2-4 the requirements for licensing under this chapter. A license fee is  
2-5 required of the home and community support services agency at the  
2-6 time of a license application.

2-7 SECTION 2. Sections 142.010(a) and (b), Health and Safety  
2-8 Code, are amended to read as follows:

2-9 (a) The executive commissioner by rule shall set license  
2-10 fees for home and community support services agencies in amounts  
2-11 that are reasonable to meet the costs of administering this  
2-12 chapter, except that the fees may not be less than \$600 or more than  
2-13 \$2,625 [~~\$2,000~~] for a license to provide home health, hospice,  
2-14 habilitation, or personal assistance services.

2-15 (b) The executive commissioner shall consider the size of  
2-16 the home and community support services agency, the number of  
2-17 clients served, the number of services provided, and the necessity  
2-18 for review of other accreditation documentation in determining the  
2-19 amount collected by the commission [~~department~~] for initial and  
2-20 renewal license fees.

2-21 SECTION 3. Section 142.017, Health and Safety Code, is  
2-22 amended by amending Subsections (a), (b), (c), (e), (i), and (j) and  
2-23 adding Subsections (k) and (l) to read as follows:

2-24 (a) The commission [~~department~~] may assess an  
2-25 administrative penalty against a person who violates:

2-26 (1) this chapter or a rule adopted under this chapter;  
2-27 or

2-28 (2) Section 102.001, Occupations Code, if the  
2-29 violation relates to the provision of home health, hospice,  
2-30 habilitation, or personal assistance services.

2-31 (b) The penalty shall be not less than \$100 or more than  
2-32 \$1,000 for each violation, except that the penalty shall be not less  
2-33 than \$100 or more than \$5,000 for each violation that results in  
2-34 actual harm or that constitutes an immediate threat to the health or  
2-35 safety of a client. Each day of a violation that occurs before the  
2-36 day on which the person receives written notice of the violation  
2-37 from the commission [~~department~~] does not constitute a separate  
2-38 violation and shall be considered to be one violation. Each day of  
2-39 a continuing violation that occurs after the day on which the person  
2-40 receives written notice of the violation from the commission  
2-41 [~~department~~] constitutes a separate violation.

2-42 (c) The executive commissioner by rule shall specify each  
2-43 violation for which the commission [~~department~~] may assess an  
2-44 administrative penalty. In determining which violations warrant  
2-45 penalties, the commission [~~department~~] shall consider:

2-46 (1) the seriousness of the violation, including the  
2-47 nature, circumstances, extent, and gravity of the violation and the  
2-48 hazard of the violation to the health or safety of clients; and

2-49 (2) whether the affected home and community support  
2-50 services agency had identified the violation as a part of its  
2-51 internal quality assurance process and had made appropriate  
2-52 progress on correction.

2-53 (e) Except as provided by Subsection (j), the executive  
2-54 commissioner by rule shall provide the home and community support  
2-55 services agency with a reasonable period of time following the  
2-56 first day of a violation to correct the violation before the  
2-57 commission [~~department~~] assesses an administrative penalty if a  
2-58 plan of correction has been implemented.

2-59 (i) The commission [~~department~~] may not assess an  
2-60 administrative penalty against a state agency.

2-61 (j) The commission [~~department~~] may assess an  
2-62 administrative penalty without providing a reasonable period of  
2-63 time to a home and community support services [~~the~~] agency to  
2-64 correct the violation if the violation:

2-65 (1) represents a pattern of violation that results in  
2-66 actual [~~serious~~] harm [~~or death~~];

2-67 (2) is widespread in scope and results in actual harm;

2-68 (3) is widespread in scope and constitutes a potential  
2-69 for actual harm;

3-1                   (4) [~~2~~] constitutes an immediate [~~a serious~~] threat  
3-2 to the health or safety of a client;  
3-3                   (5) [~~3~~] substantially limits the agency's capacity  
3-4 to provide care;  
3-5                   (6) [~~4~~] is a violation in which a person:  
3-6                   (A) makes a false statement, that the person  
3-7 knows or should know is false, of a material fact:  
3-8                   (i) on an application for issuance or  
3-9 renewal of a license or in an attachment to the application; or  
3-10                   (ii) with respect to a matter under  
3-11 investigation by the commission [~~department~~];  
3-12                   (B) refuses to allow a representative of the  
3-13 commission [~~department~~] to inspect a book, record, or file required  
3-14 to be maintained by an agency;  
3-15                   (C) wilfully interferes with the work of a  
3-16 representative of the commission [~~department~~] or the enforcement of  
3-17 this chapter;  
3-18                   (D) wilfully interferes with a representative of  
3-19 the commission [~~department~~] preserving evidence of a violation of  
3-20 this chapter or a rule, standard, or order adopted or license issued  
3-21 under this chapter;  
3-22                   (E) fails to pay a penalty assessed by the  
3-23 commission [~~department~~] under this chapter not later than the 10th  
3-24 day after the date the assessment of the penalty becomes final; or  
3-25                   (F) fails to submit:  
3-26                   (i) a plan of correction not later than the  
3-27 10th day after the date the person receives a statement of licensing  
3-28 violations; or  
3-29                   (ii) an acceptable plan of correction not  
3-30 later than the 30th day after the date the person receives  
3-31 notification from the commission [~~department~~] that the previously  
3-32 submitted plan of correction is not acceptable;  
3-33                   (7) [~~5~~] is a violation of Section 142.0145; or  
3-34                   (8) [~~6~~] involves the rights of the elderly under  
3-35 Chapter 102, Human Resources Code.  
3-36                   (k) The commission shall develop and use a system to record  
3-37 and track the scope and severity of each violation of this chapter  
3-38 or a rule adopted under this chapter for the purpose of assessing an  
3-39 administrative penalty for the violation or taking some other  
3-40 enforcement action against the appropriate home and community  
3-41 support services agency to deter future violations. The system:  
3-42                   (1) must be comparable to the system used by the  
3-43 Centers for Medicare and Medicaid Services to categorize the scope  
3-44 and severity of violations for nursing homes; and  
3-45                   (2) may be modified, as appropriate, to reflect  
3-46 changes in industry practice or changes made to the system used by  
3-47 the Centers for Medicare and Medicaid Services.  
3-48                   (1) In this section:  
3-49                   (1) "Actual harm" means a negative outcome that  
3-50 compromises a client's physical, mental, or emotional well-being.  
3-51                   (2) "Immediate threat to the health or safety of a  
3-52 client" means a situation that causes, or is likely to cause,  
3-53 serious injury, harm, or impairment to or the death of a client.  
3-54                   (3) "Pattern of violation" means repeated, but not  
3-55 pervasive, failures of a home and community support services agency  
3-56 to comply with this chapter or a rule adopted under this chapter  
3-57 that:  
3-58                   (A) result in a violation; and  
3-59                   (B) are found throughout the services provided by  
3-60 the agency or that affect or involve the same clients or agency  
3-61 employees or volunteers.  
3-62                   (4) "Widespread in scope" means a violation of this  
3-63 chapter or a rule adopted under this chapter that:  
3-64                   (A) is pervasive throughout the services  
3-65 provided by the home and community support services agency; or  
3-66                   (B) represents a systemic failure by the home and  
3-67 community support services agency that affects or has the potential  
3-68 to affect a large portion of or all of the clients of the agency.  
3-69                   SECTION 4. As soon as practicable after the effective date

4-1 of this Act and after consulting with appropriate interested  
4-2 persons, the executive commissioner of the Health and Human  
4-3 Services Commission shall adopt rules necessary to implement the  
4-4 changes in law made by this Act.

4-5 SECTION 5. The changes in law made by this Act apply only to  
4-6 actions taken by the Health and Human Services Commission and  
4-7 license holders under Chapter 142, Health and Safety Code, on or  
4-8 after the effective date of this Act. An action taken before the  
4-9 effective date of this Act is governed by the law in effect at that  
4-10 time, and the former law is continued in effect for that purpose.

4-11 SECTION 6. This Act takes effect September 1, 2019.

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