

House Bill 3193
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Section 142.006(b), Health and Safety Code, is amended to read as follows:

(b) A license issued under this chapter expires three ~~[two]~~ years after the date of issuance. The executive commissioner by rule may adopt a system under which licenses expire on various dates during the three-year ~~[two-year]~~ period.

~~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. The department may issue an initial license for a shorter term to conform expiration dates for a locality or an applicant. The~~

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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 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 for which the license is valid. A license holder shall pay the total license renewal fee at the time of renewal. The department may issue an initial license for a shorter term to conform expiration dates for a locality or an applicant. The~~

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department may issue a temporary license to an applicant for an initial license.

SECTION 2. Section 142.010(a), Health and Safety Code, is amended to read as follows:

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

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department may issue a temporary license to an applicant for an initial license].

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

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

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

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

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No equivalent provision.

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

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

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internal quality assurance process and had made appropriate progress on correction.

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

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

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

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

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

(3) is widespread in scope and constitutes a potential for actual harm;

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

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

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

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

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

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

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- (B) refuses to allow a representative of the commission [~~department~~] to inspect a book, record, or file required to be maintained by an agency;
- (C) wilfully interferes with the work of a representative of the commission [~~department~~] or the enforcement of this chapter;
- (D) 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;
- (E) 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
- (F) fails to submit:
- (i) a plan of correction not later than the 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:

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(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 violation" means repeated, but not pervasive, failures of a home and community support services agency to comply with this chapter or a rule adopted under this chapter that:

(A) result in a violation; and

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

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

(A) is pervasive throughout the services provided by the home and community support services agency; or

(B) represents a systemic failure by the home and community support services agency that affects or has the potential to affect a large portion of or all of the clients of the agency.

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SECTION 3. As soon as practicable after the effective date of this Act, the executive commissioner of the Health and Human Services Commission shall adopt rules necessary to implement the changes in law made by this Act.

No equivalent provision.

SECTION 4. This Act takes effect September 1, 2019.

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

SECTION 5. 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 142, 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 6. Same as House version.

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