By:  Klick (Senate Sponsor - Kolkhorst) H.B. No. 3240

(In the Senate - Received from the House May 10, 2021; May 11, 2021, read first time and referred to Committee on Health & Human Services; May 21, 2021, reported adversely, with favorable Committee Substitute by the following vote: Yeas 8, Nays 0; May 21, 2021, sent to printer.)

COMMITTEE VOTE

                 Yea Nay Absent  PNV

Kolkhorst         X

Perry             X

Blanco            X

Buckingham        X

Campbell          X

Hall                       X

Miles             X

Powell            X

Seliger           X

COMMITTEE SUBSTITUTE FOR H.B. No. 3240 By:  Miles

A BILL TO BE ENTITLED

AN ACT

relating to the composition of the Long-Term Care Facilities Council and rules related to and the imposition of administrative penalties against certain long-term care facilities.

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

SECTION 1.  Section 531.0581(b), Government Code, is amended to read as follows:

(b)  The executive commissioner shall establish a Long-Term Care Facilities Council as a permanent advisory committee to the commission. The council is composed of the following members appointed by the executive commissioner:

(1)  at least one member who is a for-profit nursing facility provider;

(2)  at least one member who is a nonprofit nursing facility provider;

(3)  at least one member who is an assisted living services provider;

(4)  at least one member responsible for survey enforcement within the state survey and certification agency;

(5)  at least one member responsible for survey inspection within the state survey and certification agency;

(6)  at least one member of the state agency responsible for informal dispute resolution;

(7)  at least one member with expertise in Medicaid quality-based payment systems for long-term care facilities;

(8)  at least one member who is a practicing medical director of a long-term care facility; [~~and~~]

(9)  at least one member who is a physician with expertise in infectious disease or public health; and

(10)  at least one member who is a community-based provider at an intermediate care facility for individuals with intellectual or developmental disabilities licensed under Chapter 252, Health and Safety Code.

SECTION 2.  Section 252.065(b), Health and Safety Code, is amended to read as follows:

(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. Each day a violation occurs or continues is a separate violation for purposes of imposing a penalty. The total amount of penalties [~~a penalty~~] assessed under this subsection for an on-site regulatory visit or complaint investigation, regardless of the duration of any ongoing violations, [~~for each day a violation occurs or continues~~] may not exceed:

(1)  $5,000 for a facility with fewer than 60 beds; and

(2)  $25,000 for a facility with 60 beds or more.

SECTION 3.  Section 161.089, Human Resources Code, is amended by amending Subsection (c) and adding Subsection (c-1) to read as follows:

(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;

(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; and

(8)  ensure standard and consistent interpretation of service delivery rules and consistent application of administrative penalties throughout this state.

(c-1)  On adoption of the rules under Subsection (c), the executive commissioner shall develop interpretative guidelines for regulatory staff and providers regarding the imposition of administrative penalties under this section.

SECTION 4.  Not later than December 1, 2021, 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.  The Health and Human Services Commission may not assess a penalty under Section 161.089, Human Resources Code, as amended by this Act, until the executive commissioner of the Health and Human Services Commission:

(1)  adopts the rules necessary to implement Section 161.089(c)(8), Human Resources Code, as added by this Act; and

(2)  develops the interpretive guidelines required by Section 161.089(c-1), Human Resources Code, as added by this Act.

SECTION 6.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2021.

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