88R19388 MPF-F

By:  Guillen H.B. No. 4110

Substitute the following for H.B. No. 4110:

By:  Noble C.S.H.B. No. 4110

A BILL TO BE ENTITLED

AN ACT

relating to certain administrative penalties and procedures associated with aging, community-based, and long-term care service providers and the establishment of a task force to study certain rules and policies related to those services.

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

SECTION 1.  Section 161.089, Human Resources Code, is amended by amending Subsections (b), (c), (c-1), (e), (f), and (g) and adding Subsections (b-1), (g-1), and (g-2) to read as follows:

(b)  Subject to Subsection (b-1), the [~~The~~] commission 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 assesses an administrative penalty against a provider for a violation of a law or rule, the commission may not impose a payment hold against or otherwise withhold contract payments from the provider for the same violation of a law or rule.

(b-1)  The commission may not assess an administrative penalty under this section for minor violations unless those violations are of a continuing nature or are not corrected by the provider.

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

(1)  specify each violation that warrants [~~the types of violations that warrant~~] imposition of an administrative penalty based on:

(A)  the seriousness of the violation, including:

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

(ii)  the hazard created by the violation to the health and safety of an individual; and

(B)  whether the provider had identified the violation as part of the provider's internal quality assurance process and made appropriate progress on correcting the identified violation;

(2)  establish a schedule of appropriate and graduated penalties for each [~~progressive administrative penalties in accordance with the relative type, frequency, and seriousness of a~~] violation based on:

(A)  the seriousness of the violation, including:

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

(ii)  the hazard created by the violation to the health and safety of an individual;

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

(C)  whether the provider had identified the violation as part of the provider's internal quality assurance process and made appropriate progress on correcting the identified violation;

(D)  the amount necessary to deter future violations;

(E)  other than for a violation identified under Paragraph (C), the provider's effort to correct the violation; and

(F)  any other matters that justice may require;

(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, except that each day of a violation occurring before the day on which the provider receives written notice of the violation from the commission does not constitute a separate violation and is considered to be one violation;

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

(e)  Except as provided by Subsection (f), the executive commissioner by rule shall provide to a provider who has implemented a plan of correction a reasonable period of time following the first day of a [~~date the commission sends notice to the provider of the~~] violation to correct the violation before the commission may assess an administrative penalty. [~~The period may not be less than 45 days.~~]

(f)  The commission may assess an administrative penalty on provision of written notice of a violation to a provider without providing the provider with a reasonable period of time [~~to a provider~~] to correct the violation if the violation:

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

(2)  constitutes a serious threat to health or safety and was not corrected by the provider or the provider has not made demonstrable progress toward correcting the violation before receiving the notice of the violation from the commission [~~is widespread in scope and results in actual harm~~]; or

(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:

(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. For purposes of this section, the date of correction is the date identified by the provider and submitted to the commission with evidence of the correction. Penalties do not accrue for a violation until a provider receives written notice of the violation and of all elements of the violation that must be corrected by the provider to achieve compliance.

(g-1)  Notwithstanding requirements for a provider to notify the service planning team of a significant change in condition, if the commission identifies a violation resulting from a deficiency of services authorized in a service plan, including potential hazards to the health and safety of an individual, the commission shall provide an amount of time determined sufficient by the commission for the service planning team to modify the service plan before imposing an administrative penalty.

(g-2)  Notwithstanding any other law, the commission may waive or reduce any applicable penalty if the commission determines that strict enforcement of the rule or law would impose a hardship or otherwise not be in the best interest of persons supported by the provider.

SECTION 2.  Section 161.0891(g), Human Resources Code, is amended to read as follows:

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

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

(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 to or death of a recipient[~~, or that substantially limits the provider's ability to provide care~~].

SECTION 3.  (a) In this section:

(1)  "Commission" means the Health and Human Services Commission.

(2)  "Executive commissioner" means the executive commissioner of the commission.

(3)  "Task force" means the home and community-based services waiver program regulation task force established by this section.

(b)  The commission shall establish the home and community-based services waiver program regulation task force to:

(1)  review all rules and policies adopted by the commission that are applicable to services provided under the home and community-based services (HCS) and Texas home living (TxHmL) Medicaid waiver program; and

(2)  provide to the executive commissioner recommendations on:

(A)  clarifying the rules and policies;

(B)  reducing administrative burdens; and

(C)  repealing or reversing any duplicative or conflicting rules or policies that are not required by state or federal law.

(c)  Not later than December 1, 2023, the executive commissioner shall appoint the following members to the task force:

(1)  representatives of providers under the home and community-based services (HCS) and Texas home living (TxHmL) Medicaid waiver programs; and

(2)  representatives of appropriate health and human services agency functions, including regulatory, waiver, and billing functions.

(d)  Not later than December 1, 2024, the commission shall prepare and submit to the legislature a report that includes:

(1)  recommendations made by the task force; and

(2)  any administrative changes made by the commission as a result of those recommendations.

(e)  This section expires September 1, 2025.

SECTION 4.  The following provisions of the Human Resources Code are repealed:

(1)  Sections 161.089(d) and (h); and

(2)  Section 161.0891(h).

SECTION 5.  Section 161.089, Human Resources Code, as amended by this Act, applies only to a violation that occurs on or after the effective date of this Act. A violation that occurs before the effective date of this Act is governed by the law in effect on the date the violation occurred, and that law is continued in effect for that purpose.

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, 2023.