

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 ~~The~~ ~~[After consulting with appropriate stakeholders,~~ executive commissioner by rule shall ~~[develop and adopt rules regarding the imposition of administrative penalties under this~~

1 ~~section. The rules must]~~:

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

5 (A) the seriousness of the violation, including:

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

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

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

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

18 (A) the seriousness of the violation, including:

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

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

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

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

1 violation;

2 (D) the amount necessary to deter future
3 violations;

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

6 (F) any other matters that justice may require;

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

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

12 (5) provide that a provider commits a separate
13 violation each day the provider continues to violate the law or
14 rule, except that each day of a violation occurring before the day
15 on which the provider receives written notice of the violation from
16 the commission does not constitute a separate violation and is
17 considered to be one violation;

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

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

24 ~~[(8) ensure standard and consistent interpretation of~~
25 ~~service delivery rules and consistent application of~~
26 ~~administrative penalties throughout this state].~~

27 (c-1) The ~~[On adoption of the rules under Subsection (c),~~

1 ~~the~~ executive commissioner shall maintain ~~[develop]~~
2 interpretative guidelines for regulatory staff and providers
3 regarding the imposition of administrative penalties under this
4 section.

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

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

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

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

23 (3) ~~[is widespread in scope and constitutes a~~
24 ~~potential for actual harm,~~

25 ~~[(4) constitutes an immediate threat to the health or~~
26 ~~safety of a recipient,~~

27 ~~[(5) substantially limits the provider's ability to~~

1 ~~provide care; or~~

2 ~~[(6)]~~ is a violation in which a provider:

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

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

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

13 (g) Notwithstanding any other provision of this section, an
14 administrative penalty ceases to be incurred on the date a
15 violation is corrected. For purposes of this section, the date of
16 correction is the date identified by the provider and submitted to
17 the commission with evidence of the correction. Penalties do not
18 accrue for a violation until a provider receives written notice of
19 the violation and of all elements of the violation that must be
20 corrected by the provider to achieve compliance.

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

1 before imposing an administrative penalty.

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

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

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

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

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

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

17 SECTION 3. (a) In this section:

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

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

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

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

27 (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

1 (2) Section 161.0891(h).

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

8 SECTION 6. This Act takes effect immediately if it receives
9 a vote of two-thirds of all the members elected to each house, as
10 provided by Section 39, Article III, Texas Constitution. If this
11 Act does not receive the vote necessary for immediate effect, this
12 Act takes effect September 1, 2023.