

By: Guillen

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.

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), (g), and (h) and adding Subsections (g-1) and (g-2) to read as follows:

(b) 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, except that an administrative penalty may not be assessed for minor violations unless those violations are of a continuing nature or are not corrected by the provider. 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, recoup past payments from, or otherwise withhold contract payments from the provider for the same violation of a law or rule unless the provider has committed fraud, waste, or abuse. The commission may impose a referral hold in lieu of an administrative penalty assessed under this section.

(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~~

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 after consideration of:

5 (A) the seriousness of the violation, including
6 the nature, circumstances, extent, and gravity of the violation and
7 the hazard of the violation to the health and safety of an
8 individual; and

9 (B) whether the provider previously identified
10 the violation as part of their internal quality assurance process
11 and made appropriate progress on correction;

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

16 (A) the seriousness of the violation, including
17 the nature, circumstances, extent, and gravity of the violation and
18 the hazard of the violation to the health and safety of an
19 individual;

20 (B) any history of previous violations by the
21 provider;

22 (C) whether the provider previously identified
23 the violation as part of its internal quality assurance process and
24 made appropriate progress on correction;

25 (D) the amount necessary to deter future
26 violations;

27 (E) efforts made by the provider to correct the

1 violation; and

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

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

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

8 (5) provide that a provider commits a separate
9 violation each day the provider continues to violate the law or
10 rule, except that each day of a violation occurring before the day
11 on which the provider receives written notice of the violation from
12 the commission does not constitute a separate violation and shall
13 be considered by the commission to be one violation;

14 (6) ensure standard and consistent application of
15 administrative penalties throughout the state; and

16 (7) provide for an administrative appeals process to
17 adjudicate claims and appeals relating to the imposition of an
18 administrative penalty under this section that is in accordance
19 with Chapter 2001, Government Code [~~+~~and]

20 [~~(8) ensure standard and consistent interpretation of~~
21 ~~service delivery rules and consistent application of~~
22 ~~administrative penalties throughout this state~~].

23 (c-1) The [~~On adoption of the rules under Subsection (c),~~
24 ~~the~~] executive commissioner shall maintain [~~develop~~]
25 interpretative guidelines for regulatory staff and providers
26 regarding the imposition of administrative penalties under this
27 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 date the commission sends written 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 providing written notice of a violation to a provider without providing a reasonable period of time to a provider to correct the violation if the violation:

(1) results in ~~[represents a pattern of violation that results in]~~ 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 prior to receiving 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

1 relating to a program to which this section applies;

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

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

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

17 (g-1) Notwithstanding provider requirements to notify the
18 service planning team of a significant change in condition, if the
19 commission identifies a violation caused by deficiency of services
20 authorized on a service plan, including potential hazards to the
21 health and safety of the individual, the commission shall allow
22 sufficient time for the service planning team to modify the service
23 plan before imposing an administrative penalty.

24 (g-2) Notwithstanding any other provision of law, the
25 commission may waive or reduce any applicable penalty if the
26 commission determines that strict enforcement of the rule or law
27 would impose a hardship or otherwise not be in the best interest of

1 persons supported by the provider.

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

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

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

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

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

12 SECTION 5. Subchapter D, Chapter 161, Human Resources Code,
13 is amended by adding Section 161.08915 to read as follows:

14 Sec. 161.08915. HOME AND COMMUNITY-BASED SERVICES WAIVER
15 REGULATIONS TASKFORCE. (a) Not later than December 1, 2023, the
16 executive commissioner shall establish a Home and Community-Based
17 Services Waiver Regulations Taskforce. The taskforce must be
18 composed of:

19 (1) representatives of providers of services in the
20 1915(c) Home and Community-Based Services and Texas Home Living
21 waivers; and

22 (2) representatives of appropriate health and human
23 service agency functions, including regulatory, waiver, and
24 billing functions.

25 (b) The taskforce shall review all rules, regulations, and
26 policies applicable to home and community-based services and make
27 recommendations to the executive commissioner designed to provide

1 clarity of regulations, reduced administrative burdens, and
2 removal of duplicative or conflicting regulations that are not
3 required by state or federal law.

4 (c) Not later than December 1, 2024, the commission shall
5 submit a report to the legislature detailing recommendations made
6 by the taskforce and the administrative changes made as a result of
7 those recommendations.

8 (d) This section expires January 1, 2026.

9 SECTION 4. Sections [161.089\(h\)](#) and [161.0891\(h\)](#), Human
10 Resources Code, are repealed.

11 SECTION 5. This Act takes effect immediately if it receives
12 a vote of two-thirds of all members elected to each house, as
13 provided by Section [39](#), Article III, Texas Constitution. If this
14 Act does not receive the vote necessary for immediate effect, this
15 Act takes effect September 1, 2023.