

1-1 By: Davis of Dallas, Rose H.B. No. 2025  
 1-2 (Senate Sponsor - Schwertner)  
 1-3 (In the Senate - Received from the House May 10, 2017;  
 1-4 May 11, 2017, read first time and referred to Committee on Health &  
 1-5 Human Services; May 19, 2017, reported adversely, with favorable  
 1-6 Committee Substitute by the following vote: Yeas 9, Nays 0;  
 1-7 May 19, 2017, sent to printer.)

1-8 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-9				
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			
1-18	X			

1-19 COMMITTEE SUBSTITUTE FOR H.B. No. 2025 By: Burton

1-20 A BILL TO BE ENTITLED  
 1-21 AN ACT

1-22 relating to the regulation of certain long-term care facilities,  
 1-23 including facilities that provide care to persons with Alzheimer's  
 1-24 disease or related disorders; authorizing an administrative  
 1-25 penalty.

1-26 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-27 SECTION 1. Sections [531.058](#)(a) and (a-1), Government Code,  
 1-28 are amended to read as follows:

1-29 (a) The executive commissioner by rule shall establish an  
 1-30 informal dispute resolution process in accordance with this  
 1-31 section. The process must provide for adjudication by an  
 1-32 appropriate disinterested person of disputes relating to a proposed  
 1-33 enforcement action or related proceeding of the commission under  
 1-34 Section [32.021](#)(d), Human Resources Code, or the Department of Aging  
 1-35 and Disability Services or its successor agency under Chapter [242](#),  
 1-36 [247](#), or [252](#), Health and Safety Code. The informal dispute  
 1-37 resolution process must require:

1-38 (1) an institution or facility to request informal  
 1-39 dispute resolution not later than the 10th calendar day after  
 1-40 notification by the commission or department, as applicable, of the  
 1-41 violation of a standard or standards; and

1-42 (2) the commission to complete the process not later  
 1-43 than:

1-44 (A) the 30th calendar day after receipt of a  
 1-45 request from an institution or facility, other than an assisted  
 1-46 living facility, for informal dispute resolution; or

1-47 (B) the 90th calendar day after receipt of a  
 1-48 request from an assisted living facility for informal dispute  
 1-49 resolution.

1-50 (a-1) As part of the informal dispute resolution process  
 1-51 established under this section, the commission shall contract with  
 1-52 an appropriate disinterested person [~~who is a nonprofit~~  
 1-53 ~~organization~~] to adjudicate disputes between an institution or  
 1-54 facility licensed under Chapter [242](#) or [247](#), Health and Safety Code,  
 1-55 and the Department of Aging and Disability Services or its  
 1-56 successor agency concerning a statement of violations prepared by  
 1-57 the department in connection with a survey conducted by the  
 1-58 department of the institution or facility. Section [2009.053](#) does  
 1-59 not apply to the selection of an appropriate disinterested person  
 1-60 under this subsection. The person with whom the commission

2-1 contracts shall adjudicate all disputes described by this  
2-2 subsection.

2-3 SECTION 2. Subchapter B, Chapter 531, Government Code, is  
2-4 amended by adding Section 531.0585 to read as follows:

2-5 Sec. 531.0585. ISSUANCE OF MATERIALS TO CERTAIN LONG-TERM  
2-6 CARE FACILITIES. The executive commissioner shall review the  
2-7 commission's methods for issuing informational letters, policy  
2-8 updates, policy clarifications, and other related materials to an  
2-9 entity licensed under Chapter 103, Human Resources Code, or Chapter  
2-10 242, 247, 248A, or 252, Health and Safety Code, and develop and  
2-11 implement more efficient methods to issue those materials as  
2-12 appropriate.

2-13 SECTION 3. Section 242.066, Health and Safety Code, is  
2-14 amended by amending Subsections (a) and (e) and adding Subsection  
2-15 (i) to read as follows:

2-16 (a) The commission [~~department~~] may assess an  
2-17 administrative penalty against a person who:

2-18 (1) violates this chapter or a rule, standard, or  
2-19 order adopted or license issued under this chapter;

2-20 (2) makes a false statement, that the person knows or  
2-21 should know is false, of a material fact:

2-22 (A) on an application for issuance or renewal of  
2-23 a license or in an attachment to the application; or

2-24 (B) with respect to a matter under investigation  
2-25 by the commission [~~department~~];

2-26 (3) refuses to allow a representative of the  
2-27 commission [~~department~~] to inspect:

2-28 (A) a book, record, or file required to be  
2-29 maintained by an institution; or

2-30 (B) any portion of the premises of an  
2-31 institution;

2-32 (4) wilfully interferes with the work of a  
2-33 representative of the commission [~~department~~] or the enforcement of  
2-34 this chapter;

2-35 (5) wilfully interferes with a representative of the  
2-36 commission [~~department~~] preserving evidence of a violation of this  
2-37 chapter or a rule, standard, or order adopted or license issued  
2-38 under this chapter;

2-39 (6) fails to pay a penalty assessed by the commission  
2-40 [~~department~~] under this chapter not later than the 10th day after  
2-41 the date the assessment of the penalty becomes final; or

2-42 (7) fails to notify the commission [~~department~~] of a  
2-43 change of ownership before the effective date of the change of  
2-44 ownership.

2-45 (e) In determining the amount of a penalty, the commission  
2-46 [~~department~~] shall consider any matter that justice may require,  
2-47 including:

2-48 (1) the gradations of penalties established under  
2-49 Subsection (d);

2-50 (2) the seriousness of the violation, including the  
2-51 nature, circumstances, extent, and gravity of the prohibited act  
2-52 and the hazard or potential hazard created by the act to the health  
2-53 or safety of the public;

2-54 (3) the history of previous violations;

2-55 (4) deterrence of future violations; and

2-56 (5) efforts to correct the violation.

2-57 (i) The commission shall develop and use a system to record  
2-58 and track the scope and severity of each violation of this chapter  
2-59 or a rule, standard, or order adopted under this chapter for the  
2-60 purpose of assessing an administrative penalty for the violation or  
2-61 taking some other enforcement action against the appropriate  
2-62 institution to deter future violations. The system:

2-63 (1) must be comparable to the system used by the  
2-64 Centers for Medicare and Medicaid Services to categorize the scope  
2-65 and severity of violations for nursing homes; and

2-66 (2) may be modified, as appropriate, to reflect  
2-67 changes in industry practice or changes made to the system used by  
2-68 the Centers for Medicare and Medicaid Services.

2-69 SECTION 4. Section 242.0665, Health and Safety Code, is

3-1 amended to read as follows:

3-2 Sec. 242.0665. RIGHT TO CORRECT. (a) The commission

3-3 [~~department~~] may not collect an administrative penalty against an

3-4 institution under this subchapter if, not later than the 45th day

3-5 after the date the institution receives notice under Section

3-6 242.067(c), the institution corrects the violation.

3-7 (b) Subsection (a) does not apply:

3-8 (1) to a violation that the commission [~~department~~]

3-9 determines:

3-10 (A) represents a pattern of violation that

3-11 results in actual [~~serious~~] harm [~~to or death of a resident~~];

3-12 (B) is widespread in scope and results in actual

3-13 harm;

3-14 (C) is widespread in scope, constitutes a

3-15 potential for actual harm, and relates to:

3-16 (i) residents' rights;

3-17 (ii) treatment of residents;

3-18 (iii) resident behavior and institution

3-19 practices;

3-20 (iv) quality of care;

3-21 (v) medication errors;

3-22 (vi) standard menus and nutritional

3-23 adequacy;

3-24 (vii) physician visits;

3-25 (viii) infection control;

3-26 (ix) life safety from fire; or

3-27 (x) emergency preparedness and response;

3-28 (D) [~~(B)~~] constitutes an immediate [~~a serious~~]

3-29 threat to the health or safety of a resident; or

3-30 (E) [~~(C)~~] substantially limits the institution's

3-31 capacity to provide care;

3-32 (2) to a violation described by Sections

3-33 242.066(a)(2)-(7);

3-34 (3) to a violation of Section 260A.014 or 260A.015;

3-35 [~~or~~]

3-36 (4) to a violation of a right of a resident adopted

3-37 under Subchapter L; or

3-38 (5) to a second or subsequent violation of Section

3-39 326.002 that occurs before the second anniversary of the date of the

3-40 first violation.

3-41 (c) An institution that corrects a violation under

3-42 Subsection (a) must maintain the correction. If the institution

3-43 fails to maintain the correction until at least the first

3-44 anniversary of the date the correction was made, the commission

3-45 [~~department~~] may assess an administrative penalty under this

3-46 subchapter for the subsequent violation. A penalty assessed under

3-47 this subsection shall be equal to three times the amount of the

3-48 penalty assessed but not collected under Subsection (a). The

3-49 commission [~~department~~] is not required to provide the institution

3-50 an opportunity to correct the subsequent violation under this

3-51 section.

3-52 (d) In this section:

3-53 (1) "Actual harm" means a negative outcome that

3-54 compromises a resident's physical, mental, or emotional

3-55 well-being.

3-56 (2) "Immediate threat to the health or safety of a

3-57 resident" means a situation that causes, or is likely to cause,

3-58 serious injury, harm, or impairment to or the death of a resident.

3-59 (3) "Pattern of violation" means repeated, but not

3-60 pervasive, failures of an institution to comply with this chapter

3-61 or a rule, standard, or order adopted under this chapter that:

3-62 (A) result in a violation; and

3-63 (B) are found throughout the services provided by

3-64 the institution or that affect or involve the same residents or

3-65 institution employees.

3-66 (4) "Widespread in scope" means a violation of this

3-67 chapter or a rule, standard, or order adopted under this chapter

3-68 that:

3-69 (A) is pervasive throughout the services

4-1 provided by the institution; or  
 4-2 (B) represents a systemic failure by the  
 4-3 institution that affects or has the potential to affect a large  
 4-4 portion of or all of the residents of the institution.

4-5 SECTION 5. Section 247.023, Health and Safety Code, is  
 4-6 amended to read as follows:

4-7 Sec. 247.023. ISSUANCE AND RENEWAL OF LICENSE. (a) The  
 4-8 commission [~~department~~] shall issue a license if, after inspection  
 4-9 and investigation, it finds that the applicant, the assisted living  
 4-10 facility, and all controlling persons with respect to the applicant  
 4-11 or facility meet the requirements of this chapter and the standards  
 4-12 adopted under this chapter. The license expires on the third  
 4-13 [~~second~~] anniversary of the date of its issuance. The executive  
 4-14 commissioner by rule shall [~~may~~] adopt a system under which  
 4-15 licenses expire on staggered [~~various~~] dates during each three-year  
 4-16 [~~the two-year~~] period. The commission shall prorate the license  
 4-17 fee as appropriate if the expiration date of a license changes as a  
 4-18 result of this subsection [~~For the year in which a license~~  
 4-19 ~~expiration date is changed, the department shall prorate the~~  
 4-20 ~~license fee on a monthly basis. Each license holder shall pay only~~  
 4-21 ~~that portion of the license fee allocable to the number of months~~  
 4-22 ~~during which the license is valid. A license holder shall pay the~~  
 4-23 ~~total license renewal fee at the time of renewal].~~

4-24 (b) To renew a license, the license holder must submit to  
 4-25 the commission [~~department~~] the license renewal fee.

4-26 (c) The commission [~~department~~] may require participation  
 4-27 in a continuing education program as a condition of renewal of a  
 4-28 license. The executive commissioner shall adopt rules to implement  
 4-29 this subsection.

4-30 SECTION 6. Sections 247.024(a), (d), and (e), Health and  
 4-31 Safety Code, are amended to read as follows:

4-32 (a) The executive commissioner by rule shall set license  
 4-33 fees imposed by this chapter:

4-34 (1) on the basis of the number of beds in assisted  
 4-35 living facilities required to pay the fee; and

4-36 (2) in amounts reasonable and necessary to defray the  
 4-37 cost of administering this chapter, but not to exceed \$2,250  
 4-38 [~~\$1,500~~].

4-39 (d) Investigation fees or attorney's fees may not be  
 4-40 assessed against or collected from an assisted living facility by  
 4-41 or on behalf of the commission [~~department~~] or another state agency  
 4-42 unless the commission [~~department~~] or other state agency assesses  
 4-43 and collects a penalty authorized by this chapter from the  
 4-44 facility.

4-45 (e) An applicant who submits a license renewal later than  
 4-46 the 45th day before the expiration date of a current license is  
 4-47 subject to a late fee in accordance with commission [~~department~~]  
 4-48 rules.

4-49 SECTION 7. Section 247.027, Health and Safety Code, is  
 4-50 amended to read as follows:

4-51 Sec. 247.027. INSPECTIONS. (a) In addition to the  
 4-52 inspection required under Section 247.023(a), the commission:

4-53 (1) shall [~~department may~~] inspect each [~~an~~] assisted  
 4-54 living facility at least every two years following the initial  
 4-55 inspection required under Section 247.023(a); [~~annually~~] and

4-56 (2) may inspect a facility at other reasonable times  
 4-57 as necessary to assure compliance with this chapter.

4-58 (b) The commission [~~department~~] shall establish an  
 4-59 inspection checklist based on the minimum standards that describes  
 4-60 the matters subject to inspection. The commission [~~department~~]  
 4-61 shall use the inspection checklist in conducting inspections under  
 4-62 this section and Section 247.023(a).

4-63 SECTION 8. Section 247.0451, Health and Safety Code, is  
 4-64 amended by amending Subsections (a), (b), (d), and (f) and adding  
 4-65 Subsections (g) and (h) to read as follows:

4-66 (a) The commission [~~department~~] may assess an  
 4-67 administrative penalty against a person who:

4-68 (1) violates this chapter or a rule, standard, or  
 4-69 order adopted under this chapter or a term of a license issued under

5-1 this chapter;

5-2 (2) makes a false statement, that the person knows or  
5-3 should know is false, of a material fact:

5-4 (A) on an application for issuance or renewal of  
5-5 a license or in an attachment to the application; or  
5-6 (B) with respect to a matter under investigation  
5-7 by the commission [~~department~~];

5-8 (3) refuses to allow a representative of the  
5-9 commission [~~department~~] to inspect:

5-10 (A) a book, record, or file required to be  
5-11 maintained by an assisted living facility; or  
5-12 (B) any portion of the premises of an assisted  
5-13 living facility;

5-14 (4) wilfully interferes with the work of a  
5-15 representative of the commission [~~department~~] or the enforcement of  
5-16 this chapter;

5-17 (5) wilfully interferes with a representative of the  
5-18 commission [~~department~~] preserving evidence of a violation of this  
5-19 chapter or a rule, standard, or order adopted under this chapter or  
5-20 a term of a license issued under this chapter;

5-21 (6) fails to pay a penalty assessed under this chapter  
5-22 not later than the 30th day after the date the assessment of the  
5-23 penalty becomes final; or

5-24 (7) fails to notify the commission [~~department~~] of a  
5-25 change of ownership before the effective date of the change of  
5-26 ownership.

5-27 (b) Except as provided by Section 247.0452(c), the penalty  
5-28 may not exceed:

5-29 (1) \$5,000 for each violation that:

5-30 (A) represents a pattern of violation that  
5-31 results in actual harm or is widespread in scope and results in  
5-32 actual harm; or

5-33 (B) constitutes an immediate threat to the health  
5-34 or safety of a resident; or

5-35 (2) \$1,000 for each other violation.

5-36 (d) In determining the amount of a penalty, the commission  
5-37 [~~department~~] shall consider any matter that justice may require,  
5-38 but must consider each of the following and make a record of the  
5-39 extent to which each of the following was considered:

5-40 (1) the gradations of penalties established under  
5-41 Subsection (c);

5-42 (2) the seriousness of the violation, including the  
5-43 nature, circumstances, extent, and gravity of the prohibited act  
5-44 and the hazard or potential hazard created by the act to the health  
5-45 or safety of the public;

5-46 (3) the history of previous violations;

5-47 (4) deterrence of future violations;

5-48 (5) efforts to correct the violation; and

5-49 (6) the size of the facility and of the business entity  
5-50 that owns the facility.

5-51 (f) The commission [~~department~~] may not assess a penalty  
5-52 under this section against a resident of an assisted living  
5-53 facility unless the resident is also an employee of the facility or  
5-54 a controlling person.

5-55 (g) The commission shall develop and use a system to record  
5-56 and track the scope and severity of each violation of this chapter  
5-57 or a rule, standard, or order adopted under this chapter for the  
5-58 purpose of assessing an administrative penalty for the violation or  
5-59 taking some other enforcement action against the appropriate  
5-60 assisted living facility to deter future violations. The system:

5-61 (1) must be comparable to the system used by the  
5-62 Centers for Medicare and Medicaid Services to categorize the scope  
5-63 and severity of violations for nursing homes; and

5-64 (2) may be modified, as appropriate, to reflect  
5-65 changes in industry practice or changes made to the system used by  
5-66 the Centers for Medicare and Medicaid Services.

5-67 (h) In this section, "actual harm," "immediate threat to the  
5-68 health or safety of a resident," "pattern of violation," and  
5-69 "widespread in scope" have the meanings assigned by Section

6-1 247.0452.

6-2 SECTION 9. Section 247.0452, Health and Safety Code, is  
 6-3 amended to read as follows:

6-4 Sec. 247.0452. RIGHT TO CORRECT. (a) The commission  
 6-5 [~~department~~] may not collect an administrative penalty from an  
 6-6 assisted living facility under Section 247.0451 if, not later than  
 6-7 the 45th day after the date the facility receives notice under  
 6-8 Section 247.0453(c), the facility corrects the violation.

6-9 (b) Subsection (a) does not apply:

6-10 (1) to a violation that the commission [~~department~~]  
 6-11 determines represents a pattern of violation that results in actual  
 6-12 [~~serious~~] harm [to or death of a resident];

6-13 (2) to a violation that the commission determines is  
 6-14 widespread in scope and results in actual harm;

6-15 (3) to a violation that the commission determines is  
 6-16 widespread in scope, constitutes a potential for actual harm, and  
 6-17 relates to:

6-18 (A) resident assessment;

6-19 (B) staffing, including staff training;

6-20 (C) administration of medication;

6-21 (D) infection control;

6-22 (E) restraints; or

6-23 (F) emergency preparedness and response;

6-24 (4) to a violation that the commission determines  
 6-25 constitutes an immediate threat to the health or safety of a  
 6-26 resident;

6-27 (5) [~~(2)~~] to a violation described by Sections  
 6-28 247.0451(a)(2)-(7) or a violation of Section 260A.014 or 260A.015;

6-29 (6) [~~(3)~~] to a second or subsequent violation of:

6-30 (A) a right of the same resident under Section  
 6-31 247.064; or

6-32 (B) the same right of all residents under Section  
 6-33 247.064; [~~or~~]

6-34 (7) [~~(4)~~] to a violation described by Section 247.066,  
 6-35 which contains its own right to correct provisions; or

6-36 (8) to a second or subsequent violation of Section  
 6-37 326.002 that occurs before the second anniversary of the date of the  
 6-38 first violation.

6-39 (c) An assisted living facility that corrects a violation  
 6-40 must maintain the correction. If the facility fails to maintain the  
 6-41 correction until at least the first anniversary of the date the  
 6-42 correction was made, the commission [~~department~~] may assess and  
 6-43 collect an administrative penalty for the subsequent violation. An  
 6-44 administrative penalty assessed under this subsection is equal to  
 6-45 three times the amount of the original penalty assessed but not  
 6-46 collected. The commission [~~department~~] is not required to provide  
 6-47 the facility with an opportunity under this section to correct the  
 6-48 subsequent violation.

6-49 (d) In this section:

6-50 (1) "Actual harm" means a negative outcome that  
 6-51 compromises a resident's physical, mental, or emotional  
 6-52 well-being.

6-53 (2) "Immediate threat to the health or safety of a  
 6-54 resident" means a situation that causes, or is likely to cause,  
 6-55 serious injury, harm, or impairment to or the death of a resident.

6-56 (3) "Pattern of violation" means repeated, but not  
 6-57 pervasive, failures of an assisted living facility to comply with  
 6-58 this chapter or a rule, standard, or order adopted under this  
 6-59 chapter that:

6-60 (A) result in a violation; and

6-61 (B) are found throughout the services provided by  
 6-62 the facility or that affect or involve the same residents or  
 6-63 facility employees.

6-64 (4) "Widespread in scope" means a violation of this  
 6-65 chapter or a rule, standard, or order adopted under this chapter  
 6-66 that:

6-67 (A) is pervasive throughout the services  
 6-68 provided by the assisted living facility; or

6-69 (B) represents a systemic failure by the assisted

7-1 living facility that affects or has the potential to affect a large  
7-2 portion of or all of the residents of the facility.

7-3 SECTION 10. Section 248A.053, Health and Safety Code, is  
7-4 amended to read as follows:

7-5 Sec. 248A.053. INITIAL OR RENEWAL LICENSE TERM; RENEWAL;  
7-6 NOTIFICATION. (a) An initial or renewal license issued under this  
7-7 chapter expires on the third [~~second~~] anniversary of the date of  
7-8 issuance. The executive commissioner by rule shall adopt a system  
7-9 under which licenses expire on staggered dates during each  
7-10 three-year period. The commission shall prorate the license fee as  
7-11 appropriate if the expiration date of a license changes as a result  
7-12 of this subsection.

7-13 (b) A person applying to renew a center license shall:

7-14 (1) submit a renewal application to the commission  
7-15 [~~department~~] on a [~~the form~~] prescribed form [~~by the department~~] at  
7-16 least 60 days but not more than 120 days before expiration of the  
7-17 license;

7-18 (2) submit the renewal fee in the amount required by  
7-19 agency [~~department~~] rule; and

7-20 (3) comply with any other requirements specified by  
7-21 agency [~~department~~] rule.

7-22 (c) The commission [~~department~~] shall assess a \$50 per day  
7-23 late fee to a license holder who submits a renewal application after  
7-24 the date required by Subsection (b)(1), except that the total  
7-25 amount of a late fee may not exceed the lesser of 50 percent of the  
7-26 license renewal fee or \$500.

7-27 (d) At least 120 days before expiration of a center license,  
7-28 the commission [~~department~~] shall notify the owner or operator of  
7-29 the center of the license expiration.

7-30 SECTION 11. Subchapter F, Chapter 248A, Health and Safety  
7-31 Code, is amended by adding Section 248A.2515 to read as follows:

7-32 Sec. 248A.2515. SYSTEM FOR ASSESSMENT OF PENALTY. The  
7-33 commission shall develop and use a system to record and track the  
7-34 scope and severity of each violation of this chapter or a rule or  
7-35 standard adopted or order issued under this chapter for the purpose  
7-36 of assessing an administrative penalty for the violation or taking  
7-37 some other enforcement action against the appropriate center to  
7-38 deter future violations. The system:

7-39 (1) must be comparable to the system used by the  
7-40 Centers for Medicare and Medicaid Services to categorize the scope  
7-41 and severity of violations for nursing homes; and

7-42 (2) may be modified, as appropriate, to reflect  
7-43 changes in industry practice or changes made to the system used by  
7-44 the Centers for Medicare and Medicaid Services.

7-45 SECTION 12. Sections 252.033(a), (b), (d), (f), and (h),  
7-46 Health and Safety Code, are amended to read as follows:

7-47 (a) After receiving the application, the commission  
7-48 [~~department~~] shall issue a license if, after inspection and  
7-49 investigation, it finds that the applicant and facility meet the  
7-50 requirements established under this chapter.

7-51 (b) The commission [~~department~~] may issue a license only  
7-52 for:

7-53 (1) the premises and persons or governmental unit  
7-54 named in the application; and

7-55 (2) the maximum number of beds specified in the  
7-56 application.

7-57 (d) A license is renewable on the third [~~second~~] anniversary  
7-58 of issuance or renewal of the license after:

7-59 (1) an inspection;

7-60 (2) filing and approval of a renewal report; and

7-61 (3) payment of the renewal fee.

7-62 (f) The commission [~~department~~] may not issue a license for  
7-63 new beds or an expansion of an existing facility under this chapter  
7-64 unless the addition of new beds or the expansion is included in the  
7-65 plan approved by the commission in accordance with Section  
7-66 533A.062.

7-67 (h) The executive commissioner by rule shall:

7-68 (1) define specific, appropriate, and objective  
7-69 criteria on which the commission [~~department~~] may deny an initial

8-1 license application or license renewal or revoke a license; and  
 8-2 (2) adopt a system under which:  
 8-3 (A) licenses expire on staggered dates during  
 8-4 each three-year period; and  
 8-5 (B) the commission prorates the license fee as  
 8-6 appropriate if the expiration date of a license changes as a result  
 8-7 of the system adopted under Paragraph (A).

8-8 SECTION 13. Sections 252.034(a), (e), and (f), Health and  
 8-9 Safety Code, are amended to read as follows:

8-10 (a) The executive commissioner by rule may adopt a fee for a  
 8-11 license issued under this chapter. The fee may not exceed \$225  
 8-12 [~~\$150~~] plus \$7.50 [~~\$5~~] for each unit of capacity or bed space for  
 8-13 which the license is sought.

8-14 (e) All license fees collected under this section shall be  
 8-15 deposited in the state treasury to the credit of the commission  
 8-16 [~~department~~] and may be appropriated to the commission [~~department~~]  
 8-17 to administer and enforce this chapter.

8-18 (f) An applicant who submits an application for license  
 8-19 renewal later than the 45th day before the expiration date of a  
 8-20 current license is subject to a late fee in accordance with  
 8-21 commission [~~department~~] rules.

8-22 SECTION 14. Section 252.041, Health and Safety Code, is  
 8-23 amended to read as follows:

8-24 Sec. 252.041. UNANNOUNCED INSPECTIONS. (a) Each  
 8-25 licensing period, the commission [~~department~~] shall conduct at  
 8-26 least three [~~two~~] unannounced inspections of each facility.

8-27 (b) In order to ensure continuous compliance, the  
 8-28 commission [~~department~~] shall randomly select a sufficient  
 8-29 percentage of facilities for unannounced inspections to be  
 8-30 conducted between 5 p.m. and 8 a.m. Those inspections must be  
 8-31 cursory to avoid to the greatest extent feasible any disruption of  
 8-32 the residents.

8-33 (c) The commission [~~department~~] may require additional  
 8-34 inspections.

8-35 (d) As considered appropriate and necessary by the  
 8-36 commission [~~department~~], the commission [~~department~~] may invite at  
 8-37 least one person as a citizen advocate to participate in  
 8-38 inspections. The invited advocate must be an individual who has an  
 8-39 interest in or who is employed by or affiliated with an organization  
 8-40 or entity that represents, advocates for, or serves individuals  
 8-41 with an intellectual disability or a related condition.

8-42 SECTION 15. Section 252.065, Health and Safety Code, is  
 8-43 amended by amending Subsections (a), (b), (e), (f), (i), and (j) and  
 8-44 adding Subsections (l) and (m) to read as follows:

8-45 (a) The commission [~~department~~] may assess an  
 8-46 administrative penalty against a person who:

8-47 (1) violates this chapter or a rule, standard, or  
 8-48 order adopted or license issued under this chapter;

8-49 (2) makes a false statement, that the person knows or  
 8-50 should know is false, of a material fact:

8-51 (A) on an application for issuance or renewal of  
 8-52 a license or in an attachment to the application; or

8-53 (B) with respect to a matter under investigation  
 8-54 by the commission [~~department~~];

8-55 (3) refuses to allow a representative of the  
 8-56 commission [~~department~~] to inspect:

8-57 (A) a book, record, or file required to be  
 8-58 maintained by the institution; or

8-59 (B) any portion of the premises of an  
 8-60 institution;

8-61 (4) wilfully interferes with the work of a  
 8-62 representative of the commission [~~department~~] or the enforcement of  
 8-63 this chapter;

8-64 (5) wilfully interferes with a representative of the  
 8-65 commission [~~department~~] preserving evidence of a violation of this  
 8-66 chapter or a rule, standard, or order adopted or license issued  
 8-67 under this chapter;

8-68 (6) fails to pay a penalty assessed by the commission  
 8-69 [~~department~~] under this chapter not later than the 10th day after

9-1 the date the assessment of the penalty becomes final;  
 9-2 (7) fails to submit a plan of correction within 10 days  
 9-3 after receiving a statement of licensing violations; or  
 9-4 (8) fails to notify the commission [~~department~~] of a  
 9-5 change in ownership before the effective date of that change of  
 9-6 ownership.  
 9-7 (b) The penalty for a facility with fewer than 60 beds shall  
 9-8 be not less than \$100 or more than \$1,000 for each violation. The  
 9-9 penalty for a facility with 60 beds or more shall be not less than  
 9-10 \$100 or more than \$5,000 for each violation. [~~The total amount of~~  
 9-11 ~~the penalty assessed for a violation continuing or occurring on~~  
 9-12 ~~separate days under this subsection may not exceed \$5,000 for a~~  
 9-13 ~~facility with fewer than 60 beds or \$25,000 for a facility with 60~~  
 9-14 ~~beds or more.~~] Each day a violation occurs or continues is a  
 9-15 separate violation for purposes of imposing a penalty.  
 9-16 (e) The executive commissioner by rule shall provide the  
 9-17 facility with a reasonable period of time, not less than 45 days,  
 9-18 following the first day of a violation to correct the violation  
 9-19 before the commission [~~department~~] may assess an administrative  
 9-20 penalty if a plan of correction has been implemented. This  
 9-21 subsection does not apply to a violation described by Subsections  
 9-22 (a)(2)-(8) or to a violation that the commission [~~department~~]  
 9-23 determines:  
 9-24 (1) represents a pattern of violation that results  
 9-25 [~~has resulted~~] in actual [~~serious~~] harm [~~to or the death of a~~  
 9-26 ~~resident~~];  
 9-27 (2) is widespread in scope and results in actual harm;  
 9-28 (3) is widespread in scope, constitutes a potential  
 9-29 for actual harm, and relates to:  
 9-30 (A) staff treatment of a resident;  
 9-31 (B) active treatment;  
 9-32 (C) client behavior and facility practices;  
 9-33 (D) health care services;  
 9-34 (E) drug administration;  
 9-35 (F) infection control;  
 9-36 (G) food and nutrition services; or  
 9-37 (H) emergency preparedness and response;  
 9-38 (4) [~~(2)~~] constitutes an immediate [~~a serious~~] threat  
 9-39 to the health or safety of a resident; or  
 9-40 (5) [~~(3)~~] substantially limits the facility's  
 9-41 [~~institution's~~] capacity to provide care.  
 9-42 (f) The commission [~~department~~] may not assess an  
 9-43 administrative penalty for a minor violation if the person corrects  
 9-44 the violation not later than the 46th day after the date the person  
 9-45 receives notice of the violation.  
 9-46 (i) The commission [~~department~~] may not assess an  
 9-47 administrative penalty against a state agency.  
 9-48 (j) Notwithstanding any other provision of this section, an  
 9-49 administrative penalty ceases to be incurred on the date a  
 9-50 violation is corrected. The administrative penalty ceases to be  
 9-51 incurred only if the facility:  
 9-52 (1) notifies the commission [~~department~~] in writing of  
 9-53 the correction of the violation and of the date the violation was  
 9-54 corrected; and  
 9-55 (2) shows later that the violation was corrected.  
 9-56 (1) The commission shall develop and use a system to record  
 9-57 and track the scope and severity of each violation of this chapter  
 9-58 or a rule, standard, or order adopted under this chapter for the  
 9-59 purpose of assessing an administrative penalty for the violation or  
 9-60 taking some other enforcement action against the appropriate  
 9-61 facility to deter future violations. The system:  
 9-62 (1) must be comparable to the system used by the  
 9-63 Centers for Medicare and Medicaid Services to categorize the scope  
 9-64 and severity of violations for nursing homes; and  
 9-65 (2) may be modified, as appropriate, to reflect  
 9-66 changes in industry practice or changes made to the system used by  
 9-67 the Centers for Medicare and Medicaid Services.  
 9-68 (m) In this section:  
 9-69 (1) "Actual harm" means a negative outcome that

10-1 compromises a resident's physical, mental, or emotional  
10-2 well-being.

10-3 (2) "Immediate threat to the health or safety of a  
10-4 resident" means a situation that causes, or is likely to cause,  
10-5 serious injury, harm, or impairment to or the death of a resident.

10-6 (3) "Pattern of violation" means repeated, but not  
10-7 pervasive, failures of a facility to comply with this chapter or a  
10-8 rule, standard, or order adopted under this chapter that:

10-9 (A) result in a violation; and

10-10 (B) are found throughout the services provided by  
10-11 the facility or that affect or involve the same residents or  
10-12 facility employees.

10-13 (4) "Widespread in scope" means a violation of this  
10-14 chapter or a rule, standard, or order adopted under this chapter  
10-15 that:

10-16 (A) is pervasive throughout the services  
10-17 provided by the facility; or

10-18 (B) that affects or has the potential to affect a  
10-19 large portion of or all of the residents of the facility.

10-20 SECTION 16. Subtitle G, Title 4, Health and Safety Code, is  
10-21 amended by adding Chapter 326 to read as follows:

10-22 CHAPTER 326. STAFFING REQUIREMENTS FOR FACILITIES PROVIDING CARE TO  
10-23 PERSONS WITH ALZHEIMER'S DISEASE OR RELATED DISORDERS

10-24 Sec. 326.001. DEFINITIONS. In this chapter:

10-25 (1) "Commission" means the Health and Human Services  
10-26 Commission.

10-27 (2) "Facility" means:

10-28 (A) a nursing facility licensed under Chapter  
10-29 242;

10-30 (B) a continuing care facility regulated under  
10-31 Chapter 246;

10-32 (C) an assisted living facility licensed under  
10-33 Chapter 247;

10-34 (D) a day activity and health services facility  
10-35 licensed under Chapter 103, Human Resources Code;

10-36 (E) an establishment subject to Chapter 105,  
10-37 Human Resources Code;

10-38 (F) a community home qualified under Chapter 123,  
10-39 Human Resources Code; and

10-40 (G) an adult foster care provider that contracts  
10-41 with the commission.

10-42 Sec. 326.002. WRITTEN POLICY REQUIRED. A facility shall  
10-43 adopt, implement, and enforce a written policy that:

10-44 (1) requires a facility employee who provides direct  
10-45 care to a person with Alzheimer's disease or a related disorder to  
10-46 successfully complete training in the provision of care to persons  
10-47 with Alzheimer's disease and related disorders; and

10-48 (2) ensures the care and services provided by a  
10-49 facility employee to a person with Alzheimer's disease or a related  
10-50 disorder meet the specific identified needs of the person relating  
10-51 to the person's diagnosis of Alzheimer's disease or a related  
10-52 disorder.

10-53 Sec. 326.003. ENFORCEMENT. (a) The commission may assess  
10-54 an administrative penalty against a facility for a violation of  
10-55 Section 326.002.

10-56 (b) The commission is not required to provide a facility an  
10-57 opportunity to correct a second or subsequent violation of Section  
10-58 326.002 that occurs before the second anniversary of the date of the  
10-59 first violation.

10-60 (c) A violation of Section 326.002 constitutes a violation  
10-61 of the law regulating a facility, and the commission may initiate  
10-62 for the violation any other enforcement action authorized by that  
10-63 law against the facility, including an adult foster care facility  
10-64 with three or fewer beds.

10-65 Sec. 326.004. RULES. The executive commissioner shall  
10-66 adopt rules related to the administration and implementation of  
10-67 this chapter.

10-68 SECTION 17. Section 103.003, Human Resources Code, is  
10-69 amended by amending Subdivision (1) and adding Subdivisions (1-a)

11-1 and (4-b) to read as follows:

11-2 (1) "Commission" means the Health and Human Services  
11-3 Commission.

11-4 (1-a) "Day activity and health services facility"  
11-5 means a facility that provides services under a day activity and  
11-6 health services program on a daily or regular basis but not  
11-7 overnight to four or more elderly persons or persons with  
11-8 disabilities who are not related by blood, marriage, or adoption to  
11-9 the owner of the facility.

11-10 (4-b) "Facility" means a day activity and health  
11-11 services facility.

11-12 SECTION 18. Sections 103.006(a) and (b), Human Resources  
11-13 Code, are amended to read as follows:

11-14 (a) The commission [~~department~~] shall issue a license to  
11-15 operate a day activity and health services facility to a person who  
11-16 has met the application requirements and received approval after an  
11-17 on-site inspection.

11-18 (b) The license expires three [~~two~~] years from the date of  
11-19 its issuance. The executive commissioner by rule shall [~~may~~] adopt  
11-20 a system under which licenses expire on staggered [~~various~~] dates  
11-21 during the three-year [~~two-year~~] period. The commission shall  
11-22 prorate the license fee as appropriate if the expiration date of a  
11-23 license changes as a result of this subsection [~~For the year in~~  
11-24 ~~which a license expiration date is changed, the department shall~~  
11-25 ~~prorate the license fee on a monthly basis. Each license holder~~  
11-26 ~~shall pay only that portion of the license fee allocable to the~~  
11-27 ~~number of months for which the license is valid. A license holder~~  
11-28 ~~shall pay the total license renewal fee at the time of renewal].~~

11-29 SECTION 19. Section 103.007, Human Resources Code, is  
11-30 amended to read as follows:

11-31 Sec. 103.007. LICENSE APPLICATION. (a) An applicant for a  
11-32 license to operate a day activity and health services facility must  
11-33 file an application on a form prescribed by the commission  
11-34 [~~department~~] together with a license fee of \$75 [~~\$50~~].

11-35 (b) The applicant must provide evidence of:

11-36 (1) the ability to comply with the requirements of the  
11-37 commission [~~department~~];

11-38 (2) responsible management; and

11-39 (3) qualified professional staff and personnel.

11-40 (c) A person who operates a facility that is licensed under  
11-41 this chapter must file an application for a renewal license not  
11-42 later than the 45th day before the expiration date of the current  
11-43 license on a form prescribed by the commission [~~department~~]  
11-44 together with a renewal fee of \$50.

11-45 (d) An applicant for a license renewal who submits an  
11-46 application later than the 45th day before the expiration date of  
11-47 the license is subject to a late fee in accordance with commission  
11-48 [~~department~~] rules.

11-49 SECTION 20. Section 103.008, Human Resources Code, is  
11-50 amended to read as follows:

11-51 Sec. 103.008. INSPECTIONS. (a) In addition to the  
11-52 inspection required under Section 103.006(a), the commission:

11-53 (1) shall inspect each facility every two years  
11-54 following the initial inspection required under Section  
11-55 103.006(a); and

11-56 (2) [~~The department~~] may inspect [~~enter the premises~~  
11-57 ~~of~~] a facility at other reasonable times as [~~and make an inspection~~]  
11-58 necessary to ensure compliance with this chapter [~~issue a license~~  
11-59 ~~or renew a license~~].

11-60 (b) Any person may request an inspection of a facility by  
11-61 notifying the commission [~~department~~] in writing of an alleged  
11-62 violation of a licensing requirement. The complaint shall be as  
11-63 detailed as possible and signed by the complainant. The commission  
11-64 [~~department~~] shall perform an on-site inspection as soon as  
11-65 feasible but no later than 30 days after receiving the complaint  
11-66 unless after an investigation the complaint is found to be  
11-67 frivolous. The commission [~~department~~] shall respond to a  
11-68 complainant in writing. The commission [~~department~~] shall also  
11-69 receive and investigate anonymous complaints.

12-1 SECTION 21. Section 103.012, Human Resources Code, is  
12-2 amended by amending Subsections (a) and (e) and adding Subsection  
12-3 (g) to read as follows:

12-4 (a) The commission [~~department~~] may assess an  
12-5 administrative penalty against a person who:

12-6 (1) violates this chapter, a rule, standard, or order  
12-7 adopted under this chapter, or a term of a license issued under this  
12-8 chapter;

12-9 (2) makes a false statement of a material fact that the  
12-10 person knows or should know is false:

12-11 (A) on an application for issuance or renewal of  
12-12 a license or in an attachment to the application; or

12-13 (B) with respect to a matter under investigation  
12-14 by the commission [~~department~~];

12-15 (3) refuses to allow a representative of the  
12-16 commission [~~department~~] to inspect:

12-17 (A) a book, record, or file required to be  
12-18 maintained by a day activity and health services facility; or

12-19 (B) any portion of the premises of a day activity  
12-20 and health services facility;

12-21 (4) wilfully interferes with the work of a  
12-22 representative of the commission [~~department~~] or the enforcement of  
12-23 this chapter;

12-24 (5) wilfully interferes with a representative of the  
12-25 commission [~~department~~] preserving evidence of a violation of this  
12-26 chapter, a rule, standard, or order adopted under this chapter, or a  
12-27 term of a license issued under this chapter;

12-28 (6) fails to pay a penalty assessed under this chapter  
12-29 not later than the 30th day after the date the assessment of the  
12-30 penalty becomes final; or

12-31 (7) fails to notify the commission [~~department~~] of a  
12-32 change of ownership before the effective date of the change of  
12-33 ownership.

12-34 (e) In determining the amount of a penalty, the commission  
12-35 [~~department~~] shall consider any matter that justice may require,  
12-36 including:

12-37 (1) the gradations of penalties established under  
12-38 Subsection (d);

12-39 (2) the seriousness of the violation, including the  
12-40 nature, circumstances, extent, and gravity of the prohibited act  
12-41 and the hazard or potential hazard created by the act to the health  
12-42 or safety of the public;

12-43 (3) the history of previous violations;

12-44 (4) the deterrence of future violations; and

12-45 (5) the efforts to correct the violation.

12-46 (g) The commission shall develop and use a system to record  
12-47 and track the scope and severity of each violation of this chapter  
12-48 or a rule, standard, or order adopted under this chapter for the  
12-49 purpose of assessing an administrative penalty for the violation or  
12-50 taking some other enforcement action against the appropriate  
12-51 facility to deter future violations. The system:

12-52 (1) must be comparable to the system used by the  
12-53 Centers for Medicare and Medicaid Services to categorize the scope  
12-54 and severity of violations for nursing homes; and

12-55 (2) may be modified, as appropriate, to reflect  
12-56 changes in industry practice or changes made to the system used by  
12-57 the Centers for Medicare and Medicaid Services.

12-58 SECTION 22. Section 103.013, Human Resources Code, is  
12-59 amended to read as follows:

12-60 Sec. 103.013. RIGHT TO CORRECT BEFORE IMPOSITION OF  
12-61 ADMINISTRATIVE PENALTY. (a) The commission [~~department~~] may not  
12-62 collect an administrative penalty from a day activity and health  
12-63 services facility under Section 103.012 if, not later than the 45th  
12-64 day after the date the facility receives notice under Section  
12-65 103.014(c), the facility corrects the violation.

12-66 (b) Subsection (a) does not apply to:

12-67 (1) a violation that the commission [~~department~~]  
12-68 determines:

12-69 (A) represents a pattern of violation that

13-1 results in actual [~~serious~~] harm [~~to or death of a person attending~~  
13-2 ~~the facility~~];

13-3 (B) is widespread in scope and results in actual  
13-4 harm;

13-5 (C) is widespread in scope, constitutes a  
13-6 potential for actual harm, and relates to:

13-7 (i) staffing, including staff training,  
13-8 ratio, and health;

13-9 (ii) administration of medication; or  
13-10 (iii) emergency preparedness and response;

13-11 (D) [~~(B)~~] constitutes an immediate [~~a serious~~]  
13-12 threat to the health or [~~and~~] safety of an elderly person or a  
13-13 person with a disability receiving services at a [~~a person~~  
13-14 ~~attending the~~] facility; or

13-15 (E) [~~(C)~~] substantially limits the facility's  
13-16 capacity to provide care;

13-17 (2) a violation described by Sections  
13-18 103.012(a)(2)-(7); [~~or~~]

13-19 (3) a violation of Section 103.011; or

13-20 (4) a second or subsequent violation of Section  
13-21 326.002, Health and Safety Code, that occurs before the second  
13-22 anniversary of the date of the first violation.

13-23 (c) A day activity and health services facility that  
13-24 corrects a violation must maintain the correction. If the facility  
13-25 fails to maintain the correction until at least the first  
13-26 anniversary after the date the correction was made, the commission  
13-27 [~~department~~] may assess and collect an administrative penalty for  
13-28 the subsequent violation. An administrative penalty assessed under  
13-29 this subsection is equal to three times the amount of the original  
13-30 penalty assessed but not collected. The commission [~~department~~] is  
13-31 not required to provide the facility with an opportunity under this  
13-32 section to correct the subsequent violation.

13-33 (d) In this section:

13-34 (1) "Actual harm" means a negative outcome that  
13-35 compromises the physical, mental, or emotional well-being of an  
13-36 elderly person or a person with a disability receiving services at a  
13-37 facility.

13-38 (2) "Immediate threat to the health or safety of an  
13-39 elderly person or a person with a disability" means a situation that  
13-40 causes, or is likely to cause, serious injury, harm, or impairment  
13-41 to or the death of an elderly person or a person with a disability  
13-42 receiving services at a facility.

13-43 (3) "Pattern of violation" means repeated, but not  
13-44 pervasive, failures of a facility to comply with this chapter or a  
13-45 rule, standard, or order adopted under this chapter that:

13-46 (A) result in a violation; and

13-47 (B) are found throughout the services provided by  
13-48 the facility or that affect or involve the same elderly persons or  
13-49 persons with disabilities receiving services at the facility or the  
13-50 same facility employees.

13-51 (4) "Widespread in scope" means a violation of this  
13-52 chapter or a rule, standard, or order adopted under this chapter  
13-53 that:

13-54 (A) is pervasive throughout the services  
13-55 provided by the facility; or

13-56 (B) represents a systemic failure by the facility  
13-57 that affects or has the potential to affect a large portion of or  
13-58 all of the elderly persons or persons with disabilities receiving  
13-59 services at the facility.

13-60 SECTION 23. Section 247.0025, Health and Safety Code, is  
13-61 repealed.

13-62 SECTION 24. The changes in law made by this Act apply only  
13-63 to actions taken by the Health and Human Services Commission and  
13-64 license holders under Chapter 103, Human Resources Code, and  
13-65 Chapters 242, 247, 248A, and 252, Health and Safety Code, on or  
13-66 after the effective date of this Act. An action taken before the  
13-67 effective date of this Act is governed by the law in effect at that  
13-68 time, and the former law is continued in effect for that purpose.

13-69 SECTION 25. Chapter 326, Health and Safety Code, as added by

14-1 this Act, does not affect the terms of a contract entered into  
14-2 before the effective date of this Act, except that if the contract  
14-3 is renewed, modified, or extended on or after the effective date of  
14-4 this Act, Chapter 326 applies to the contract beginning on the date  
14-5 of renewal, modification, or extension.

14-6 SECTION 26. This Act takes effect September 1, 2017.

14-7

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