

By: Schwertner

S.B. No. 932

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the licensing of, the executive commissioner of the
3 Health and Human Services Commission's duties with respect to, and
4 the administrative penalties for certain long-term care
5 facilities.

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

7 SECTION 1. Sections 531.058(a) and (a-1), Government Code,
8 are amended to read as follows:

9 (a) The executive commissioner by rule shall establish an
10 informal dispute resolution process in accordance with this
11 section. The process must provide for adjudication by an
12 appropriate disinterested person of disputes relating to a proposed
13 enforcement action or related proceeding of the commission under
14 Section 32.021(d), Human Resources Code, or the Department of Aging
15 and Disability Services or its successor agency under Chapter 242,
16 247, or 252, Health and Safety Code. The informal dispute
17 resolution process must require:

18 (1) an institution or facility to request informal
19 dispute resolution not later than the 10th calendar day after
20 notification by the commission or department, as applicable, of the
21 violation of a standard or standards; and

22 (2) the commission to complete the process not later
23 than:

24 (A) the 30th calendar day after receipt of a

1 request from an institution or facility, other than an assisted
2 living facility, for informal dispute resolution; or

3 (B) the 90th calendar day after receipt of a
4 request from an assisted living facility for informal dispute
5 resolution.

6 (a-1) As part of the informal dispute resolution process
7 established under this section, the commission shall contract with
8 an appropriate disinterested person who is a nonprofit organization
9 to adjudicate disputes between an institution or facility licensed
10 under Chapter [242](#) or [247](#), Health and Safety Code, and the Department
11 of Aging and Disability Services or its successor agency concerning
12 a statement of violations prepared by the department in connection
13 with a survey conducted by the department of the institution or
14 facility. Section [2009.053](#) does not apply to the selection of an
15 appropriate disinterested person under this subsection. The person
16 with whom the commission contracts shall adjudicate all disputes
17 described by this subsection.

18 SECTION 2. Subchapter B, Chapter [531](#), Government Code, is
19 amended by adding Section 531.0585 to read as follows:

20 Sec. 531.0585. ISSUANCE OF MATERIALS TO CERTAIN LONG-TERM
21 CARE FACILITIES. The executive commissioner shall review the
22 commission's methods for issuing informational letters, policy
23 updates, policy clarifications, and other related materials to an
24 entity licensed under Chapter [103](#), Human Resources Code, or Chapter
25 [242](#), [247](#), [248A](#), or [252](#), Health and Safety Code, and develop and
26 implement more efficient methods to issue those materials as
27 appropriate.

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

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

6 (1) violates this chapter or a rule, standard, or
7 order adopted or license issued under this chapter;

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

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

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

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

16 (A) a book, record, or file required to be
17 maintained by an institution; or

18 (B) any portion of the premises of an
19 institution;

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

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

27 (6) fails to pay a penalty assessed by the commission

1 ~~[department]~~ under this chapter not later than the 10th day after
2 the date the assessment of the penalty becomes final; or

3 (7) fails to notify the commission ~~[department]~~ of a
4 change of ownership before the effective date of the change of
5 ownership.

6 (e) In determining the amount of a penalty, the commission
7 ~~[department]~~ shall consider any matter that justice may require,
8 including:

9 (1) the gradations of penalties established under
10 Subsection (d);

11 (2) the seriousness of the violation, including the
12 nature, circumstances, extent, and gravity of the prohibited act
13 and the hazard or potential hazard created by the act to the health
14 or safety of the public;

15 (3) the history of previous violations;

16 (4) deterrence of future violations; and

17 (5) efforts to correct the violation.

18 (i) The commission shall develop and use a system to record
19 and track the scope and severity of each violation of this chapter
20 or a rule, standard, or order adopted under this chapter for the
21 purpose of assessing an administrative penalty for the violation or
22 taking some other enforcement action against the appropriate
23 institution to deter future violations. The system:

24 (1) must be comparable to the system used by the
25 Centers for Medicare and Medicaid Services to categorize the scope
26 and severity of violations for nursing homes; and

27 (2) may be modified, as appropriate, to reflect

1 changes in industry practice or changes made to the system used by
2 the Centers for Medicare and Medicaid Services.

3 SECTION 4. Section 242.0665, Health and Safety Code, is
4 amended to read as follows:

5 Sec. 242.0665. RIGHT TO CORRECT. (a) The commission
6 [~~department~~] may not collect an administrative penalty against an
7 institution under this subchapter if, not later than the 45th day
8 after the date the institution receives notice under Section
9 242.067(c), the institution corrects the violation.

10 (b) Subsection (a) does not apply:

11 (1) to a violation that the commission [~~department~~]
12 determines:

13 (A) represents a pattern of violations that
14 results in actual [~~serious~~] harm [~~to or death of a resident~~];

15 (B) results in actual harm that is pervasive
16 throughout the services provided by the institution or that
17 represents a systemic failure by the institution that affects or
18 has the potential to affect a large number of or all of the
19 residents of the institution;

20 (C) constitutes the potential for actual harm
21 that is pervasive throughout the services provided by the
22 institution or that represents a systemic failure by the
23 institution that affects or has the potential to affect a large
24 number of or all of the residents of the institution and is a
25 violation of this chapter or a rule, standard, or order adopted
26 under this chapter relating to:

27 (i) residents' rights;

- 1 (ii) treatment of residents;
- 2 (iii) resident behavior and institution
- 3 practices;
- 4 (iv) quality of care;
- 5 (v) medication errors;
- 6 (vi) standard menus and nutritional
- 7 adequacy;
- 8 (vii) physician visits;
- 9 (viii) infection control;
- 10 (ix) life safety from fire; or
- 11 (x) emergency preparedness and response;

12 (D) [~~(B)~~] constitutes an immediate [~~a serious~~]
13 threat to the health or safety of a resident; or

14 (E) [~~(C)~~] substantially limits the institution's
15 capacity to provide care;

16 (2) to a violation described by Sections
17 [242.066](#)(a)(2)-(7);

18 (3) to a violation of Section [260A.014](#) or [260A.015](#); or

19 (4) to a violation of a right of a resident adopted
20 under Subchapter L.

21 (c) An institution that corrects a violation under
22 Subsection (a) must maintain the correction. If the institution
23 fails to maintain the correction until at least the first
24 anniversary of the date the correction was made, the commission
25 [~~department~~] may assess an administrative penalty under this
26 subchapter for the subsequent violation. A penalty assessed under
27 this subsection shall be equal to three times the amount of the

1 penalty assessed but not collected under Subsection (a). The
2 commission [~~department~~] is not required to provide the institution
3 an opportunity to correct the subsequent violation under this
4 section.

5 (d) In this section:

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

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

12 (3) "Pattern of violations" means the repeated, but
13 not pervasive, occurrence of violations that are found throughout
14 the services provided by an institution or that affect or involve
15 the same residents or institution employees.

16 SECTION 5. Section 247.023, Health and Safety Code, is
17 amended to read as follows:

18 Sec. 247.023. ISSUANCE AND RENEWAL OF LICENSE. (a) The
19 commission [~~department~~] shall issue a license if, after inspection
20 and investigation, it finds that the applicant, the assisted living
21 facility, and all controlling persons with respect to the applicant
22 or facility meet the requirements of this chapter and the standards
23 adopted under this chapter. The license expires on the third
24 [~~second~~] anniversary of the date of its issuance. The executive
25 commissioner by rule shall [~~may~~] adopt a system under which
26 licenses expire on staggered [~~various~~] dates during each [~~the~~]
27 three-year [~~two-year~~] period. The commission shall prorate the

1 license fee as appropriate if the expiration date of a license
2 changes as a result of this subsection [~~For the year in which a~~
3 ~~license expiration date is changed, the department shall prorate~~
4 ~~the license fee on a monthly basis. Each license holder shall pay~~
5 ~~only that portion of the license fee allocable to the number of~~
6 ~~months during which the license is valid. A license holder shall~~
7 ~~pay the total license renewal fee at the time of renewal~~].

8 (b) To renew a license, the license holder must submit to
9 the commission [~~department~~] the license renewal fee.

10 (c) The commission [~~department~~] may require participation
11 in a continuing education program as a condition of renewal of a
12 license. The executive commissioner shall adopt rules to implement
13 this subsection.

14 SECTION 6. Section 247.027, Health and Safety Code, is
15 amended to read as follows:

16 Sec. 247.027. INSPECTIONS. (a) In addition to the
17 inspection required under Section 247.023(a), the commission:

18 (1) shall [~~department may~~] inspect each [~~an~~] assisted
19 living facility every two years following the initial inspection
20 required under Section 247.023(a); [~~annually~~] and

21 (2) may inspect a facility at other reasonable times
22 as necessary to assure compliance with this chapter.

23 (b) The commission [~~department~~] shall establish an
24 inspection checklist based on the minimum standards that describes
25 the matters subject to inspection. The commission [~~department~~]
26 shall use the inspection checklist in conducting inspections under
27 this section and Section 247.023(a).

1 SECTION 7. Section 247.0451, Health and Safety Code, is
2 amended by amending Subsections (a), (b), (d), and (f) and adding
3 Subsections (g) and (h) to read as follows:

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

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

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

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

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

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

17 (A) a book, record, or file required to be
18 maintained by an assisted living facility; or

19 (B) any portion of the premises of an assisted
20 living facility;

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

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

1 (6) fails to pay a penalty assessed under this chapter
2 not later than the 30th day after the date the assessment of the
3 penalty becomes final; or

4 (7) fails to notify the commission [~~department~~] of a
5 change of ownership before the effective date of the change of
6 ownership.

7 (b) Except as provided by Section 247.0452(c), the penalty
8 may not exceed:

9 (1) \$5,000 for each violation that results in actual
10 harm or that constitutes an immediate threat to the health or safety
11 of a resident; or

12 (2) \$1,000 for each other violation.

13 (d) In determining the amount of a penalty, the commission
14 [~~department~~] shall consider any matter that justice may require,
15 but must consider each of the following and make a record of the
16 extent to which each of the following was considered:

17 (1) the gradations of penalties established under
18 Subsection (c);

19 (2) the seriousness of the violation, including the
20 nature, circumstances, extent, and gravity of the prohibited act
21 and the hazard or potential hazard created by the act to the health
22 or safety of the public;

23 (3) the history of previous violations;

24 (4) deterrence of future violations;

25 (5) efforts to correct the violation; and

26 (6) the size of the facility and of the business entity
27 that owns the facility.

1 (f) The commission [~~department~~] may not assess a penalty
2 under this section against a resident of an assisted living
3 facility unless the resident is also an employee of the facility or
4 a controlling person.

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

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

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

17 (h) In this section:

18 (1) "Actual harm" has the meaning assigned by Section
19 [247.0452](#).

20 (2) "Immediate threat to the health or safety of a
21 resident" has the meaning assigned by Section [247.0452](#).

22 SECTION 8. Section [247.0452](#), Health and Safety Code, is
23 amended to read as follows:

24 Sec. 247.0452. RIGHT TO CORRECT. (a) The commission
25 [~~department~~] may not collect an administrative penalty from an
26 assisted living facility under Section [247.0451](#) if, not later than
27 the 45th day after the date the facility receives notice under

1 Section 247.0453(c), the facility corrects the violation.

2 (b) Subsection (a) does not apply:

3 (1) to a violation that the commission [~~department~~]
4 determines represents a pattern of violations that results in
5 actual [~~serious~~] harm [~~to or death of a resident~~];

6 (2) to a violation that the commission determines
7 results in actual harm that is pervasive throughout the services
8 provided by the assisted living facility or that represents a
9 systemic failure by the assisted living facility that affects or
10 has the potential to affect a large number of or all of the
11 residents of the facility;

12 (3) to a violation that the commission determines
13 constitutes the potential for actual harm that is pervasive
14 throughout the services provided by the assisted living facility or
15 that represents a systemic failure by the assisted living facility
16 that affects or has the potential to affect a large number of or all
17 of the residents of the facility and is a violation of this chapter
18 or a rule, standard, or order adopted under this chapter relating
19 to:

20 (A) resident assessment;

21 (B) staffing, including staff training;

22 (C) resident policies, including residents'
23 rights;

24 (D) administration of medication;

25 (E) activities;

26 (F) infection control;

27 (G) restraints; or

1 (H) emergency preparedness and response;
2 (4) to a violation that the commission determines
3 constitutes an immediate threat to the health or safety of a
4 resident;

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

7 (6) [~~(3)~~] to a second or subsequent violation of:

8 (A) a right of the same resident under Section
9 247.064; or

10 (B) the same right of all residents under Section
11 247.064; or

12 (7) [~~(4)~~] to a violation described by Section 247.066,
13 which contains its own right to correct provisions.

14 (c) An assisted living facility that corrects a violation
15 must maintain the correction. If the facility fails to maintain the
16 correction until at least the first anniversary of the date the
17 correction was made, the commission [~~department~~] may assess and
18 collect an administrative penalty for the subsequent violation. An
19 administrative penalty assessed under this subsection is equal to
20 three times the amount of the original penalty assessed but not
21 collected. The commission [~~department~~] is not required to provide
22 the facility with an opportunity under this section to correct the
23 subsequent violation.

24 (d) In this section:

25 (1) "Actual harm" means a negative outcome that
26 compromises a resident's physical, mental, or emotional
27 well-being.

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

4 (3) "Pattern of violations" means the repeated, but
5 not pervasive, occurrence of violations that are found throughout
6 the services provided by an assisted living facility or that affect
7 or involve the same residents or facility employees.

8 SECTION 9. Section 248A.053, Health and Safety Code, is
9 amended to read as follows:

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

18 (b) A person applying to renew a center license shall:

19 (1) submit a renewal application to the commission
20 [~~department~~] on a [~~the form~~] prescribed form [~~by the department~~] at
21 least 60 days but not more than 120 days before expiration of the
22 license;

23 (2) submit the renewal fee in the amount required by
24 agency [~~department~~] rule; and

25 (3) comply with any other requirements specified by
26 agency [~~department~~] rule.

27 (c) The commission [~~department~~] shall assess a \$50 per day

1 late fee to a license holder who submits a renewal application after
2 the date required by Subsection (b)(1), except that the total
3 amount of a late fee may not exceed the lesser of 50 percent of the
4 license renewal fee or \$500.

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

8 SECTION 10. Subchapter F, Chapter 248A, Health and Safety
9 Code, is amended by adding Section 248A.2515 to read as follows:

10 Sec. 248A.2515. SYSTEM FOR ASSESSMENT OF PENALTY. The
11 commission shall develop and use a system to record and track the
12 scope and severity of each violation of this chapter or a rule or
13 standard adopted or order issued under this chapter for the purpose
14 of assessing an administrative penalty for the violation or taking
15 some other enforcement action against the appropriate center to
16 deter future violations. The system:

17 (1) must be comparable to the system used by the
18 Centers for Medicare and Medicaid Services to categorize the scope
19 and severity of violations for nursing homes; and

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

23 SECTION 11. Sections 252.033(a), (b), (d), (f), and (h),
24 Health and Safety Code, are amended to read as follows:

25 (a) After receiving the application, the commission
26 [~~department~~] shall issue a license if, after inspection and
27 investigation, it finds that the applicant and facility meet the

1 requirements established under this chapter.

2 (b) The commission [~~department~~] may issue a license only
3 for:

4 (1) the premises and persons or governmental unit
5 named in the application; and

6 (2) the maximum number of beds specified in the
7 application.

8 (d) A license is renewable on the third [~~second~~] anniversary
9 of issuance or renewal of the license after:

10 (1) an inspection;

11 (2) filing and approval of a renewal report; and

12 (3) payment of the renewal fee.

13 (f) The commission [~~department~~] may not issue a license for
14 new beds or an expansion of an existing facility under this chapter
15 unless the addition of new beds or the expansion is included in the
16 plan approved by the commission in accordance with Section
17 [533A.062](#).

18 (h) The executive commissioner by rule shall:

19 (1) define specific, appropriate, and objective
20 criteria on which the commission [~~department~~] may deny an initial
21 license application or license renewal or revoke a license; and

22 (2) adopt a system under which:

23 (A) licenses expire on staggered dates during
24 each three-year period; and

25 (B) the commission prorates the license fee as
26 appropriate if the expiration date of a license changes as a result
27 of the system adopted under Paragraph (A).

1 SECTION 12. Section 252.041, Health and Safety Code, is
2 amended to read as follows:

3 Sec. 252.041. UNANNOUNCED INSPECTIONS. (a) Each licensing
4 period, the commission [~~department~~] shall conduct at least three
5 [~~two~~] unannounced inspections of each facility.

6 (b) In order to ensure continuous compliance, the
7 commission [~~department~~] shall randomly select a sufficient
8 percentage of facilities for unannounced inspections to be
9 conducted between 5 p.m. and 8 a.m. Those inspections must be
10 cursory to avoid to the greatest extent feasible any disruption of
11 the residents.

12 (c) The commission [~~department~~] may require additional
13 inspections.

14 (d) As considered appropriate and necessary by the
15 commission [~~department~~], the commission [~~department~~] may invite at
16 least one person as a citizen advocate to participate in
17 inspections. The invited advocate must be an individual who has an
18 interest in or who is employed by or affiliated with an organization
19 or entity that represents, advocates for, or serves individuals
20 with an intellectual disability or a related condition.

21 SECTION 13. Section 252.065, Health and Safety Code, is
22 amended by amending Subsections (a), (b), (e), (f), (i), and (j) and
23 adding Subsections (l) and (m) to read as follows:

24 (a) The commission [~~department~~] may assess an
25 administrative penalty against a person who:

26 (1) violates this chapter or a rule, standard, or
27 order adopted or license issued under this chapter;

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

3 (A) on an application for issuance or renewal of
4 a license or in an attachment to the application; or

5 (B) with respect to a matter under investigation
6 by the commission [~~department~~];

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

9 (A) a book, record, or file required to be
10 maintained by the institution; or

11 (B) any portion of the premises of an
12 institution;

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

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

20 (6) fails to pay a penalty assessed by the commission
21 [~~department~~] under this chapter not later than the 10th day after
22 the date the assessment of the penalty becomes final;

23 (7) fails to submit a plan of correction within 10 days
24 after receiving a statement of licensing violations; or

25 (8) fails to notify the commission [~~department~~] of a
26 change in ownership before the effective date of that change of
27 ownership.

1 (b) The penalty for a facility with fewer than 60 beds shall
2 be not less than \$100 or more than \$1,000 for each violation. The
3 penalty for a facility with 60 beds or more shall be not less than
4 \$100 or more than \$5,000 for each violation. [~~The total amount of~~
5 ~~the penalty assessed for a violation continuing or occurring on~~
6 ~~separate days under this subsection may not exceed \$5,000 for a~~
7 ~~facility with fewer than 60 beds or \$25,000 for a facility with 60~~
8 ~~beds or more.~~] Each day a violation occurs or continues is a
9 separate violation for purposes of imposing a penalty.

10 (e) The executive commissioner by rule shall provide the
11 facility with a reasonable period of time, not less than 45 days,
12 following the first day of a violation to correct the violation
13 before the commission [~~department~~] may assess an administrative
14 penalty if a plan of correction has been implemented. This
15 subsection does not apply to a violation described by Subsections
16 (a)(2)-(8) or to a violation that the commission [~~department~~]
17 determines:

18 (1) represents a pattern of violations that results
19 [~~has resulted~~] in actual [~~serious~~] harm [~~to or the death of a~~
20 ~~resident~~];

21 (2) results in actual harm that is pervasive
22 throughout the services provided by the facility or that represents
23 a systemic failure by the facility that affects or has the potential
24 to affect a large number of or all of the residents of the facility;

25 (3) constitutes the potential for actual harm that is
26 pervasive throughout the services provided by the facility or that
27 represents a systemic failure by the facility that affects or has

1 the potential to affect a large number of or all of the residents of
2 the facility and is a violation of this chapter or a rule, standard,
3 or order adopted under this chapter relating to:

- 4 (A) staff treatment of a resident;
- 5 (B) active treatment;
- 6 (C) client behavior and facility practices;
- 7 (D) health care services;
- 8 (E) drug administration;
- 9 (F) infection control;
- 10 (G) food and nutrition services; or
- 11 (H) emergency preparedness and response;

12 (4) [~~2~~] constitutes an immediate [~~a serious~~] threat
13 to the health or safety of a resident; or

14 (5) [~~3~~] substantially limits the facility's
15 [~~institution's~~] capacity to provide care.

16 (f) The commission [~~department~~] may not assess an
17 administrative penalty for a minor violation if the person corrects
18 the violation not later than the 46th day after the date the person
19 receives notice of the violation.

20 (i) The commission [~~department~~] may not assess an
21 administrative penalty against a state agency.

22 (j) Notwithstanding any other provision of this section, an
23 administrative penalty ceases to be incurred on the date a
24 violation is corrected. The administrative penalty ceases to be
25 incurred only if the facility:

26 (1) notifies the commission [~~department~~] in writing of
27 the correction of the violation and of the date the violation was

1 corrected; and

2 (2) shows later that the violation was corrected.

3 (1) The commission shall develop and use a system to record
4 and track the scope and severity of each violation of this chapter
5 or a rule, standard, or order adopted under this chapter for the
6 purpose of assessing an administrative penalty for the violation or
7 taking some other enforcement action against the appropriate
8 facility to deter future violations. The system:

9 (1) must be comparable to the system used by the
10 Centers for Medicare and Medicaid Services to categorize the scope
11 and severity of violations for nursing homes; and

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

15 (m) In this section:

16 (1) "Actual harm" means a negative outcome that
17 compromises a resident's physical, mental, or emotional
18 well-being.

19 (2) "Immediate threat to the health or safety of a
20 resident" means a situation that causes, or is likely to cause,
21 serious injury, harm, or impairment to or the death of a resident.

22 (3) "Pattern of violations" means the repeated, but
23 not pervasive, occurrence of violations that are found throughout
24 the services provided by a facility or that affect or involve the
25 same residents or facility employees.

26 SECTION 14. Section 103.003, Human Resources Code, is
27 amended by amending Subdivision (1) and adding Subdivisions (1-a)

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

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

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

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

12 SECTION 15. Sections 103.006(a) and (b), Human Resources
13 Code, are amended to read as follows:

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

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

1 ~~shall pay the total license renewal fee at the time of renewal].~~

2 SECTION 16. Section 103.008, Human Resources Code, is
3 amended to read as follows:

4 Sec. 103.008. INSPECTIONS. (a) In addition to the
5 inspection required under Section 103.006(a), the commission:

6 (1) shall inspect each facility every two years
7 following the initial inspection required under Section
8 103.006(a); and

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

13 (b) Any person may request an inspection of a facility by
14 notifying the commission ~~[department]~~ in writing of an alleged
15 violation of a licensing requirement. The complaint shall be as
16 detailed as possible and signed by the complainant. The commission
17 ~~[department]~~ shall perform an on-site inspection as soon as
18 feasible but no later than 30 days after receiving the complaint
19 unless after an investigation the complaint is found to be
20 frivolous. The commission ~~[department]~~ shall respond to a
21 complainant in writing. The commission ~~[department]~~ shall also
22 receive and investigate anonymous complaints.

23 SECTION 17. Section 103.012, Human Resources Code, is
24 amended by amending Subsections (a) and (e) and adding Subsection
25 (g) to read as follows:

26 (a) The commission ~~[department]~~ may assess an
27 administrative penalty against a person who:

1 (1) violates this chapter, a rule, standard, or order
2 adopted under this chapter, or a term of a license issued under this
3 chapter;

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

6 (A) on an application for issuance or renewal of
7 a license or in an attachment to the application; or

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

10 (3) refuses to allow a representative of the
11 commission [~~department~~] to inspect:

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

14 (B) any portion of the premises of a day activity
15 and health services facility;

16 (4) wilfully interferes with the work of a
17 representative of the commission [~~department~~] or the enforcement of
18 this chapter;

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

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

26 (7) fails to notify the commission [~~department~~] of a
27 change of ownership before the effective date of the change of

1 ownership.

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

5 (1) the gradations of penalties established under
6 Subsection (d);

7 (2) the seriousness of the violation, including the
8 nature, circumstances, extent, and gravity of the prohibited act
9 and the hazard or potential hazard created by the act to the health
10 or safety of the public;

11 (3) the history of previous violations;

12 (4) the deterrence of future violations; and

13 (5) the efforts to correct the violation.

14 (g) The commission shall develop and use a system to record
15 and track the scope and severity of each violation of this chapter
16 or a rule, standard, or order adopted under this chapter for the
17 purpose of assessing an administrative penalty for the violation or
18 taking some other enforcement action against the appropriate
19 facility to deter future violations. The system:

20 (1) must be comparable to the system used by the
21 Centers for Medicare and Medicaid Services to categorize the scope
22 and severity of violations for nursing homes; and

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

26 SECTION 18. Section 103.013, Human Resources Code, is
27 amended to read as follows:

1 Sec. 103.013. RIGHT TO CORRECT BEFORE IMPOSITION OF
2 ADMINISTRATIVE PENALTY. (a) The commission [~~department~~] may not
3 collect an administrative penalty from a day activity and health
4 services facility under Section 103.012 if, not later than the 45th
5 day after the date the facility receives notice under Section
6 103.014(c), the facility corrects the violation.

7 (b) Subsection (a) does not apply to:

8 (1) a violation that the commission [~~department~~]
9 determines:

10 (A) represents a pattern of violations that
11 results in actual [~~serious~~] harm [~~to or death of a person attending~~
12 ~~the facility~~];

13 (B) results in actual harm that is pervasive
14 throughout the services provided by the facility or that represents
15 a systemic failure by the facility that affects or has the potential
16 to affect a large number of or all of the elderly persons and
17 persons with disabilities receiving services at the facility;

18 (C) constitutes the potential for actual harm and
19 is a violation of this chapter or a rule, standard, or order adopted
20 under this chapter relating to:

21 (i) staffing, including staff training,
22 ratio, and health;

23 (ii) administration of medication; or

24 (iii) emergency preparedness and response;

25 (D) [~~(B)~~] constitutes an immediate [~~a serious~~]
26 threat to the health or [~~and~~] safety of an elderly person or a
27 person with a disability receiving services at a [~~a person~~

1 ~~attending the~~ facility; or

2 (E) [~~(C)~~] substantially limits the facility's
3 capacity to provide care;

4 (2) a violation described by Sections
5 103.012(a)(2)-(7); or

6 (3) a violation of Section 103.011.

7 (c) A day activity and health services facility that
8 corrects a violation must maintain the correction. If the facility
9 fails to maintain the correction until at least the first
10 anniversary after the date the correction was made, the commission
11 [~~department~~] may assess and collect an administrative penalty for
12 the subsequent violation. An administrative penalty assessed under
13 this subsection is equal to three times the amount of the original
14 penalty assessed but not collected. The commission [~~department~~] is
15 not required to provide the facility with an opportunity under this
16 section to correct the subsequent violation.

17 (d) In this section:

18 (1) "Actual harm" means a negative outcome that
19 compromises the physical, mental, or emotional well-being of an
20 elderly person or a person with a disability receiving services at a
21 facility.

22 (2) "Immediate threat to the health or safety of an
23 elderly person or a person with a disability" means a situation that
24 causes, or is likely to cause, serious injury, harm, or impairment
25 to or the death of an elderly person or a person with a disability
26 receiving services at a facility.

27 (3) "Pattern of violations" means the repeated, but

1 not pervasive, occurrence of violations that are found throughout
2 the services provided by a facility or that affect or involve the
3 same elderly persons or persons with disabilities receiving
4 services at the facility or the same facility employees.

5 SECTION 19. Section 247.0025, Health and Safety Code, is
6 repealed.

7 SECTION 20. The changes in law made by this Act apply only
8 to actions taken by the Health and Human Services Commission and
9 license holders under Chapter 103, Human Resources Code, and
10 Chapters 242, 247, 248A, and 252, Health and Safety Code, on or
11 after the effective date of this Act. An action taken before the
12 effective date of this Act is governed by the law in effect at that
13 time, and the former law is continued in effect for that purpose.

14 SECTION 21. This Act takes effect September 1, 2017.