

1-1 By: Schwertner S.B. No. 933
 1-2 (In the Senate - Filed February 16, 2017; March 1, 2017,
 1-3 read first time and referred to Committee on Health & Human
 1-4 Services; April 10, 2017, reported adversely, with favorable
 1-5 Committee Substitute by the following vote: Yeas 8, Nays 0;
 1-6 April 10, 2017, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
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 COMMITTEE SUBSTITUTE FOR S.B. No. 933 By: Schwertner

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to the licensing of, the executive commissioner of the
 1-22 Health and Human Services Commission's duties with respect to, and
 1-23 the administrative penalties for home and community support
 1-24 services agencies.

1-25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-26 SECTION 1. Sections 142.006(a), (b), and (c), Health and
 1-27 Safety Code, are amended to read as follows:

1-28 (a) The commission [~~department~~] shall issue a home and
 1-29 community support services agency license to provide home health,
 1-30 hospice, habilitation, or personal assistance services for each
 1-31 place of business to an applicant if:

1-32 (1) the applicant:

1-33 (A) qualifies for the license to provide the type
 1-34 of service that is to be offered by the applicant;

1-35 (B) submits an application and license fee as
 1-36 required by this chapter; and

1-37 (C) complies with all applicable licensing
 1-38 standards required or adopted under this chapter; and

1-39 (2) any controlling person with respect to the
 1-40 applicant complies with all applicable licensing standards
 1-41 required or adopted under this chapter.

1-42 (b) A license issued under this chapter expires three [~~two~~]
 1-43 years after the date of issuance. The executive commissioner by
 1-44 rule shall [~~may~~] adopt a system under which licenses expire on
 1-45 staggered [~~various~~] dates during each three-year [~~the two-year~~]
 1-46 period. The commission shall prorate the license fee as
 1-47 appropriate if the expiration date of a license changes as a result
 1-48 of this subsection [~~For the year in which a license expiration date~~
 1-49 ~~is changed, the department shall prorate the license fee on a~~
 1-50 ~~monthly basis. Each license holder shall pay only that portion of~~
 1-51 ~~the license fee allocable to the number of months for which the~~
 1-52 ~~license is valid. A license holder shall pay the total license~~
 1-53 ~~renewal fee at the time of renewal. The department may issue an~~
 1-54 ~~initial license for a shorter term to conform expiration dates for a~~
 1-55 ~~locality or an applicant. The department may issue a temporary~~
 1-56 ~~license to an applicant for an initial license].~~

1-57 (c) The commission [~~department~~] may find that a home and
 1-58 community support services agency has satisfied the requirements
 1-59 for licensing if the agency is accredited by an accreditation
 1-60 organization, such as The Joint Commission or the Community Health

2-1 Accreditation Program, and the commission [~~department~~] finds that
 2-2 the accreditation organization has standards that meet or exceed
 2-3 the requirements for licensing under this chapter. A license fee is
 2-4 required of the home and community support services agency at the
 2-5 time of a license application.

2-6 SECTION 2. Sections 142.010(a) and (b), Health and Safety
 2-7 Code, are amended to read as follows:

2-8 (a) The executive commissioner by rule shall set license
 2-9 fees for home and community support services agencies in amounts
 2-10 that are reasonable to meet the costs of administering this
 2-11 chapter, except that the fees may not be less than \$600 or more than
 2-12 \$3,000 [~~\$2,000~~] for a license to provide home health, hospice,
 2-13 habilitation, or personal assistance services.

2-14 (b) The executive commissioner shall consider the size of
 2-15 the home and community support services agency, the number of
 2-16 clients served, the number of services provided, and the necessity
 2-17 for review of other accreditation documentation in determining the
 2-18 amount collected by the commission [~~department~~] for initial and
 2-19 renewal license fees.

2-20 SECTION 3. Section 142.017, Health and Safety Code, is
 2-21 amended by amending Subsections (a), (b), (c), (e), (i), and (j) and
 2-22 adding Subsections (k) and (l) to read as follows:

2-23 (a) The commission [~~department~~] may assess an
 2-24 administrative penalty against a person who violates:

2-25 (1) this chapter or a rule adopted under this chapter;
 2-26 or

2-27 (2) Section 102.001, Occupations Code, if the
 2-28 violation relates to the provision of home health, hospice,
 2-29 habilitation, or personal assistance services.

2-30 (b) The penalty shall be not less than \$100 or more than
 2-31 \$1,000 for each violation, except that the penalty shall be not less
 2-32 than \$100 or more than \$5,000 for each violation that results in
 2-33 actual harm or that constitutes an immediate threat to the health or
 2-34 safety of a client. Each day of a violation that occurs before the
 2-35 day on which the person receives written notice of the violation
 2-36 from the commission [~~department~~] does not constitute a separate
 2-37 violation and shall be considered to be one violation. Each day of
 2-38 a continuing violation that occurs after the day on which the person
 2-39 receives written notice of the violation from the commission
 2-40 [~~department~~] constitutes a separate violation.

2-41 (c) The executive commissioner by rule shall specify each
 2-42 violation for which the commission [~~department~~] may assess an
 2-43 administrative penalty. In determining which violations warrant
 2-44 penalties, the commission [~~department~~] shall consider:

2-45 (1) the seriousness of the violation, including the
 2-46 nature, circumstances, extent, and gravity of the violation and the
 2-47 hazard of the violation to the health or safety of clients; and

2-48 (2) whether the affected home and community support
 2-49 services agency had identified the violation as a part of its
 2-50 internal quality assurance process and had made appropriate
 2-51 progress on correction.

2-52 (e) Except as provided by Subsection (j), the executive
 2-53 commissioner by rule shall provide the home and community support
 2-54 services agency with a reasonable period of time following the
 2-55 first day of a violation to correct the violation before the
 2-56 commission [~~department~~] assesses an administrative penalty if a
 2-57 plan of correction has been implemented.

2-58 (i) The commission [~~department~~] may not assess an
 2-59 administrative penalty against a state agency.

2-60 (j) The commission [~~department~~] may assess an
 2-61 administrative penalty without providing a reasonable period of
 2-62 time to a home and community support services [~~the~~] agency to
 2-63 correct the violation if the violation:

2-64 (1) represents a pattern of violation that results in
 2-65 actual [~~serious~~] harm [~~or death~~];

2-66 (2) is widespread in scope and results in actual harm;

2-67 (3) is widespread in scope and constitutes a potential
 2-68 for actual harm;

2-69 (4) [~~(2)~~] constitutes an immediate [~~a serious~~] threat

3-1 to the health or safety of a client;

3-2 (5) [~~(3)~~] substantially limits the agency's capacity

3-3 to provide care;

3-4 (6) [~~(4)~~] is a violation in which a person:

3-5 (A) makes a false statement, that the person

3-6 knows or should know is false, of a material fact:

3-7 (i) on an application for issuance or

3-8 renewal of a license or in an attachment to the application; or

3-9 (ii) with respect to a matter under

3-10 investigation by the commission [~~department~~];

3-11 (B) refuses to allow a representative of the

3-12 commission [~~department~~] to inspect a book, record, or file required

3-13 to be maintained by an agency;

3-14 (C) wilfully interferes with the work of a

3-15 representative of the commission [~~department~~] or the enforcement of

3-16 this chapter;

3-17 (D) wilfully interferes with a representative of

3-18 the commission [~~department~~] preserving evidence of a violation of

3-19 this chapter or a rule, standard, or order adopted or license issued

3-20 under this chapter;

3-21 (E) fails to pay a penalty assessed by the

3-22 commission [~~department~~] under this chapter not later than the 10th

3-23 day after the date the assessment of the penalty becomes final; or

3-24 (F) fails to submit:

3-25 (i) a plan of correction not later than the

3-26 10th day after the date the person receives a statement of licensing

3-27 violations; or

3-28 (ii) an acceptable plan of correction not

3-29 later than the 30th day after the date the person receives

3-30 notification from the commission [~~department~~] that the previously

3-31 submitted plan of correction is not acceptable;

3-32 (7) [~~(5)~~] is a violation of Section 142.0145; or

3-33 (8) [~~(6)~~] involves the rights of the elderly under

3-34 Chapter 102, Human Resources Code.

3-35 (k) The commission shall develop and use a system to record

3-36 and track the scope and severity of each violation of this chapter

3-37 or a rule adopted under this chapter for the purpose of assessing an

3-38 administrative penalty for the violation or taking some other

3-39 enforcement action against the appropriate home and community

3-40 support services agency to deter future violations. The system:

3-41 (1) must be comparable to the system used by the

3-42 Centers for Medicare and Medicaid Services to categorize the scope

3-43 and severity of violations for nursing homes; and

3-44 (2) may be modified, as appropriate, to reflect

3-45 changes in industry practice or changes made to the system used by

3-46 the Centers for Medicare and Medicaid Services.

3-47 (l) In this section:

3-48 (1) "Actual harm" means a negative outcome that

3-49 compromises a client's physical, mental, or emotional well-being.

3-50 (2) "Immediate threat to the health or safety of a

3-51 client" means a situation that causes, or is likely to cause,

3-52 serious injury, harm, or impairment to or the death of a client.

3-53 (3) "Pattern of violation" means repeated, but not

3-54 pervasive, failures of a home and community support services agency

3-55 to comply with this chapter or a rule adopted under this chapter

3-56 that:

3-57 (A) result in a violation; and

3-58 (B) are found throughout the services provided by

3-59 the agency or that affect or involve the same clients or agency

3-60 employees or volunteers.

3-61 (4) "Widespread in scope" means a violation of this

3-62 chapter or a rule adopted under this chapter that:

3-63 (A) is pervasive throughout the services

3-64 provided by the home and community support services agency; or

3-65 (B) represents a systemic failure by the home and

3-66 community support services agency that affects or has the potential

3-67 to affect a large portion of or all of the clients of the agency.

3-68 SECTION 4. As soon as practicable after the effective date

3-69 of this Act and after consulting with appropriate stakeholders, the

4-1 executive commissioner of the Health and Human Services Commission
4-2 shall develop and adopt rules necessary to implement the changes in
4-3 law made by this Act.

4-4 SECTION 5. The changes in law made by this Act apply only to
4-5 actions taken by the Health and Human Services Commission and
4-6 license holders under Chapter 142, Health and Safety Code, on or
4-7 after the effective date of this Act. An action taken before the
4-8 effective date of this Act is governed by the law in effect at that
4-9 time, and the former law is continued in effect for that purpose.

4-10 SECTION 6. This Act takes effect September 1, 2017.

4-11

* * * * *