

1-1 By: Schwertner S.B. No. 932
 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	X			
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. 932 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 certain long-term care
 1-24 facilities.

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

1-26 SECTION 1. Sections [531.058](#)(a) and (a-1), Government Code,
 1-27 are amended to read as follows:

1-28 (a) The executive commissioner by rule shall establish an
 1-29 informal dispute resolution process in accordance with this
 1-30 section. The process must provide for adjudication by an
 1-31 appropriate disinterested person of disputes relating to a proposed
 1-32 enforcement action or related proceeding of the commission under
 1-33 Section [32.021](#)(d), Human Resources Code, or the Department of Aging
 1-34 and Disability Services or its successor agency under Chapter [242](#),
 1-35 [247](#), or [252](#), Health and Safety Code. The informal dispute
 1-36 resolution process must require:

1-37 (1) an institution or facility to request informal
 1-38 dispute resolution not later than the 10th calendar day after
 1-39 notification by the commission or department, as applicable, of the
 1-40 violation of a standard or standards; and

1-41 (2) the commission to complete the process not later
 1-42 than:

1-43 (A) the 30th calendar day after receipt of a
 1-44 request from an institution or facility, other than an assisted
 1-45 living facility, for informal dispute resolution; or

1-46 (B) the 90th calendar day after receipt of a
 1-47 request from an assisted living facility for informal dispute
 1-48 resolution.

1-49 (a-1) As part of the informal dispute resolution process
 1-50 established under this section, the commission shall contract with
 1-51 an appropriate disinterested person [~~who is a nonprofit~~
 1-52 ~~organization~~] to adjudicate disputes between an institution or
 1-53 facility licensed under Chapter [242](#) or [247](#), Health and Safety Code,
 1-54 and the Department of Aging and Disability Services or its
 1-55 successor agency concerning a statement of violations prepared by
 1-56 the department in connection with a survey conducted by the
 1-57 department of the institution or facility. Section [2009.053](#) does
 1-58 not apply to the selection of an appropriate disinterested person
 1-59 under this subsection. The person with whom the commission
 1-60 contracts shall adjudicate all disputes described by this

2-1 subsection.

2-2 SECTION 2. Subchapter B, Chapter 531, Government Code, is

2-3 amended by adding Section 531.0585 to read as follows:

2-4 Sec. 531.0585. ISSUANCE OF MATERIALS TO CERTAIN LONG-TERM

2-5 CARE FACILITIES. The executive commissioner shall review the

2-6 commission's methods for issuing informational letters, policy

2-7 updates, policy clarifications, and other related materials to an

2-8 entity licensed under Chapter 103, Human Resources Code, or Chapter

2-9 242, 247, 248A, or 252, Health and Safety Code, and develop and

2-10 implement more efficient methods to issue those materials as

2-11 appropriate.

2-12 SECTION 3. Section 242.066, Health and Safety Code, is

2-13 amended by amending Subsections (a) and (e) and adding Subsection

2-14 (i) to read as follows:

2-15 (a) The commission [~~department~~] may assess an

2-16 administrative penalty against a person who:

2-17 (1) violates this chapter or a rule, standard, or

2-18 order adopted or license issued under this chapter;

2-19 (2) makes a false statement, that the person knows or

2-20 should know is false, of a material fact:

2-21 (A) on an application for issuance or renewal of

2-22 a license or in an attachment to the application; or

2-23 (B) with respect to a matter under investigation

2-24 by the commission [~~department~~];

2-25 (3) refuses to allow a representative of the

2-26 commission [~~department~~] to inspect:

2-27 (A) a book, record, or file required to be

2-28 maintained by an institution; or

2-29 (B) any portion of the premises of an

2-30 institution;

2-31 (4) wilfully interferes with the work of a

2-32 representative of the commission [~~department~~] or the enforcement of

2-33 this chapter;

2-34 (5) wilfully interferes with a representative of the

2-35 commission [~~department~~] preserving evidence of a violation of this

2-36 chapter or a rule, standard, or order adopted or license issued

2-37 under this chapter;

2-38 (6) fails to pay a penalty assessed by the commission

2-39 [~~department~~] under this chapter not later than the 10th day after

2-40 the date the assessment of the penalty becomes final; or

2-41 (7) fails to notify the commission [~~department~~] of a

2-42 change of ownership before the effective date of the change of

2-43 ownership.

2-44 (e) In determining the amount of a penalty, the commission

2-45 [~~department~~] shall consider any matter that justice may require,

2-46 including:

2-47 (1) the gradations of penalties established under

2-48 Subsection (d);

2-49 (2) the seriousness of the violation, including the

2-50 nature, circumstances, extent, and gravity of the prohibited act

2-51 and the hazard or potential hazard created by the act to the health

2-52 or safety of the public;

2-53 (3) the history of previous violations;

2-54 (4) deterrence of future violations; and

2-55 (5) efforts to correct the violation.

2-56 (i) The commission shall develop and use a system to record

2-57 and track the scope and severity of each violation of this chapter

2-58 or a rule, standard, or order adopted under this chapter for the

2-59 purpose of assessing an administrative penalty for the violation or

2-60 taking some other enforcement action against the appropriate

2-61 institution to deter future violations. The system:

2-62 (1) must be comparable to the system used by the

2-63 Centers for Medicare and Medicaid Services to categorize the scope

2-64 and severity of violations for nursing homes; and

2-65 (2) may be modified, as appropriate, to reflect

2-66 changes in industry practice or changes made to the system used by

2-67 the Centers for Medicare and Medicaid Services.

2-68 SECTION 4. Section 242.0665, Health and Safety Code, is

2-69 amended to read as follows:

3-1 Sec. 242.0665. RIGHT TO CORRECT. (a) The commission
3-2 [~~department~~] may not collect an administrative penalty against an
3-3 institution under this subchapter if, not later than the 45th day
3-4 after the date the institution receives notice under Section
3-5 242.067(c), the institution corrects the violation.

3-6 (b) Subsection (a) does not apply:
3-7 (1) to a violation that the commission [~~department~~]
3-8 determines:

3-9 (A) represents a pattern of violation that
3-10 results in actual [serious] harm [to or death of a resident];

3-11 (B) is widespread in scope and results in actual
3-12 harm;

3-13 (C) is widespread in scope, constitutes a
3-14 potential for actual harm, and relates to:

3-15 (i) residents' rights;

3-16 (ii) treatment of residents;

3-17 (iii) resident behavior and institution
3-18 practices;

3-19 (iv) quality of care;

3-20 (v) medication errors;

3-21 (vi) standard menus and nutritional
3-22 adequacy;

3-23 (vii) physician visits;

3-24 (viii) infection control;

3-25 (ix) life safety from fire; or

3-26 (x) emergency preparedness and response;

3-27 (D) [~~(B)~~] constitutes an immediate [a serious]
3-28 threat to the health or safety of a resident; or

3-29 (E) [~~(C)~~] substantially limits the institution's
3-30 capacity to provide care;

3-31 (2) to a violation described by Sections
3-32 242.066(a)(2)-(7);

3-33 (3) to a violation of Section 260A.014 or 260A.015; or

3-34 (4) to a violation of a right of a resident adopted
3-35 under Subchapter L.

3-36 (c) An institution that corrects a violation under
3-37 Subsection (a) must maintain the correction. If the institution
3-38 fails to maintain the correction until at least the first
3-39 anniversary of the date the correction was made, the commission
3-40 [~~department~~] may assess an administrative penalty under this
3-41 subchapter for the subsequent violation. A penalty assessed under
3-42 this subsection shall be equal to three times the amount of the
3-43 penalty assessed but not collected under Subsection (a). The
3-44 commission [~~department~~] is not required to provide the institution
3-45 an opportunity to correct the subsequent violation under this
3-46 section.

3-47 (d) In this section:

3-48 (1) "Actual harm" means a negative outcome that
3-49 compromises a resident's physical, mental, or emotional
3-50 well-being.

3-51 (2) "Immediate threat to the health or safety of a
3-52 resident" means a situation that causes, or is likely to cause,
3-53 serious injury, harm, or impairment to or the death of a resident.

3-54 (3) "Pattern of violation" means repeated, but not
3-55 pervasive, failures of an institution to comply with this chapter
3-56 or a rule, standard, or order adopted under this chapter that:

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

3-58 (B) are found throughout the services provided by
3-59 the institution or that affect or involve the same residents or
3-60 institution employees.

3-61 (4) "Widespread in scope" means a violation of this
3-62 chapter or a rule, standard, or order adopted under this chapter
3-63 that:

3-64 (A) is pervasive throughout the services
3-65 provided by the institution; or

3-66 (B) represents a systemic failure by the
3-67 institution that affects or has the potential to affect a large
3-68 portion of or all of the residents of the institution.

3-69 SECTION 5. Section 247.023, Health and Safety Code, is

4-1 amended to read as follows:

4-2 Sec. 247.023. ISSUANCE AND RENEWAL OF LICENSE. (a) The
4-3 commission [~~department~~] shall issue a license if, after inspection
4-4 and investigation, it finds that the applicant, the assisted living
4-5 facility, and all controlling persons with respect to the applicant
4-6 or facility meet the requirements of this chapter and the standards
4-7 adopted under this chapter. The license expires on the third
4-8 [~~second~~] anniversary of the date of its issuance. The executive
4-9 commissioner by rule shall [~~may~~] adopt a system under which
4-10 licenses expire on staggered [~~various~~] dates during each [~~the~~]
4-11 three-year [~~two-year~~] period. The commission shall prorate the
4-12 license fee as appropriate if the expiration date of a license
4-13 changes as a result of this subsection [~~For the year in which a~~
4-14 ~~license expiration date is changed, the department shall prorate~~
4-15 ~~the license fee on a monthly basis. Each license holder shall pay~~
4-16 ~~only that portion of the license fee allocable to the number of~~
4-17 ~~months during which the license is valid. A license holder shall~~
4-18 ~~pay the total license renewal fee at the time of renewal].~~

4-19 (b) To renew a license, the license holder must submit to
4-20 the commission [~~department~~] the license renewal fee.

4-21 (c) The commission [~~department~~] may require participation
4-22 in a continuing education program as a condition of renewal of a
4-23 license. The executive commissioner shall adopt rules to implement
4-24 this subsection.

4-25 SECTION 6. Sections 247.024(a), (d), and (e), Health and
4-26 Safety Code, are amended to read as follows:

4-27 (a) The executive commissioner by rule shall set license
4-28 fees imposed by this chapter:

4-29 (1) on the basis of the number of beds in assisted
4-30 living facilities required to pay the fee; and

4-31 (2) in amounts reasonable and necessary to defray the
4-32 cost of administering this chapter, but not to exceed \$2,250
4-33 [~~\$1,500~~].

4-34 (d) Investigation fees or attorney's fees may not be
4-35 assessed against or collected from an assisted living facility by
4-36 or on behalf of the commission [~~department~~] or another state agency
4-37 unless the commission [~~department~~] or other state agency assesses
4-38 and collects a penalty authorized by this chapter from the
4-39 facility.

4-40 (e) An applicant who submits a license renewal later than
4-41 the 45th day before the expiration date of a current license is
4-42 subject to a late fee in accordance with commission [~~department~~]
4-43 rules.

4-44 SECTION 7. Section 247.027, Health and Safety Code, is
4-45 amended to read as follows:

4-46 Sec. 247.027. INSPECTIONS. (a) In addition to the
4-47 inspection required under Section 247.023(a), the commission:

4-48 (1) shall [~~department may~~] inspect each [~~an~~] assisted
4-49 living facility at least every two years following the initial
4-50 inspection required under Section 247.023(a); [~~annually~~] and

4-51 (2) may inspect a facility at other reasonable times
4-52 as necessary to assure compliance with this chapter.

4-53 (b) The commission [~~department~~] shall establish an
4-54 inspection checklist based on the minimum standards that describes
4-55 the matters subject to inspection. The commission [~~department~~]
4-56 shall use the inspection checklist in conducting inspections under
4-57 this section and Section 247.023(a).

4-58 SECTION 8. Section 247.0451, Health and Safety Code, is
4-59 amended by amending Subsections (a), (b), (d), and (f) and adding
4-60 Subsections (g) and (h) to read as follows:

4-61 (a) The commission [~~department~~] may assess an
4-62 administrative penalty against a person who:

4-63 (1) violates this chapter or a rule, standard, or
4-64 order adopted under this chapter or a term of a license issued under
4-65 this chapter;

4-66 (2) makes a false statement, that the person knows or
4-67 should know is false, of a material fact:

4-68 (A) on an application for issuance or renewal of
4-69 a license or in an attachment to the application; or

5-1 (B) with respect to a matter under investigation
5-2 by the commission [~~department~~];
5-3 (3) refuses to allow a representative of the
5-4 commission [~~department~~] to inspect:
5-5 (A) a book, record, or file required to be
5-6 maintained by an assisted living facility; or
5-7 (B) any portion of the premises of an assisted
5-8 living facility;
5-9 (4) wilfully interferes with the work of a
5-10 representative of the commission [~~department~~] or the enforcement of
5-11 this chapter;
5-12 (5) wilfully interferes with a representative of the
5-13 commission [~~department~~] preserving evidence of a violation of this
5-14 chapter or a rule, standard, or order adopted under this chapter or
5-15 a term of a license issued under this chapter;
5-16 (6) fails to pay a penalty assessed under this chapter
5-17 not later than the 30th day after the date the assessment of the
5-18 penalty becomes final; or
5-19 (7) fails to notify the commission [~~department~~] of a
5-20 change of ownership before the effective date of the change of
5-21 ownership.
5-22 (b) Except as provided by Section 247.0452(c), the penalty
5-23 may not exceed:
5-24 (1) \$5,000 for each violation that:
5-25 (A) represents a pattern of violation that
5-26 results in actual harm or is widespread in scope and results in
5-27 actual harm; or
5-28 (B) constitutes an immediate threat to the health
5-29 or safety of a resident; or
5-30 (2) \$1,000 for each other violation.
5-31 (d) In determining the amount of a penalty, the commission
5-32 [~~department~~] shall consider any matter that justice may require,
5-33 but must consider each of the following and make a record of the
5-34 extent to which each of the following was considered:
5-35 (1) the gradations of penalties established under
5-36 Subsection (c);
5-37 (2) the seriousness of the violation, including the
5-38 nature, circumstances, extent, and gravity of the prohibited act
5-39 and the hazard or potential hazard created by the act to the health
5-40 or safety of the public;
5-41 (3) the history of previous violations;
5-42 (4) deterrence of future violations;
5-43 (5) efforts to correct the violation; and
5-44 (6) the size of the facility and of the business entity
5-45 that owns the facility.
5-46 (f) The commission [~~department~~] may not assess a penalty
5-47 under this section against a resident of an assisted living
5-48 facility unless the resident is also an employee of the facility or
5-49 a controlling person.
5-50 (g) The commission shall develop and use a system to record
5-51 and track the scope and severity of each violation of this chapter
5-52 or a rule, standard, or order adopted under this chapter for the
5-53 purpose of assessing an administrative penalty for the violation or
5-54 taking some other enforcement action against the appropriate
5-55 assisted living facility to deter future violations. The system:
5-56 (1) must be comparable to the system used by the
5-57 Centers for Medicare and Medicaid Services to categorize the scope
5-58 and severity of violations for nursing homes; and
5-59 (2) may be modified, as appropriate, to reflect
5-60 changes in industry practice or changes made to the system used by
5-61 the Centers for Medicare and Medicaid Services.
5-62 (h) In this section, "actual harm," "immediate threat to the
5-63 health or safety of a resident," "pattern of violation," and
5-64 "widespread in scope" have the meanings assigned by Section
5-65 247.0452.
5-66 SECTION 9. Section 247.0452, Health and Safety Code, is
5-67 amended to read as follows:
5-68 Sec. 247.0452. RIGHT TO CORRECT. (a) The commission
5-69 [~~department~~] may not collect an administrative penalty from an

6-1 assisted living facility under Section 247.0451 if, not later than
6-2 the 45th day after the date the facility receives notice under
6-3 Section 247.0453(c), the facility corrects the violation.

6-4 (b) Subsection (a) does not apply:

6-5 (1) to a violation that the commission [~~department~~]
6-6 determines represents a pattern of violation that results in actual
6-7 [~~serious~~] harm [~~to or death of a resident~~];

6-8 (2) to a violation that the commission determines is
6-9 widespread in scope and results in actual harm;

6-10 (3) to a violation that the commission determines is
6-11 widespread in scope, constitutes a potential for actual harm, and
6-12 relates to:

6-13 (A) resident assessment;

6-14 (B) staffing, including staff training;

6-15 (C) administration of medication;

6-16 (D) infection control;

6-17 (E) restraints; or

6-18 (F) emergency preparedness and response;

6-19 (4) to a violation that the commission determines
6-20 constitutes an immediate threat to the health or safety of a
6-21 resident;

6-22 (5) [~~(2)~~] to a violation described by Sections
6-23 247.0451(a) (2)-(7) or a violation of Section 260A.014 or 260A.015;

6-24 (6) [~~(3)~~] to a second or subsequent violation of:

6-25 (A) a right of the same resident under Section
6-26 247.064; or

6-27 (B) the same right of all residents under Section
6-28 247.064; or

6-29 (7) [~~(4)~~] to a violation described by Section 247.066,
6-30 which contains its own right to correct provisions.

6-31 (c) An assisted living facility that corrects a violation
6-32 must maintain the correction. If the facility fails to maintain the
6-33 correction until at least the first anniversary of the date the
6-34 correction was made, the commission [~~department~~] may assess and
6-35 collect an administrative penalty for the subsequent violation. An
6-36 administrative penalty assessed under this subsection is equal to
6-37 three times the amount of the original penalty assessed but not
6-38 collected. The commission [~~department~~] is not required to provide
6-39 the facility with an opportunity under this section to correct the
6-40 subsequent violation.

6-41 (d) In this section:

6-42 (1) "Actual harm" means a negative outcome that
6-43 compromises a resident's physical, mental, or emotional
6-44 well-being.

6-45 (2) "Immediate threat to the health or safety of a
6-46 resident" means a situation that causes, or is likely to cause,
6-47 serious injury, harm, or impairment to or the death of a resident.

6-48 (3) "Pattern of violation" means repeated, but not
6-49 pervasive, failures of an assisted living facility to comply with
6-50 this chapter or a rule, standard, or order adopted under this
6-51 chapter that:

6-52 (A) result in a violation; and

6-53 (B) are found throughout the services provided by
6-54 the facility or that affect or involve the same residents or
6-55 facility employees.

6-56 (4) "Widespread in scope" means a violation of this
6-57 chapter or a rule, standard, or order adopted under this chapter
6-58 that:

6-59 (A) is pervasive throughout the services
6-60 provided by the assisted living facility; or

6-61 (B) represents a systemic failure by the assisted
6-62 living facility that affects or has the potential to affect a large
6-63 portion of or all of the residents of the facility.

6-64 SECTION 10. Section 248A.053, Health and Safety Code, is
6-65 amended to read as follows:

6-66 Sec. 248A.053. INITIAL OR RENEWAL LICENSE TERM; RENEWAL;
6-67 NOTIFICATION. (a) An initial or renewal license issued under this
6-68 chapter expires on the third [~~second~~] anniversary of the date of
6-69 issuance. The executive commissioner by rule shall adopt a system

7-1 under which licenses expire on staggered dates during each
 7-2 three-year period. The commission shall prorate the license fee as
 7-3 appropriate if the expiration date of a license changes as a result
 7-4 of this subsection.

7-5 (b) A person applying to renew a center license shall:

7-6 (1) submit a renewal application to the commission
 7-7 [~~department~~] on a [~~the form~~] prescribed form [~~by the department~~] at
 7-8 least 60 days but not more than 120 days before expiration of the
 7-9 license;

7-10 (2) submit the renewal fee in the amount required by
 7-11 agency [~~department~~] rule; and

7-12 (3) comply with any other requirements specified by
 7-13 agency [~~department~~] rule.

7-14 (c) The commission [~~department~~] shall assess a \$50 per day
 7-15 late fee to a license holder who submits a renewal application after
 7-16 the date required by Subsection (b)(1), except that the total
 7-17 amount of a late fee may not exceed the lesser of 50 percent of the
 7-18 license renewal fee or \$500.

7-19 (d) At least 120 days before expiration of a center license,
 7-20 the commission [~~department~~] shall notify the owner or operator of
 7-21 the center of the license expiration.

7-22 SECTION 11. Subchapter F, Chapter 248A, Health and Safety
 7-23 Code, is amended by adding Section 248A.2515 to read as follows:

7-24 Sec. 248A.2515. SYSTEM FOR ASSESSMENT OF PENALTY. The
 7-25 commission shall develop and use a system to record and track the
 7-26 scope and severity of each violation of this chapter or a rule or
 7-27 standard adopted or order issued under this chapter for the purpose
 7-28 of assessing an administrative penalty for the violation or taking
 7-29 some other enforcement action against the appropriate center to
 7-30 deter future violations. The system:

7-31 (1) must be comparable to the system used by the
 7-32 Centers for Medicare and Medicaid Services to categorize the scope
 7-33 and severity of violations for nursing homes; and

7-34 (2) may be modified, as appropriate, to reflect
 7-35 changes in industry practice or changes made to the system used by
 7-36 the Centers for Medicare and Medicaid Services.

7-37 SECTION 12. Sections 252.033(a), (b), (d), (f), and (h),
 7-38 Health and Safety Code, are amended to read as follows:

7-39 (a) After receiving the application, the commission
 7-40 [~~department~~] shall issue a license if, after inspection and
 7-41 investigation, it finds that the applicant and facility meet the
 7-42 requirements established under this chapter.

7-43 (b) The commission [~~department~~] may issue a license only
 7-44 for:

7-45 (1) the premises and persons or governmental unit
 7-46 named in the application; and

7-47 (2) the maximum number of beds specified in the
 7-48 application.

7-49 (d) A license is renewable on the third [~~second~~] anniversary
 7-50 of issuance or renewal of the license after:

7-51 (1) an inspection;

7-52 (2) filing and approval of a renewal report; and

7-53 (3) payment of the renewal fee.

7-54 (f) The commission [~~department~~] may not issue a license for
 7-55 new beds or an expansion of an existing facility under this chapter
 7-56 unless the addition of new beds or the expansion is included in the
 7-57 plan approved by the commission in accordance with Section
 7-58 533A.062.

7-59 (h) The executive commissioner by rule shall:

7-60 (1) define specific, appropriate, and objective
 7-61 criteria on which the commission [~~department~~] may deny an initial
 7-62 license application or license renewal or revoke a license; and

7-63 (2) adopt a system under which:

7-64 (A) licenses expire on staggered dates during
 7-65 each three-year period; and

7-66 (B) the commission prorates the license fee as
 7-67 appropriate if the expiration date of a license changes as a result
 7-68 of the system adopted under Paragraph (A).

7-69 SECTION 13. Sections 252.034(a), (e), and (f), Health and

8-1 Safety Code, are amended to read as follows:

8-2 (a) The executive commissioner by rule may adopt a fee for a
8-3 license issued under this chapter. The fee may not exceed \$225
8-4 [~~\$150~~] plus \$7.50 [~~\$5~~] for each unit of capacity or bed space for
8-5 which the license is sought.

8-6 (e) All license fees collected under this section shall be
8-7 deposited in the state treasury to the credit of the commission
8-8 [~~department~~] and may be appropriated to the commission [~~department~~]
8-9 to administer and enforce this chapter.

8-10 (f) An applicant who submits an application for license
8-11 renewal later than the 45th day before the expiration date of a
8-12 current license is subject to a late fee in accordance with
8-13 commission [~~department~~] rules.

8-14 SECTION 14. Section 252.041, Health and Safety Code, is
8-15 amended to read as follows:

8-16 Sec. 252.041. UNANNOUNCED INSPECTIONS. (a) Each
8-17 licensing period, the commission [~~department~~] shall conduct at
8-18 least three [~~two~~] unannounced inspections of each facility.

8-19 (b) In order to ensure continuous compliance, the
8-20 commission [~~department~~] shall randomly select a sufficient
8-21 percentage of facilities for unannounced inspections to be
8-22 conducted between 5 p.m. and 8 a.m. Those inspections must be
8-23 cursory to avoid to the greatest extent feasible any disruption of
8-24 the residents.

8-25 (c) The commission [~~department~~] may require additional
8-26 inspections.

8-27 (d) As considered appropriate and necessary by the
8-28 commission [~~department~~], the commission [~~department~~] may invite at
8-29 least one person as a citizen advocate to participate in
8-30 inspections. The invited advocate must be an individual who has an
8-31 interest in or who is employed by or affiliated with an organization
8-32 or entity that represents, advocates for, or serves individuals
8-33 with an intellectual disability or a related condition.

8-34 SECTION 15. Section 252.065, Health and Safety Code, is
8-35 amended by amending Subsections (a), (b), (e), (f), (i), and (j) and
8-36 adding Subsections (l) and (m) to read as follows:

8-37 (a) The commission [~~department~~] may assess an
8-38 administrative penalty against a person who:

8-39 (1) violates this chapter or a rule, standard, or
8-40 order adopted or license issued under this chapter;

8-41 (2) makes a false statement, that the person knows or
8-42 should know is false, of a material fact:

8-43 (A) on an application for issuance or renewal of
8-44 a license or in an attachment to the application; or

8-45 (B) with respect to a matter under investigation
8-46 by the commission [~~department~~];

8-47 (3) refuses to allow a representative of the
8-48 commission [~~department~~] to inspect:

8-49 (A) a book, record, or file required to be
8-50 maintained by the institution; or

8-51 (B) any portion of the premises of an
8-52 institution;

8-53 (4) wilfully interferes with the work of a
8-54 representative of the commission [~~department~~] or the enforcement of
8-55 this chapter;

8-56 (5) wilfully interferes with a representative of the
8-57 commission [~~department~~] preserving evidence of a violation of this
8-58 chapter or a rule, standard, or order adopted or license issued
8-59 under this chapter;

8-60 (6) fails to pay a penalty assessed by the commission
8-61 [~~department~~] under this chapter not later than the 10th day after
8-62 the date the assessment of the penalty becomes final;

8-63 (7) fails to submit a plan of correction within 10 days
8-64 after receiving a statement of licensing violations; or

8-65 (8) fails to notify the commission [~~department~~] of a
8-66 change in ownership before the effective date of that change of
8-67 ownership.

8-68 (b) The penalty for a facility with fewer than 60 beds shall
8-69 be not less than \$100 or more than \$1,000 for each violation. The

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

9-8 (e) The executive commissioner by rule shall provide the
 9-9 facility with a reasonable period of time, not less than 45 days,
 9-10 following the first day of a violation to correct the violation
 9-11 before the commission ~~[department]~~ may assess an administrative
 9-12 penalty if a plan of correction has been implemented. This
 9-13 subsection does not apply to a violation described by Subsections
 9-14 (a)(2)-(8) or to a violation that the commission ~~[department]~~
 9-15 determines:

9-16 (1) represents a pattern of violation that results
 9-17 [has resulted] in actual [serious] harm [to or the death of a
 9-18 resident];

9-19 (2) is widespread in scope and results in actual harm;

9-20 (3) is widespread in scope, constitutes a potential
 9-21 for actual harm, and relates to:

9-22 (A) staff treatment of a resident;

9-23 (B) active treatment;

9-24 (C) client behavior and facility practices;

9-25 (D) health care services;

9-26 (E) drug administration;

9-27 (F) infection control;

9-28 (G) food and nutrition services; or

9-29 (H) emergency preparedness and response;

9-30 (4) ~~[(2)]~~ constitutes an immediate [a serious] threat
 9-31 to the health or safety of a resident; or

9-32 (5) ~~[(3)]~~ substantially limits the facility's
 9-33 [institution's] capacity to provide care.

9-34 (f) The commission ~~[department]~~ may not assess an
 9-35 administrative penalty for a minor violation if the person corrects
 9-36 the violation not later than the 46th day after the date the person
 9-37 receives notice of the violation.

9-38 (i) The commission ~~[department]~~ may not assess an
 9-39 administrative penalty against a state agency.

9-40 (j) Notwithstanding any other provision of this section, an
 9-41 administrative penalty ceases to be incurred on the date a
 9-42 violation is corrected. The administrative penalty ceases to be
 9-43 incurred only if the facility:

9-44 (1) notifies the commission [department] in writing of
 9-45 the correction of the violation and of the date the violation was
 9-46 corrected; and

9-47 (2) shows later that the violation was corrected.

9-48 (1) The commission shall develop and use a system to record
 9-49 and track the scope and severity of each violation of this chapter
 9-50 or a rule, standard, or order adopted under this chapter for the
 9-51 purpose of assessing an administrative penalty for the violation or
 9-52 taking some other enforcement action against the appropriate
 9-53 facility to deter future violations. The system:

9-54 (1) must be comparable to the system used by the
 9-55 Centers for Medicare and Medicaid Services to categorize the scope
 9-56 and severity of violations for nursing homes; and

9-57 (2) may be modified, as appropriate, to reflect
 9-58 changes in industry practice or changes made to the system used by
 9-59 the Centers for Medicare and Medicaid Services.

9-60 (m) In this section:

9-61 (1) "Actual harm" means a negative outcome that
 9-62 compromises a resident's physical, mental, or emotional
 9-63 well-being.

9-64 (2) "Immediate threat to the health or safety of a
 9-65 resident" means a situation that causes, or is likely to cause,
 9-66 serious injury, harm, or impairment to or the death of a resident.

9-67 (3) "Pattern of violation" means repeated, but not
 9-68 pervasive, failures of a facility to comply with this chapter or a
 9-69 rule, standard, or order adopted under this chapter that:

10-1 (A) result in a violation; and
 10-2 (B) are found throughout the services provided by
 10-3 the facility or that affect or involve the same residents or
 10-4 facility employees.

10-5 (4) "Widespread in scope" means a violation of this
 10-6 chapter or a rule, standard, or order adopted under this chapter
 10-7 that:

10-8 (A) is pervasive throughout the services
 10-9 provided by the facility; or

10-10 (B) that affects or has the potential to affect a
 10-11 large portion of or all of the residents of the facility.

10-12 SECTION 16. Section 103.003, Human Resources Code, is
 10-13 amended by amending Subdivision (1) and adding Subdivisions (1-a)
 10-14 and (4-b) to read as follows:

10-15 (1) "Commission" means the Health and Human Services
 10-16 Commission.

10-17 (1-a) "Day activity and health services facility"
 10-18 means a facility that provides services under a day activity and
 10-19 health services program on a daily or regular basis but not
 10-20 overnight to four or more elderly persons or persons with
 10-21 disabilities who are not related by blood, marriage, or adoption to
 10-22 the owner of the facility.

10-23 (4-b) "Facility" means a day activity and health
 10-24 services facility.

10-25 SECTION 17. Sections 103.006(a) and (b), Human Resources
 10-26 Code, are amended to read as follows:

10-27 (a) The commission [~~department~~] shall issue a license to
 10-28 operate a day activity and health services facility to a person who
 10-29 has met the application requirements and received approval after an
 10-30 on-site inspection.

10-31 (b) The license expires three [~~two~~] years from the date of
 10-32 its issuance. The executive commissioner by rule shall [~~may~~] adopt
 10-33 a system under which licenses expire on staggered [~~various~~] dates
 10-34 during the three-year [~~two-year~~] period. The commission shall
 10-35 prorate the license fee as appropriate if the expiration date of a
 10-36 license changes as a result of this subsection [~~For the year in~~
 10-37 ~~which a license expiration date is changed, the department shall~~
 10-38 ~~prorate the license fee on a monthly basis. Each license holder~~
 10-39 ~~shall pay only that portion of the license fee allocable to the~~
 10-40 ~~number of months for which the license is valid. A license holder~~
 10-41 ~~shall pay the total license renewal fee at the time of renewal].~~

10-42 SECTION 18. Section 103.007, Human Resources Code, is
 10-43 amended to read as follows:

10-44 Sec. 103.007. LICENSE APPLICATION. (a) An applicant for a
 10-45 license to operate a day activity and health services facility must
 10-46 file an application on a form prescribed by the commission
 10-47 [~~department~~] together with a license fee of \$75 [~~\$50~~].

10-48 (b) The applicant must provide evidence of:

10-49 (1) the ability to comply with the requirements of the
 10-50 commission [~~department~~];

10-51 (2) responsible management; and

10-52 (3) qualified professional staff and personnel.

10-53 (c) A person who operates a facility that is licensed under
 10-54 this chapter must file an application for a renewal license not
 10-55 later than the 45th day before the expiration date of the current
 10-56 license on a form prescribed by the commission [~~department~~]
 10-57 together with a renewal fee of \$50.

10-58 (d) An applicant for a license renewal who submits an
 10-59 application later than the 45th day before the expiration date of
 10-60 the license is subject to a late fee in accordance with commission
 10-61 [~~department~~] rules.

10-62 SECTION 19. Section 103.008, Human Resources Code, is
 10-63 amended to read as follows:

10-64 Sec. 103.008. INSPECTIONS. (a) In addition to the
 10-65 inspection required under Section 103.006(a), the commission:

10-66 (1) shall inspect each facility every two years
 10-67 following the initial inspection required under Section
 10-68 103.006(a); and

10-69 (2) [~~The department~~] may inspect [~~enter the premises~~

11-1 ~~of~~ a facility at other reasonable times as [and make an inspection]
 11-2 necessary to ensure compliance with this chapter [issue a license
 11-3 or renew a license].

11-4 (b) Any person may request an inspection of a facility by
 11-5 notifying the commission [department] in writing of an alleged
 11-6 violation of a licensing requirement. The complaint shall be as
 11-7 detailed as possible and signed by the complainant. The commission
 11-8 [department] shall perform an on-site inspection as soon as
 11-9 feasible but no later than 30 days after receiving the complaint
 11-10 unless after an investigation the complaint is found to be
 11-11 frivolous. The commission [department] shall respond to a
 11-12 complainant in writing. The commission [department] shall also
 11-13 receive and investigate anonymous complaints.

11-14 SECTION 20. Section 103.012, Human Resources Code, is
 11-15 amended by amending Subsections (a) and (e) and adding Subsection
 11-16 (g) to read as follows:

11-17 (a) The commission [department] may assess an
 11-18 administrative penalty against a person who:

11-19 (1) violates this chapter, a rule, standard, or order
 11-20 adopted under this chapter, or a term of a license issued under this
 11-21 chapter;

11-22 (2) makes a false statement of a material fact that the
 11-23 person knows or should know is false:

11-24 (A) on an application for issuance or renewal of
 11-25 a license or in an attachment to the application; or

11-26 (B) with respect to a matter under investigation
 11-27 by the commission [department];

11-28 (3) refuses to allow a representative of the
 11-29 commission [department] to inspect:

11-30 (A) a book, record, or file required to be
 11-31 maintained by a day activity and health services facility; or

11-32 (B) any portion of the premises of a day activity
 11-33 and health services facility;

11-34 (4) wilfully interferes with the work of a
 11-35 representative of the commission [department] or the enforcement of
 11-36 this chapter;

11-37 (5) wilfully interferes with a representative of the
 11-38 commission [department] preserving evidence of a violation of this
 11-39 chapter, a rule, standard, or order adopted under this chapter, or a
 11-40 term of a license issued under this chapter;

11-41 (6) fails to pay a penalty assessed under this chapter
 11-42 not later than the 30th day after the date the assessment of the
 11-43 penalty becomes final; or

11-44 (7) fails to notify the commission [department] of a
 11-45 change of ownership before the effective date of the change of
 11-46 ownership.

11-47 (e) In determining the amount of a penalty, the commission
 11-48 [department] shall consider any matter that justice may require,
 11-49 including:

11-50 (1) the gradations of penalties established under
 11-51 Subsection (d);

11-52 (2) the seriousness of the violation, including the
 11-53 nature, circumstances, extent, and gravity of the prohibited act
 11-54 and the hazard or potential hazard created by the act to the health
 11-55 or safety of the public;

11-56 (3) the history of previous violations;

11-57 (4) the deterrence of future violations; and

11-58 (5) the efforts to correct the violation.

11-59 (g) The commission shall develop and use a system to record
 11-60 and track the scope and severity of each violation of this chapter
 11-61 or a rule, standard, or order adopted under this chapter for the
 11-62 purpose of assessing an administrative penalty for the violation or
 11-63 taking some other enforcement action against the appropriate
 11-64 facility to deter future violations. The system:

11-65 (1) must be comparable to the system used by the
 11-66 Centers for Medicare and Medicaid Services to categorize the scope
 11-67 and severity of violations for nursing homes; and

11-68 (2) may be modified, as appropriate, to reflect
 11-69 changes in industry practice or changes made to the system used by

12-1 the Centers for Medicare and Medicaid Services.
 12-2 SECTION 21. Section 103.013, Human Resources Code, is
 12-3 amended to read as follows:
 12-4 Sec. 103.013. RIGHT TO CORRECT BEFORE IMPOSITION OF
 12-5 ADMINISTRATIVE PENALTY. (a) The commission [~~department~~] may not
 12-6 collect an administrative penalty from a day activity and health
 12-7 services facility under Section 103.012 if, not later than the 45th
 12-8 day after the date the facility receives notice under Section
 12-9 103.014(c), the facility corrects the violation.
 12-10 (b) Subsection (a) does not apply to:
 12-11 (1) a violation that the commission [~~department~~]
 12-12 determines:
 12-13 (A) represents a pattern of violation that
 12-14 results in actual [~~serious~~] harm [~~to or death of a person attending~~
 12-15 ~~the facility~~];
 12-16 (B) is widespread in scope and results in actual
 12-17 harm;
 12-18 (C) is widespread in scope, constitutes a
 12-19 potential for actual harm, and relates to:
 12-20 (i) staffing, including staff training,
 12-21 ratio, and health;
 12-22 (ii) administration of medication; or
 12-23 (iii) emergency preparedness and response;
 12-24 (D) [~~(B)~~] constitutes an immediate [~~a serious~~]
 12-25 threat to the health or [~~and~~] safety of an elderly person or a
 12-26 person with a disability receiving services at a [~~a person~~
 12-27 ~~attending the~~] facility; or
 12-28 (E) [~~(C)~~] substantially limits the facility's
 12-29 capacity to provide care;
 12-30 (2) a violation described by Sections
 12-31 103.012(a)(2)-(7); or
 12-32 (3) a violation of Section 103.011.
 12-33 (c) A day activity and health services facility that
 12-34 corrects a violation must maintain the correction. If the facility
 12-35 fails to maintain the correction until at least the first
 12-36 anniversary after the date the correction was made, the commission
 12-37 [~~department~~] may assess and collect an administrative penalty for
 12-38 the subsequent violation. An administrative penalty assessed under
 12-39 this subsection is equal to three times the amount of the original
 12-40 penalty assessed but not collected. The commission [~~department~~] is
 12-41 not required to provide the facility with an opportunity under this
 12-42 section to correct the subsequent violation.
 12-43 (d) In this section:
 12-44 (1) "Actual harm" means a negative outcome that
 12-45 compromises the physical, mental, or emotional well-being of an
 12-46 elderly person or a person with a disability receiving services at a
 12-47 facility.
 12-48 (2) "Immediate threat to the health or safety of an
 12-49 elderly person or a person with a disability" means a situation that
 12-50 causes, or is likely to cause, serious injury, harm, or impairment
 12-51 to or the death of an elderly person or a person with a disability
 12-52 receiving services at a facility.
 12-53 (3) "Pattern of violation" means repeated, but not
 12-54 pervasive, failures of a facility to comply with this chapter or a
 12-55 rule, standard, or order adopted under this chapter that:
 12-56 (A) result in a violation; and
 12-57 (B) are found throughout the services provided by
 12-58 the facility or that affect or involve the same elderly persons or
 12-59 persons with disabilities receiving services at the facility or the
 12-60 same facility employees.
 12-61 (4) "Widespread in scope" means a violation of this
 12-62 chapter or a rule, standard, or order adopted under this chapter
 12-63 that:
 12-64 (A) is pervasive throughout the services
 12-65 provided by the facility; or
 12-66 (B) represents a systemic failure by the facility
 12-67 that affects or has the potential to affect a large portion of or
 12-68 all of the elderly persons or persons with disabilities receiving
 12-69 services at the facility.

13-1 SECTION 22. Section 247.0025, Health and Safety Code, is
13-2 repealed.

13-3 SECTION 23. The changes in law made by this Act apply only
13-4 to actions taken by the Health and Human Services Commission and
13-5 license holders under Chapter 103, Human Resources Code, and
13-6 Chapters 242, 247, 248A, and 252, Health and Safety Code, on or
13-7 after the effective date of this Act. An action taken before the
13-8 effective date of this Act is governed by the law in effect at that
13-9 time, and the former law is continued in effect for that purpose.

13-10 SECTION 24. This Act takes effect September 1, 2017.

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