

SUBJECT: Administrative penalties for intermediate care facilities for mentally retarded

COMMITTEE: Public Health — favorable, without amendment

VOTE: 9 ayes — Gray, Coleman, Capelo, Delisi, Glaze, Hilderbran, Maxey,  
McClendon, Uresti

0 nays

SENATE VOTE: On final passage, March 23 — voice vote

WITNESSES: For — Greg Hooser, Private Providers Association

Against — None

On — Aaryce Hayes, Advocacy, Inc.

BACKGROUND: Intermediate Care Facilities for the Mentally Retarded (ICF/MRs) are Medicaid-paid residential facilities operated by public and private providers. There are about 876 ICF/MRs with a total of 7,946 beds. About 787 of these facilities are small, having six or fewer beds.

The Texas Department of Mental Health and Mental Retardation (MHMR) is responsible for contracting and contract-related sanctioning and for reimbursement. The Department of Human Services (DHS) is responsible for licensing and certification of the facilities.

During the 1997 session, the 75th Legislature enacted SB 1248 by Madla, creating a separate licensing chapter for ICF/MR facilities, which formerly had been required to adhere to requirements governing nursing homes.

DIGEST: SB 196 would specify the reporting and procedures to be used by DHS when inspecting or investigating ICF/MR facilities and the amount and procedures by which DHS could assess administrative penalties. It also would authorize the attorney general to recover reasonable expenses and costs from facilities found liable and require DHS to define specific and appropriate criteria by which it could deny a license application or renewal or revoke a license.

The bill would take effect September 1, 1999, and apply to violations that occur on or after the effective date.

**Inspections.** DHS inspectors would have to list each violation found and reference it to a specific law or rule. At the conclusion of an inspection, the inspector would have to discuss and leave a written list of the violations with the facility's management. Any additional violations found by the inspector in the review of field notes would necessitate an additional exit conference.

Facilities would have to submit a plan to correct the violation within 10 days after they received the final statement of violations.

DHS would have to send a facility a written notice of the alleged violation, the proposed penalty, and the person's right to a hearing.

**Administrative penalties.** Penalties could range between \$100 to \$1,000 for each violation. Each day a continuing violation occurred after the day on which the person received notice of the violation would constitute a separate violation. DHS would have to establish a specific and detailed schedule of graduated penalties, and DHS rules on assessing penalties would have to consider the seriousness of the violation, whether the facility had made progress in correcting the violation, and other considerations.

Facilities would have up to 45 days from the first day of a violation to correct the violation and avoid being penalized.

The department could require a person subject to penalties to use all or part of the penalty amount to ameliorate the violation.

Administrative penalties would be deposited to the state general revenue fund.

**Hearings.** A person would have 20 days from receiving the written notification of violations to request a hearing. Based on the findings of fact and conclusions and recommendations of the hearing officer, the DHS commissioner could find that a violation had occurred and assess a penalty. The person would then have the right to seek judicial review of the case, following specified provisions.

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**SUPPORTERS  
SAY:**

SB 196 would advance the progress made last session in appropriately regulating ICF/MR facilities and would conform this program with the administrative tools that are used in other regulatory programs.

SB 196 would improve DHS regulation in a way that is fair to providers. The current options they have are too stringent and inflexible. If a facility is out of compliance with the law, DHS may refer the case to the attorney general, but the resulting prosecution could result in closure of the business. This bill would give DHS some intermediate, more appropriate administrative steps that could assist facilities in making necessary corrections or sanctioning facilities with monetary penalties.

Per day penalties for violations would be limited to those violations that continue to occur after receipt of the final notice from DHS. The operators would still have opportunities to correct the problem without penalty. Also, the penalties imposed could be as low as \$100, so that minor infractions would not be unduly punished.

**OPPONENTS  
SAY:**

Not all violations warrant a per day penalty. The use of per day penalties should be limited to serious infractions that are recommitted on a daily basis.

The administrative provisions should be further refined to exempt certain, serious violations from the 45-day correction alternative. For example, failure to properly tube feed or to provide active, medically necessary treatment to a resident can cause serious and permanent harm, and facilities should be penalized when it happens. Also, the violating facilities would have received payment for required services they did not provide.

**NOTES:**

Rep. Coleman plans to offer a floor amendment to address the concerns with the 45-day correction provision.