

BILL ANALYSIS

Senate Research Center
76R6085 MCK-D

C.S.S.B. 196
By: Madla
Health Services
3/17/1999
Committee Report (Substituted)

DIGEST

Currently, there is an established system for regulating intermediate care facilities for the mentally retarded (ICF-MR) which addresses ICF-MR regulation, governance, and use of administrative penalties. However, the specific provisions for penalties do not address many due process provisions offered in parallel licensing statutes for similar programs. This bill clarifies and creates provisions regarding violations and penalties affecting ICF-MR facilities.

PURPOSE

As proposed, C.S.S.B. 196 sets forth provisions and administrative penalties for intermediate care facilities for the mentally retarded.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas Department of Human Services in SECTION 1 (Sections 252.033(h), and 252.065(c)-(e), Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 252.033, Health and Safety Code, by adding Subsection (h), to require the Texas Department of Human Services (department), by rule, to define criteria for denial or revocation of licenses.

SECTION 2. Amends Chapter 252B, Health and Safety Code, by adding Section 252.044, as follows:

Sec. 252.044. REPORTING VIOLATIONS. Requires the department to perform certain actions while conducting an inspection, survey, or investigation. Requires the department to discuss violations with the facility's management, and to provide a list of violations. Requires the department to conduct another discussion with the facility if further violations are found. Requires the facility to submit a violation correction plan by the 10th day after receipt of the final statement of violations.

SECTION 3. Amends Section 252.065, Health and Safety Code, to set forth requirements concerning the administrative penalty value and clarifies what is considered a violation. Authorizes the department, by rule, to specify violations warranting an administrative penalty and sets forth a list of items the department is required to consider. Authorizes the department, by rule, to establish a specific and detailed schedule of penalties for violations based on specifics of the violation. Requires the department, by rule, to provide the facility with at least 45 days to correct the violation before assessing a penalty, if a plan of correction has been implemented. Prohibits a penalty from being assessed for minor violations prior to 46 days after the violator receives notice of the violation. Requires the department to establish a system ensuring consistent application of penalties. Provides that all penalty proceedings under this chapter are subject to Chapter 2001, Government Code. Prohibits the department from assessing a penalty against a state agency. Provides that a penalty ceases to accrue when the violation is corrected. Provides that the penalty ceases to be incurred if the facility takes certain actions. Deletes the department's rulemaking authority to establish gradations and amounts of penalties. Deletes certain departmental considerations in determining the amount of a penalty. Deletes text prohibiting the department from assessing certain penalties. Makes conforming and nonsubstantive changes.

SECTION 4. Amends Section 252.066, Health and Safety Code, as follows:

Sec. 252.066. New heading: NOTICE; REQUEST FOR HEARING. Requires the department to give written notice to a certain person, and sets forth the required information to be included in the notice. Authorizes the person notified to accept the department's determination, or to make a written request for a hearing, not later than the 20th day after violation notification is received. Authorizes the commissioner of human services or a designee to order the person to pay the proposed penalty, if the person accepts the determination or fails to respond to the notification. Deletes Texas Board of Human Services rulemaking authority concerning the assessment of administrative penalties. Deletes text requiring certain criteria for rules in this section, including the requirement that a penalty be appropriate to the violation. Deletes text authorizing the department to assess a per diem penalty. Deletes text defining "immediate and serious threat."

SECTION 5. Amends Chapter 252C, Health and Safety Code, by adding Sections 252.067-252.071, as follows:

Sec. 252.067. HEARING; ORDER. Sets forth requirements for the department if the person notified requests a hearing. Sets forth required actions of the hearings examiner. Authorizes the commissioner of human services or a designee to find that a violation has occurred and to assess a penalty or to find that no violation has occurred, based on the results of the hearing.

Sec. 252.068. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW; REFUND. Requires the department to notify the alleged violator, and sets forth the required information to be included in the notification. Sets forth actions required of the alleged violator. Authorizes the alleged violator to take certain actions within the 30-day period after the final decision concerning the alleged violation. Authorizes the department to contest a sworn affidavit stating that the alleged violator is unable to pay the penalty, under certain conditions. Sets forth procedures regarding the contested affidavit. Authorizes the department to refer the matter of an alleged violator who does not pay the penalty to the attorney general. Sets forth provisions regarding the judicial review of the order. Authorizes the court sustaining the violation to reduce the amount of the penalty and order the violator to pay. Authorizes the court to order that no penalty is owed if it does not sustain the violation. Sets forth court procedures following a final judgment.

Sec. 252.069. PENALTY DEPOSITED TO STATE TREASURY. Requires a collected administrative penalty to be credited to the general revenue fund.

Sec. 252.070. EXPENSES AND COSTS FOR COLLECTION OF CIVIL OR ADMINISTRATIVE PENALTY. Authorizes the attorney general to recover reasonable costs and expenses from a person found liable for a civil or administrative penalty. Describes reasonable expenses and costs.

Sec. 252.071. AMELIORATION OF VIOLATION. Authorizes the department to require a person subject to a penalty to use the penalty funds to improve the facility affected by the violation, in lieu of ordering the penalty's payment.

SECTION 6. Effective date: September 1, 1999.
Makes application of this Act prospective.

SECTION 7. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 1.

Amends Section 252.033, Health and Safety Code, by adding Subsection (h), to give rulemaking authority to the department.

SECTION 2.

Amends Chapter 252B, Health and Safety Code, by adding Section 252.044, regarding reporting violations.

SECTION 3.

Redesignates existing SECTION 1 as SECTION 3. Amends Section 252, Health and Safety Code, to require the department to establish specific and detailed penalties. Specifies the size of a facility as a determining factor in penalty assessment. Specifies a minimum of 45 days for the department to allow a facility to make corrections before assessing a penalty, and prohibits a penalty before that time. Sets forth provisions for the cessation of an administrative penalty. Makes conforming and nonsubstantive changes.

SECTION 4.

Redesignates existing SECTION 2 as SECTION 4. Amends Section 252.066, Health and Safety Code, to require the department to give written notice to the person designated by the facility to receive notice, rather than to the person alleged to have committed the violation. Requires the commissioner of human services, rather than human resources, to issue a certain order.

SECTION 5.

Redesignates existing SECTION 3 as SECTION 5. Adds Section 252.071, Health and Safety Code, regarding the department's authority to require a person who commits a violation to take certain actions regarding improvement of the facility. Specifies that the commissioner of human services is required to receive a certain proposal for decision.

SECTION 6.

Redesignates existing SECTION 4 as SECTION 6.

SECTION 7.

Redesignates existing SECTION 5 as SECTION 7.