

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 1083  
By: Harris  
Health & Human Services  
3/27/2001  
As Filed

### **DIGEST AND PURPOSE**

Current statutes require the Texas Department of Human Services (department) to regulate nursing facilities. As proposed, S.B. 1083 clarifies and strengthens the due process requirements relating to the department's licensing, inspection, survey, investigation, and enforcement functions.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Department of Human Services in SECTION 1 (Section 242.037, Health and Safety Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 242.037, Health and Safety Code, by adding Subsection (i) to require the Texas Department of Human Services (department) to identify in its rules each violation of a rule or standard for which a penalty may be assessed under this chapter or in accordance with Chapter 32 (Medical Assistance Program), Human Resources Code.

SECTION 2. Amends Section 242.0445, Health and Safety Code, by amending Subsections (a) and (b) and adding Subsections (d) and (e), as follows:

- (a) Requires the department or the department's representative conducting an inspection, survey, or investigation under Section 242.043 or 242.044, or in accordance with Chapter 32, Human Resources Code, to list each violation of a law or rule on a form designed by the department for inspections; identify the specific law or rule the institution, rather than facility, violated; and if the institution is denied a right to correct the violation, identify the specific reason under Section 242.0665(b) for the denial.
- (b) After a certain inspection, survey, or investigation, requires the department or department's representative to leave official notice, rather than a written list, of the violations with the facility at the time of the exit conference. Requires the official notice to include a written list of the violations and a list of recommendations for the facility's plan to correct the violations. Makes a conforming change.
- (d) Authorizes a facility, not later than 24 hours before the time scheduled for the exit conference, to provide to the department's representative additional documentation to demonstrate that a violation identified in the inspection, survey, or investigation has not occurred.
- (e) Prohibits the department from imposing a penalty or remedy under this chapter or in accordance with Chapter 32, Human Resources Code, for a violation identified or confirmed in an inspection, survey, or investigation under Section 242.043 or 242.044, or in accordance with Chapter 32, Human Resources Code, unless the violation is included in the official notice required by Subsection (b).

SECTION 3. Amends Chapter 242B, Health and Safety Code, by adding Section 242.0447, as follows:

Sec. 242.0447. DUTIES OF REPRESENTATIVES. Requires the department to adopt written policies requiring representatives of the department to treat the residents of the institution and the institution's staff with courtesy, consideration, and respect when conducting an inspection, survey, or investigation under Section 242.043 or 242.044 or in accordance with Chapter 32, Human Resources Code.

SECTION 4. Amends Section 242.066, Health and Safety Code, by adding Subsection (i) to authorize the department to impose only one administrative penalty for each violation identified or confirmed in an inspection, survey, or investigation.

SECTION 5. Amends Section 242.0665, Health and Safety Code, by amending Subsection (b) and adding Subsection (d), as follows:

(b) Provides that subject to Subsection (d), Subsection (a) does not apply to certain violations.

(d) Prohibits the department from denying a right to correct unless actual harm to a resident has been identified with respect to a violation described by Subsection (b).

SECTION 6. Amends Section 242.070, Health and Safety Code, to prohibit the department from assessing a monetary penalty under this chapter and a monetary penalty under Chapter 32, Human Resources Code, for the same act or failure to act. Deletes text regarding a monetary penalty not being prohibited.

SECTION 7. Effective date: September 1, 2001.

Makes application of the change in law made by this Act to Sections 242.066 and 242.0665, Health and Safety Code, regarding the assessment of an administrative penalty, prospective.