

BILL ANALYSIS

Senate Research Center
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S.B. 39
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Health & Human Services
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DIGEST AND PURPOSE

Currently, Texas has no enforcement options for an out-of-compliance assisted living facility other than revoking its license, closing the facility, or referring the case to the Office of the Attorney General. As proposed, S.B. 39 provides a full range of administrative penalties for use by the state to sanction assisted living facilities that do not meet standards.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 247.002, Health and Safety Code, by adding Subdivision (7), to define “commissioner.”

SECTION 2. Amends Section 247.0455, Health and Safety Code, to redesignate Section 247.0455 to Section 247.0459.

SECTION 3. Amends Chapter 247C, Health and Safety Code, by adding Sections 247.0451 through 247.0457, as follows:

Sec. 247.0451. ADMINISTRATIVE PENALTY. (a) Authorizes the Texas Department of Human Services (department) to assess an administrative penalty against a person who:

- violates this chapter or a rule, standard, or order adopted or license issued under this chapter;
- makes a false statement, that the person knows or should know is false, of a material fact under certain conditions;
- refuses to allow a representative of the department to inspect certain items;
- wilfully interferes with the work of a representative of the department or the enforcement of this chapter;
- wilfully interferes with a representative of the department preserving evidence of a violation of this chapter or a rule, standard, or order adopted or license issued under this chapter; or
- fails to pay a penalty assessed under this chapter not later than the 30th day after the date the assessment of the penalty becomes final.

(b) Prohibits the penalty, except as provided by Subsection (d), from exceeding \$5,000 for each violation.

(c) Requires a notice of any violation observed by a representative of the department during an inspection that results in a recommendation of an administrative penalty to be provided in writing to the assisted living facility. Requires the written notice to identify the specific law or regulation that has been violated and include the name of the department representative recommending the penalty.

(d) Prohibits the penalty for a violation of a right of a resident under Section 247.064 from exceeding \$1,000 for each violation. Provides that this subsection does not apply to conduct that also violates another provision of this chapter or a rule, standard, or order adopted or license issued under this chapter.

(e) Requires the Texas Board of Human Services (board) to establish gradations of penalties in accordance with the relative seriousness of the violation.

(f) Requires the department to consider, in determining the amount of a penalty, any matter that justice may require, including certain matters.

(g) Provides that a penalty assessed under Subsection (a)(6) is in addition to the penalty previously assessed and not timely paid.

Sec. 247.0452. RIGHT TO CORRECT. (a) Prohibits the department from collecting an administrative penalty from an assisted living facility under Section 247.0451 if, not later than the 45th day after the date the facility receives notice under Section 247.0453(c), the facility corrects the violation.

(b) Provides that Subsection (a) does not apply:

- to a violation that the department determines meets certain criteria;
- to a violation described by Sections 247.0451(a)(2)-(6); or
- to a violation or a right of a resident under Section 247.064.

Sec. 247.0453. REPORT RECOMMENDING ADMINISTRATIVE PENALTY. (a) Authorizes the department to issue a preliminary report stating the facts on which the department concludes that a violation of this chapter or a rule, standard, or order adopted or license issued under this chapter has occurred if the department has met certain conditions.

(b) Authorizes the report to recommend a penalty under Section 247.0451 and the amount of the penalty.

(c) Requires the department to give written notice of the report to the person charged with the violation not later than the 10th day after the date the report is issued. Requires the notice to include certain information.

(d) Authorizes the person charged, not later than the 20th day after the date the notice under Subsection (c) is sent, to:

- give to the department written consent to the department's report, including the recommended penalty;
- make a written request for a hearing; or
- if the violation is subject to correction under Section 247.0452, submit a plan of correction to the department for approval.

(e) Requires the department, if the violation is subject to correction under Section 247.0452 and the person reports to the department that the violation has been corrected, to inspect the correction or take any other step necessary to confirm the correction. Requires the department to notify the person that the correction is satisfactory and a penalty will not be assessed, or the correction is not satisfactory and a penalty is recommended.

(f) Authorizes the person charged, not later than the 20th day after the date a notice under Subsection (e)(2) is sent, to give to the department written consent to the department's report, including the recommended penalty, or make a written request for a hearing.

(g) Requires the commissioner of human services (commissioner) or the commissioner's designee to assess the penalty recommended by the department if the person charged with the violation consents to the penalty recommended by the department or does not timely respond to a notice sent under Subsection (c) or (e)(2).

(h) Requires the department to give written notice to the person charged of the decision and requires the person to pay the penalty, if the commissioner or the commissioner's designee assesses the recommended penalty.

Sec. 247.0454. HEARING ON ADMINISTRATIVE PENALTY. (a) Requires an administrative law judge to order a hearing and give notice of the hearing if a person charged with a violation under Section 247.0451 timely requests a hearing.

(b) Requires the hearing to be held before an administrative law judge.

(c) Requires the administrative law judge to make findings of fact and conclusions of law and promptly issue to the commissioner a written decision regarding the occurrence of a violation of this chapter or a rule, standard, or order adopted or license issued under this chapter and a recommendation regarding the amount of the proposed penalty if a penalty is warranted.

(d) Authorizes the commissioner, based on the findings of fact and conclusion of law and the recommendation of the administrative law judge to, by order, find that a violation has occurred and assess an administrative penalty, or find that a violation has not occurred.

(e) Provides that proceedings under this section are subject to Chapter 2001 (Administrative Procedure), Government Code.

Sec. 247.0455. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; INTEREST; REFUND. (a) Requires the commissioner to give notice of the findings made under Section 247.0454(d) to the person charged. Requires the commissioner, if the commissioner finds that a violation has occurred, to give to the person charged written notice of certain information.

(b) Requires the person charged with the penalty, not later than the 30th day after the date the commissioner's order is final, to pay the full amount of the penalty, or file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, the failure to correct the violation to the department's satisfaction, or any combination of those issues.

(c) Authorizes the department to permit the person to pay a penalty, notwithstanding Subsection (b), in installments or may require the person to use all or part of the amount of the penalty in accordance with Section 247.0457.

(d) Provides that if the person does not pay the penalty within the period provided by Subsection (b) or in accordance with Subsection (c), if applicable, the penalty is subject to interest, and the department is authorized to refer the matter to the attorney general for collection of the penalty and interest.

(e) Provides that interest under Subsection (d)(1) accrues at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and for the period beginning on the date after the date the penalty becomes due and ending on the date the penalty is paid.

(f) Requires the commissioner, if a penalty is reduced or not assessed as a result of judicial review, to remit to the person charged the appropriate amount of any penalty payment plus accrued interest; or execute a release of the supersedeas bond if one has been posted.

(g) Requires accrued interest on amounts remitted by the commissioner under Subsection (f)(1) to be paid at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted to the person charged.

Sec. 247.0456. APPLICATION OF OTHER LAW. Prohibits the department from assessing, except as provided by Section 247.0451(a)(6), more than one monetary penalty under this chapter for a violation arising out of the same act or failure to act.

Sec. 247.0457. AMELIORATION OF VIOLATION. Authorizes the commissioner, instead of ordering payment of an administrative penalty authorized by this subchapter, to require a person subject to the penalty to use, under the supervision of the department, all or part of the amount of the penalty to ameliorate the violation or to improve services, other than administrative services, in the assisted living facility affected by the violation.

SECTION 4. Amends Section 247.049(b), Health and Safety Code, to provide that Subsection (a) does not bar the admission into evidence of department reports or other documents in an enforcement action in which the state or an agency or political subdivision of the state is a party, including a contested case hearing on the imposition of an administrative penalty under Section 247.0451.

SECTION 5. Effective date: September 1, 2001.