

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 932  
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Health & Human Services  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

In 2014, the Sunset Advisory Commission (Sunset) comprehensively reviewed the state's long-term care system. Sunset found that the Department of Aging and Disability Services (DADS) takes few enforcement actions on violations of long-term care facilities such as nursing homes, even on serious and repeat offenses. In response to these findings, Sunset unanimously adopted a variety of recommendations to strengthen regulatory oversight, including higher administrative penalties and progressive sanctions for serious or repeated violations. However, the DADS Sunset bill (S.B. 204, 84R) passed the full Senate, but failed to pass out of the legislature.

S.B. 932 includes many of the same provisions as S.B. 204 and also includes recommendations made by the Senate Health and Human Services Committee in their Interim Report to the 85th Legislature based on an extensive interim study on long term care regulation and oversight.

Specifically, S.B. 932 clarifies that the third party informal dispute resolution process established for nursing facilities in S.B. 304 (Schwertner, 84R) also applies to assisted living facilities. The bill also requires the executive commissioner of the Health and Human Services Commission (HHSC) to review and streamline the processes for how HHSC issues informational letters and policy updates to certain long-term care providers and requires HHSC to utilize a system to record and track the scope and severity of violations for certain providers.

In addition, S.B. 932 prohibits certain long-term care providers from utilizing "right to correct" for a violation if it represents a pattern of violations that results in actual harm, is widespread in scope and results in actual harm, is widespread in scope and constitutes the potential for actual harm, or constitutes an immediate threat to the health and safety of a client.

This legislation extends the licensure period of certain long-term care providers an additional year, and finally, S.B. 932 increases the penalty cap for assisted living facilities in instances that result in actual harm or constitutes an immediate threat to the health or safety of a resident and removes the penalty cap for intermediate care facilities (ICFs) for the total amount of a penalty assessed for a violation for both small and ICFs.

As proposed, S.B. 932 amends current law relating to the licensing of, the executive commissioner of the Health and Human Services Commission's duties with respect to, and the administrative penalties for certain long-term care facilities.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission (HHSC) in SECTION 9 (Section 248A.053, Health and Safety Code) of this bill.

Rulemaking authority previously granted to the executive commissioner of HHSC is modified in SECTION 5 (Section 247.023, Health and Safety Code) and SECTION 15 (Section 103.006, Human Resources Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Sections 531.058(a) and (a-1), Government Code, as follows:

(a) Requires that the process provide for adjudication by an appropriate disinterested person of disputes relating to a proposed enforcement action or related proceeding of the Health and Human Services Commission (HHSC) under Section 32.021(d) (relating to provisions for monetary penalties in contracts for delivery of medical assistance by nursing facilities), Human Resources Code, or the Department of Aging and Disability Services (DADS) or its successor agency under Chapter 242 (Convalescent and Nursing Facilities and Related Institutions), 247 (Assisted Living Facilities), or 252 (Intermediate Care Facilities for Individuals with an Intellectual Disability), Health and Safety Code. Requires that the informal dispute resolution process require certain actions.

(a-1) Requires HHSC, as part of the informal dispute resolution process established under this section, to contract with an appropriate disinterested person who is a nonprofit organization to adjudicate disputes between an institution or facility licensed under Chapter 242 or 247, Health and Safety Code, and DADS or its successor agency concerning a statement of violations prepared by the department in connection with a survey conducted by the department of the institution or facility. Provides that Section 2009.053 (Impartial Third Parties) does not apply to the selection of an appropriate disinterested person under this subsection. Requires the person with whom HHSC contracts to adjudicate all disputes described by this subsection.

SECTION 2. Amends Subchapter B, Chapter 531, Government Code, by adding Section 531.0585, as follows:

Sec. 531.0585. ISSUANCE OF MATERIALS TO CERTAIN LONG-TERM CARE FACILITIES. Requires the executive commissioner of HHSC (executive commissioner) to review HHSC's methods for issuing informational letters, policy updates, policy clarifications, and other related materials to an entity licensed under Chapter 103 (Day Activity and Health Services), Human Resources Code, or Chapter 242, 247, 248A (Prescribed Pediatric Extended Care Centers), or 252, Health and Safety Code, and develop and implement more efficient methods to issue those materials as appropriate.

SECTION 3. Amends Section 242.066, Health and Safety Code, by amending Subsections (a) and (e) and adding Subsection (i), as follows:

(a) to (e) Changes references to department to commission in these subsections.

(i) Requires HHSC to develop and use a system to record and track the scope and severity of each violation of this chapter or a rule, standard, or order adopted under this chapter for the purpose of assessing an administrative penalty for the violation or taking some other enforcement action against the appropriate institution to deter future violations. Provides that the system:

(1) is required to be comparable to the system used by the Centers for Medicare and Medicaid Services to categorize the scope and severity of violation for nursing homes; and

(2) is authorized to be modified, as appropriate, to reflect changes in industry practice or changes made to the system used by the Centers for Medicare and Medicaid Services.

SECTION 4. Amends Section 242.0665, Health and Safety Code, as follows:

Sec. 242.0665. RIGHT TO CORRECT. (a) Prohibits HHSC, rather than the department, from collecting an administrative penalty against an institution under this subchapter if, not later than the 45th day after the date the institution receives notice under Section 242.067(c) (relating to written notice of the report to the person charged with the violation), the institution corrects the violation.

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

(1) to a violation that HHSC, rather than department, determines:

(A) represents a pattern of violations that results in actual harm, rather than serious harm to or death of a resident;

(B) results in actual harm that is pervasive throughout the services provided by the institution or that represents a systemic failure by the institution that affects or has the potential to affect a large number of or all of the residents of the institution;

(C) constitutes the potential for actual harm that is pervasive throughout the services provided by the institution or that represents a systemic failure by the institution that affects or has the potential to affect a large number of or all of the residents of the institution and is a violation of this chapter or a rule, standard, or order adopted under this chapter relating to resident's rights, treatment of residents, resident behavior and institution practices, quality of care, medication errors, standard menus and nutritional adequacy, physician visits, infection control, life safety from fire, or emergency preparedness and response;

(D) redesignates Paragraph (B) as Paragraph (D); constitutes an immediate, rather than a serious, threat to the health or safety of a resident; or

(E) redesignates Paragraph (C) as Paragraph (E); substantially limits the institution's capacity to provide care;

(2) to (4) makes no changes to these subdivisions.

(c) Makes conforming changes.

(d) Defines "actual harm," "immediate threat to health or safety of a resident," and "pattern of violations."

SECTION 5. Amends Section 247.023, Health and Safety Code, as follows:

Sec. 247.023. ISSUANCE AND RENEWAL OF LICENSE. (a) Requires HHSC, rather than DADS, to issue a license if, after inspection and investigation, it finds that the applicant, the assisted living facility, and all controlling persons with respect to the applicant or facility meet the requirements of this chapter and the standards adopted under this chapter. Provides that the license expires on the third, rather than second, anniversary of the date of its issuance. Requires, rather than authorizes, the executive commissioner by rule to adopt a system under which licenses expire on staggered, rather than various, dates during each three-year period, rather than two-year period. Requires HHSC to prorate the license fee as appropriate if the expiration date of the license changes as a result of this subsection. Deletes previously existing text requiring DADS for the year in which a license expiration date is changed, to prorate the license fee on a monthly basis, requiring each license holder to pay only that portion of the license fee allocable to the number of months during which the license is valid, requiring a license holder to pay the total license renewal fee at the time of renewal.

(b) Requires the license holder, to renew a license, to submit to HHSC, rather than DADS, the license renewal fee.

(c) Makes a conforming change.

SECTION 6. Amends Section 247.027, Health and Safety Code, as follows:

Sec. 247.027. INSPECTIONS. (a) Provides that in addition to the inspection required under Section 247.023(a), HHSC:

(1) is required to inspect each assisted living facility every two years following the initial inspection required under Section 247.023(a), rather than DADS is authorized to inspect an assisted living facility annually; and

(2) is authorized to inspect a facility at other reasonable times as necessary to assure compliance with this chapter.

(b) Makes conforming changes.

SECTION 7. Amends Section 247.0451, Health and Safety Code, by amending Subsections (a), (b), (d), and (f) and adding Subsections (g) and (h), as follows:

(a) Changes references to DADS to HHSC.

(b) Prohibits the penalty, except as provided by Section 247.0452(c), from exceeding:

(1) \$5,000 for each violation that results in actual harm or that constitutes an immediate threat to the health or safety of a resident; or

(2) \$1,000 for each other violation.

(d) and (f) Makes conforming changes.

(g) Requires HHSC to develop and use a system to record and track the scope and severity of each violation if this chapter or a rule, standard, or order adopted under this chapter for the purpose of assessing an administrative penalty for the violation or taking some other enforcement action against the appropriate assisted living facility to deter future violations. Provides that the system must be comparable to the system used by the Centers for Medicare and Medicaid Services to categorize the scope and severity of violations for nursing homes and may be modified, as appropriate, to reflect changes in industry practice or changes made to the system used by the Centers for Medicare and Medicaid Services.

(h) Defines "actual harm" and "immediate threat to the health and safety of a resident."

SECTION 8. Amends Section 247.0452, Health and Safety Code, as follows:

Sec. 247.052. RIGHT TO CORRECT. (a) Makes conforming changes.

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

(1) to a violation that HHSC, rather than DADS, determines represents a pattern of violations that results in actual harm, rather than serious harm to or death of a resident;

(2) to a violation that HHSC determines results in actual harm that is pervasive throughout the services provided by the assisted living facility or that represents a systemic failure by the assisted living facility that affects or has the potential to affect a large number of or all of the residents of the facility;

(3) to a violation that HHSC determines constitutes the potential for actual harm that is pervasive throughout the services provided by the assisted living facility or that represents a systemic failure by the assisted living facility that affects or has the potential to affect a large number of or all of the residents of the facility and is a violation of this chapter or a rule,

standard, or order adopted under this chapter relating to resident assessment, staffing, including staff training, resident policies, including resident's rights, administration of medication, activities, infection control, restraints, or emergency preparedness and response.

(4) to a violation that HHSC determines constitutes an immediate threat to the health or safety of a resident.

(5) to (7) redesignates Subdivisions (2), (3), and (4) as Subdivisions (5), (6), and (7).

(c) Makes conforming changes.

(d) Defines "actual harm," "immediate threat to the health or safety of a resident," and "pattern of violations."

SECTION 9. Amends Section 248A.053, Health and Safety Code, as follows:

Sec. 248A.053. INITIAL OR RENEWAL LICENSE TERM; RENEWAL; NOTIFICATION. (a) Provides that an initial or renewal license issued under this chapter expires on the third, rather than second, anniversary of the date of issuance. Requires the executive commissioner by rule to adopt a system under which licenses expire on staggered dates during each three-year period. Requires HHSC to prorate the license fee as appropriate if the expiration date of a license changes as a result of this subsection.

(b) Requires a person applying to renew a center license to:

(1) submit a renewal application to HHSC, rather than DADS, on a prescribed form, rather than the form prescribed by DADS, at least 60 days but not more than 120 days before expiration of the license;

(2) submit the renewal fee in the amount required by agency, rather than DADS, rule; and

(3) makes a conforming change.

(c) to (d) Makes conforming changes to these subsections.

SECTION 10. Amends Subchapter F, Chapter 248A, Health and Safety Code, by adding Section 248A.2515, as follows:

Sec. 248A.2515. SYSTEM FOR ASSESSMENT OF PENALTY. Requires HHSC to develop and use a system to record and track the scope and severity of each violation of this chapter or a rule or standard adopted or order issued under this chapter for the purpose of assessing an administrative penalty for the violation or taking some other enforcement action against the appropriate center to deter future violations. Provides that the system must be comparable to the system used by the Centers for Medicare and Medicaid Services to categorize the scope and severity of violations for nursing homes and may be modified, as appropriate, to reflect changes in industry practice or changes made to the system used by the Centers for Medicare and Medicaid Services.

SECTION 11. Amends Sections 252.033(a), (b), (d), (f), and (h), Health and Safety Code, as follows:

(a) Changes reference to DADS to HHSC.

(b) Makes a conforming change.

(d) Provides that a license is renewable on the third, rather than second, anniversary of issuance or renewal of the license after certain actions.

(f) Makes a conforming change.

(h) Requires the executive commissioner by rule to define specific, appropriate, and objective criteria on which HHSC, rather than DADS, may deny an initial license application or license renewal or revoke a license and adopt a system under which licenses expire on staggered dates during each three-year period and HHSC prorates the license fee as appropriate if the expiration date of a license changes as a result of the system adopted.

SECTION 12. Amends Section 252.041, Health and Safety Code, as follows:

Sec. 252.041. UNANNOUNCED INSPECTIONS. (a) Requires HHSC, rather than DADS, each licensing period, to conduct at least three, rather than two, unannounced inspections of each facility.

(b) to (d) Makes conforming changes.

SECTION 13. Amends Section 252.065, Health and Safety Code, by amending Subsections (a), (b), (e), (f), (i), and (j) and adding Subsections (l) and (m), as follows:

(a) Makes conforming changes.

(b) Deletes existing text prohibiting the total amount of the penalty assessed for a violation continuing or occurring on separate days under this subsection from exceeding \$5,000 for a facility with fewer than 60 beds or \$25,000 for a facility with 60 beds or more.

(e) Makes conforming changes.

(1) represents a pattern of violations that results in actual harm, rather than has resulted in serious harm to or the death of a resident;

(2) results in actual harm that is pervasive throughout the services provided by the facility or that represents a systemic failure by the facility that affects or has the potential to affect a large number of or all of the residents of the facility;

(3) constitutes the potential for actual harm that is pervasive throughout the services provided by the facility or that represents a systemic failure by the facility that affects or has the potential to affect a large number of or all of the residents of the facility and is a violation of this chapter or a rule, standard, or order adopted under this chapter relating to certain actions.

(4) redesignates existing Subdivision (2) as Subdivision (4); constitutes an immediate, rather than a serious threat to health and safety of a resident; or

(5) redesignates existing Subdivision (3) as Subdivision (5); substantially limits the facility's, rather than institution's, capacity to provide care.

(f), (i), and (j) Makes conforming changes to these subsections.

(l) Requires HHSC to develop and use a system to record and track the scope and severity of each violation of this chapter or a rule, standard, or order adopted under this chapter for the purpose of assessing an administrative penalty for the violation or taking some other enforcement action against the appropriate facility to deter future violations. Provides that the system must be comparable to the system used by the Centers for Medicare and Medicaid Services to categorize the scope and severity of violations for nursing homes and may be modified, as appropriate, to reflect changes in industry practice or changes made to the system used by the Centers for Medicare and Medicaid Services.

(m) Defines "actual harm," "immediate threat to the health or safety of a resident," and "pattern of violations."

SECTION 14. Amends Section 103.003, Human Resources Code, by amending Subdivision (1) and adding Subdivisions (1-a) and (4-b), as follows:

(1) Defines "commission."

(1-a) Creates Subdivision (1-a) from existing text defining "day activity and health services facility."

(4-b) Defines "facility."

SECTION 15. Amends Sections 103.006(a) and (b), Human Resources Code, as follows:

(a) Changes reference to DADS to HHSC.

(b) Provides that the license expires three, rather than two, years from the date of its issuance. Requires, rather than authorizes, the executive commissioner to adopt a system under which licenses expire on staggered dates during the three-year period, rather than on various dates during the two-year period. Requires HHSC to prorate the license fee as appropriate if the expiration date of a license changes as a result of this subsection. Deletes existing text requiring DADS, for each year in which a license expiration date is changed, to prorate the license fee on a monthly basis. Deletes existing text requiring each license holder to pay only that portion of the license fee allocable to the number of months for which the license is valid, and requiring a license holder to pay the total license renewal fee at the time of renewal.

SECTION 16. Amends Section 103.008, Human Resources Code, as follows:

Sec. 103.008. INSPECTIONS. (a) Provides that in addition to the inspection required under Section 103.006(a), HHSC:

(1) is required to inspect each facility every two years following the initial inspection required under Section 103.006(a); and

(2) is authorized to inspect a facility at other reasonable times as necessary to ensure compliance with the chapter. Deletes previously existing text authorizing DADS to enter the premises of a facility at reasonable times and make an inspection necessary to issue a license or renew a license.

(b) Makes conforming changes.

SECTION 17. Amends Section 103.012, Human Resources Code, by amending Subsections (a) and (e) and adding Subsection (g), as follows:

(a) and (e) Makes conforming changes.

(g) Requires HHSC to develop and use a system to record and track the scope and severity of each violation of this chapter or a rule, standard, or order adopted under this chapter for the purpose of assessing an administrative penalty for the violation or taking some other enforcement action against the appropriate facility to deter future violations. Requires the system to be comparable to the system used by the Center for Medicare and Medicaid Services to categorize the scope and severity of violations for nursing homes and may be modified, as appropriate, to reflect changes in industry practice or changes made to the system used by the Centers for Medicare and Medicaid Services.

SECTION 18. Amends Section 103.013, Human Resources Code, as follows:

Sec. 103.013. RIGHT TO CORRECT BEFORE IMPOSITION OF ADMINISTRATIVE PENALTY. (a) Makes conforming changes.

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

(1) a violation that HHSC, rather than DADS, determines:

(A) represents a pattern of violations that results in actual harm, rather than serious harm to or death of a person attending the facility;

(B) results in actual harm that is pervasive throughout the services provided by the facility or that represents a systemic failure by the facility that affects or has the potential to affect a large number of or all of the elderly persons and persons with disabilities receiving services at the facility;

(C) constitutes the potential for actual harm and is a violation of this chapter or a rule, standard, or order adopted under this chapter relating to staffing, including staff training, ratio, and health, administration of medication, or emergency preparedness and response;

(D) redesignates existing Paragraph (B) as Paragraph (D); constitutes an immediate threat to the health or safety of an elderly person or a person with a disability receiving services at a facility, rather than constitutes a serious threat to the health and safety of a person attending the facility; or

(E) redesignates existing Paragraph (C) as Paragraph (E);

(2) to (3) makes no changes to these subdivisions.

(c) Makes conforming changes.

(d) Defines "actual harm," "immediate threat to the health or safety of an elderly person or a person with a disability," and "pattern of violations."

SECTION 19. Repealer: Section 247.0025 (Immediate Threat of Harm), Health and Safety Code.

SECTION 20. Makes application of this Act prospective.

SECTION 21. Effective date: September 1, 2017.