

**Status of Bills Related to Administrative Penalties ~ May 30, 2017**  
**June 23, 2017 Update: HB 2590 and HB 2025 Have Been Signed By The Governor**

**HB 2590 [Passed as amended]**

**Representative Raymond, author /Senator Schwertner, Senate sponsor**

- **As filed**, the bill applied to **HCS and TxHmL** (Chapter 161, Human Resources Code) and specified the following: In lieu of demanding payment of an administrative penalty assessed under Section 161.089, the commission may, in accordance with this section, allow the provider subject to the penalty to use, under the supervision of the commission, any portion of the amount of the penalty to ameliorate the violation or to improve services in the waiver program in which the provider participates. It further stated that: The HHSC executive commissioner by rule shall establish an informal dispute resolution process. The process must provide for adjudication by an appropriate disinterested person of disputes relating to a proposed enforcement action or related proceeding of the commission against a provider participating in the HCS or TxHmL waiver program.
- **As amended in the Senate and passed by both chambers**, the bill incorporates amendments which not only parallel language in SB 932 (Schwertner) which did not pass, but which also reflect the position of the Senate Health and Human Services Committee regarding amelioration of violation. In brief the bill:
  - ~ **Removes current law which states:** In specifying the types of violations that warrant imposition of an administrative penalty under Subsection (c), the executive commissioner shall specify the types of minor violations that allow a provider an opportunity to take corrective action.
  - ~ **Amends current law to read as follows:** The commissioner by rule ~~[(f) In lieu of imposing an administrative penalty under this section, the department]~~ shall provide to [allow] a provider who has implemented a plan of correction ~~[found to have committed a minor violation specified by rule in accordance with Subsection (d) to have]~~ a reasonable period of time following ~~[that is not less than 45 days after]~~ the date the commission ~~[department]~~ sends notice to the provider of the violation to correct ~~[take corrective action regarding]~~ the violation before the commission may assess an administrative penalty. The period may not be less than 45 days ~~[department may not allow time for corrective action for any violation that is not a minor violation].~~
  - ~ **Adds new provisions** which parallel language in SB 932 (which, as stated previously, did not pass) and in HB 2025 as amended in the Senate. These new provisions provide definitions for the following terms:
    - "Actual harm" means a negative outcome that compromises a resident's physical, mental, or emotional well-being.
    - "Immediate threat to the health or safety of a resident" means a situation that causes, or is likely to cause, serious injury, harm, or impairment to or the death of a resident.
    - "Pattern of violation" means repeated, but not pervasive, failures of a provider to comply with a law relating to a program to which this section applies that: (A) result in a violation; and (B) are found throughout the services provided by the provider or that affect or involve the same recipients or provider employees or volunteers;
    - "Widespread in scope" means a violation of this chapter or a rule, standard, or order adopted under this chapter that: (A) is pervasive throughout the services provided by the provider; or (B) that represents a systemic failure by the provider that affects or has the potential to affect a large portion of or all of the recipients.
- **Maintains the provisions included in HB 2590 as filed** that allow HHSC to offer amelioration of violation to a HCS or TxHmL provider in lieu of payment of an administrative penalty, **but, as amended and passed calls for the amelioration process to expire on September 1, 2023.**
- **Maintains the provisions included in HB 2590 as filed** that establish an informal dispute process in the HCS and TxHmL programs.

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**HB 2025** *[Passed as amended]*

**Representative Y. Davis, author; Senator Schwertner, Senate sponsor:** Relating to staffing requirements for certain facilities that provide care to persons with Alzheimer's disease or related disorders; authorizing an administrative penalty.

- **As filed**, the bill amended the Health and Safety Code by adding new Chapter 326 relating to the regulation of certain long-term care facilities, including facilities that provide care to persons with Alzheimer's disease or related disorders; authorizing an administrative penalty. The bill applied to: NHs (Chapter 242), **ALFs** (Chapter 247), **DAHS** (Chapter 103), a Continuing Care Facility (Chapter 246), an Adult Foster Care Provider under contract with HHSC, Residential Facilities for Persons with Disabilities or who are Elderly (Chapter 105), and facilities subject to **Chapter 123, Human Resources Code (Community Homes for Persons with Disabilities) which includes community-based ICFs/IID.**]
- **As amended in the Senate and passed by both chambers**, the bill incorporates SB 932 (Schwertner) which did not pass. [During the May 15, 2017 Senate HHS Committee meeting at which HB 2505 was being heard, Senator Schwertner stated he was amending the bill to add SB 932 as the result of the House not moving bills. The provisions in SB 932 were included in the DADS Sunset Bill (SB 204, Hinojosa) filed last session that failed to pass as it included provisions related to closure of SSLCs.]

In brief, the bill, as passed:

- ~ **Maintains the provisions included in the bill as passed in the House** related to staffing requirements for providing care to persons with Alzheimer's disease or related disorders, requiring the following:
  - The facilities to which this bill applies (see list of facilities above) must adopt, implement, and enforce a written policy that: (1) requires a facility employee who provides direct care to a person with Alzheimer's disease or a related disorder to successfully complete training related to caring for persons with Alzheimer's and related disorders; and (2) ensures the care and services provided by the employee to a person with Alzheimer's meets the specific identified needs of the person.
  - HHSC is not required to permit a facility an opportunity to correct a 2<sup>nd</sup> or subsequent violation of the law that occurs before the 2nd anniversary of the date of the first violation.
  - HHSC may initiate for the violation any other enforcement action authorized by that law against the facility, including an adult foster care facility with three or fewer beds.
  - The bill, if passed, does not affect the terms of a contract entered into before the effective date of this Act, except that if the contract is renewed, modified, or extended on or after the effective date of this Act, Chapter 326 applies to the contract beginning on the date of renewal, modification, or extension.
- ~ **Adds language included in SB 932** that requires HHSC to review its methods for issuing informational letters, policy updates and clarifications, and other related materials and develop and implement more efficient methods to issue those materials as appropriate. [This provision applies to the same programs to which SB 932 applied; i.e., **ICFs/IID** (Chapter 252), ALFs (Chapter 247), NFs (Chapter 242), **DAHS** (Chapter 103) and Prescribed Pediatric Extended Care Centers (Chapter 248 A).]
- ~ **Amends current law** related to informal disputes for Nursing Homes adding ALFs as an applicable program and requiring that HHSC shall contract with an appropriate disinterested person who is a non-profit organization to adjudicate disputes between a NH and ALF by removing "who is a non-profit organization."
- ~ **Directs that enforcement of the changes in law** related to administrative penalties and license renewal process and related fees apply only to actions taken by HHSC on or after the effective date of the Act (law), and that an action taken before the effective date of the bill (i.e., September

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1, 2017) is governed by the law in effect at that time, and the former law is continued in effect for that purpose.

~ **Incorporates the text of SB 932** relating to the license renewal date and fee for **ICFs/IID** (Chapter 252), ALFs (Chapter 247), NFs (Chapter 242), **DAHS** (Chapter 103) and Prescribed Pediatric Extended Care Centers (Chapter 248 A) and the application of administrative penalties for these same programs. **Changes applicable to ICFs/IID (detailed on pages 17-22 of the bill) include the following:**

- Provides that a **license is renewable on the third**, rather than second, anniversary of issuance or renewal of the license after certain actions.
- Requires HHSC, rather than DADS, each licensing period, **to conduct at least three**, rather than two, unannounced inspections of each facility.
- **Removes current penalty cap for ICFs related to the total amount of a penalty assessed for a violation continuing or occurring on separate days regardless of facility size.** In short, the current total amount of a penalty (\$5,000 for an ICF/IID with fewer than 60 beds; \$25,000 for an ICF/IID with 60 or more beds) is removed.
- Requires HHSC to define specific, appropriate, and objective criteria on which it, 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.
- Amends current law to permit HHSC to **adopt a fee for an ICF/IID license that may not exceed \$225 (current law states \$150) plus \$7.50 [current law states \$5) for each unit of capacity or bed space for which the license is sought.**
- Changes current law related to 'right to correct' noting that HHCS shall permit a reasonable time, not less than 45 days, following the first day of a violation to correct the violation HHSC may assess an administrative penalty if a plan of correction has been implemented except in certain situations including a violation that results in actual harm (as opposed to 'serious harm' specified in current law). **[See page 21 of the bill.]**
- Requires HHSC to develop and use a system to record and track the scope and severity of each violation 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 CMS uses to categorize scope & severity of violations for NHs and may be modified, as appropriate, to reflect changes in industry practice or changes to the CMS system.
- Adds the following definitions:
  - (1) "Actual harm" means a negative outcome that compromises a resident's physical, mental, or emotional well-being.
  - (2) "Immediate threat to the health or safety of a resident" means a situation that causes, or is likely to cause, serious injury, harm, or impairment to or the death of a resident.
  - (3) "Pattern of violation" means repeated, but not pervasive, failures of a facility to comply with this chapter or a rule, standard, or order adopted under this chapter that: (A) result in a violation; and (B) are found throughout the services provided by the facility or that affect or involve the same residents or facility employees.
  - (4) "Widespread in scope" means a violation of this chapter or a rule, standard, or order adopted under this chapter that: (A) is pervasive throughout the services provided by the facility; or (B) that affects or has the potential to affect a large portion of or all of the residents of the facility.

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**SPECIAL NOTE:**

**SB 932 (Schwertner)** relating to the licensing of, the executive commissioner of the HHSC's duties with respect to, and the administrative penalties for ICFs/IID, ALFs, NFs, DAHS and Prescribed Pediatric Extended Care Centers (Chapter 248 A). As previously noted, though this bill **DID NOT PASS**, its provisions were incorporated into HB 2025 (see pages 2 and 3).

**SB 933 (Schwertner)**, parallel to SB 932 above, applied to the licensing of, and administrative penalties for programs licensed as home and community support services agencies (**HCSSAs**). Though it passed the Senate and was reported favorably out of the House Human Services Committee on May 16, the bill **DID NOT PASS**. [It was never set on House Calendar.]

**HB 3533 (Raymond)** relating to inspection procedures in ICFs/IID, ALs and NHs and creation of a long-term care legislative oversight committee **DID NOT PASS**. [Passed House and referred to Senate Health and Human Services Committee, but never heard.]