

## **BILL ANALYSIS**

Senate Research Center  
85R30739 JG-D

C.S.H.B. 2025  
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Health & Human Services  
5/18/2017  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

H.B. 2025 amends current law relating to staffing requirements for certain facilities that provide care to persons with Alzheimer's disease or related disorders, and authorizes an administrative penalty.

In addition, H.B. 2025 clarifies that the third party informal dispute resolution process established for nursing facilities also applies to assisted living facilities.

H.B. 2025 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, H.B. 2025 increases the penalty cap for assisted living facilities in instances that result in actual harm and are included in the no "right to correct" language of this legislation or constitutes an immediate threat to the health or safety of a resident.

H.B. 2025 amends current law relating to the regulation of certain long-term care facilities, including facilities that provide care to persons with Alzheimer's disease or related disorders and authorizes an administrative penalty.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission (executive commissioner) in SECTION 10 (Section 248A.053) and SECTION 16 (Section 326.004, Health and Safety Code) of this bill.

Rulemaking authority previously granted to the executive commissioner is modified in SECTION 1 (Section 531.058, Government Code), SECTION 5 (Section 247.023, Health and Safety Code), SECTION 6 (Section 247.024, Health and Safety Code), SECTION 12 (Section 252.033, Health and Safety Code), SECTION 13 (Section 252.034, Health and Safety Code), and SECTION 18 (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 informal dispute resolution process established by rule by the executive commissioner of the Health and Human Services Commission (executive commissioner; HHSC) provide for adjudication by an appropriate disinterested person of disputes relating to certain proposed enforcement actions or related proceedings of HHSC or the Department of Aging and Disability Services (DADS) or its successor agency, rather than DADS, under certain provisions.

(a-1) Requires HHSC, as part of the informal dispute resolution process established under this section (Informal Dispute Resolution for Certain Long-Term Care Facilities), to contract with an appropriate disinterested person, rather than an appropriate disinterested

person who is a nonprofit organization, to adjudicate disputes between an institution or facility assisted living licensed under Chapter 242 (Convalescent and Nursing Facilities and Related Institutions) or 247 (Assisted Living Facilities), Health and Safety Code, and DADS or its successor agency, rather than under Chapter 242, Health and Safety Code, and DADS, concerning certain statements of violations prepared by DADS.

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 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 (Intermediate Care Facilities for Individuals with an Intellectual Disability), 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) Authorizes HHSC, rather than DADS, to assess an administrative penalty against a person who:

(1) makes no changes to this subdivision;

(2) through (7) makes conforming changes.

(e) Makes a conforming change.

(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. Requires that the system 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 authorizes the system 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. 246.0665. RIGHT TO CORRECT. (a) Makes a conforming change.

(b) Provides that Subsection (a) (relating to prohibiting HHSC from collecting a certain administrative penalty) does not apply:

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

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

(B) is widespread in scope and results in actual harm;

(C) is widespread in scope, constitutes a potential for actual harm, and relates to certain rights and standards of care for residents;

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

(E) redesignates existing Paragraph (C) as Paragraph (E) and makes no further changes to this paragraph.

(2) through (4) makes no changes to these subdivisions; or

(5) to a second or subsequent violation of Section 326.002 that occurs before the second anniversary of the date of the first violation.

(c) Makes conforming changes.

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

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

Sec. 247.023. ISSUANCE AND RENEWAL OF LICENSE. (a) Makes a conforming change. Provides that the license to establish or operate an assisted living facility expires on the third, rather than the second, anniversary of the date of its issuance. Requires, rather than authorizes, the executive commissioner, by rule, to adopt a system under which assisted living licenses expire on staggered dates during each three-year period, rather than under which licenses expire 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 to prorate the assisted living license fee on a monthly basis, and requiring assisted living license holders to pay certain amounts.

(b) and (c) Makes conforming changes.

SECTION 6. Amends Section 247.024(a), (d), and (e), Health and Safety Code, as follows:

(a) Requires the executive commissioner, by rule, to set license fees imposed by this chapter in certain manners, including in amounts reasonable and necessary to defray the cost of administering this chapter, but not to exceed \$2,250, rather than \$1,500.

(d) and (e) Makes conforming changes.

SECTION 7. 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, rather than DADS is authorized, to inspect each assisted living facility at least every two years following the initial inspection required under Section 247.023(a), rather than inspect an assisted living facility annually; and

(2) creates this subdivision from existing text and makes no further changes to this subdivision.

(b) Makes conforming changes.

SECTION 8. 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) makes conforming changes.

(b) Prohibits the penalty, except as provided by Section 247.0452(c) (relating to authorizing HHSC to assess and collect an administrative penalty from certain assisted living facilities), from exceeding:

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

(2) \$1,000 for each other violation, rather than for each violation. Creates this subdivision from existing text.

(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 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 violations. Requires that the system 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 authorizes the system 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.

(h) Defines "actual harm," "immediate threat to the health or safety of a resident," "pattern of violation," and "widespread in scope."

SECTION 9. Amends Section 247.0452, Health and Safety Code, as follows:

Sec. 247.0452. RIGHT TO CORRECT. (a) Makes a conforming change.

(b) Provides that Subsection (a) (relating to prohibiting HHSC from collecting a certain administrative penalty) does not apply:

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

(2) to a violation that HHSC determines is widespread in scope and results in actual harm;

(3) to a violation that HHSC determines is widespread in scope, constitutes a potential for actual harm, and relates to certain acts or practices;

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

(5) through (7) redesignates existing Subdivisions (2) through (4) as Subdivisions (5) through (7) and makes no further changes to these subdivisions; or

(8) to a second or subsequent violation of Section 326.002 that occurs before the second anniversary of the date of the first violation.

(c) Makes conforming changes.

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

SECTION 10. 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 to own or operate a

prescribed pediatric extended care center (center license) issued under this chapter expires on the third, rather than the second, anniversary of the date of issuance. Requires the executive commissioner, by rule, to adopt a system under which center licenses expire on staggered dates during each three-year period, Requires HHSC to prorate the center license fee if 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 on a prescribed form, rather than to DADS on the form prescribed by DADS, during a certain period;

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

(3) makes a conforming change.

(c) and (d) Makes conforming changes.

SECTION 11. 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, 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 center to deter violations. Requires that the system 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 authorizes the system to be modified, as appropriate, to reflect changes in industry practice or changes made to the system used by the Centers for Medicaid and Medicaid Services.

SECTION 12. Amends Sections 252.033(a), (b), (d), (f), and (h), Health and Safety Code, as follows:

(a) Requires HHSC, rather than DADS, after receiving the application, to issue a license to establish, conduct, or maintain a facility that provides certain services (facility license) if, after inspection and investigation, HHSC finds that the applicant and facility meet the requirements established under this chapter.

(b) Makes a conforming change.

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

(f) Makes a conforming change.

(h) Requires the executive commissioner by rule to:

(1) creates this subdivision from existing text and makes a conforming change; and

(2) 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 adopted system.

SECTION 13. Amends Sections 252.034(a), (e), and (f), Health and Safety Code, as follows:

(a) Prohibits the fee for a facility license adopted by executive commissioner rule from exceeding \$225 plus \$7.50, rather than \$150 plus \$5, for each unit of capacity or bed space for which the license is sought.

(e) and (f) Makes conforming changes.

SECTION 14. 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) through (d) Makes conforming changes.

SECTION 15. Amends Sections 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 assessed penalty from exceeding certain amounts.

(e) Makes a conforming change. Provides that this subsection does not apply to certain violations or to a violation that HHSC, rather than DADS, determines:

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

(2) is widespread in scope and results in actual harm;

(3) is widespread in scope, constitutes a potential for actual harm, and relates to certain acts or practices;

(4) redesignates existing Subdivision (2) as Subdivision (4) and makes a conforming change; or

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

(f) Makes a conforming change.

(i) and (j) Makes conforming changes.

(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 institution to deter future violations. Requires that the system 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 authorizes the system to be modified, as appropriate, to reflect changes in industry practice or changes made to the system used by the Centers for Medicaid and Medicaid Services.

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

SECTION 16. Amends Subtitle G, Title 4, Health and Safety Code, by adding Chapter 326, as follows:

CHAPTER 326. STAFFING REQUIREMENTS FOR FACILITIES PROVIDING CARE TO PERSONS WITH ALZHEIMER'S DISEASE OR RELATED DISORDERS

Sec. 326.001. DEFINITIONS. Defines "commission" and "facility."

Sec. 326.002. WRITTEN POLICY REQUIRED. Requires a facility to 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 in the provision of care to persons with Alzheimer's disease and related disorders; and

(2) ensures the care and services provided by a facility employee to a person with Alzheimer's disease or a related disorder meet the specific identified needs of the person relating to the person's diagnosis of Alzheimer's disease or a related disorder.

Sec. 326.003. ENFORCEMENT. (a) Authorizes the Health and Human Services Commission (HHSC) to assess an administrative penalty against a facility for a violation of Section 326.002.

(b) Provides that HHSC is not required to provide a facility an opportunity to correct a second or subsequent violation of Section 326.002 that occurs before the second anniversary of the date of the first violation.

(c) Provides that a violation of Section 326.002 constitutes a violation of the law regulating a facility, and authorizes HHSC to 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.

Sec. 326.004. RULES. Requires the executive commissioner of HHSC to adopt rules related to the administration and implementation of this chapter.

SECTION 17. 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) Redesignates existing Subdivision (1) as Subdivision (1-a) and makes no further changes to this subdivision.

(4-b) Defines "facility."

SECTION 18. Amends Sections 103.006(a) and (b), Human Resources Code, as follows:

(a) Requires HHSC, rather than DADS, to issue a license to operate a day activity and health services facility (day activity license) to a person who has met certain requirements.

(b) Provides that the day activity license expires three years, rather than two years, from the date of its issuance. Requires, rather than authorizes, the executive commissioner, by rule, to adopt a system under which the day activity licenses expire on staggered dates during the three-year period, rather than expire on various dates during the two-year period. Requires HHSC to prorate the day activity license fee as appropriate if the expiration date of a day activity license changes as a result of this subsection. Deletes existing text requiring DADS to prorate the license fee on a monthly basis and requiring each day activity license holder to pay certain amounts.

SECTION 19. Amends Section 103.007, Human Resources Code, as follows:

Sec. 103.007. LICENSE APPLICATION. (a) Requires an applicant for a license to operate a day activity and health services facility to file an application on a form prescribed by HHSC, rather than by DADS, together with a license fee of \$75, rather than 50.

(b) through (d) Makes conforming changes.

SECTION 20. 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 this chapter (Day Activity and Health Services). Creates this subdivision from existing text. Deletes existing text authorizing DADS to enter the premises of a facility at reasonable times and make an inspection necessary to issue or renew a day activity license.

(b) Makes conforming changes.

SECTION 21. 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 institution to deter future violations. Requires that the system 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 authorizes the system to be modified, as appropriate, to reflect changes in industry practice or changes made to the system used by the Centers for Medicaid and Medicaid Services.

SECTION 22. Amends Section 103.013, Human Resources Code, as follows:

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

(b) Provides that Subsection (a) (relating to prohibiting HHSC from collecting a certain administrative penalty) does not apply:

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

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

(B) is widespread in scope and results in actual harm;

(C) is widespread in scope, constitutes a potential for actual harm, and relates to certain actions;

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

(E) redesignates existing Paragraph (C) as Paragraph (E) and makes no further changes to this paragraph;

(2) and (3) makes no changes to these subdivisions; or

(4) a second or subsequent violation of Section 326.002, Health and Safety Code, that occurs before the second anniversary of the date of the first violation.

(c) Makes conforming changes.

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

SECTION 23. Repealer: Section 247.0025 (Immediate Threat of Harm), Health and Safety Code.

SECTION 24. Provides that the changes in law made by this Act apply only to actions taken by HHSC and license holders under Chapter 103, Human Resources Code, and Chapters 242, 247, 248A, and 252, Health and Safety Code, on or after the effective date of this Act. Provides that an action taken before the effective date of this Act is governed by the law in effect at that time, and the former law is continued in effect for that purpose.

SECTION 25. Provides that Chapter 326, Health and Safety Code, as added by this Act, 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.

SECTION 26. Effective date: September 1, 2017.