

- SUBJECT:** Regulating personal care facilities
- COMMITTEE:** Public health — committee substitute recommended
- VOTE:** 5 ayes — Berlanga, Delisi, Janek, Maxey, McDonald
0 nays
4 absent — Hirschi, Coleman, Glaze, Rodriguez
- WITNESSES:** For — Sara Speights, Texas Health Care Association

Against — Sid Rich, Texas Association of Retirement Communities;
Johnnie M. Benson; James Martin; C.W. "Mat" Mathews, Texas
Organization of Residential Care Homes

On — Jaqueline Johnson, Steven Aragon, Texas Department of Human
Services
- BACKGROUND:** A personal care facility furnishes food, shelter and assistance with meals, dressing, bathing and other personal needs to four or more persons unrelated to the proprietor. Personal care facilities are required to be licensed and are regulated by the Texas Department of Health. Facilities are inspected prior to initial licensing and at reasonable times as necessary to assure compliance.
- DIGEST:** CSHB 299 would amend existing statutes governing inspections and penalties for personal care facilities and would place regulation under the Department of Human Services (DHS).

Inspections

In addition to existing inspection requirements, DHS would be required to develop and use an inspection checklist that describes the minimum standards of the matters subject to inspection. DHS would be required to provide copies of the checklist to facilities upon request, and to provide modified checklists to facilities during license renewal.

Department inspectors would be required to conduct an exit conference to advise the facility of their findings, to permit the facility to provide information and to correct any deficiencies that can be immediately corrected. Inspectors also would be required to provide a copy of the checklist and list each violation discovered. An inspector who recognizes a violation after the exit conference would be required to set up another exit conference for that violation, which could be conducted over the telephone.

A facility that did not agree with the inspector's findings could request and would receive an informal review conducted by the regional director or by his appointee. Exit conference and informal review rights would be in addition to existing rights under the Texas Administrative Practice Act (Government Code, chpt. 2002).

Penalties

DHS could assess an administrative penalty for violations of personal care facility statutes or rules, including operating without a license, after notice and opportunity for hearing following Texas Administrative Procedure (Government Code, chpt. 2001). A maximum penalty could not exceed \$1,000. Each day of a continuing violation would constitute a separate violation. Collected penalties would be deposited to the general revenue fund.

The department would be required to establish an advisory committee of consumer advocates and personal care providers to develop a schedule of maximum penalties to apply to separate categories of violations. The board of human services would be required to adopt a schedule of maximum penalties by February 29, 1996. Administrative penalties for violations of the act could be assessed on or after March 1, 1996.

A person found liable for payment of an administrative penalty could file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty or both. A person who files a petition for judicial review could stay enforcement of the penalty by paying the penalty to a court escrow account or by posting a supersedeas bond. The department could contest an affidavit for a stay of enforcement.

If the court sustains the occurrence of the violation, the court could uphold or reduce the penalty amount. Penalties paid but reduced or found not warranted by the court would be returned to the person with accrued interest.

**SUPPORTERS
SAY:**

CSHB 299 would enact administrative penalties that would serve as an intermediate enforcement remedy and could encourage personal care facilities operating without licenses to obtain licenses.

Current DHS enforcement powers are fairly severe; DHS can revoke or suspend licenses for any violation of the act, it can order the immediate closing of facilities in violation of standards that impose a threat to resident health and safety, it temporarily restrain a facility that offers a continuing violation of the act and an immediate threat to resident health and safety, or it imposing a civil penalty of \$100-10,000 per violation, through action of the attorney general's office. Administrative penalties would give the department an alternative to impose less severe enforcement measures and to encourage compliance with state standards.

DHS enforcement measures of revoking licensure have no enforcement effect on facilities operating without a license. All other steps require the assistance of the attorney general's office. The enactment of administrative penalties would give DHS a penalty to impose on unlicensed facilities without having to shut them down or go through the attorney general's office. The attorney general estimates that the provisions of this bill would save the state \$11,000 per year.

Fairness in the scheduling and imposition of administrative penalties would be ensured by the establishment of an advisory committee composed of personal care providers and advocates. CSHB 299 would specifically require the committee to consider the seriousness of the violation and the amount necessary to deter violations when developing a schedule. The board would also be required to consider an alleged violator's history of violations and efforts to correct the violations when imposing a penalty.

Checklist provisions would also ensure fairness and uniformity in defining state standards and identifying infractions. Facilities would clearly know in advance the standards under which they are required to operate and

inspectors will have more objective standards on which to base their identification of a violation.

**OPPONENTS
SAY:**

CSHB 299 is not needed, it is too severe and would be ineffective in punishing unlicensed facilities. Personal care facility residents are not as sick and vulnerable as patients in nursing facilities and generally require fewer special state protections. Existing state and local statutes sufficiently enforce abuse and neglect prohibitions and fire and other safety standards.

CSHB 299 could be used to unfairly penalize generally good personal care facilities for minor infractions. DHS has had an acrimonious attitude toward personal care facilities, and poorly trained and overworked inspectors are prone to finding infractions. DHS would be required to view each day of a continuing violation as a separate violation could unfairly penalize facilities for repair problems beyond their control, for example, while they're waiting for the delivery of machine parts.

Facilities operating without a license should be shut down — the enactment of administrative penalties will not deter someone who is already knowingly breaking the law from continuing to operate illegally.

NOTES:

The committee substitute added inspection checklist, exit conference and informal review provisions, and removed from the filed version requirements for the department to issue an investigation report and to provide an administrative hearing for persons who contest the report's findings or recommended penalties.

The committee substitute required the establishment of a penalty advisory committee and reduced the maximum penalty from \$10,000 in the filed version to \$1,000. It also expanded a person's options in penalty payment and stays of enforcement for judicial review.