

- SUBJECT:** Regulating long-term care facility licensing and penalties
- COMMITTEE:** Human Services — committee substitute recommended
- VOTE:** 6 ayes — Rose, S. King, Herrero, Hughes, Naishtat, Parker  
0 nays  
3 absent — J. Davis, Eissler, Pierson
- WITNESSES:** For — Derek Daniels, Texas Assisted Living Association; Gavin Gadberry, Texas Health Care Association; Jane Johnson, Montgomery County and Houston areas TORCH; Kathy Schoeneberg, Texas Organization of Residential Care Homes; Heather Vasek, Texas Association For Home Care; (*Registered, but did not testify*: Lora Butler, Mission Road Developmental Center; Richard Hernandez, Educare Community Living; Carole Smith, Private Providers Association of Texas)  
  
Against — None  
  
On — Veronda Durden, Department of Aging and Disability Services - Regulatory Services; Barry Walte, Department of Aging and Disability Services; (*Registered, but did not testify*: Juanita Henry, Health and Human Services Commission - Office of Inspector General)
- BACKGROUND:** The Department of Aging and Disability Services (DADS) licenses a variety of service providers that provide in-home care or long-term facility care to elderly and disabled populations. Licensing terms for these types of licensees, as well as statutes regarding the assessment of late fees, vary depending upon the type of facility. The regulatory statute for these licensees often provides for a reasonable period of time following certain violations to correct these violations without penalty. If a new facility operator fails to provide notice of change of ownership, DADS may deny licensing the new operator.  
  
Remedies for noncompliance on the part of long-term care facilities are provided in federal regulations, 42 C.F.R., sec. 488.408. Category 2 remedies are applied for widespread deficiencies that constitute no actual harm or one or more deficiencies that constitute actual harm but do not cause immediate jeopardy. Category 3 remedies are applied when there are

one or more deficiencies that constitute immediate jeopardy to resident health or safety. Except under findings of good cause to waive the termination provision, DADS terminates a nursing facility's provider license if the facility has imposed three Category 2 or 3 remedies within a 24-month period.

**DIGEST:**

CSHB 1715 would revise the licensing period, late fee assessment, and violation provisions for certain facilities licensed by DADS. The bill also would require the executive director of the Health and Human Services Commission (HHSC) to establish rules to waive the requirement to terminate the provider agreement with a nursing facility if DADS had imposed three Category 2 or Category 3 remedies on the facility within a 24-month period.

The HHSC executive commissioner could adopt rules creating a system under which an adult day-care facility license, a home and community support services license, or an assisted living facility license would expire on various dates during a two-year license period. A person wishing to renew these licenses, a nursing facility license, or an Intermediate Care Facility for the Mentally Retarded (ICF-MR) license would be required to do so at least 45 days prior to the expiration date of the license or the person would face a late fee. Home and community support services licensees would be mailed a notice at least 120 days prior to the expiration of their license that included an application for license renewal.

In conjunction with a licensing term increase from one to two years, DADS would increase license fees as follows:

- applications for home and community support service agency licenses would range from \$600 to \$2,000 rather than \$300 to \$1,000;
- application and renewal fees for an adult day-care facility license would increase from \$25 to \$50; and
- applications and renewal fees for an assisted living facility license would increase from \$750 to \$1,500.

DADS could assess an administrative penalty against a nursing facility, assisted living facility, or ICF-MR for failing to provide notice of change of ownership prior to the effective date of the change of ownership.

DADS could assess an administrative penalty against a home and community support services licensee without allowing a reasonable period to correct the violation before assessing a penalty if the violation:

- resulted in serious harm or death;
- constituted a serious threat to health or safety;
- substantially limited the agency's capacity to provide care;
- involved acts to intentionally mislead or interfere in an investigation, inspection, or enforcement action;
- violated an advance directive; or
- infringed upon the rights of the elderly.

DADS could assess an administrative penalty against an ICF-MR licensee without allowing a reasonable period to correct the violation before assessing a penalty if the violation:

- involved acts to intentionally mislead or fail to comply with an investigation, inspection, enforcement action, or corrective action; and
- resulted in serious harm or death, constituted a serious threat to health or safety, or substantially limited the agency's capacity to provide care.

DADS could not publicly disclose financial information regarding a nursing facility that was obtained through an inspection.

CSHB 1715 would take effect September 1, 2007, and would apply to licenses issued or renewed on or after this date. The issuance of a late fee would apply only to applications for renewal issued on or after November 1, 2007.

**NOTES:**

The companion bill, SB 1318 by Janek, passed the Senate on April 26 on the Local and Uncontested Calendar and was reported favorably, without amendment, by the House Human Services Committee on May 4, making it eligible to be considered in lieu of HB 1715.