

SUBJECT: Modifying rules for the imposition of certain administrative penalties

COMMITTEE: Human Services — committee substitute recommended

VOTE: 8 ayes — Frank, Hinojosa, Hull, Klick, Meza, Neave, Noble, Shaheen

0 nays

1 absent — Rose

WITNESSES: For — Carole Smith, Private Providers Association of Texas; Sandra Frizzell Batton, Providers Alliance for Community Services of Texas; Erin Lawler, Texas Council of Community Centers; (*Registered, but did not testify*: George Linial, LeadingAge Texas; Roland Leal, ResCare; Diana Martinez, Texas Assisted Living Association; Kevin Warren, Texas Health Care Association; Tim Schauer, The Center for Pursuit, Reach Unlimited, and Avalon House)

Against — Cissy Sanders

On — (*Registered, but did not testify*: Corey Kintzer, Health and Human Services Commission)

BACKGROUND: Health and Safety Code sec. 252.065(b) establishes administrative penalties for violations at intermediate care facilities for individuals with intellectual disabilities (ICF-IID). The penalty for a facility with fewer than 60 beds cannot be less than \$100 or more than \$1,000 for each violation. The penalty for a facility with 60 beds or more cannot be less than \$100 or more than \$5,000 for each violation. Each day a violation occurs or continues is a separate violation for purposes of imposing a penalty. The total amount of a penalty for each day a violation occurs or continues cannot exceed \$5,000 for a facility with fewer than 60 beds or \$25,000 for a facility with 60 beds or more.

Human Resources Code sec. 161.089 allows the Health and Human Services Commission (HHSC) to assess and collect administrative

penalties against providers participating in the home and community-based services (HCS) waiver program and the Texas home living (TxHmL) waiver program. The HHSC executive commissioner is required by statute to develop and adopt rules regarding the imposition of such administrative penalties.

Government Code sec. 531.0581 governs the Long-Term Care Facilities Council and requires that the council be composed of specified long-term care facility providers.

Interested parties have suggested that clarification of certain administrative penalties and rules governing the imposition of such penalties as applied to ICF-IID facilities and providers participating in the HCS and TxHmL waiver programs is needed to ensure standard and consistent application of such penalties.

**DIGEST:**

CSHB 3240 would modify certain administrative penalties for violations at ICF-IID facilities to specify that the total amount of penalties assessed for an on-site regulatory visit or complaint investigation, regardless of the duration of any ongoing violations, could not exceed the total amounts allowed under current law.

The bill also would require that the rules related to the imposition of administrative penalties against providers participating in the home and community-based services (HCS) waiver program and the Texas home living (TxHmL) waiver program would:

- ensure standard and consistent interpretation of service delivery rules and consistent application of administrative penalties throughout the state;
- include interpretative guidelines for regulatory staff and providers regarding the imposition of administrative penalties; and
- authorize the imposition of an administrative penalty in an amount not to exceed \$5,000 for violations discovered during each on-site regulatory visit or complaint investigation.

CSHB 3240 would add to the Long-Term Care Facilities Council at least one member who was a community-based provider at a licensed intermediate care facility for individuals with intellectual or developmental disabilities (ICF-IID).

The HHSC executive commissioner would be required to adopt rules necessary to implement the bill's provisions by December 1, 2021, and the commission could not assess a penalty as changed by the bill's provisions until the necessary rules were adopted.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2021.