

## **BILL ANALYSIS**

Senate Research Center  
76R702 MCK-D

S.B. 196  
By: Madla  
Health Services  
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As Filed

### **DIGEST**

Currently, there is an established system for regulating intermediate care facilities for the mentally retarded (ICF-MR) which addresses ICF-MR regulation, governance, and use of administrative penalties. However, the specific provisions for penalties do not address many due process provisions offered in parallel licensing statutes for similar programs. This bill clarifies and creates provisions regarding violations and penalties affecting ICF-MR facilities.

### **PURPOSE**

As proposed, S.B. 196 sets forth provisions and administrative penalties for intermediate care facilities for the mentally retarded.

### **RULEMAKING AUTHORITY**

Rulemaking authority is granted to the Texas Department of Human Services in SECTION 1 (Sections 252.065(c)-(e), Health and Safety Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 252.065, Health and Safety Code, to set forth requirements concerning the administrative penalty value and clarifies what is considered a violation. Authorizes the Texas Department of Human Services (department), by rule, to specify violations warranting an administrative penalty and sets forth a list of items the department is required to consider. Authorizes the department, by rule, to establish a schedule of penalties for violations based on specifics of the violation. Requires the department, by rule, to provide the facility with time to correct the violation before assessing a penalty, if a plan of correction has been implemented. Prohibits a penalty from being assessed for minor violations unless they are continually not corrected. Requires the department to establish a system ensuring consistent application of penalties. Provides that all penalty proceedings under this chapter are subject to Chapter 2001, Government Code. Prohibits the department from assessing a penalty against a state agency. Deletes the department's rulemaking authority to establish gradations and amounts of penalties. Deletes certain departmental considerations in determining the amount of a penalty. Deletes text prohibiting the department from assessing certain penalties. Makes conforming changes.

SECTION 2. Amends Section 252.066, Health and Safety Code, as follows:

Sec. 252.066. New heading: NOTICE; REQUEST FOR HEARING. Requires the department to give written notice to the alleged violator, and sets forth the required information to be included in the notice. Authorizes the alleged violator to accept the department's determination, or to make a written request for a hearing, not later than the 20th day after violation notification is received. Authorizes the commissioner of human resources or a designee to order the violator to pay the proposed penalty, if the person accepts the determination or fails to respond to the notification. Deletes Texas Board of Human Services rulemaking authority concerning the assessment of administrative penalties. Deletes text requiring certain criteria for rules in this section, including the requirement that a penalty be appropriate to the violation. Deletes text authorizing the department to assess a per diem penalty. Deletes text defining "immediate and serious threat."

SECTION 3. Amends Chapter 252C, Health and Safety Code, by adding Sections 252.067, 252.068, 252.069, and 252.070, as follows:

Sec. 252.067. HEARING; ORDER. Sets forth requirements for the department if the person

notified requests a hearing. Sets forth required actions of the hearings examiner. Authorizes the commissioner of human resources or a designee to find that a violation has occurred and to assess a penalty or to find that no violation has occurred, based on the results of the hearing.

Sec. 252.068. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW; REFUND. Requires the department to notify the alleged violator, and sets forth the required information to be included in the notification. Sets forth action required of the alleged violator. Entitles the alleged violator to certain actions within the 30-day period after the final decision concerning the alleged violation. Authorizes the department to contest a sworn affidavit stating that the alleged violator is unable to pay the penalty, under certain conditions. Sets forth procedures regarding the contested affidavit. Authorizes the department to refer the matter of an alleged violator who does not pay the penalty to the attorney general. Sets forth provisions regarding the judicial review of the order. Authorizes the court sustaining the violation to reduce the amount of the penalty and order the violator to pay. Authorizes the court to order that no penalty is owed if it does not sustain the violation. Sets forth court procedures following a final judgment.

Sec. 252.069. PENALTY DEPOSITED TO STATE TREASURY. Requires a collected administrative penalty to be credited to the general revenue fund.

Sec. 252.070. EXPENSES AND COSTS FOR COLLECTION OF CIVIL OR ADMINISTRATIVE PENALTY. Authorizes the attorney general to recover reasonable costs and expenses from a person found liable for a civil or administrative penalty. Describes reasonable expenses and costs.

SECTION 4. Effective date: September 1, 1999.  
Makes application of this Act prospective.

SECTION 5. Emergency clause.