

BILL ANALYSIS

Senate Research Center
76R4592 KKA-D

C.S.S.B. 200
By: Moncrief
Health Services
4/7/1999
Committee Report (Substituted)

DIGEST

Currently, the enforcement remedies in the personal care facility statute provide questionable protection of residents in assisted living facilities. Under current law, the state must choose between completely closing down a facility at the inconvenience of its residents, or letting the facility continue to operate without any enforcement action. This bill would increase the state's enforcement choices by creating provisions for the assessment and determination of violations and penalties for personal care facilities.

PURPOSE

As proposed, C.S.S.B. 200 creates legislation regulating procedures for assessing and determining violations and penalties for personal care facilities.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 247.002, Health and Safety Code, by adding Subdivision (6), to define "commissioner."

SECTION 2. Amends Chapter 247C, Health and Safety Code, by adding Sections 247.0451-247.0457, as follows:

Sec. 247.0451. ADMINISTRATIVE PENALTY. Authorizes the Texas Department of Human Services (department), to assess an administrative penalty against a person who commits certain violations, and sets forth the terminology of the violations. Requires any violation that results in the assessment of an administrative penalty to be provided in writing to the facility, and sets forth requirements of the written violation. Prohibits the penalties from being in excess of specific dollar amounts for certain violations. Requires the Texas Board of Human Services (board) to establish penalties relative to the violation. Sets forth factors the department is required to consider in determining the amount of a penalty. Provides that a penalty assessed under Subsection (a)(6) is in addition to previous penalties.

Sec. 247.0452. RIGHT TO CORRECT. Prohibits the department from collecting a penalty if the personal care facility (facility) corrects the violation within a certain time frame. Sets forth circumstances in which Subsection (a) does not apply. Requires a facility to maintain corrections and provides ultimatums for failure to do so. Establishes that the department is not obliged to give the facility an opportunity to correct subsequent violations.

Sec. 247.0453. REPORT RECOMMENDING ADMINISTRATIVE PENALTY. Authorizes the department to issue a preliminary report of facts determining a violation if it completes certain actions. Authorizes the report to recommend a specific amount of penalty. Requires the department to give the alleged violator written notice by the 10th day after issuance of the report. Sets forth information required to be in the notification. Authorizes the alleged violator to take certain actions by the 20th day after certain notification is sent. Requires the department to inspect and confirm reported corrections, and to notify the alleged violator of the result of the inspection. Authorizes the alleged violator to take certain actions by the 20th day after certain notification is sent. Requires the commissioner of human services (commissioner) to assess a penalty under certain conditions. Requires the department to give written notification to the violator of the

commissioner's decision to assess a penalty. Requires the violator to pay the penalty.

Sec. 247.0454. HEARING ON ADMINISTRATIVE PENALTY. Requires an administrative law judge (judge) to order and give notice of a hearing if the alleged violator makes a timely request for such a hearing. Requires the hearing to be held before the judge. Requires the judge to promptly issue to the commissioner a written decision and potential penalty recommendation. Authorizes the commissioner to take certain actions based on the conclusions and recommendation of the judge. Provides that proceedings under this section are subject to Chapter 2001, Government Code.

Sec. 247.0455. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; INTEREST; REFUND. Requires the commissioner to give the alleged violator certain notifications. Requires certain actions of the violator by the 30th day after the commissioner's order is final. Authorizes the department to permit certain penalty payment procedures. Sets forth further penalties if the violator does not pay the penalty within a certain time frame. Sets forth the accrual rate of interest on a penalty. Requires the commissioner to take certain action if a penalty is reduced or not assessed. Sets forth required accrued interest payment procedures.

Sec. 247.0456. APPLICATION OF OTHER LAW. Prohibits the department from assessing multiple penalties under this chapter for the same violation. Provides that this section does not prohibit the department from assessing a penalty under this Chapter and chapter 32, Human Resources Code, for the same violation.

Sec. 247.0457. AMELIORATION OF VIOLATION. Authorizes the commissioner to require certain penalty payment procedures.

SECTION 3. Effective date: September 1, 1999.

SECTION 4. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 2.

Amends Section 247.0451, Health and Safety Code, to eliminate a daily specification for violation assessment, add text regarding written violation notification, deletes existing Subsection (d), and makes conforming changes.