

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1376
By: Moncrief
Health & Human Services
3/30/2001
Committee Report (Substituted)

DIGEST AND PURPOSE

Amelioration is an enforcement mechanism available to the Department of Human Services (department) as an alternative to an administrative hearing to address a violation; however, the department has only exercised this option once in four years. C.S.S.B. 1376 offers amelioration for any violation that does not constitute immediate jeopardy to the health and safety of a resident of an institution. It also sets forth procedures for establishing an amelioration plan and dismisses any administrative appeal if the amelioration plan is approved.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 242.071, Health and Safety Code, as follows:

Sec. 242.071. AMELIORATION OF VIOLATION. (a) Authorizes the commissioner of human services (commissioner), in lieu of demanding, rather than ordering, payment of an administrative penalty assessed under Section 242.066, rather than 242.069, in accordance with this section, to allow, rather than require, the person to use, under the supervision of the Texas Department of Human Services (department), any portion of the penalty to ameliorate the violation or to improve services, other than administrative services, in the institution affected by the violation.

(b) Requires the department to offer amelioration to a person for a charged violation if the department determines that the violation does not constitute immediate jeopardy to the health and safety of an institution resident.

(c) Prohibits the department from offering amelioration to a person if:

(1) the person has been charged with a violation which is subject to correction under Section 242.0665; or

(2) the department determines that the charged violation constitutes immediate jeopardy to the health and safety of an institution resident.

(d) Requires the department to offer amelioration to a person under this section not later than the 10th day after the date the person receives from the department a final notification of assessment of administrative penalty that is sent to the person after an informal dispute resolution process but before an administrative hearing under Section 242.068.

(e) Requires person to whom amelioration has been offered to file a plan for

amelioration not later than the 45th day after the date the person receives the offer of amelioration from the department. Requires the person, in submitting the plan, to agree to waive the person's right to an administrative hearing under Section 242.068 if the department approves the plan.

(f) Sets forth minimum standards for a plan for amelioration.

(g) Sets forth proposed changes that may be included in a plan for amelioration.

(h) Authorizes the department to require that an amelioration plan propose changes that would result in conditions that exceed the requirements of this chapter or the rules adopted under this chapter.

(i) Requires the department to approve or deny an amelioration plan not later than the 45th day after the date the department receives the plan. Requires the department, on approval of a person's plan, to deny a pending request for a hearing submitted by the person under Section 242.067(d).

(j) Prohibits the department from offering amelioration to a person more than three times in a two-year period or more than one time in a two-year period for the same or similar violation.

(k) Defines "immediate jeopardy to health and safety."

SECTION 2. Amends Section 252.071, Health and Safety Code, to apply to intermediate care facilities the same standards regarding amelioration of violations as apply to nursing and convalescent homes under Section 242.071, Health and Safety Code.

SECTION 3. Effective date: September 1, 2001.
Makes application of this Act prospective.

SUMMARY OF COMMITTEE CHANGES

Differs from the original as follows:

- Amends the caption to include intermediate care facility violations.
- Adds proposed amendments to Section 242.071(a), Health and Safety Code.
- Adds proposed amendments to Section 252.071, Health and Safety Code, to make the Act applicable to intermediate care facilities for people with mental retardation as well as to nursing homes and convalescent homes.
- Redesignates the proposed effective date and prospective clause as SECTION 3 rather than SECTION 2.