

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 527  
By: Moncrief  
Health & Human Services  
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### **DIGEST AND PURPOSE**

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. As proposed, S.B. 527 creates legislation regulating procedures for assessing and determining violations and penalties for personal care facilities to increase the state's enforcement choices regarding personal care facilities.

### **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 247.002, Health and Safety Code, to define “commissioner.”

SECTION 2. Redesignates Section 247.0455, Health and Safety Code, as Section 247.0459, Health and Safety Code.

SECTION 3. Amends Chapter 247C, Health and Safety Code, by adding Sections 247.0451-247.0457, as follows:

Sec. 247.0451. ADMINISTRATIVE PENALTY. (a) Authorizes the Texas Department of Human Services (department) to assess an administrative penalty against a person who commits certain acts.

(b) Prohibits a penalty from exceeding \$10,000 a day for each violation, except as provided by Subsection (c) and Section 247.0452(c).

(c) Prohibits a penalty for a violation of a right of a resident from exceeding \$1,000 a day for each violation. Provides that this subsection does not apply to conduct that violates certain other regulations.

(d) Provides that each day of a continuing violation constitutes a separate violation.

(e) Requires the Texas Board of Human Services (board) to establish gradations of penalties in accordance with the relative seriousness of the violation.

(f) Requires the department, in determining the amount of a penalty, to consider any matter that justice may require, including certain aspects of the violation.

(g) Provides that a penalty assessed under Subsection (a)(6) is in addition to the penalty previously assessed and not timely paid.

Sec. 247.0452. RIGHT TO CORRECT. (a) Prohibits the department from collecting an administrative penalty from an assisted living facility under Section 247.0451 if the facility corrects the violation not later than the 45th day after the date it receives notice under Section 247.0453(c).

(b) Provides that Subsection (a) does not apply in certain situations.

(c) Requires an assisted living facility that corrects a violation to maintain the correction. Authorizes the department, if the facility fails to maintain the correction for at least one year from the date the correction was made, to assess and collect an administrative penalty for the subsequent violation. Sets forth the amount of the administrative penalty. Provides that the department is not required to provide the facility with an opportunity to correct the subsequent violation.

Sec. 247.0453. REPORT RECOMMENDING ADMINISTRATIVE PENALTY. (a) Authorizes the department to issue a preliminary report stating the facts on which the department concludes that a violation of certain regulations has occurred if the department has completed certain actions.

(b) Authorizes the report to recommend a penalty under Section 247.0451 and the amount of the penalty.

(c) Requires the department to give written notice of the report to the person charged with the violation not later than the 10th day after the date on which the report was issued. Requires the notice to include certain items.

(d) Authorizes the person charged, not later than the 20th day after the date on which the notice under Subsection (c) was sent, to perform certain actions.

(e) Requires the department, if the violation is subject to correction under Section 247.0452 and the person reports to the department that the violation has been corrected, to inspect the correction or take any other step necessary to confirm the correction. Requires the department to notify the person that the correction is satisfactory or not, and whether a penalty will be assessed or recommended.

(f) Authorizes the person charged, not later than the 20th day after the date on which a notice under Subsection (e)(2) is sent, to perform certain actions.

(g) Requires the commissioner of human services (commissioner) or the commissioner's designee to assess the penalty recommended by the department if the person charged with the violation consents to the penalty recommended by the department or does not timely respond to a notice sent under Subsection (c) or (e)(2).

(h) Requires the department, if the commissioner or the commissioner's designee assesses the recommended penalty, to give written notice to the person charged of the decision. Requires the person to pay the penalty.

Sec. 247.0454. HEARING ON ADMINISTRATIVE PENALTY. (a) Requires an administrative law judge to order a hearing and give notice of the hearing if a person charged with a specific violation requests a hearing.

(b) Requires the hearing to be held before an administrative law judge.

(c) Requires the administrative law judge to make findings of fact and conclusions of law and promptly issue to the commissioner a written decision regarding the occurrence

of a violation of certain regulations and a recommendation regarding the amount of the proposed penalty if a penalty is warranted.

(d) Authorizes the commissioner to make, by order, certain findings based on the findings, conclusions, and recommendations of the administrative law judge.

(e) Provides that proceedings under this section are subject to Chapter 2001 (Administrative Procedure), Government Code.

Sec. 247.0455. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; INTEREST; REFUND. (a) Requires the commissioner to give notice of the findings made under Section 247.0454(d) to the person charged. Requires the commissioner, on finding that a violation has occurred, to give the person charged written notice of certain items.

(b) Requires the person charged with the penalty to perform certain actions not later than the 30th day after the date on which the commissioner's order is final.

(c) Authorizes the department, notwithstanding Subsection (b), to permit the person to pay the penalty in installments or require the person to use all or part of the amount of the penalty in accordance with Section 247.0457.

(d) Sets forth certain conditions which apply if the person does not pay the penalty within the period provided by Subsection (b) or in accordance with Subsection (c).

(e) Sets forth the manner in which interest under Subsection (d)(1) accrues.

(f) Requires the commissioner to complete certain actions if the amount of the penalty is reduced or the assessment of the penalty is not upheld on judicial review.

(g) Sets forth provisions regarding the payment of accrued interest on amounts remitted by the commissioner under Subsection (f)(1).

Sec. 247.0456. APPLICATION OF OTHER LAW. Prohibits the department, except as provided by specific sections, from assessing more than one monetary penalty under this chapter for a violation arising out of the same act or failure to act. Provides that this section does not prohibit the department from assessing a monetary penalty under this chapter and a monetary penalty under Chapter 32 (Medical Assistance Program), Human Resources Code, for the same act or failure to act.

Sec. 247.0457. AMELIORATION OF VIOLATION. Authorizes the commissioner to require, in lieu of ordering payment of a specific administrative penalty, a person subject to the penalty to use, under the supervision of the department, all or part of the amount of the penalty to ameliorate the violation or to improve services, other than administrative services, in the assisted living facility affected by the violation.

SECTION 4. Amends Section 247.049(b), Health and Safety Code, to add an action seeking imposition of an administrative penalty under this subchapter to the list of items which are barred from admission into evidence in a certain enforcement action by Section 247.049(a).

SECTION 5. Effective date: September 1, 2001.