

## **BILL ANALYSIS**

Senate Research Center  
77R14176 JRD-D

C.S.S.B. 527  
By: Moncrief  
Health & Human Services  
4/27/2001  
Committee Report (Substituted)

### **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. C.S.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**

Rulemaking authority is expressly granted to the Health and Human Services Commission in SECTION 13 (Section 247.051, Health and Safety Code) of this code.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 247.002, Health and Safety Code, to define “commissioner.”

SECTION 2. Amends Chapter 247A, Health and Safety Code, by adding Section 247.0025, as follows:

Sec. 247.0025. IMMEDIATE THREAT OF HARM. Sets forth, for the purposes of this chapter, the conditions for the health or safety of a resident to be considered to be immediately threatened or jeopardized.

SECTION 3. Amends the heading to Section 247.0272, Health and Safety Code, to read as follows:

Sec. 247.0272. INSPECTOR TRAINING; REQUIRED EXAMINATION.

SECTION 4. Amends Section 247.0272, Health and Safety Code, to require the Texas Department of Human Services (department) to examine department employees who inspect or otherwise survey assisted living facilities under this chapter. Requires the department, in developing the examination, to consult with operators of assisted living facilities or their representatives and with consumers of personal care services provided by assisted living facilities or representatives of consumers. Prohibits a department employee from independently inspecting, surveying, or taking administrative action against an assisted living facility unless the employee has passed the examination administered under this section.

SECTION 5. Amends Section 247.041, Health and Safety Code, to authorize the department, after providing notice and opportunity for a hearing to the applicant or license holder, to deny, suspend, or revoke a license if the department finds that the applicant, license holder, or controlling person has taken certain actions. Provides that the status of a person as an applicant for a license or as a licensed is preserved until final disposition of the contested manner, except as the court having jurisdiction of judicial review of the matter may order in the public interest for the welfare and safety of the residents. Prohibits a court having jurisdiction of a judicial review of the matter from ordering arbitration, whether

on motion of any party or on the court's own motion, to resolve a dispute involving the denial, suspension, or revocation of a license under this section or the conduct with respect to which the denial, suspension, or revocation of the license is sought.

SECTION 6. Amends Section 247.042, Health and Safety Code, to require the department to suspend the license or order immediate closing of part, rather than all or part, of an assisted living facility if the department finds the facility operating in violation of the standards prescribed by, rather than under, this chapter. Requires the department and the State Office of Administrative Hearings to expedite any hearing or decision involving an emergency suspension or closing order issued under this section.

SECTION 7. Redesignates Section 247.0455, Health and Safety Code, as Section 247.0459, Health and Safety Code, and amends to require the department to assess an administrative penalty against an assisted living facility, rather than a personal care facility, that violates Section 166.004.

SECTION 8. 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 Section 247.0452(c).

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

(d) Requires the department, in determining the amount of a penalty, to consider any matter that justice may require, and requires it to consider certain aspects of the violation and make a record of the extent to which each aspect was considered.

(e) 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) is received, to perform certain actions.

(e) Require the assisted living facility, if the violation is subject to correction under Section 247.0452, to submit a plan of correction to the department for approval not later than the 10th day after the date on which the notice under Subsection (c) is received.

(f) 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 steps necessary to confirm the correction and to notify the person as to the acceptability of the correction.

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

(h) 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 (f)(2).

(i) 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 or the commissioner's designee 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 or the commissioner's designee to make, by order, certain findings based on the findings, conclusions, and recommendations of the administrative law judge.

(e) Requires the commissioner or the commissioner's designee, if the commissioner or the commissioner's designee finds that a violation has not occurred, to order all records reflecting that the department found a violation had occurred and attempted to impose an administrative penalty to be expunged except certain records.

(f) 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 or the commissioner's designee to give notice of the findings made under Section 247.0454(d) to the person charged. Requires the commissioner or the commissioner's designee, 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 order of the commissioner or the commissioner's designee 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 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. (a) Authorizes the commissioner, in lieu of demanding payment of a specific administrative penalty, to allow the person to use, under the supervision of the department, any portion of the penalty to ameliorate the violation or to improve services, other than administrative services, in the assisted living facility 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 a resident of the assisted living facility.

(c) 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 the recommended assessment of an administrative penalty that is sent to the person after an informal dispute resolution process but before an administrative hearing under Section 247.0454.

(d) Requires a person to whom amelioration has been offered to file a plan for amelioration not later than the 45th day after the date 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 247.0454 if the department approves the plan.

(e) Sets forth minimum requirements of the plan for amelioration.

(f) Sets forth certain proposed changes a plan for amelioration is authorized to include.

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

(h) 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 247.0453.

(i) Limits the number of times the department may offer amelioration to a person in a certain time frame.

SECTION 9. 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 10. Redesignates Section 247.051, Health and Safety Code, as Section 247.006, Health and Safety Code, and amends it to make a conforming change.

SECTION 11. Repealer: Heading to Subchapter 247D, Health and Safety Code.

SECTION 12. Redesignates Chapter 247E, Health and Safety Code, as Chapter 247D, Health and Safety Code, and amends the subchapter heading to read as follows:

#### SUBCHAPTER D. MISCELLANEOUS PROVISIONS

SECTION 13. Amends Chapter 247C, Health and Safety Code, by adding Section 247.0541, as follows:

Sec. 247.051. INFORMAL DISPUTE RESOLUTION. Requires the Health and Human Services Commission (commission) by rule to establish an informal dispute resolution process in accordance with this section. Sets forth certain requirements for the process. Requires the commission to adopt rules to adjudicate claims in contested cases. Prohibits the commission from delegating its responsibility to administer the informal dispute resolution process established by this section to another state agency.

SECTION 14. Amends Section 247.066, Health and Safety Code, to provide that if a department inspector determines that a resident is inappropriately placed at a facility, the facility is not required to move the patient if, in a certain time frame, the facility obtains certain written statements opposing the department inspector's determination. Prohibits the department from assessing an administrative penalty against a facility because of an inappropriate placement of a resident if a department inspector's determination is agreed with by the facility or is not opposed. Requires the facility to discharge the resident if the inspector's determination is not opposed. Provides that the resident is allowed 30 days after the date of discharge to move from the facility. Requires a discharge required under this section to be made notwithstanding certain items.

SECTION 15. Repealer: Section 247.0271(d), Health and Safety Code.

SECTION 16. Requires the department to adopt rules to implement Section 247.0452, Health and Safety Code, as added by this Act, and Section 247.066, Health and Safety Code, as amended by this Act, not later than January 1, 2002.

SECTION 17. Effective date: September 1, 2001.

#### **SUMMARY OF COMMITTEE CHANGES**

Amends As Filed S.B. 527 as follows:

SECTION 2. Adds proposed text relating to the immediate threat of harm to a resident.

SECTION 3. Amends the section heading to Section 247.0272, Health and Safety Code.

SECTION 4. Adds proposed text relating to examination of department employees.

SECTION 5. Amends existing text and adds proposed text relating to the denial, suspension or revocation of a license.

SECTION 6. Amends existing text and adds proposed text relating to an emergency suspension or closing.

Redesignates SECTION 2 as SECTION 7 and amends it.

Redesignates SECTION 3 as SECTION 8 and amends proposed text relating to an administrative penalty. Adds proposed text relating to the amelioration of a violation.

Redesignates SECTION 4 as SECTION 9.

Adds SECTIONS 10 - 16.

Redesignates SECTION 5 as SECTION 17.