

## **BILL ANALYSIS**

Senate Research Center  
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C.S.H.B. 2590  
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Health & Human Services  
5/22/2017  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

In 2015 the Texas Legislature authorized the Health and Human Services Commission (HHSC) to develop a system of administrative penalties for providers contracted to deliver services in the Home and Community-based Services (HCS) and Texas Home Living (TxHmL) waiver programs. These providers are certified by HHSC rather than licensed. Administrative penalties were designed to raise the level of enforcement to match other licensed long-term care service and supports (LTSS) providers, however, additional statutory changes are required for the appeal process to match that of other program types.

H.B. 2590 mirrors appeal processes of other LTSS providers by establishing an informal dispute resolution process for HCS and TxHmL. The bill further grants the HHSC the authority to use amelioration as a tool to assist providers with compliance, which is a resource allowed for other LTSS providers. The amelioration process would allow a provider to use a portion of an administrative penalty toward compliance and program improvement. (Original Author's / Sponsor's Statement of Intent)

C.S.H.B. 2590 amends current law relating to the administrative penalty, amelioration, and informal dispute resolution processes for providers participating in certain Medicaid waiver programs.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the executive commissioner of Health and Human Services (executive commissioner) is modified in SECTION 1 (Section 161.089, Human Resources Code) of this bill.

Rulemaking authority is expressly granted to the executive commissioner in SECTION 2 (Section 161.0892, Human Resources Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Redesignates Section 161.088, Human Resources Code, as added by Chapters 826 (H.B. 4001) and 1200 (S.B. 1385), Acts of the 84th Legislature, Regular Session, 2015, as Section 161.089, Human Resources Code, and amends it as follows:

Sec. 161.089. ADMINISTRATIVE PENALTIES. (a) Provides that this section applies to certain waiver programs established under Section 1915(c), Social Security Act (42 U.S.C. Section 1396n(c)), and administered by the Health and Human Services Commission (HHSC), rather than the Department of Aging and Disability Services (DADS), to serve persons with an intellectual or developmental disability.

(b) Makes conforming changes.

(c) Makes no changes to this subsection.

(d) Redesignates existing Subsection (e) as Subsection (d). Requires the executive commissioner of HHSC (executive commissioner), in determining the types of violations that warrant imposition of an administrative penalty and in establishing

the schedule of progressive administrative penalties and penalty amounts under Subsection (c), rather than in establishing the schedule of progressive administrative penalties and penalty amounts under Subsection (c), to consider certain factors. Deletes existing text requiring the executive commissioner, in specifying the types of violations that warrant imposition of an administrative penalty under Subsection (c), to specify the types of minor violations that allow a provider an opportunity to take corrective action before a penalty is imposed.

(e) Redesignates existing Subsection (f) as Subsection (e). Requires the executive commissioner, by rule, except as provided by Subsection (f), to provide to a provider who has implemented a plan of correction a reasonable period of time following the date HHSC sends notice to the provider of the violation to correct the violation before HHSC may assess an administrative penalty. Authorizes the period to not be less than 45 days. Deletes existing text requiring DADS, in lieu of imposing an administrative penalty under this section, to allow a provider found to have committed a minor violation specified by rule in accordance with Subsection (d) to have a reasonable period of time that is not less than 45 days after the date DADS sends notice to the provider of the violation to take corrective action regarding the violation. Deletes existing text prohibiting DADS from allowing time for corrective action for any violation that is not a minor violation.

(f) Authorizes HHSC to assess an administrative penalty without providing a reasonable period of time to a provider to correct the violation if the violation meets certain criteria.

(g) Provides that, notwithstanding any other provision of this section, an administrative penalty ceases to be incurred on the date a violation is corrected.

(h) Defines "actual harm," "immediate threat to the health or safety of a recipient," "minor harm," "pattern of violation," "recipient," and "widespread in scope."

SECTION 2. Amends Subchapter D, Chapter 161, Human Resources Code, by adding Sections 161.0891 and 161.0892, as follows:

Sec. 161.0891. AMELIORATION PROCESS. (a) Authorizes HHSC in lieu of demanding payment of an administrative penalty assessed under Section 161.089, to, in accordance with this section, allow the provider subject to the penalty to use, under the supervision of HHSC, any portion of the amount of the penalty to ameliorate the violation or to improve services in the waiver program in which the provider participates.

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

(c) Requires a provider to whom amelioration has been offered to file a plan for amelioration not later than the 45th day after the date the provider receives the offer of amelioration from HHSC. Requires the provider, in submitting the plan, to agree to waive the provider's right to an administrative hearing if HHSC approves the plan.

(d) Requires that a plan for amelioration, at a minimum, propose changes to the management or operation of the waiver program in which the provider participates that will improve services to or quality of care for recipients under the program, identify, through measurable outcomes, the ways in which and the extent to which the proposed changes will improve services to or quality of care for clients in the waiver program, establish clear goals to be achieved through the

proposed changes, establish a timeline for implementing the proposed changes, and identify specific actions necessary to implement the proposed changes.

(e) Authorizes HHSC to require that an amelioration plan propose changes that would result in conditions that exceed the requirements of a law or rule relating to the waiver program in which the provider participates.

(f) Requires HHSC to approve or deny an amelioration plan not later than the 45th day after the date HHSC receives the plan. Requires HHSC or the State Office of Administrative Hearings, as appropriate, on approval of a provider's plan, to deny a pending request for a hearing submitted by the provider.

(g) Prohibits HHSC from offering amelioration to a provider 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.

Sec. 161.0892. INFORMAL DISPUTE RESOLUTION. (a) Requires the executive commissioner of HHSC (executive commissioner) to establish an informal dispute resolution process in accordance with this section. Requires that the process provide for adjudication by an appropriate disinterested person of disputes relating to a proposed enforcement action or related proceeding of HHSC against a provider participating in a waiver program described by Section 161.089. Requires that the informal dispute resolution process require a provider participating in a waiver program described by Section 161.089 to request informal dispute resolution not later than the 10th calendar day after the date of notification by HHSC of the violation of a law or rule relating to the program and HHSC to complete the process not later than the 30th calendar day after the date of receipt of a request from a provider for informal dispute resolution.

(b) Requires HHSC, as part of the informal dispute resolution process established under this section, to contract with an appropriate disinterested person who is a nonprofit organization to adjudicate disputes between a provider participating in a program described by Section 161.089 and HHSC concerning a statement of violations prepared by HHSC. Provides that Section 2009.053 (Impartial Third Parties), Government Code, does not apply to the selection of an appropriate disinterested person under this subsection. Requires the person with whom HHSC contracts to adjudicate all disputes described by this subsection.

(c) Requires the executive commissioner to adopt rules to adjudicate claims in contested cases.

(d) Prohibits HHSC from delegating its responsibility to administer the informal dispute resolution process established by this section to another state agency.

SECTION 3. Requires the executive commissioner to, as soon as practicable after the effective date of this Act, adopt the rules necessary to implement the changes in law made by this Act.

SECTION 4. Effective date: September 1, 2017.