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Human Services, Regulation and Licensing

State may consider revising ‘right to correct’ for nursing homes

[January 26](#) — State lawmakers this past interim discussed ways to enhance the quality of long-term care facilities in the state, including whether to limit “right-to-correct” laws that allow providers to avoid state penalties by addressing certain violations within a specified time. Legislation that would have restricted providers’ right to correct violations was considered but not enacted in 2015 by the 84th Legislature. Similar proposals could emerge this legislative session.

The Senate Committee on Health and Human Services, at a [hearing](#) last February, considered how to improve quality and oversight in long-term care settings. Its interim [report](#), released in November, recommends several changes, including removing the right to correct for violations that result in actual harm to clients. Limiting right-to-correct provisions by repealing them from statute and revising them in rule was also among the recommendations from the Sunset Advisory Commission in its 2014-15 [review](#) of the Department of Aging and Disability Services (DADS). Sunset’s recommendation followed its finding that few long-term care providers in Texas face enforcement actions for health and safety violations.

DADS in fiscal 2016 assessed 51 administrative penalties against nursing homes, which committed 18,089 violations during that time, according to the agency. A single administrative penalty may be assessed for multiple violations. Also in fiscal 2016, nursing homes had 14,751 federal deficiencies and faced 261 federal civil money penalties. A single violation cannot result in more than one monetary penalty, meaning a facility cannot receive both a state administrative penalty and a federal civil money penalty for the same violation.

Current law

Provisions giving long-term care providers the right to correct appear in the Texas Health and Safety Code and the

Human Resources Code. For example, Health and Safety Code, [sec. 242.0665](#) prohibits DADS from collecting an administrative penalty against a nursing home or related institution if the facility corrects a violation within 45 days of receiving notice.

The right to correct does not apply to certain violations, including those that result in serious harm to or death of a resident, constitute a serious threat to the health or safety of a resident, or substantially limit the institution’s capacity to provide care. If an institution fails to maintain a correction for at least a year, DADS may assess an administrative penalty equal to three times the amount of the penalty assessed, but not collected, for the initial violation.

Recent legislation

[SB 204](#) by Hinojosa, which the 84th Legislature considered in 2015 but did not enact, would have removed from statute right-to-correct provisions for nursing homes and other long-term care providers. It would have required the executive commissioner of the Health and Human Services Commission (HHSC) to define in rule the types of minor violations a facility could correct before the assessment of an administrative penalty. The commissioner would have had to ensure that all other types of violations were not subject to a right to correct. The bill was passed by both chambers but died in conference committee.

Debate about right to correct

The Legislature in 2017 may consider proposals similar to SB 204 that would repeal right-to-correct provisions from statute and require that they be revised in rule to specify which minor violations could be corrected.

(continued on page 2)

Supporters of restricting long-term care providers' right to correct violations say these provisions are a key reason that few circumstances allow the state to assess a penalty against long-term care facilities. The average overall rating of Texas nursing homes that accept Medicaid and Medicare is 57 out of 100, according to DADS' Quality Reporting System, and supporters say the state needs better tools to discourage inadequate care. While the right to correct makes sense for low-level violations, they say, it should not be allowed when residents were harmed or for repeated violations, which is sometimes the case under the current system. Supporters also say there is little evidence that Texas nursing homes are overregulated compared to those in other states, as suggested by some opponents, and that more effort, rather than more money, could make better progress toward improving long-term care.

Opponents of restricting long-term care providers' right to correct violations say the change is unnecessary because the nursing home industry already is highly regulated. The current right-to-correct system works well, they say, particularly because the fine triples if a facility fails to keep a violation corrected for a year, and long-term care providers can face substantial federal penalties for health and safety violations. Opponents

also say inconsistencies in surveys of regulatory compliance across different regions of the state must be addressed to ensure violations are being assessed fairly. They say the survey system should be more focused on improvement than on punishment. Many factors other than safety regulations contribute to quality long-term care, they say, including higher Medicaid reimbursement rates. Opponents also say limiting providers' right to correct violations at this time would coincide inappropriately with substantial changes taking place on the federal level to long-term care regulations.

— *Mary Beth Schaefer*