Chapter 590

S.B. No. 924

AN ACT
relating to informal dispute resolutions for violations of health
and safety standards at certain long-term care facilities;
authorizing the imposition of costs.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 247.051, Health and Safety Code, is
amended by amending Subsections (a), (c), and (d) and adding
Subsection (e) to read as follows:

(a) The executive commissioner by rule shall establish an
informal dispute resolution process to address disputes between an
assisted living [a] facility and the commission [department]
concerning a statement of violations prepared by the commission
[department] in accordance with this section. The process must
provide for adjudication by an appropriate disinterested person of
disputes relating to a statement of violations. The informal
dispute resolution process must require:

(1) the assisted living facility to request informal
dispute resolution not later than the 10th day after the date of
notification by the commission [department] of the violation of a
standard or standards;

(2) that the [commission to complete the] process be
completed not later than the 90th day after the date of receipt of a
request from the assisted living facility for informal dispute
resolution;
that, not later than the 20th [20th] business day after the date an assisted living facility requests an informal dispute resolution, the commission [department] forward to the assisted living facility a copy of all information referenced [that is referred to] in the disputed statement of violations or on which a citation is based in connection with the survey, inspection, investigation, or other visit, including any notes taken by or e-mails or messages sent by a commission employee involved with the survey, inspection, investigation, or other visit and excluding the following information:

(A) the name of any complainant, witness, or informant, which must be redacted from information provided to the assisted living facility;

(B) any information that would reasonably lead to the identification of a complainant, witness, or informant, which must be redacted from information provided to the assisted living facility;

(C) information obtained from or contained in the records of the facility;

(D) information that is publicly available; or

(E) information that is confidential by law;

(4) that [the commission to give] full consideration is given to all factual arguments raised during the informal dispute resolution process [that]

[(A) are supported by references to specific information that the facility or department relies on to dispute or support findings in the statement of violations; and]
(B) are provided by the proponent of the argument to the commission and the opposing party;

(5) that full consideration is given during the informal dispute resolution process to the information provided by the assisted living facility and the commission;

(6) that ex parte communications concerning the substance of any argument relating to a survey, inspection, investigation, visit, or statement of violations under consideration not occur between the informal dispute resolution staff and the assisted living facility or the commission; and

(7) that the assisted living facility and the commission be given a reasonable opportunity to submit arguments and information supporting the position of the assisted living facility or the commission and to respond to arguments and information presented against them, provided the assisted living facility submits its arguments and supporting information not later than the 10th business day after the date of receipt of the materials provided under Subdivision (3); and

(8) that the commission bears the burden of proving the violation of a standard or standards.

(c) An assisted living facility requesting an informal dispute resolution under this section must reimburse the commission for any costs associated with the commission's preparation, copying, and delivery of information requested by the facility.
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(4) A statement of violations prepared by the commission following a survey, inspection, investigation, or visit is confidential pending the outcome of the informal dispute resolution process. Information concerning the outcome of a survey, inspection, investigation, or visit may be posted on any website maintained by the commission while the dispute is pending if the posting clearly notes each finding that is in dispute.

(e) The commission may charge and the assisted living facility shall pay the reasonable costs associated with making the redactions required by Subsections (a)(3)(A) and (B).

SECTION 2. Section 531.058, Government Code, is amended by amending Subsections (a) and (a-1) and adding Subsection (d) to read as follows:

(a) The executive commissioner by rule shall establish an informal dispute resolution process in accordance with this section. The process must provide for adjudication by an appropriate disinterested person of disputes relating to a proposed enforcement action or related proceeding of the commission under Section 32.021(d), Human Resources Code, or [the Department of Aging and Disability Services] under Chapter 242, 247, or 252, Health and Safety Code. The informal dispute resolution process must require:

(1) an institution or facility to request informal dispute resolution not later than the 10th calendar day after notification by the commission [or department, as applicable] of the violation of a standard or standards; and
(2) the completion of the process not later than:

(A) the 30th calendar day after receipt of a request from an institution or facility, other than an assisted living facility, for informal dispute resolution; or

(B) the 90th calendar day after receipt of a request from an assisted living facility for informal dispute resolution.

(a-1) As part of the informal dispute resolution process established under this section, the commission shall contract with an appropriate disinterested person to adjudicate disputes between an institution or facility licensed under Chapter 242, Health and Safety Code, or a facility licensed under Chapter 247, Health and Safety Code, and the commission concerning a statement of violations prepared by the commission in connection with a survey conducted by the commission of the institution or facility. Section 2009.053 does not apply to the selection of an appropriate disinterested person under this subsection. The person with whom the commission contracts shall adjudicate all disputes described by this subsection.

(d) The rules adopted by the executive commissioner under Subsection (a) that relate to a dispute described by Section 247.051(a), Health and Safety Code, must incorporate the requirements of Section 247.051, Health and Safety Code.

SECTION 3. This Act takes effect September 1, 2017.
I hereby certify that S.B. No. 924 passed the Senate on April 19, 2017, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 25, 2017, by the following vote: Yeas 31, Nays 0.

I hereby certify that S.B. No. 924 passed the House, with amendment, on May 19, 2017, by the following vote: Yeas 144, Nays 0, two present not voting.

Approved:

6 - 9 - 2017

Date

Governor

FILED IN THE OFFICE OF THE SECRETARY OF STATE
7:00 P.M. O'CLOCK

Secretary of State
TO: Honorable Richard Peña Raymond, Chair, House Committee on Human Services

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: SB924 by Perry (Relating to informal dispute resolutions for violations of health and safety standards at certain long-term care facilities; authorizing the imposition of costs.), Committee Report 2nd House, Substituted

No significant fiscal implication to the State is anticipated.

The bill would amend the Health and Safety Code to require the Health and Human Services Commission to provide certain documentation related to the survey, inspection, or other investigation of assisted living facilities to facilities that request an informal dispute resolution in response to a statement of violations. The documentation would include notes taken by or e-mails or messages sent by a commission employee involved with the survey, inspection, investigation, or other visit of an assisted living facility, with certain information redacted. The bill would take effect September 1, 2017.

Based on the LBB's analysis of the Health and Human Services Commission, duties and responsibilities associated with implementing the provisions of the bill could be accomplished with existing resources.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 529 Health and Human Services Commission

LBB Staff: UP, MDI, KCA, EP, TBo
TO: Honorable Richard Peña Raymond, Chair, House Committee on Human Services

FROM: Ursula Parks, Director, Legislative Budget Board

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LBB Staff: UP, KCA, EP, MDI
TO: Honorable Charles Schwertner, Chair, Senate Committee on Health & Human Services

FROM: Ursula Parks, Director, Legislative Budget Board

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