

Regular Session, 2008

SENATE BILL NO. 236

BY SENATOR GRAY

NURSING HOMES. Provides for violations and penalties for nursing homes and other health care facilities. (gov sig)

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AN ACT

To amend and reenact R.S. 40:2009.11(B)(2)(b) and (3), 2199(B)(2)(b), (B)(3) and (F)(1) and (2), to enact R.S. 40:2199(F)(3) and (4) and 2199.1, relative to nursing homes and health care facilities; to provide for Class B violations for nursing homes and health care facilities licensed or certified by the Department of Health and Hospitals; to provide for monthly aggregate fines for nursing homes or health care facilities; to provide for monies collected for violations by health care facilities; to provide for the use of the monies collected for violations by health care facilities; to provide for additional remedies against health care facilities; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 40:2009.11(B)(2)(b) and (3), 2199(B)(2)(b), (B)(3) and (F)(1) and (2) are hereby amended and reenacted and R.S. 40:2199(F)(3) and (4) and 2199.1 are hereby enacted to read as follows:

§2009.11. Violations; penalties; notice; hearings; appeal; collection and distribution of fines

* * *

B. * * *

1 Civil fines shall not exceed one thousand five hundred dollars for the first violation
2 and shall not exceed three thousand dollars per day for repeat violations.

3 * * *

4 (3) The aggregate fines assessed for violations determined in any one month
5 shall not exceed ~~five~~ **twenty** thousand dollars, except that the aggregate fines
6 assessed for Class A ~~or B~~ repeat violations shall not exceed ~~ten~~ **fifty** thousand dollars
7 in any one month **and the aggregate fines assessed for Class B repeat violations**
8 **shall not exceed thirty thousand dollars in any one month.**

9 * * *

10 F.(1) ~~Civil fines collected under the provisions of this Section shall be~~
11 ~~deposited in the state general fund after compliance with the requirements of Article~~
12 ~~VII, Section 9(B) of the Constitution of Louisiana relative to the Bond Security and~~
13 ~~Redemption Fund.~~ **After compliance with the requirements of Article VII,**
14 **Section 9(B) of the Constitution of Louisiana relative to the Bond Security and**
15 **Redemption Fund and prior to the monies being placed in the state general**
16 **fund, an amount equal to the civil fines collected under the provision of this**
17 **Section shall be credited to a special fund hereby created in the state treasury**
18 **to be known as the "Health Care Facility Fund," hereinafter referred to as "the**
19 **fund."**

20 **(2) The monies in the fund shall be subject to an annual appropriation**
21 **by the legislature and shall be available exclusively for use by the Department**
22 **of Health and Hospitals for:**

23 **(a) The protection of the health, welfare, rights, or property of those**
24 **receiving services from health care facilities licensed or certified by the**
25 **Department of Health and Hospitals.**

26 **(b) The enforcement of sanctions against health care facilities licensed**
27 **or certified by the Department of Health and Hospitals.**

28 **(c) Education, employment, and training of employees, staff, or other**
29 **personnel of health care facilities licensed or certified by the Department of**

Health and Hospitals.

(3) The monies in the fund shall be invested by the treasurer in the same manner as the monies in the state general fund, and all interest earned from the investment of monies in the fund shall be deposited in and remain to the credit of the fund. All unexpended and unencumbered monies remaining in the fund at the close of the fiscal year shall remain in the fund.

~~(2)~~ **(4)** The secretary of the Department of Health and Hospitals is authorized to promulgate rules and regulations in accordance with the Administrative Procedure Act to provide for the administration of the fund.

§2199.1. Adoption of rules; denial of payment; fines; temporary management; alternate remedies

A. The Department of Health and Hospitals is hereby authorized to and shall adopt rules in accordance with the Administrative Procedure Act to provide remedies for facilities which violate the minimum standards for licensure, the certification requirements, or the Medicaid standards of participation. Such remedies may include:

(1) The denial of payment with respect to any individual admitted to or provided services by a facility.

(2) The appointment of temporary management of a facility.

(3) The closure of a facility.

(4) The transfer of residents, clients, patients, or persons receiving services.

(5) Alternate remedies to deter noncompliance and correct deficiencies.

B. The Department of Health and Hospitals, by rule adopted pursuant to the Administrative Procedure Act, shall specify criteria as to when and how each remedy is to be applied and the severity of the remedies to be used in the imposition of such remedies.

C. The department shall enforce rules adopted pursuant to this Section and, when determined necessary, may petition a court of competent jurisdiction

1 **to judicially enforce any such rule.**

2 Section 2. This Act shall become effective upon signature by the governor
3 or, if not signed by the governor, upon expiration of the time for bills to become law
4 without signature by the governor, as provided by Article III, Section 18 of the
5 Constitution of Louisiana. If vetoed by the governor and subsequently approved by
6 the legislature, this Act shall become effective on the day following such approval.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Bobbie Hunter.

DIGEST

Present law provides for civil fines for operating a nursing home in violation of any federal statute, state law, regulation, or any rule adopted pursuant to the Administrative Procedure Act (APA) by the Department of Health and Hospitals (department) which govern the administration of nursing home care.

Present law provides that the aggregate fines assessed to nursing homes for violations determined in any one month shall not exceed \$5,000, except that the aggregate fines assessed for Class A or B repeat violations shall not exceed \$10,000 in any one month.

Proposed law increases the aggregate fines assessed to nursing homes for violations determined in any one month to \$20,000, except that the aggregate fines assessed for Class A repeat violations shall not exceed \$50,000 in any one month and the aggregate fines assessed for Class B repeat violations shall not exceed \$30,000 in any one month.

Present law provides that it shall be a violation to operate a facility, as defined in R.S. 40:2199, if one of the following apply:

- (1) As a result of a licensure or certification survey, it is determined by an agency to be in violation of one or more conditions of licensure or certification and has failed to correct such conditions of violation within the time prescribed by law or by the agency.
- (2) As a result of one or more third-party complaints, it is determined by an agency to have been in violation of one or more conditions of licensure or certification resulting directly in the incident which gave rise to such third-party complaint.

Present law provides that the aggregate fines assessed to facilities for violations determined in any one month shall not exceed \$5,000, except that the aggregate fines assessed for Class A or B repeat violations shall not exceed \$10,000 in any one month.

Proposed law increases the aggregate fines assessed to facilities for violations determined in any one month to \$20,000, except that the aggregate fines assessed for Class A repeat violations shall not exceed \$50,000 in any one month and the aggregate fines assessed for Class B repeat violations shall not exceed \$30,000 in any one month.

Present law provides that civil fines collected from any person or facility in violation shall be deposited in the state general fund after compliance with the requirements of Article VII, Section 9(B) of the Constitution of Louisiana relative to the Bond Security and Redemption Fund.

Proposed law provides that after compliance with the requirements of Article VII, Section 9(B) of the Constitution of Louisiana relative to the Bond Security and Redemption Fund, the civil fines collected under the provisions of R.S. 40:2199 shall be deposited into a special fund in the state treasury to be known as the Health Care Facility Fund.

Proposed law authorizes and requires the department to adopt rules in accordance with the APA to provide remedies for facilities which violate the minimum standards for licensure, the certification requirements, or the Medicaid standards of participation. Such remedies may include:

- (1) The denial of payment with respect to any individual admitted to or provided services by a facility.
- (2) The appointment of temporary management of a facility.
- (3) The closure of a facility.
- (4) The transfer of residents, clients, patients, or persons receiving services.
- (5) Alternate remedies to deter noncompliance and correct deficiencies.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 40:2009.11(B)(2)(b) and (3) and 2199(B)(2)(b), (B)(3) and (F)(1) and (2); adds R.S. 40:2199(F)(3) and (4) and 2199.1)