

HEALTH & SAFETY CODE
CHAPTER 577. PRIVATE MENTAL HOSPITALS AND OTHER MENTAL HEALTH
FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS; LICENSING AND PENALTIES

Sec. 577.001. LICENSE REQUIRED. (a) A person or political subdivision may not operate a mental hospital without a license issued by the department under this chapter.

(b) A community center or other entity designated by the Texas Department of Mental Health and Mental Retardation to provide mental health services may not operate a mental health facility that provides court-ordered mental health services without a license issued by the department under this chapter.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 573, Sec. 4.02, eff. Sept. 1, 1993.

Sec. 577.0011. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Board of Health.

(2) "Department" means the Texas Department of Health.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 4.03, eff. Sept. 1, 1993.

Sec. 577.002. EXEMPTIONS FROM LICENSING REQUIREMENT. A mental health facility operated by the Texas Department of Mental Health and Mental Retardation or a federal agency need not be licensed under this chapter.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 573, Sec. 4.04, eff. Sept. 1, 1993.

Sec. 577.003. ADDITIONAL LICENSE NOT REQUIRED. A mental hospital licensed under this chapter that the Texas Department of Mental Health and Mental Retardation designates to provide mental health services is not required to obtain an additional license to provide court-ordered mental health services.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 573, Sec. 4.04, eff. Sept. 1, 1993.

Sec. 577.004. LICENSE APPLICATION. (a) An applicant for a license under this chapter must submit a sworn application to the department on a form prescribed by the department.

(b) The department shall prepare the application form and make the form available on request.

(c) The application must be accompanied by a nonrefundable application fee and by a license fee. The department shall return the license fee if the application is denied.

(d) The application must contain:

(1) the name and location of the mental hospital or mental health facility;

(2) the name and address of the physician to be in charge of the hospital care and treatment of the patients;

(3) the names and addresses of the mental hospital owners, including the officers, directors, and principal stockholders if the owner is a corporation or other association, or the names and addresses of the members of the board of trustees of the community center or the directors of the entity designated by the department to provide mental health services;

(4) the bed capacity to be authorized by the license;

(5) the number, duties, and qualifications of the professional staff;

(6) a description of the equipment and facilities of the mental hospital or mental health facility; and

(7) other information required by the department, including affirmative evidence of ability to comply with the department's rules and standards.

(e) The applicant must submit a plan of the mental hospital or mental health facility premises that describes the buildings and grounds and the manner in which the various parts of the premises are intended to be used.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 577.005. INVESTIGATION AND LICENSE ISSUANCE. (a) The department shall conduct an investigation as considered necessary after receiving the proper license application and the required fees.

(b) The department shall issue a license if it finds that the premises are suitable and that the applicant is qualified to operate a mental hospital or a mental health facility that provides court-ordered inpatient mental health services, in accordance with

the requirements and standards prescribed by law and the department.

(c) A license is issued to the applicant for the premises described and for the bed capacity specified by the license.

(d) The license is not transferable or assignable.
Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 577.006. FEES. (a) The department shall charge each hospital an annual license fee for an initial license or a license renewal.

(b) The board by rule shall adopt the fees authorized by Subsection (a) according to a schedule under which the number of beds in the hospital determines the amount of the fee. The fee may not exceed \$15 a bed. A minimum license fee may be established. The minimum fee may not exceed \$1,000.

(c) The board by rule shall adopt fees for hospital plan reviews according to a schedule under which the amounts of the fees are based on the estimated construction costs.

(d) The fees imposed under the schedule may not exceed the following:

Cost of Construction	Fee
(1) \$ 100,000 or less	\$ 500
(2) \$ 100,001 - \$ 600,000	\$1,500
(3) \$ 600,001 - \$ 2,000,000	\$3,000
(4) \$ 2,000,001 - \$ 5,000,000	\$4,500
(5) \$ 5,000,001 - \$10,000,000	\$6,000
(6) \$ 10,000,001 and over	\$7,500

(e) The department shall charge a fee for field surveys of construction plans reviewed under this section. The board by rule shall adopt a fee schedule for the surveys that provides a minimum fee of \$500 and a maximum fee of \$1,000 for each survey conducted.

(f) The department annually shall review the fee schedules to ensure that the fees charged are based on the estimated costs to and level of effort expended by the department.

(g) The department may establish staggered license renewal dates and dates on which fees are due.

(h) A fee adopted under this chapter must be based on the estimated cost to and level of effort expended by the department to conduct the activity for which the fee is imposed.

(i) All license fees collected shall be deposited in the state treasury to the credit of the department to administer and enforce this chapter. These fees may be appropriated only to the department.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1999, 76th Leg., ch. 1411, Sec. 8.01, eff. Sept. 1, 1999.

Sec. 577.007. CHANGE IN BED CAPACITY. A mental hospital or mental health facility may increase the bed capacity authorized by the license at any time with the department's approval and may decrease the capacity at any time by notifying the department.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 577.008. REQUIREMENT OF PHYSICIAN IN CHARGE. Each licensed private mental hospital shall be in the charge of a physician who has at least three years experience as a physician in psychiatry in a mental hospital or who is certified by the American Board of Psychiatry and Neurology or by the American Osteopathic Board of Psychiatry and Neurology.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 577.009. LIMITATION ON CERTAIN CONTRACTS. A community center or other entity the Texas Department of Mental Health and Mental Retardation designates to provide mental health services may not contract with a mental health facility to provide court-ordered mental health services unless the facility is licensed by the department.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 573, Sec. 4.04, eff. Sept. 1, 1993.

Sec. 577.010. RULES AND STANDARDS. (a) The Texas Board of Mental Health and Mental Retardation shall adopt rules and standards the board considers necessary and appropriate to ensure the proper care and treatment of patients in a private mental hospital or mental health facility required to obtain a license under this chapter.

(b) The rules must encourage mental health facilities licensed under this chapter to provide inpatient mental health services in ways that are appropriate for the diversity of the

state.

(c) The standards for community-based crisis stabilization and crisis residential services must be less restrictive than the standards for mental hospitals.

(d) The department shall send a copy of the rules to each mental hospital or mental health facility licensed under this chapter.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 573, Sec. 4.05, eff. Sept. 1, 1993.

Sec. 577.0101. NOTIFICATION OF TRANSFER OR REFERRAL. (a) The board shall adopt rules governing the transfer or referral of a patient from a private mental hospital to an inpatient mental health facility.

(b) The rules must provide that before a private mental hospital may transfer or refer a patient, the hospital must:

(1) provide to the receiving inpatient mental health facility notice of the hospital's intent to transfer a patient;

(2) provide to the receiving inpatient mental health facility information relating to the patient's diagnosis and condition; and

(3) obtain verification from the receiving inpatient mental health facility that the facility has the space, personnel, and services necessary to provide appropriate care to the patient.

(c) The rules must also require that the private mental hospital send the patient's appropriate records, or a copy of the records, if any, to the receiving inpatient mental health facility. Added by Acts 1993, 73rd Leg., ch. 705, Sec. 4.07, eff. Aug. 30, 1993.

Sec. 577.011. RECORDS AND REPORTS. The department may require a license holder to make annual, periodical, or special reports to the department and to keep the records the department considers necessary to ensure compliance with this subtitle and the department's rules and standards.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 577.012. DESTRUCTION OF RECORDS. (a) A private mental hospital licensed under this chapter may authorize the disposal of any medical record on or after the 10th anniversary of the date on which the patient who is the subject of the record was last treated in the hospital.

(b) If a patient was younger than 18 years of age when last treated, the hospital may authorize the disposal of records relating to the patient on or after the later of the patient's 20th birthday or the 10th anniversary of the date on which the patient was last treated.

(c) The hospital may not destroy medical records that relate to any matter that is involved in litigation if the hospital knows that the litigation has not been finally resolved.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 577.013. INVESTIGATIONS. (a) The department may make investigations it considers necessary and proper to obtain compliance with this subtitle and the department's rules and standards.

(b) An agent of the department may at any reasonable time enter the premises of a private mental hospital or mental health facility licensed under this chapter to:

(1) inspect the facilities and conditions;

(2) observe the hospital's or facility's care and treatment program; and

(3) question the employees of the hospital or facility.

(c) An agent of the department may examine or transcribe any records or documents relevant to the investigation.

(d) All information and materials obtained or compiled by the department in connection with a complaint and investigation concerning a mental hospital licensed under this chapter are confidential and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the department or its employees or agents involved in the enforcement action except that this information may be disclosed to:

(1) persons involved with the department in the enforcement action against the licensed mental hospital;

(2) the licensed mental hospital that is the subject of the enforcement action, or the licensed mental hospital's

authorized representative;

(3) appropriate state or federal agencies that are authorized to inspect, survey, or investigate licensed mental hospital services;

(4) law enforcement agencies; and

(5) persons engaged in bona fide research, if all individual-identifying information and information identifying the licensed mental hospital has been deleted.

(e) The following information is subject to disclosure in accordance with Section 552.001 et seq., Government Code:

(1) a notice of alleged violation against the licensed mental hospital, which notice shall include the provisions of law which the licensed mental hospital is alleged to have violated, and the nature of the alleged violation;

(2) the pleadings in the administrative proceeding; and

(3) a final decision or order by the department.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 1444, Sec. 16, eff. Aug. 30, 1999.

Sec. 577.014. OATHS. The department or its agent may administer oaths, receive evidence, and examine witnesses in conducting an investigation or other proceeding under this chapter. Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 577.015. SUBPOENAS. (a) The department or its agent, in conducting an investigation or other proceeding under this chapter, may issue subpoenas to compel the attendance and testimony of witnesses and the production of documents or records anywhere in this state that are related to the matter under inquiry.

(b) If a person refuses to obey a subpoena, the department may apply to the district court of Travis County for an order requiring obedience to the subpoena.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 577.016. DENIAL, SUSPENSION, PROBATION, OR REVOCATION OF LICENSE. (a) The department may deny, suspend, or revoke a license if the department finds that the applicant or licensee has substantially failed to comply with:

(1) department rules;

(2) this subtitle; or

(3) Chapters 104 and 225.

(b) The department must give the applicant or license holder notice of the proposed action, an opportunity to demonstrate or achieve compliance, and an opportunity for a hearing before taking the action.

(c) The department may suspend a license for 10 days pending a hearing if after an investigation the department finds that there is an immediate threat to the health or safety of the patients or employees of a private mental hospital or mental health facility licensed under this chapter. The department may issue necessary orders for the patients' welfare.

(d) The department shall send the license holder or applicant a copy of the department's decision by registered mail. If the department denies, suspends, or revokes a license, the department shall include the findings and conclusions on which the department based its decision.

(e) A license holder whose license is suspended or revoked may not admit new patients until the license is reissued.

(f) If the department finds that a private mental hospital or mental health facility is in repeated noncompliance under Subsection (a) but that the noncompliance does not endanger public health and safety, the department may schedule the hospital or facility for probation rather than suspending or revoking the license of the hospital or facility. The department shall provide notice to the hospital or facility of the probation and of the items of noncompliance not later than the 10th day before the date the probation period begins. The department shall designate a period of not less than 30 days during which the hospital or facility will remain under probation. During the probation period, the hospital or facility must correct the items that were in noncompliance and report the corrections to the department for approval.

(g) The department may suspend or revoke the license of a private mental hospital or mental health facility that does not comply with the applicable requirements within the applicable probation period.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 705, Sec. 3.12, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 802, Sec. 14, 15, eff. June 20, 2003.

Sec. 577.017. HEARINGS. (a) The department's legal staff may participate in a hearing under this chapter.

(b) The hearing proceedings shall be recorded in a form that can be transcribed if notice of appeal is filed.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 577.018. JUDICIAL REVIEW OF DEPARTMENT DECISION. (a) An applicant or license holder may appeal from a department decision by filing notice of appeal in the district court of Travis County and with the department not later than the 30th day after receiving a copy of the department's decision.

(b) The department shall certify and file with the court a transcript of the case proceedings on receiving notice of appeal. The transcript may be limited by stipulation.

(c) The court shall hear the case on the record and may consider other evidence the court determines necessary to determine properly the issues involved. The substantial evidence rule does not apply.

(d) The court may affirm or set aside the department decision or may remand the case to the department for further proceedings.

(e) The department shall pay the cost of the appeal unless the court affirms the department's decision, in which case the applicant or license holder shall pay the cost of the appeal.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 577.019. INJUNCTION. (a) The department, in the name of the state, may maintain an action in a district court of Travis County or in the county in which the violation occurs for an injunction or other process against any person to restrain the person from operating a mental hospital or mental health facility that is not licensed as required by this chapter.

(b) The district court may grant any prohibitory or mandatory relief warranted by the facts, including a temporary restraining order, temporary injunction, or permanent injunction.

(c) At the request of the department or on the initiative of the attorney general or district or county attorney, the attorney general or the appropriate district or county attorney shall institute and conduct a suit authorized by this section in the name of the state. The attorney general may recover reasonable expenses incurred in instituting and conducting a suit authorized by this section, including investigative costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 705, Sec. 3.13, eff. Sept. 1, 1993.

SUBCHAPTER B. PATIENT SAFETY PROGRAM

Sec. 577.051. DUTIES OF DEPARTMENT.

Section 577.064 provides that this section expires
September 1, 2007.

The department shall develop a patient safety program for mental hospitals licensed under Section 577.001(a). The program must:

(1) be administered by the licensing program within the department; and

(2) serve as an information clearinghouse for hospitals concerning best practices and quality improvement strategies.

Added by Acts 2003, 78th Leg., ch. 569, Sec. 6, eff. June 20, 2003.

Sec. 577.052. ANNUAL REPORT.

[Section 577.064 provides that this section expires
September 1, 2007.]

(a) On renewal of a license under this chapter, a mental hospital shall submit to the department an annual report that lists the number of occurrences at the hospital or at an outpatient facility owned or operated by the hospital of each of the following events during the preceding year:

(1) a medication error resulting in a patient's unanticipated death or major permanent loss of bodily function in circumstances unrelated to the natural course of the illness or underlying condition of the patient;

(2) the suicide of a patient in a setting in which the patient received care 24 hours a day;

(3) the sexual assault of a patient during treatment

or while the patient was on the premises of the hospital or facility;

(4) a hemolytic transfusion reaction in a patient resulting from the administration of blood or blood products with major blood group incompatibilities; and

(5) a patient death or serious disability associated with the use or function of a device designed for patient care that is used or functions other than as intended.

(b) The department may not require the annual report to include any information other than the number of occurrences of each event listed in Subsection (a).

Added by Acts 2003, 78th Leg., ch. 569, Sec. 6, eff. June 20, 2003.

Sec. 577.053. ROOT CAUSE ANALYSIS AND ACTION PLAN.

Section 577.064 provides that this section expires
September 1, 2007.

(a) In this section, "root cause analysis" means the process that identifies basic or causal factors underlying a variation in performance leading to an event listed in Section 577.052 and that:

(1) focuses primarily on systems and processes;

(2) progresses from special causes in clinical processes to common causes in organizational processes; and

(3) identifies potential improvements in processes or systems.

(b) Not later than the 45th day after the date a mental hospital becomes aware of an event listed in Section 577.052, the hospital shall:

(1) conduct a root cause analysis of the event; and

(2) develop an action plan that identifies strategies to reduce the risk of a similar event occurring in the future.

(c) The department may review a root cause analysis or action plan related to an event listed in Section 577.052 during a survey, inspection, or investigation of a mental hospital.

(d) The department may not require a root cause analysis or action plan to be submitted to the department.

(e) The department or an employee or agent of the department may not in any form, format, or manner remove, copy, reproduce, redact, or dictate from all or any part of a root cause analysis or action plan.

Added by Acts 2003, 78th Leg., ch. 569, Sec. 6, eff. June 20, 2003.

Sec. 577.054. CONFIDENTIALITY; ABSOLUTE PRIVILEGE.

Section 577.064 provides that this section expires
September 1, 2007.

(a) Except as provided by Sections 577.055 and 577.056, all information and materials obtained or compiled by the department under this subchapter or compiled by a mental hospital under this subchapter, including the root cause analysis, annual report of the hospital, action plan, best practices report, department summary, and all related information and materials, are confidential and:

(1) are not subject to disclosure under Chapter 552, Government Code, or discovery, subpoena, or other means of legal compulsion for release to any person, subject to Section 577.053(c); and

(2) may not be admitted as evidence or otherwise disclosed in any civil, criminal, or administrative proceeding.

(b) The confidentiality protections under Subsection (a) apply without regard to whether the information or materials are obtained from or compiled by a mental hospital or an entity that has an ownership or management interest in a hospital.

(c) The transfer of information or materials under this subchapter is not a waiver of a privilege or protection granted under law.

(d) Information reported by a mental hospital under this subchapter and analyses, plans, records, and reports obtained, prepared, or compiled by a hospital under this subchapter and all related information and materials are subject to an absolute privilege and may not be used in any form against the hospital or the hospital's agents, employees, partners, assignees, or independent contractors in any civil, criminal, or administrative proceeding, regardless of the means by which a person came into possession of the information, analysis, plan, record, report, or related information or material. A court shall enforce this privilege for all matters covered by this subsection.

(e) The provisions of this section regarding the confidentiality of information or materials compiled or reported by a mental hospital in compliance with or as authorized under this

subchapter do not restrict access, to the extent authorized by law, by the patient or the patient's legally authorized representative to records of the patient's medical diagnosis or treatment or to other primary health records.

Added by Acts 2003, 78th Leg., ch. 569, Sec. 6, eff. June 20, 2003.

Sec. 577.055. ANNUAL DEPARTMENT SUMMARY.

Section 577.064 provides that this section expires
September 1, 2007.

The department annually shall compile and make available to the public a summary of the events reported by mental hospitals as required by Section 577.052. The summary may contain only aggregated information and may not directly or indirectly identify:

- (1) a specific mental hospital or group of hospitals;
- (2) an individual; or
- (3) a specific reported event or the circumstances or individuals surrounding the event.

Added by Acts 2003, 78th Leg., ch. 569, Sec. 6, eff. June 20, 2003.

Sec. 577.056. BEST PRACTICES REPORT AND DEPARTMENT SUMMARY.

[Section 577.064 provides that this section expires
September 1, 2007.]

(a) A mental hospital shall provide to the department at least one report of best practices and safety measures related to a reported event.

(b) A mental hospital may provide to the department a report of other best practices and the safety measures that are effective in improving patient safety.

(c) The department by rule may prescribe the form and format of a best practices report. The department may not require a best practices report to exceed one page in length. The department shall accept, in lieu of a report in the form and format prescribed by the department, a copy of a report submitted by a mental hospital to a patient safety organization.

(d) The department periodically shall:

- (1) review the best practices reports;
- (2) compile a summary of the best practices reports determined by the department to be effective and recommended as best practices; and
- (3) make the summary available to the public.

(e) The summary may not directly or indirectly identify:

- (1) a specific mental hospital or group of hospitals;
- (2) an individual; or
- (3) a specific reported event or the circumstances or individuals surrounding the event.

Added by Acts 2003, 78th Leg., ch. 569, Sec. 6, eff. June 20, 2003.

Sec. 577.057. PROHIBITION.

[Section 577.064 provides that this section expires
September 1, 2007.]

The annual report of a mental hospital, the department summary, or the best practices report may not distinguish between an event that occurred at an outpatient facility owned or operated by the hospital and an event that occurred at a hospital facility.

Added by Acts 2003, 78th Leg., ch. 569, Sec. 6, eff. June 20, 2003.

Sec. 577.058. REPORT TO LEGISLATURE.

Section 577.064 provides that this section expires
September 1, 2007.

(a) Not later than December 1, 2006, the commissioner of public health shall:

- (1) evaluate the patient safety program established under this subchapter; and
- (2) report the results of the evaluation and make recommendations to the legislature.

(b) The commissioner of public health shall conduct the evaluation in consultation with mental hospitals licensed under this chapter.

(c) The evaluation must address:

- (1) the degree to which the department was able to detect statewide trends in errors based on the types and numbers of events reported;
- (2) the degree to which the statewide summaries of events compiled by the department were accessed by the public;
- (3) the effectiveness of the department's best practices summary in improving hospital patient care; and
- (4) the impact of national studies on the effectiveness of state or federal systems of reporting medical errors.

Added by Acts 2003, 78th Leg., ch. 569, Sec. 6, eff. June 20, 2003.
Sec. 577.059. GIFTS, GRANTS, AND DONATIONS.

Section 577.064 provides that this section expires
September 1, 2007.

The department may accept and administer a gift, grant, or donation from any source to carry out the purposes of this subchapter.

Added by Acts 2003, 78th Leg., ch. 569, Sec. 6, eff. June 20, 2003.
Sec. 577.060. ADMINISTRATIVE PENALTY.

Section 577.064 provides that this section expires
September 1, 2007.

(a) The department may assess an administrative penalty against a person who violates this subchapter or a rule adopted under this subchapter.

(b) The penalty may not exceed \$1,000 for each violation. Each day of a continuing violation constitutes a separate violation.

(c) In determining the amount of an administrative penalty assessed under this section, the department shall consider:

- (1) the seriousness of the violation;
- (2) the history of previous violations;
- (3) the amount necessary to deter future violations;
- (4) efforts made to correct the violation;
- (5) any hazard posed to the public health and safety by the violation; and
- (6) any other matters that justice may require.

(d) All proceedings for the assessment of an administrative penalty under this subchapter are considered to be contested cases under Chapter 2001, Government Code.

Added by Acts 2003, 78th Leg., ch. 569, Sec. 6, eff. June 20, 2003.

Sec. 577.061. NOTICE; REQUEST FOR HEARING.

[Section 577.064 provides that this section expires
September 1, 2007.]

(a) If, after investigation of a possible violation and the facts surrounding that possible violation, the department determines that a violation has occurred, the department shall give written notice of the violation to the person alleged to have committed the violation. The notice shall include:

- (1) a brief summary of the alleged violation;
- (2) a statement of the amount of the proposed penalty based on the factors set forth in Section 577.060(c); and
- (3) a statement of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(b) Not later than the 20th day after the date on which the notice is received, the person notified may accept the determination of the department made under this section, including the proposed penalty, or make a written request for a hearing on that determination.

(c) If the person notified of the violation accepts the determination of the department, the commissioner of public health or the commissioner's designee shall issue an order approving the determination and ordering that the person pay the proposed penalty.

Added by Acts 2003, 78th Leg., ch. 569, Sec. 6, eff. June 20, 2003.

Sec. 577.062. HEARING; ORDER.

Section 577.064 provides that this section expires
September 1, 2007.

(a) If the person notified fails to respond in a timely manner to the notice under Section 577.061(b) or if the person requests a hearing, the department shall:

- (1) set a hearing;
 - (2) give written notice of the hearing to the person;
- and
- (3) designate a hearings examiner to conduct the hearing.

(b) The hearings examiner shall make findings of fact and conclusions of law and shall promptly issue to the commissioner of public health or the commissioner's designee a proposal for decision as to the occurrence of the violation and a recommendation as to the amount of the proposed penalty if a penalty is determined to be warranted.

(c) Based on the findings of fact and conclusions of law and the recommendations of the hearings examiner, the commissioner of public health or the commissioner's designee by order may find that

a violation has occurred and may assess a penalty or may find that no violation has occurred.

Added by Acts 2003, 78th Leg., ch. 569, Sec. 6, eff. June 20, 2003.

Sec. 577.063. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW; REFUND.

[Section 577.064 provides that this section expires
September 1, 2007.]

(a) The department shall give notice of the order under Section 577.062(c) to the person notified. The notice must include:

- (1) separate statements of the findings of fact and conclusions of law;
- (2) the amount of any penalty assessed; and
- (3) a statement of the right of the person to judicial review of the order.

(b) Not later than the 30th day after the date on which the decision is final as provided by Chapter 2001, Government Code, the person shall:

- (1) pay the penalty;
- (2) pay the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or
- (3) without paying the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) Within the 30-day period, a person who acts under Subsection (b)(3) may:

- (1) stay enforcement of the penalty by:
 - (A) paying the penalty to the court for placement in an escrow account; or
 - (B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the order is final; or
- (2) request the court to stay enforcement of the penalty by:
 - (A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and
 - (B) giving a copy of the affidavit to the department by certified mail.

(d) If the department receives a copy of an affidavit under Subsection (c)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

(e) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the penalty.

(f) Judicial review of the order:

- (1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and
- (2) is under the substantial evidence rule.

(g) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(h) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty under Subsection (b)(2) and if that amount is reduced or is not upheld by the court, the court shall order that the department pay the appropriate amount plus accrued interest to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person paid the penalty under Subsection (c)(1)(A) or gave a supersedeas bond under Subsection (c)(1)(A) and if the amount of

the penalty is not upheld by the court, the court shall order the release of the escrow account or bond. If the person paid the penalty under Subsection (c)(1)(A) and the amount of the penalty is reduced, the court shall order that the amount of the penalty be paid to the department from the escrow account and that the remainder of the account be released. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

Added by Acts 2003, 78th Leg., ch. 569, Sec. 6, eff. June 20, 2003.

Sec. 577.064. EXPIRATION.

[This section expires September 1, 2007.]

Unless continued in existence, this subchapter expires September 1, 2007.

Added by Acts 2003, 78th Leg., ch. 569, Sec. 6, eff. June 20, 2003.