

A BILL TO BE ENTITLED

AN ACT

relating to the licensing and regulation of home and community support services agencies.

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

SECTION 1. Section 142.001, Health and Safety Code, is amended by amending Subdivisions (6), (13), and (22) and adding Subdivision (22-a) to read as follows:

(6) "Certified agency" means a home and community support services agency, or a portion of the agency, that:

(A) provides a home health service; and

(B) is certified by an official of the Department of Health and Human Services as in compliance with conditions of participation in Title XVIII, Social Security Act (42 U.S.C. Section 1395 et seq.).

(13) "Home health service" means the provision of one or more of the following health services required by an individual in a residence or independent living environment:

(A) nursing, including blood pressure monitoring and diabetes treatment;

(B) physical, occupational, speech, or respiratory therapy;

(C) medical social service;

(D) intravenous therapy;

(E) dialysis;

1 (F) service provided by unlicensed personnel  
2 under the delegation or supervision of a licensed health  
3 professional;

4 (G) the furnishing of medical equipment and  
5 supplies, excluding drugs and medicines; or

6 (H) nutritional counseling.

7 (22) "Personal assistance service" means routine  
8 ongoing care or services required by an individual in a residence or  
9 independent living environment that enable the individual to engage  
10 in the activities of daily living or to perform the physical  
11 functions required for independent living, including respite  
12 services. The term includes:

13 (A) personal care;

14 (B) health-related services performed under  
15 circumstances that are defined as not constituting the practice of  
16 professional nursing by the Board of Nurse Examiners through a  
17 memorandum of understanding with the department in accordance with  
18 Section 142.016; and

19 (C) health-related tasks provided by unlicensed  
20 personnel under the delegation of a registered nurse or that a  
21 registered nurse determines do not require delegation.

22 (22-a) "Personal care" means the provision of one or  
23 more of the following services required by an individual in a  
24 residence or independent living environment:

25 (A) bathing;

26 (B) dressing;

27 (C) grooming;

- 1                    (D) feeding;
- 2                    (E) exercising;
- 3                    (F) toileting;
- 4                    (G) positioning;
- 5                    (H) assisting with self-administered
- 6 medications;
- 7                    (I) routine hair and skin care; and
- 8                    (J) transfer or ambulation.

9            SECTION 2. Section 142.002, Health and Safety Code, is  
10 amended by adding Subsection (f) to read as follows:

11            (f) A person who is not licensed to provide personal  
12 assistance services under this chapter may not indicate or imply  
13 that the person is licensed to provide personal assistance services  
14 by the use of the words "personal assistance services" or in any  
15 other manner.

16            SECTION 3. Subsection (a), Section 142.003, Health and  
17 Safety Code, is amended to read as follows:

18            (a) The following persons need not be licensed under this  
19 chapter:

20                    (1) a physician, dentist, registered nurse,  
21 occupational therapist, or physical therapist licensed under the  
22 laws of this state who provides home health services to a client  
23 only as a part of and incidental to that person's private office  
24 practice;

25                    (2) a registered nurse, licensed vocational nurse,  
26 physical therapist, occupational therapist, speech therapist,  
27 medical social worker, or any other health care professional as

1 determined by the department who provides home health services as a  
2 sole practitioner;

3 (3) a registry that operates solely as a clearinghouse  
4 to put consumers in contact with persons who provide home health,  
5 hospice, or personal assistance services and that does not maintain  
6 official client records, direct client services, or compensate the  
7 person who is providing the service;

8 (4) an individual whose permanent residence is in the  
9 client's residence;

10 (5) an employee of a person licensed under this  
11 chapter who provides home health, hospice, or personal assistance  
12 services only as an employee of the license holder and who receives  
13 no benefit for providing the services, other than wages from the  
14 license holder;

15 (6) a home, nursing home, convalescent home, assisted  
16 living facility, special care facility, or other institution for  
17 individuals who are elderly or who have disabilities that provides  
18 home health or personal assistance services only to residents of  
19 the home or institution;

20 (7) a person who provides one health service through a  
21 contract with a person licensed under this chapter;

22 (8) a durable medical equipment supply company;

23 (9) a pharmacy or wholesale medical supply company  
24 that does not furnish services, other than supplies, to a person at  
25 the person's house;

26 (10) a hospital or other licensed health care facility  
27 that provides home health or personal assistance services only to

1 inpatient residents of the hospital or facility;

2 (11) a person providing home health or personal  
3 assistance services to an injured employee under Title 5, Labor  
4 Code;

5 (12) a visiting nurse service that:

6 (A) is conducted by and for the adherents of a  
7 well-recognized church or religious denomination; and

8 (B) provides nursing services by a person exempt  
9 from licensing by Section 301.004, Occupations Code, because the  
10 person furnishes nursing care in which treatment is only by prayer  
11 or spiritual means;

12 (13) an individual hired and paid directly by the  
13 client or the client's family or legal guardian to provide home  
14 health or personal assistance services;

15 (14) a business, school, camp, or other organization  
16 that provides home health or personal assistance services,  
17 incidental to the organization's primary purpose, to individuals  
18 employed by or participating in programs offered by the business,  
19 school, or camp that enable the individual to participate fully in  
20 the business's, school's, or camp's programs;

21 (15) a person or organization providing  
22 sitter-companion services or chore or household services that do  
23 not involve personal care, health, or health-related services;

24 (16) a licensed health care facility that provides  
25 hospice services under a contract with a hospice;

26 (17) a person delivering residential acquired immune  
27 deficiency syndrome hospice care who is licensed and designated as

1 a residential AIDS hospice under Chapter 248; ~~[or]~~

2 (18) a person that provides home health, hospice, or  
3 personal assistance services only to persons enrolled in a program  
4 funded wholly or partly by the Texas Department of Mental Health and  
5 Mental Retardation and monitored by the Texas Department of Mental  
6 Health and Mental Retardation or its designated local authority in  
7 accordance with standards set by the Texas Department of Mental  
8 Health and Mental Retardation;

9 (19) the Texas Department of Criminal Justice; or

10 (20) an individual who provides home health or  
11 personal assistance services as the employee of a consumer or an  
12 entity or employee of an entity acting as a consumer's fiscal agent  
13 under Section 531.051, Government Code.

14 SECTION 4. Subsection (j), Section 142.009, Health and  
15 Safety Code, is amended to read as follows:

16 (j) Except as provided by Subsections (h) ~~[(i)]~~ and (l),  
17 an on-site survey must be conducted within 18 months after a survey  
18 for an initial license. After that time, an on-site survey must be  
19 conducted at least every 36 months.

20 SECTION 5. Subsections (a) and (b), Section 142.016, Health  
21 and Safety Code, are amended to read as follows:

22 (a) The Board of Nurse Examiners and the department shall  
23 adopt a memorandum of understanding governing the circumstances  
24 under which the provision of health-related tasks or services do  
25 not constitute the practice of professional nursing. The agencies  
26 periodically ~~[annually]~~ shall review and shall renew or modify the  
27 memorandum as necessary.

1 (b) The Board of Nurse Examiners and the department shall  
2 consult with an advisory committee in developing, modifying, or  
3 renewing the memorandum of understanding. The advisory committee  
4 shall be appointed by the Board of Nurse Examiners and the  
5 department and at a minimum shall include:

6 (1) one representative from the Board of Nurse  
7 Examiners and one representative from the department to serve as  
8 cochairmen;

9 (2) one representative from the Texas Department of  
10 Mental Health and Mental Retardation;

11 (3) ~~[one representative from the Texas Department of~~  
12 ~~Human Services;~~

13 [~~(4)~~] one representative from the Texas Nurses  
14 Association;

15 (4) [~~(5)~~] one representative from the Texas  
16 Association for Home Care, Incorporated, or its successor;

17 (5) [~~(6)~~] one representative from the Texas Hospice  
18 Organization, Incorporated, or its successor;

19 (6) [~~(7)~~] one representative of the Texas Respite  
20 Resource Network or its successor; and

21 (7) [~~(8)~~] two representatives of organizations such  
22 as the Personal Assistance Task Force or the Disability Consortium  
23 that advocate for clients in community-based settings.

24 SECTION 6. Subsections (b) and (c), Section 142.018, Health  
25 and Safety Code, are amended to read as follows:

26 (b) A home and community support services agency that has  
27 cause to believe that a person receiving services from the agency

1 has been abused, exploited, or neglected by an employee of the  
2 agency shall report the information to:

3 (1) the department; and

4 (2) the Department of Protective and Regulatory  
5 Services or other appropriate state agency as required by Section  
6 48.051 [~~Sections 48.036 and 48.082~~], Human Resources Code.

7 (c) This section does not affect the duty or authority of  
8 any state agency to conduct an investigation of alleged abuse,  
9 exploitation, or neglect as provided by other law. An  
10 investigation of alleged abuse, exploitation, or neglect may be  
11 conducted without an on-site survey, as appropriate.

12 SECTION 7. Section 253.008, Health and Safety Code, is  
13 amended to read as follows:

14 Sec. 253.008. VERIFICATION OF EMPLOYABILITY. (a) Before a  
15 facility, ~~[or]~~ an agency licensed under Chapter 142, or a person  
16 exempt from licensing under Section 142.003(a)(18) may hire an  
17 employee, the facility, ~~[or]~~ agency, or person shall search the  
18 employee misconduct registry under this chapter and the nurse aide  
19 registry maintained under the Omnibus Budget Reconciliation Act of  
20 1987 (Pub. L. No. 100-203) to determine whether the applicant for  
21 employment [~~person~~] is designated in either registry as having  
22 abused, neglected, or exploited a resident or consumer of a  
23 facility or an individual receiving services from an agency  
24 licensed under Chapter 142 or from a person exempt from licensing  
25 under Section 142.003(a)(18).

26 (b) A facility, ~~[or]~~ agency licensed under Chapter 142, or a  
27 person exempt from licensing under Section 142.003(a)(18) may not



1 employ a person who is listed in either registry as having abused,  
2 neglected, or exploited a resident or consumer of a facility or an  
3 individual receiving services from an agency licensed under Chapter  
4 142 or from a person exempt from licensing under Section  
5 142.003(a)(18).

6 SECTION 8. Subsection (a), Section 253.009, Health and  
7 Safety Code, is amended to read as follows:

8 (a) Each facility, ~~[or]~~ each agency licensed under Chapter  
9 142, and each person exempt from licensing under Section  
10 142.003(a)(18) shall notify its employees in a manner prescribed by  
11 the department:

- 12 (1) about the employee misconduct registry; and  
13 (2) that an employee may not be employed if the  
14 employee is listed in the registry.

15 SECTION 9. Subdivision (1), Section 48.401, Human Resources  
16 Code, is amended to read as follows:

- 17 (1) "Agency" means:  
18 (A) an entity licensed under Chapter 142, Health  
19 and Safety Code; or  
20 (B) a person exempt from licensing under Section  
21 142.003(a)(18), Health and Safety Code.

22 SECTION 10. The following sections are repealed:

- 23 (1) Subsections (d), (e), and (f), Section 142.006,  
24 Health and Safety Code;  
25 (2) Subsection (i), Section 142.009, Health and Safety  
26 Code; and  
27 (3) Section 142.0176, Health and Safety Code.

1 SECTION 11. This Act takes effect September 1, 2003.