

By: Madla

S.B. No. 1498

A BILL TO BE ENTITLED

1 AN ACT

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

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

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

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

10 (A) provides a home health service; and

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

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

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

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

22 (C) medical social service;

23 (D) intravenous therapy;

24 (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 following services
23 provided to an individual:

24 (A) bathing, dressing, grooming, feeding,
25 exercising, toileting, positioning, and assisting with
26 self-administered medications;

27 (B) routine hair and skin care; and

1 (C) transfer or ambulation.

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

4 (f) A person who is not licensed to provide personal
5 assistance services under this chapter may not indicate or imply
6 that the person is licensed to provide personal assistance services
7 by the use of the words "personal assistance services" or in any
8 other manner.

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

11 (a) The following persons need not be licensed under this
12 chapter:

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

18 (2) a registered nurse, licensed vocational nurse,
19 physical therapist, occupational therapist, speech therapist,
20 medical social worker, or any other health care professional as
21 determined by the department who provides home health services as a
22 sole practitioner;

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

1 (4) an individual whose permanent residence is in the
2 client's residence;

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

8 (6) a home, nursing home, convalescent home, assisted
9 living facility, special care facility, or other institution for
10 individuals who are elderly or who have disabilities that provides
11 home health or personal assistance services only to residents of
12 the home or institution;

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

15 (8) a durable medical equipment supply company;

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

19 (10) a hospital or other licensed health care facility
20 that provides home health or personal assistance services only to
21 inpatient residents of the hospital or facility;

22 (11) a person providing home health or personal
23 assistance services to an injured employee under Title 5, Labor
24 Code;

25 (12) a visiting nurse service that:

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

1 (B) provides nursing services by a person exempt
2 from licensing by Section 301.004, Occupations Code, because the
3 person furnishes nursing care in which treatment is only by prayer
4 or spiritual means;

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

8 (14) a business, school, camp, or other organization
9 that provides home health or personal assistance services,
10 incidental to the organization's primary purpose, to individuals
11 employed by or participating in programs offered by the business,
12 school, or camp that enable the individual to participate fully in
13 the business's, school's, or camp's programs;

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

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

19 (17) a person delivering residential acquired immune
20 deficiency syndrome hospice care who is licensed and designated as
21 a residential AIDS hospice under Chapter 248; [~~or~~]

22 (18) a person that provides home health, hospice, or
23 personal assistance services only to persons enrolled in a program
24 funded wholly or partly by the Texas Department of Mental Health and
25 Mental Retardation and monitored by the Texas Department of Mental
26 Health and Mental Retardation or its designated local authority in
27 accordance with standards set by the Texas Department of Mental

1 Health and Mental Retardation; or

2 (19) the Texas Department of Criminal Justice.

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

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

9 SECTION 5. Section 142.016(a), Health and Safety Code, is
10 amended to read as follows:

11 (a) The Board of Nurse Examiners and the department shall
12 adopt a memorandum of understanding governing the circumstances
13 under which the provision of health-related tasks or services do
14 not constitute the practice of professional nursing. The agencies
15 periodically [~~annually~~] shall review and shall renew or modify the
16 memorandum as necessary.

17 SECTION 6. Sections 142.018(b) and (c), Health and Safety
18 Code, are amended to read as follows:

19 (b) A home and community support services agency that has
20 cause to believe that a person receiving services from the agency
21 has been abused, exploited, or neglected by an unlicensed employee
22 of the agency shall report the information to:

23 (1) the department; and

24 (2) the Department of Protective and Regulatory
25 Services or other appropriate state agency as required by Section
26 48.051 [~~Sections 48.036 and 48.082~~], Human Resources Code.

27 (c) This section does not affect the duty or authority of

1 any state agency to conduct an investigation of alleged abuse,
2 exploitation, or neglect as provided by other law. An
3 investigation of alleged abuse, exploitation, or neglect may be
4 conducted without an on-site survey, as appropriate.

5 SECTION 7. The following sections are repealed:

6 (1) Sections 142.006(d), (e), and (f), Health and
7 Safety Code;

8 (2) Section 142.009(i), Health and Safety Code; and

9 (3) Section 142.076, Health and Safety Code.

10 SECTION 8. This Act takes effect September 1, 2003.