

1-1 By: Madla S.B. No. 1498
1-2 (In the Senate - Filed March 13, 2003; March 20, 2003, read
1-3 first time and referred to Committee on Health and Human Services;
1-4 April 29, 2003, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 8, Nays 0; April 29, 2003,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1498 By: Janek

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the licensing and regulation of home and community
1-11 support services agencies.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 142.001, Health and Safety Code, is
1-14 amended by amending Subdivisions (6), (13), and (22) and adding
1-15 Subdivision (22-a) to read as follows:

1-16 (6) "Certified agency" means a home and community
1-17 support services agency, or a portion of the agency, that:

1-18 (A) provides a home health service; and

1-19 (B) is certified by an official of the Department
1-20 of Health and Human Services as in compliance with conditions of
1-21 participation in Title XVIII, Social Security Act (42 U.S.C.
1-22 Section 1395 et seq.).

1-23 (13) "Home health service" means the provision of one
1-24 or more of the following health services required by an individual
1-25 in a residence or independent living environment:

1-26 (A) nursing, including blood pressure monitoring
1-27 and diabetes treatment;

1-28 (B) physical, occupational, speech, or
1-29 respiratory therapy;

1-30 (C) medical social service;

1-31 (D) intravenous therapy;

1-32 (E) dialysis;

1-33 (F) service provided by unlicensed personnel
1-34 under the delegation or supervision of a licensed health
1-35 professional;

1-36 (G) the furnishing of medical equipment and
1-37 supplies, excluding drugs and medicines; or

1-38 (H) nutritional counseling.

1-39 (22) "Personal assistance service" means routine
1-40 ongoing care or services required by an individual in a residence or
1-41 independent living environment that enable the individual to engage
1-42 in the activities of daily living or to perform the physical
1-43 functions required for independent living, including respite
1-44 services. The term includes:

1-45 (A) personal care;

1-46 (B) health-related services performed under
1-47 circumstances that are defined as not constituting the practice of
1-48 professional nursing by the Board of Nurse Examiners through a
1-49 memorandum of understanding with the department in accordance with
1-50 Section 142.016; and

1-51 (C) health-related tasks provided by unlicensed
1-52 personnel under the delegation of a registered nurse or that a
1-53 registered nurse determines do not require delegation.

1-54 (22-a) "Personal care" means the provision of one or
1-55 more of the following services required by an individual in a
1-56 residence or independent living environment:

1-57 (A) bathing;

1-58 (B) dressing;

1-59 (C) grooming;

1-60 (D) feeding;

1-61 (E) exercising;

1-62 (F) toileting;

1-63 (G) positioning;

- 2-1 (H) assisting with self-administered
- 2-2 medications;
- 2-3 (I) routine hair and skin care; and
- 2-4 (J) transfer or ambulation.

2-5 SECTION 2. Section 142.002, Health and Safety Code, is
2-6 amended by adding Subsection (f) to read as follows:

2-7 (f) A person who is not licensed to provide personal
2-8 assistance services under this chapter may not indicate or imply
2-9 that the person is licensed to provide personal assistance services
2-10 by the use of the words "personal assistance services" or in any
2-11 other manner.

2-12 SECTION 3. Subsection (a), Section 142.003, Health and
2-13 Safety Code, is amended to read as follows:

2-14 (a) The following persons need not be licensed under this
2-15 chapter:

2-16 (1) a physician, dentist, registered nurse,
2-17 occupational therapist, or physical therapist licensed under the
2-18 laws of this state who provides home health services to a client
2-19 only as a part of and incidental to that person's private office
2-20 practice;

2-21 (2) a registered nurse, licensed vocational nurse,
2-22 physical therapist, occupational therapist, speech therapist,
2-23 medical social worker, or any other health care professional as
2-24 determined by the department who provides home health services as a
2-25 sole practitioner;

2-26 (3) a registry that operates solely as a clearinghouse
2-27 to put consumers in contact with persons who provide home health,
2-28 hospice, or personal assistance services and that does not maintain
2-29 official client records, direct client services, or compensate the
2-30 person who is providing the service;

2-31 (4) an individual whose permanent residence is in the
2-32 client's residence;

2-33 (5) an employee of a person licensed under this
2-34 chapter who provides home health, hospice, or personal assistance
2-35 services only as an employee of the license holder and who receives
2-36 no benefit for providing the services, other than wages from the
2-37 license holder;

2-38 (6) a home, nursing home, convalescent home, assisted
2-39 living facility, special care facility, or other institution for
2-40 individuals who are elderly or who have disabilities that provides
2-41 home health or personal assistance services only to residents of
2-42 the home or institution;

2-43 (7) a person who provides one health service through a
2-44 contract with a person licensed under this chapter;

2-45 (8) a durable medical equipment supply company;

2-46 (9) a pharmacy or wholesale medical supply company
2-47 that does not furnish services, other than supplies, to a person at
2-48 the person's house;

2-49 (10) a hospital or other licensed health care facility
2-50 that provides home health or personal assistance services only to
2-51 inpatient residents of the hospital or facility;

2-52 (11) a person providing home health or personal
2-53 assistance services to an injured employee under Title 5, Labor
2-54 Code;

2-55 (12) a visiting nurse service that:

2-56 (A) is conducted by and for the adherents of a
2-57 well-recognized church or religious denomination; and

2-58 (B) provides nursing services by a person exempt
2-59 from licensing by Section 301.004, Occupations Code, because the
2-60 person furnishes nursing care in which treatment is only by prayer
2-61 or spiritual means;

2-62 (13) an individual hired and paid directly by the
2-63 client or the client's family or legal guardian to provide home
2-64 health or personal assistance services;

2-65 (14) a business, school, camp, or other organization
2-66 that provides home health or personal assistance services,
2-67 incidental to the organization's primary purpose, to individuals
2-68 employed by or participating in programs offered by the business,
2-69 school, or camp that enable the individual to participate fully in

3-1 the business's, school's, or camp's programs;
3-2 (15) a person or organization providing
3-3 sitter-companion services or chore or household services that do
3-4 not involve personal care, health, or health-related services;

3-5 (16) a licensed health care facility that provides
3-6 hospice services under a contract with a hospice;

3-7 (17) a person delivering residential acquired immune
3-8 deficiency syndrome hospice care who is licensed and designated as
3-9 a residential AIDS hospice under Chapter 248; ~~[or]~~

3-10 (18) a person that provides home health, hospice, or
3-11 personal assistance services only to persons enrolled in a program
3-12 funded wholly or partly by the Texas Department of Mental Health and
3-13 Mental Retardation and monitored by the Texas Department of Mental
3-14 Health and Mental Retardation or its designated local authority in
3-15 accordance with standards set by the Texas Department of Mental
3-16 Health and Mental Retardation;

3-17 (19) the Texas Department of Criminal Justice; or

3-18 (20) an individual who provides home health or
3-19 personal assistance services as the employee of a consumer or an
3-20 entity or employee of an entity acting as a consumer's fiscal agent
3-21 under Section 531.051, Government Code.

3-22 SECTION 4. Subsection (j), Section 142.009, Health and
3-23 Safety Code, is amended to read as follows:

3-24 (j) Except as provided by Subsections (h) ~~[(i)],~~ and (l),
3-25 an on-site survey must be conducted within 18 months after a survey
3-26 for an initial license. After that time, an on-site survey must be
3-27 conducted at least every 36 months.

3-28 SECTION 5. Subsections (a) and (b), Section 142.016, Health
3-29 and Safety Code, are amended to read as follows:

3-30 (a) The Board of Nurse Examiners and the department shall
3-31 adopt a memorandum of understanding governing the circumstances
3-32 under which the provision of health-related tasks or services do
3-33 not constitute the practice of professional nursing. The agencies
3-34 periodically ~~[annually]~~ shall review and shall renew or modify the
3-35 memorandum as necessary.

3-36 (b) The Board of Nurse Examiners and the department shall
3-37 consult with an advisory committee in developing, modifying, or
3-38 renewing the memorandum of understanding. The advisory committee
3-39 shall be appointed by the Board of Nurse Examiners and the
3-40 department and at a minimum shall include:

3-41 (1) one representative from the Board of Nurse
3-42 Examiners and one representative from the department to serve as
3-43 cochairmen;

3-44 (2) one representative from the Texas Department of
3-45 Mental Health and Mental Retardation;

3-46 (3) ~~[one representative from the Texas Department of~~
3-47 ~~Human Services,~~

3-48 ~~[(4)]~~ one representative from the Texas Nurses
3-49 Association;

3-50 (4) ~~[(5)]~~ one representative from the Texas
3-51 Association for Home Care, Incorporated, or its successor;

3-52 (5) ~~[(6)]~~ one representative from the Texas Hospice
3-53 Organization, Incorporated, or its successor;

3-54 (6) ~~[(7)]~~ one representative of the Texas Respite
3-55 Resource Network or its successor; and

3-56 (7) ~~[(8)]~~ two representatives of organizations such
3-57 as the Personal Assistance Task Force or the Disability Consortium
3-58 that advocate for clients in community-based settings.

3-59 SECTION 6. Subsections (b) and (c), Section 142.018, Health
3-60 and Safety Code, are amended to read as follows:

3-61 (b) A home and community support services agency that has
3-62 cause to believe that a person receiving services from the agency
3-63 has been abused, exploited, or neglected by an employee of the
3-64 agency shall report the information to:

3-65 (1) the department; and

3-66 (2) the Department of Protective and Regulatory
3-67 Services or other appropriate state agency as required by Section
3-68 48.051 ~~[Sections 48.036 and 48.082]~~, Human Resources Code.

3-69 (c) This section does not affect the duty or authority of

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

4-5 SECTION 7. Section 253.008, Health and Safety Code, is
4-6 amended to read as follows:

4-7 Sec. 253.008. VERIFICATION OF EMPLOYABILITY. (a) Before a
4-8 facility, ~~[or]~~ an agency licensed under Chapter 142, or a person
4-9 exempt from licensing under Section 142.003(a)(18) may hire an
4-10 employee, the facility, ~~[or]~~ agency, or person shall search the
4-11 employee misconduct registry under this chapter and the nurse aide
4-12 registry maintained under the Omnibus Budget Reconciliation Act of
4-13 1987 (Pub. L. No. 100-203) to determine whether the applicant for
4-14 employment ~~[person]~~ is designated in either registry as having
4-15 abused, neglected, or exploited a resident or consumer of a
4-16 facility or an individual receiving services from an agency
4-17 licensed under Chapter 142 or from a person exempt from licensing
4-18 under Section 142.003(a)(18).

4-19 (b) A facility, ~~[or]~~ agency licensed under Chapter 142, or a
4-20 person exempt from licensing under Section 142.003(a)(18) may not
4-21 employ a person who is listed in either registry as having abused,
4-22 neglected, or exploited a resident or consumer of a facility or an
4-23 individual receiving services from an agency licensed under Chapter
4-24 142 or from a person exempt from licensing under Section
4-25 142.003(a)(18).

4-26 SECTION 8. Subsection (a), Section 253.009, Health and
4-27 Safety Code, is amended to read as follows:

4-28 (a) Each facility, ~~[or]~~ each agency licensed under Chapter
4-29 142, and each person exempt from licensing under Section
4-30 142.003(a)(18) shall notify its employees in a manner prescribed by
4-31 the department:

- 4-32 (1) about the employee misconduct registry; and
- 4-33 (2) that an employee may not be employed if the
- 4-34 employee is listed in the registry.

4-35 SECTION 9. Subdivision (1), Section 48.401, Human Resources
4-36 Code, is amended to read as follows:

- 4-37 (1) "Agency" means:
 - 4-38 (A) an entity licensed under Chapter 142, Health
 - 4-39 and Safety Code; or
 - 4-40 (B) a person exempt from licensing under Section
 - 4-41 142.003(a)(18), Health and Safety Code.

4-42 SECTION 10. The following sections are repealed:

- 4-43 (1) Subsections (d), (e), and (f), Section 142.006,
- 4-44 Health and Safety Code;
- 4-45 (2) Subsection (i), Section 142.009, Health and Safety
- 4-46 Code; and
- 4-47 (3) Section 142.0176, Health and Safety Code.

4-48 SECTION 11. This Act takes effect September 1, 2003.

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