

AN ACT

relating to certain facilities and care providers, including providers under the state Medicaid program and to improving health care provider accountability and efficiency under the child health plan and Medicaid programs; providing penalties.

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

SECTION 1. Section 411.1143, Government Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) The Health and Human Services Commission, ~~an~~ an agency operating part of the medical assistance program under Chapter 32, Human Resources Code, or the office of inspector general established under Chapter 531, Government Code, is entitled to obtain from the department the criminal history record information maintained by the department that relates to a provider under the medical assistance program or a person applying to enroll as a provider under the medical assistance program.

(a-1) Criminal history record information an agency or the office of inspector general is authorized to obtain under Subsection (a) includes criminal history record information relating to:

(1) a person with a direct or indirect ownership or control interest, as defined by 42 C.F.R. Section 455.101, in a provider of five percent or more; and

1 (2) a person whose information is required to be
2 disclosed in accordance with 42 C.F.R. Part 1001.

3 SECTION 2. Subchapter B, Chapter 531, Government Code, is
4 amended by adding Section 531.024161 to read as follows:

5 Sec. 531.024161. REIMBURSEMENT CLAIMS FOR CERTAIN MEDICAID
6 OR CHIP SERVICES INVOLVING SUPERVISED PROVIDERS. (a) If a
7 provider, including a nurse practitioner or physician assistant,
8 under the Medicaid or child health plan program provides a referral
9 for or orders health care services for a recipient or enrollee, as
10 applicable, at the direction or under the supervision of another
11 provider, and the referral or order is based on the supervised
12 provider's evaluation of the recipient or enrollee, the names and
13 associated national provider identifier numbers of the supervised
14 provider and the supervising provider must be included on any claim
15 for reimbursement submitted by a provider based on the referral or
16 order. For purposes of this section, "national provider
17 identifier" means the national provider identifier required under
18 Section 1128J(e), Social Security Act (42 U.S.C. Section
19 1320a-7k(e)).

20 (b) The executive commissioner shall adopt rules necessary
21 to implement this section.

22 SECTION 3. Subdivision (2), Subsection (g), Section
23 531.102, Government Code, is amended to read as follows:

24 (2) In addition to other instances authorized under
25 state or federal law, the office shall impose without prior notice a
26 hold on payment of claims for reimbursement submitted by a provider
27 to compel production of records, ~~or~~ when requested by the state's

1 Medicaid fraud control unit, or on receipt of reliable evidence
2 that the circumstances giving rise to the hold on payment involve
3 fraud or wilful misrepresentation under the state Medicaid program
4 in accordance with 42 C.F.R. Section 455.23, as applicable. The
5 office must notify the provider of the hold on payment in accordance
6 with 42 C.F.R. Section 455.23(b) [~~not later than the fifth working~~
7 ~~day after the date the payment hold is imposed~~].

8 SECTION 4. The heading to Section 531.1031, Government
9 Code, is amended to read as follows:

10 Sec. 531.1031. DUTY TO EXCHANGE INFORMATION [~~REGARDING~~
11 ~~ALLEGATIONS OF MEDICAID FRAUD OR ABUSE~~].

12 SECTION 5. Subdivision (2), Subsection (a), Section
13 531.1031, Government Code, is amended to read as follows:

14 (2) "Participating agency" means:

15 (A) the Medicaid fraud enforcement divisions of
16 the office of the attorney general; [~~and~~]

17 (B) each board or agency with authority to
18 license, register, regulate, or certify a health care professional
19 or managed care organization that may participate in the state
20 Medicaid program; and

21 (C) the commission's office of inspector
22 general.

23 SECTION 6. Section 531.1031, Government Code, is amended by
24 amending Subsections (b) and (c) and adding Subsection (c-1) to
25 read as follows:

26 (b) This section applies only to criminal history record
27 information held by a participating agency that relates to a health

1 care professional and information held by a participating agency
2 that relates to a health care professional or managed care
3 organization that is the subject of an investigation by a
4 participating agency for alleged fraud or abuse under the state
5 Medicaid program.

6 (c) A participating agency may submit to another
7 participating agency a written request for information described by
8 Subsection (b) regarding a health care professional or managed care
9 organization [~~that is the subject of an investigation by the~~
10 ~~participating agency to any other participating agency~~]. The
11 participating agency that receives the request shall provide the
12 requesting agency with the information regarding the health care
13 professional or managed care organization unless:

14 (1) the release of the information would jeopardize an
15 ongoing investigation or prosecution by the participating agency
16 with possession of the information; or

17 (2) the release of the information is prohibited by
18 other law.

19 (c-1) Notwithstanding any other law, a participating agency
20 may enter into a memorandum of understanding or agreement with
21 another participating agency for the purpose of exchanging criminal
22 history record information relating to a health care professional
23 that both participating agencies are authorized to access under
24 Chapter 411. Confidential criminal history record information in
25 the possession of a participating agency that is provided to
26 another participating agency in accordance with this subsection
27 remains confidential while in the possession of the participating

1 agency that receives the information.

2 SECTION 7. Subchapter C, Chapter 531, Government Code, is
3 amended by adding Sections 531.1131, 531.1132, and 531.117 to read
4 as follows:

5 Sec. 531.1131. FRAUD AND ABUSE RECOVERY BY CERTAIN PERSONS;
6 RETENTION OF RECOVERED AMOUNTS. (a) If a managed care
7 organization's special investigative unit under Section
8 531.113(a)(1) or the entity with which the managed care
9 organization contracts under Section 531.113(a)(2) discovers fraud
10 or abuse in the Medicaid program or the child health plan program,
11 the unit or entity shall:

12 (1) immediately and contemporaneously notify the
13 commission's office of inspector general and the office of the
14 attorney general;

15 (2) subject to Subsection (b), begin payment recovery
16 efforts; and

17 (3) ensure that any payment recovery efforts in which
18 the organization engages are in accordance with applicable rules
19 adopted by the executive commissioner.

20 (b) If the amount sought to be recovered under Subsection
21 (a)(2) exceeds \$100,000, the managed care organization's special
22 investigative unit or contracted entity described by Subsection (a)
23 may not engage in payment recovery efforts if, not later than the
24 10th business day after the date the unit or entity notified the
25 commission's office of inspector general and the office of the
26 attorney general under Subsection (a)(1), the unit or entity
27 receives a notice from either office indicating that the unit or

1 entity is not authorized to proceed with recovery efforts.

2 (c) A managed care organization may retain any money
3 recovered under Subsection (a)(2) by the organization's special
4 investigative unit or contracted entity described by Subsection
5 (a).

6 (d) A managed care organization shall submit a quarterly
7 report to the commission's office of inspector general detailing
8 the amount of money recovered under Subsection (a)(2).

9 (e) The executive commissioner shall adopt rules necessary
10 to implement this section, including rules establishing due process
11 procedures that must be followed by managed care organizations when
12 engaging in payment recovery efforts as provided by this section.

13 Sec. 531.1132. ANNUAL REPORT ON CERTAIN FRAUD AND ABUSE
14 RECOVERIES. Not later than December 1 of each year, the commission
15 shall prepare and submit a report to the legislature relating to the
16 amount of money recovered during the preceding 12-month period as a
17 result of investigations and recovery efforts made under Sections
18 531.113 and 531.1131 by special investigative units or entities
19 with which a managed care organization contracts under Section
20 531.113(a)(2). The report must specify the amount of money retained
21 by each managed care organization under Section 531.1131(c).

22 Sec. 531.117. RECOVERY AUDIT CONTRACTORS. To the extent
23 required under Section 1902(a)(42), Social Security Act (42 U.S.C.
24 Section 1396a(a)(42)), the commission shall establish a program
25 under which the commission contracts with one or more recovery
26 audit contractors for purposes of identifying underpayments and
27 overpayments under the Medicaid program and recovering the

1 overpayments.

2 SECTION 8. Subchapter D, Chapter 62, Health and Safety
3 Code, is amended by adding Section 62.1561 to read as follows:

4 Sec. 62.1561. PROHIBITION OF CERTAIN HEALTH CARE PROVIDERS.

5 The executive commissioner of the commission shall adopt rules for
6 prohibiting a person from participating in the child health plan
7 program as a health care provider for a reasonable period, as
8 determined by the executive commissioner, if the person:

9 (1) fails to repay overpayments under the program; or

10 (2) owns, controls, manages, or is otherwise
11 affiliated with and has financial, managerial, or administrative
12 influence over a provider who has been suspended or prohibited from
13 participating in the program.

14 SECTION 9. Section 142.001, Health and Safety Code, is
15 amended by adding Subdivisions (11-a), (11-b), and (12-a) to read
16 as follows:

17 (11-a) "Department" means the Department of Aging and
18 Disability Services.

19 (11-b) "Executive commissioner" means the executive
20 commissioner of the Health and Human Services Commission.

21 (12-a) "Home and community support services agency
22 administrator" or "administrator" means the person who is
23 responsible for implementing and supervising the administrative
24 policies and operations of the home and community support services
25 agency and for administratively supervising the provision of all
26 services to agency clients on a day-to-day basis.

27 SECTION 10. Section 142.0025, Health and Safety Code, is

1 amended to read as follows:

2 Sec. 142.0025. TEMPORARY LICENSE. If a person is in the
3 process of becoming certified by the United States Department of
4 Health and Human Services to qualify as a certified agency, the
5 department may issue a temporary home and community support
6 services agency license to the person authorizing the person to
7 provide certified home health services. A temporary license is
8 effective as provided by [~~board~~] rules adopted by the executive
9 commissioner.

10 SECTION 11. Section 142.009, Health and Safety Code, is
11 amended by adding Subsections (a-1) and (i) and amending Subsection
12 (g) to read as follows:

13 (a-1) A license applicant or license holder must provide the
14 department representative conducting the survey with a reasonable
15 and safe workspace at the premises. The executive commissioner may
16 adopt rules to implement this subsection.

17 (g) After a survey of a home and community support services
18 agency by the department, the department shall provide to the home
19 and community support services [~~chief executive officer of the~~]
20 agency administrator:

21 (1) specific and timely written notice of the official
22 findings of the survey, including:

23 (A) the specific nature of the survey;

24 (B) any alleged violations of a specific statute
25 or rule;

26 (C) the specific nature of any finding regarding
27 an alleged violation or deficiency; and

1 (D) if a deficiency is alleged, the severity of
2 the deficiency;

3 (2) information on the identity, including the name
4 ~~[signature]~~, of each department representative conducting or~~[~~
5 reviewing~~], or approving]~~ the results of the survey and the date on
6 which the department representative acted on the matter; and

7 (3) if requested by the agency, copies of all
8 documents relating to the survey maintained by the department or
9 provided by the department to any other state or federal agency that
10 are not confidential under state law.

11 (i) Except as provided by Subsection (h), the department may
12 not renew an initial home and community support services agency
13 license unless the department has conducted an initial on-site
14 survey of the agency.

15 SECTION 12. The heading to Section 142.0091, Health and
16 Safety Code, is amended to read as follows:

17 Sec. 142.0091. ~~[SURVEYOR]~~ TRAINING.

18 SECTION 13. Section 142.0091, Health and Safety Code, is
19 amended by amending Subsection (b) and adding Subsection (c) to
20 read as follows:

21 (b) In developing and updating the training required by
22 Subsection (a) ~~[this section]~~, the department shall consult with
23 and include providers of home health, hospice, and personal
24 assistance services, recipients of those services and their family
25 members, and representatives of appropriate advocacy
26 organizations.

27 (c) The department at least semiannually shall provide

1 joint training for home and community support services agencies and
2 surveyors on subjects that address the 10 most common violations of
3 federal or state law by home and community support services
4 agencies. The department may charge a home and community support
5 services agency a fee, not to exceed \$50 per person, for the
6 training.

7 SECTION 14. Subchapter A, Chapter 142, Health and Safety
8 Code, is amended by adding Section 142.0104 to read as follows:

9 Sec. 142.0104. CHANGE IN APPLICATION INFORMATION. (a) If
10 certain application information as specified by executive
11 commissioner rule changes after the applicant submits an
12 application to the department for a license under this chapter or
13 after the department issues the license, the license holder shall
14 report the change to the department and pay a fee not to exceed \$50
15 not later than the time specified by executive commissioner rule.

16 (b) The executive commissioner by rule shall:

17 (1) specify the information provided in an application
18 that a license holder shall report to the department if the
19 information changes;

20 (2) prescribe the time for reporting a change in the
21 application information required by Subdivision (1);

22 (3) establish which changes required to be reported
23 under Subdivision (1) will require department evaluation and
24 approval; and

25 (4) set the amount of a late fee to be assessed against
26 a license holder who fails to report a change in the application
27 information within the time prescribed under Subdivision (2).

1 SECTION 15. Subsection (a), Section 142.011, Health and
2 Safety Code, is amended to read as follows:

3 (a) The department may deny a license application or suspend
4 or revoke the license of a person who:

5 (1) fails to comply with the rules or standards for
6 licensing required by this chapter; or

7 (2) engages in conduct that violates Section 102.001,
8 Occupations Code [~~161.091~~].

9 SECTION 16. Subsections (a), (b), and (c), Section 142.012,
10 Health and Safety Code, are amended to read as follows:

11 (a) The executive commissioner [~~board, with the~~
12 ~~recommendations of the council,~~] shall adopt rules necessary to
13 implement this chapter. The executive commissioner may adopt rules
14 governing the duties and responsibilities of home and community
15 support services agency administrators, including rules regarding:

16 (1) an administrator's management of daily operations
17 of the home and community support services agency;

18 (2) an administrator's responsibility for supervising
19 the provision of quality care to agency clients;

20 (3) an administrator's implementation of agency policy
21 and procedures; and

22 (4) an administrator's responsibility to be available
23 to the agency at all times in person or by telephone.

24 (b) The executive commissioner [~~board~~] by rule shall set
25 minimum standards for home and community support services agencies
26 licensed under this chapter that relate to:

27 (1) qualifications for professional and

1 nonprofessional personnel, including volunteers;

2 (2) supervision of professional and nonprofessional
3 personnel, including volunteers;

4 (3) the provision and coordination of treatment and
5 services, including support and bereavement services, as
6 appropriate;

7 (4) the management, ownership, and organizational
8 structure, including lines of authority and delegation of
9 responsibility and, as appropriate, the composition of an
10 interdisciplinary team;

11 (5) clinical and business records;

12 (6) financial ability to carry out the functions as
13 proposed;

14 (7) safety, fire prevention, and sanitary standards
15 for residential units and inpatient units; and

16 (8) any other aspects of home health, hospice, or
17 personal assistance services as necessary to protect the public.

18 (c) The initial minimum standards adopted [~~by the board~~]
19 under Subsection (b) for hospice services must be at least as
20 stringent as the conditions of participation for a Medicare
21 certified provider of hospice services in effect on April 30, 1993,
22 under Title XVIII, Social Security Act (42 U.S.C. Section 1395 et
23 seq.).

24 SECTION 17. Subsection (e), Section 242.032, Health and
25 Safety Code, is amended to read as follows:

26 (e) In making the evaluation required by Subsection (d), the
27 department shall require the applicant or license holder to file a

1 sworn affidavit of a satisfactory compliance history and any other
2 information required by the department to substantiate a
3 satisfactory compliance history relating to each state or other
4 jurisdiction in which the applicant or license holder and any other
5 person described by Subsection (d) operated an institution at any
6 time before [~~during the five-year period preceding~~] the date on
7 which the application is made. The department by rule shall
8 determine what constitutes a satisfactory compliance history. The
9 department may consider and evaluate the compliance history of the
10 applicant and any other person described by Subsection (d) for any
11 period during which the applicant or other person operated an
12 institution in this state or in another state or jurisdiction. The
13 department may also require the applicant or license holder to file
14 information relating to the history of the financial condition of
15 the applicant or license holder and any other person described by
16 Subsection (d) with respect to an institution operated in another
17 state or jurisdiction at any time before [~~during the five-year~~
18 ~~period preceding~~] the date on which the application is made.

19 SECTION 18. Subsection (b), Section 242.0615, Health and
20 Safety Code, is amended to read as follows:

21 (b) Exclusion of a person under this section must extend for
22 a period of at least two years and [~~but~~] may extend throughout the
23 person's lifetime or existence [~~not exceed a period of 10 years~~].

24 SECTION 19. Section 250.001, Health and Safety Code, is
25 amended by amending Subdivision (1) and adding Subdivisions (3-a)
26 and (3-b) to read as follows:

27 (1) "Nurse aide registry" means a list maintained by

1 the [~~Texas~~] Department of Aging and Disability [~~Human~~] Services of
2 nurse aides under the Omnibus Budget Reconciliation Act of 1987
3 (Pub. L. No. 100-203).

4 (3-a) "Financial management services agency" means an
5 entity that contracts with the Department of Aging and Disability
6 Services to serve as a fiscal and employer agent for an individual
7 employer in the consumer-directed service option described by
8 Section 531.051, Government Code.

9 (3-b) "Individual employer" means an individual or
10 legally authorized representative who participates in the
11 consumer-directed service option described by Section 531.051,
12 Government Code, and is responsible for hiring service providers to
13 deliver program services.

14 SECTION 20. Section 250.002, Health and Safety Code, is
15 amended by amending Subsection (a) and adding Subsection (c-1) to
16 read as follows:

17 (a) A facility, a regulatory agency, a financial management
18 services agency on behalf of an individual employer, or a private
19 agency on behalf of a facility is entitled to obtain from the
20 Department of Public Safety of the State of Texas criminal history
21 record information maintained by the Department of Public Safety
22 that relates to a person who is:

23 (1) an applicant for employment at a facility other
24 than a facility licensed under Chapter 142;

25 (2) an employee of a facility other than a facility
26 licensed under Chapter 142; [~~or~~]

27 (3) an applicant for employment at or an employee of a

1 facility licensed under Chapter 142 whose employment duties would
2 or do involve direct contact with a consumer in the facility; or

3 (4) an applicant for employment by or an employee of an
4 individual employer.

5 (c-1) A financial management services agency shall forward
6 criminal history record information received under this section to
7 the individual employer requesting the information.

8 SECTION 21. Section 250.003, Health and Safety Code, is
9 amended by amending Subsection (a) and adding Subsection (c-1) to
10 read as follows:

11 (a) A facility or individual employer may not employ an
12 applicant:

13 (1) if the facility or individual employer determines,
14 as a result of a criminal history check, that the applicant has been
15 convicted of an offense listed in this chapter that bars employment
16 or that a conviction is a contraindication to employment with the
17 consumers the facility or individual employer serves;

18 (2) if the applicant is a nurse aide, until the
19 facility further verifies that the applicant is listed in the nurse
20 aide registry; and

21 (3) until the facility verifies that the applicant is
22 not designated in the registry maintained under this chapter or in
23 the employee misconduct registry maintained under Section 253.007
24 as having a finding entered into the registry concerning abuse,
25 neglect, or mistreatment of a consumer of a facility, or
26 misappropriation of a consumer's property.

27 (c-1) An individual employer shall immediately discharge

1 any employee whose criminal history check reveals conviction of a
2 crime that bars employment or that the individual employer
3 determines is a contraindication to employment as provided by this
4 chapter.

5 SECTION 22. Section 250.004, Health and Safety Code, is
6 amended to read as follows:

7 Sec. 250.004. CRIMINAL HISTORY RECORD OF EMPLOYEES.

8 (a) Identifying information of an employee in a covered facility
9 or of an employee of an individual employer shall be submitted
10 electronically, on disk, or on a typewritten form to the Department
11 of Public Safety to obtain the person's criminal conviction record
12 when the person applies for employment and at other times as the
13 facility or individual employer may determine appropriate. In this
14 subsection, "identifying information" includes:

- 15 (1) the complete name, race, and sex of the employee;
16 (2) any known identifying number of the employee,
17 including social security number, driver's license number, or state
18 identification number; and
19 (3) the employee's date of birth.

20 (b) If the Department of Public Safety reports that a person
21 has a criminal conviction of any kind, the conviction shall be
22 reviewed by the facility, the financial management services agency,
23 or the individual employer to determine if the conviction may bar
24 the person from employment in a facility or by the individual
25 employer under Section 250.006 or if the conviction may be a
26 contraindication to employment.

27 SECTION 23. Section 250.005, Health and Safety Code, is

1 amended to read as follows:

2 Sec. 250.005. NOTICE AND OPPORTUNITY TO BE HEARD CONCERNING
3 ACCURACY OF INFORMATION. (a) If a facility, financial management
4 services agency, or individual employer believes that a conviction
5 may bar a person from employment in a facility or by the individual
6 employer under Section 250.006 or may be a contraindication to
7 employment, the facility or individual employer shall notify the
8 applicant or employee.

9 (b) The Department of Public Safety of the State of Texas
10 shall give a person notified under Subsection (a) the opportunity
11 to be heard concerning the accuracy of the criminal history record
12 information and shall notify the facility or individual employer if
13 inaccurate information is discovered.

14 SECTION 24. Subsections (a) and (b), Section 250.006,
15 Health and Safety Code, are amended to read as follows:

16 (a) A person for whom the facility or the individual
17 employer is entitled to obtain criminal history record information
18 may not be employed in a facility or by an individual employer if
19 the person has been convicted of an offense listed in this
20 subsection:

21 (1) an offense under Chapter 19, Penal Code (criminal
22 homicide);

23 (2) an offense under Chapter 20, Penal Code
24 (kidnapping and unlawful restraint);

25 (3) an offense under Section 21.02, Penal Code
26 (continuous sexual abuse of young child or children), or Section
27 21.11, Penal Code (indecent with a child);

- 1 (4) an offense under Section 22.011, Penal Code
2 (sexual assault);
- 3 (5) an offense under Section 22.02, Penal Code
4 (aggravated assault);
- 5 (6) an offense under Section 22.04, Penal Code (injury
6 to a child, elderly individual, or disabled individual);
- 7 (7) an offense under Section 22.041, Penal Code
8 (abandoning or endangering child);
- 9 (8) an offense under Section 22.08, Penal Code (aiding
10 suicide);
- 11 (9) an offense under Section 25.031, Penal Code
12 (agreement to abduct from custody);
- 13 (10) an offense under Section 25.08, Penal Code (sale
14 or purchase of a child);
- 15 (11) an offense under Section 28.02, Penal Code
16 (arson);
- 17 (12) an offense under Section 29.02, Penal Code
18 (robbery);
- 19 (13) an offense under Section 29.03, Penal Code
20 (aggravated robbery);
- 21 (14) an offense under Section 21.08, Penal Code
22 (indecent exposure);
- 23 (15) an offense under Section 21.12, Penal Code
24 (improper relationship between educator and student);
- 25 (16) an offense under Section 21.15, Penal Code
26 (improper photography or visual recording);
- 27 (17) an offense under Section 22.05, Penal Code

1 (deadly conduct);

2 (18) an offense under Section 22.021, Penal Code
3 (aggravated sexual assault);

4 (19) an offense under Section 22.07, Penal Code
5 (terroristic threat);

6 (20) an offense under Section 33.021, Penal Code
7 (online solicitation of a minor);

8 (21) an offense under Section 34.02, Penal Code (money
9 laundering);

10 (22) an offense under Section 35A.02, Penal Code
11 (Medicaid fraud);

12 (23) an offense under Section 42.09, Penal Code
13 (cruelty to animals); or

14 (24) a conviction under the laws of another state,
15 federal law, or the Uniform Code of Military Justice for an offense
16 containing elements that are substantially similar to the elements
17 of an offense listed by this subsection.

18 (b) A person may not be employed in a position the duties of
19 which involve direct contact with a consumer in a facility or may
20 not be employed by an individual employer before the fifth
21 anniversary of the date the person is convicted of:

22 (1) an offense under Section 22.01, Penal Code
23 (assault), that is punishable as a Class A misdemeanor or as a
24 felony;

25 (2) an offense under Section 30.02, Penal Code
26 (burglary);

27 (3) an offense under Chapter 31, Penal Code (theft),

1 that is punishable as a felony;

2 (4) an offense under Section 32.45, Penal Code
3 (misapplication of fiduciary property or property of a financial
4 institution), that is punishable as a Class A misdemeanor or a
5 felony;

6 (5) an offense under Section 32.46, Penal Code
7 (securing execution of a document by deception), that is punishable
8 as a Class A misdemeanor or a felony;

9 (6) an offense under Section 37.12, Penal Code (false
10 identification as peace officer); or

11 (7) an offense under Section 42.01(a)(7), (8), or (9),
12 Penal Code (disorderly conduct).

13 SECTION 25. Subsections (a) and (b), Section 250.007,
14 Health and Safety Code, are amended to read as follows:

15 (a) The criminal history records are for the exclusive use
16 of the regulatory agency, the requesting facility, the private
17 agency on behalf of the requesting facility, the financial
18 management services agency on behalf of the individual employer,
19 the individual employer, and the applicant or employee who is the
20 subject of the records.

21 (b) All criminal records and reports and the information
22 they contain that are received by the regulatory agency or private
23 agency for the purpose of being forwarded to the requesting
24 facility or received by the financial management services agency
25 under this chapter are privileged information.

26 SECTION 26. Subsection (a), Section 250.009, Health and
27 Safety Code, is amended to read as follows:

1 (a) A facility, ~~[or]~~ an officer or employee of a facility, a
2 financial management services agency, or an individual employer is
3 not civilly liable for failure to comply with this chapter if the
4 facility, financial management services agency, or individual
5 employer makes a good faith effort to comply.

6 SECTION 27. Section 22.039(c), Human Resources Code, is
7 amended to read as follows:

8 (c) The department shall semiannually provide training for
9 surveyors and providers on subjects that address ~~[at least one of]~~
10 the 10 most common violations by long-term care facilities of
11 ~~[under]~~ federal or state law. The department may charge a fee not to
12 exceed \$50 per person for the training.

13 SECTION 28. Section 32.0322, Human Resources Code, is
14 amended to read as follows:

15 Sec. 32.0322. CRIMINAL HISTORY RECORD INFORMATION;
16 ENROLLMENT OF PROVIDERS. (a) The department or the office of
17 inspector general established under Chapter 531, Government Code,
18 may obtain from any law enforcement or criminal justice agency the
19 criminal history record information that relates to a provider
20 under the medical assistance program or a person applying to enroll
21 as a provider under the medical assistance program.

22 (a-1) The criminal history record information the
23 department and the office of inspector general are authorized to
24 obtain under Subsection (a) includes criminal history record
25 information relating to:

26 (1) a person with a direct or indirect ownership or
27 control interest, as defined by 42 C.F.R. Section 455.101, in a

1 provider of five percent or more; and

2 (2) a person whose information is required to be
3 disclosed in accordance with 42 C.F.R. Part 1001.

4 (b) The executive commissioner of the Health and Human
5 Services Commission [~~department~~] by rule shall establish criteria
6 for the department or the commission's office of inspector general
7 to suspend a provider's billing privileges under the medical
8 assistance program, revoke [~~revoking~~] a provider's enrollment
9 under the program, or deny [~~denying~~] a person's application to
10 enroll as a provider under the [~~medical assistance~~] program based
11 on:

12 (1) the results of a criminal history check;

13 (2) any exclusion or debarment of the provider from
14 participation in a state or federally funded health care program;

15 (3) the provider's failure to bill for medical
16 assistance or refer clients for medical assistance within a
17 12-month period; or

18 (4) any of the provider screening or enrollment
19 provisions contained in 42 C.F.R. Part 455, Subpart E.

20 (c) As a condition of eligibility to participate as a
21 provider in the medical assistance program, the executive
22 commissioner of the Health and Human Services Commission by rule
23 shall:

24 (1) require a provider or a person applying to enroll
25 as a provider to disclose:

26 (A) all persons described by Subsection
27 (a-1)(1);

1 (B) any managing employees of the provider; and

2 (C) an agent or subcontractor of the provider if:

3 (i) the provider or a person described by
4 Subsection (a-1)(1) has a direct or indirect ownership interest of
5 at least five percent in the agent or subcontractor; or

6 (ii) the provider engages in a business
7 transaction with the agent or subcontractor that meets the criteria
8 specified by 42 C.F.R. Section 455.105; and

9 (2) require disclosure by persons applying for
10 enrollment as providers and provide for screening of applicants for
11 enrollment in conformity and compliance with the requirements of 42
12 C.F.R. Part 455, Subparts B and E.

13 (d) In adopting rules under this section, the executive
14 commissioner of the Health and Human Services Commission shall
15 adopt rules as authorized by and in conformity with 42 C.F.R.
16 Section 455.470 for the imposition of a temporary moratorium on
17 enrollment of new providers, or to impose numerical caps or other
18 limits on the enrollment of providers, that the department or the
19 commission's office of inspector general, in consultation with the
20 department, determines have a significant potential for fraud,
21 waste, or abuse.

22 SECTION 29. Section 32.039, Human Resources Code, is
23 amended by amending Subsection (b) and adding Subsection (b-1) to
24 read as follows:

25 (b) A person commits a violation if the person:

26 (1) presents or causes to be presented to the
27 department a claim that contains a statement or representation the

1 person knows or should know to be false;

2 (1-a) engages in conduct that violates Section
3 102.001, Occupations Code;

4 (1-b) solicits or receives, directly or indirectly,
5 overtly or covertly any remuneration, including any kickback,
6 bribe, or rebate, in cash or in kind for referring an individual to
7 a person for the furnishing of, or for arranging the furnishing of,
8 any item or service for which payment may be made, in whole or in
9 part, under the medical assistance program, provided that this
10 subdivision does not prohibit the referral of a patient to another
11 practitioner within a multispecialty group or university medical
12 services research and development plan (practice plan) for
13 medically necessary services;

14 (1-c) solicits or receives, directly or indirectly,
15 overtly or covertly any remuneration, including any kickback,
16 bribe, or rebate, in cash or in kind for purchasing, leasing, or
17 ordering, or arranging for or recommending the purchasing, leasing,
18 or ordering of, any good, facility, service, or item for which
19 payment may be made, in whole or in part, under the medical
20 assistance program;

21 (1-d) offers or pays, directly or indirectly, overtly
22 or covertly any remuneration, including any kickback, bribe, or
23 rebate, in cash or in kind to induce a person to refer an individual
24 to another person for the furnishing of, or for arranging the
25 furnishing of, any item or service for which payment may be made, in
26 whole or in part, under the medical assistance program, provided
27 that this subdivision does not prohibit the referral of a patient to

1 another practitioner within a multispecialty group or university
2 medical services research and development plan (practice plan) for
3 medically necessary services;

4 (1-e) offers or pays, directly or indirectly, overtly
5 or covertly any remuneration, including any kickback, bribe, or
6 rebate, in cash or in kind to induce a person to purchase, lease, or
7 order, or arrange for or recommend the purchase, lease, or order of,
8 any good, facility, service, or item for which payment may be made,
9 in whole or in part, under the medical assistance program;

10 (1-f) provides, offers, or receives an inducement in a
11 manner or for a purpose not otherwise prohibited by this section or
12 Section 102.001, Occupations Code, to or from a person, including a
13 recipient, provider, employee or agent of a provider, third-party
14 vendor, or public servant, for the purpose of influencing or being
15 influenced in a decision regarding:

16 (A) selection of a provider or receipt of a good
17 or service under the medical assistance program;

18 (B) the use of goods or services provided under
19 the medical assistance program; or

20 (C) the inclusion or exclusion of goods or
21 services available under the medical assistance program; [~~or~~]

22 (2) is a managed care organization that contracts with
23 the department to provide or arrange to provide health care
24 benefits or services to individuals eligible for medical assistance
25 and:

26 (A) fails to provide to an individual a health
27 care benefit or service that the organization is required to

1 provide under the contract with the department;

2 (B) fails to provide to the department
3 information required to be provided by law, department rule, or
4 contractual provision;

5 (C) engages in a fraudulent activity in
6 connection with the enrollment in the organization's managed care
7 plan of an individual eligible for medical assistance or in
8 connection with marketing the organization's services to an
9 individual eligible for medical assistance; or

10 (D) engages in actions that indicate a pattern
11 of:

12 (i) wrongful denial of payment for a health
13 care benefit or service that the organization is required to
14 provide under the contract with the department; or

15 (ii) wrongful delay of at least 45 days or a
16 longer period specified in the contract with the department, not to
17 exceed 60 days, in making payment for a health care benefit or
18 service that the organization is required to provide under the
19 contract with the department; or

20 (3) fails to maintain documentation to support a claim
21 for payment in accordance with the requirements specified by
22 department rule or medical assistance program policy or engages in
23 any other conduct that a department rule has defined as a violation
24 of the medical assistance program.

25 (b-1) A person who commits a violation described by
26 Subsection (b)(3) is liable to the department for either the amount
27 paid in response to the claim for payment or the payment of an

1 administrative penalty in an amount not to exceed \$500 for each
2 violation, as determined by the department.

3 SECTION 30. Section 32.047, Human Resources Code, is
4 amended to read as follows:

5 Sec. 32.047. PROHIBITION OF CERTAIN HEALTH CARE SERVICE
6 PROVIDERS. (a) A person is permanently prohibited from providing
7 or arranging to provide health care services under the medical
8 assistance program if:

9 (1) the person is convicted of an offense arising from
10 a fraudulent act under the program; and

11 (2) the person's fraudulent act results in injury to an
12 elderly person, as defined by Section 48.002(a)(1) [~~48.002(1)~~], a
13 disabled person, as defined by Section 48.002(a)(8)(A)
14 [~~48.002(8)(A)~~], or a person younger than 18 years of age.

15 (b) The executive commissioner of the Health and Human
16 Services Commission shall adopt rules for prohibiting a person from
17 participating in the medical assistance program as a health care
18 provider for a reasonable period, as determined by the executive
19 commissioner, if the person:

20 (1) fails to repay overpayments under the program; or

21 (2) owns, controls, manages, or is otherwise
22 affiliated with and has financial, managerial, or administrative
23 influence over a provider who has been suspended or prohibited from
24 participating in the program.

25 SECTION 31. Subchapter B, Chapter 32, Human Resources Code,
26 is amended by adding Section 32.068 to read as follows:

27 Sec. 32.068. IN-PERSON EVALUATION REQUIRED FOR CERTAIN

1 SERVICES. (a) A medical assistance provider may order or otherwise
2 authorize the provision of home health services for a recipient
3 only if the provider has conducted an in-person evaluation of the
4 recipient within the 12-month period preceding the date the order
5 or other authorization was issued.

6 (b) A physician, physician assistant, nurse practitioner,
7 clinical nurse specialist, or certified nurse-midwife that orders
8 or otherwise authorizes the provision of durable medical equipment
9 for a recipient in accordance with Chapter 157, Occupations Code,
10 and other applicable law, including rules, must certify on the
11 order or other authorization that the person conducted an in-person
12 evaluation of the recipient within the 12-month period preceding
13 the date the order or other authorization was issued.

14 (c) The executive commissioner of the Health and Human
15 Services Commission shall adopt rules necessary to implement this
16 section. The executive commissioner may by rule adopt limited
17 exceptions to the requirements of this section.

18 SECTION 32. Subsection (a), Section 103.009, Human
19 Resources Code, is amended to read as follows:

20 (a) The department may deny, suspend, or revoke the license
21 of an applicant or holder of a license who fails to comply with the
22 rules or standards for licensing required by this chapter or has
23 committed an act described by Sections 103.012(a)(2)-(7).

24 SECTION 33. Chapter 103, Human Resources Code, is amended
25 by adding Sections 103.012 through 103.016 to read as follows:

26 Sec. 103.012. ADMINISTRATIVE PENALTY. (a) The department
27 may assess an administrative penalty against a person who:

1 (1) violates this chapter, a rule, standard, or order
2 adopted under this chapter, or a term of a license issued under this
3 chapter;

4 (2) makes a false statement of a material fact that the
5 person knows or should know is false:

6 (A) on an application for issuance or renewal of
7 a license or in an attachment to the application; or

8 (B) with respect to a matter under investigation
9 by the department;

10 (3) refuses to allow a representative of the
11 department to inspect:

12 (A) a book, record, or file required to be
13 maintained by an adult day-care facility; or

14 (B) any portion of the premises of an adult
15 day-care facility;

16 (4) wilfully interferes with the work of a
17 representative of the department or the enforcement of this
18 chapter;

19 (5) wilfully interferes with a representative of the
20 department preserving evidence of a violation of this chapter, a
21 rule, standard, or order adopted under this chapter, or a term of a
22 license issued under this chapter;

23 (6) fails to pay a penalty assessed under this chapter
24 not later than the 30th day after the date the assessment of the
25 penalty becomes final; or

26 (7) fails to notify the department of a change of
27 ownership before the effective date of the change of ownership.

1 (b) Except as provided by Section 103.013(c), the penalty
2 may not exceed \$500 for each violation.

3 (c) Each day of a continuing violation constitutes a
4 separate violation.

5 (d) The department shall establish gradations of penalties
6 in accordance with the relative seriousness of the violation.

7 (e) In determining the amount of a penalty, the department
8 shall consider any matter that justice may require, including:

9 (1) the gradations of penalties established under
10 Subsection (d);

11 (2) the seriousness of the violation, including the
12 nature, circumstances, extent, and gravity of the prohibited act
13 and the hazard or potential hazard created by the act to the health
14 or safety of the public;

15 (3) the history of previous violations;

16 (4) the deterrence of future violations; and

17 (5) the efforts to correct the violation.

18 (f) A penalty assessed under Subsection (a)(6) is in
19 addition to the penalty previously assessed and not timely paid.

20 Sec. 103.013. RIGHT TO CORRECT BEFORE IMPOSITION OF
21 ADMINISTRATIVE PENALTY. (a) The department may not collect an
22 administrative penalty from an adult day-care facility under
23 Section 103.012 if, not later than the 45th day after the date the
24 facility receives notice under Section 103.014(c), the facility
25 corrects the violation.

26 (b) Subsection (a) does not apply to:

27 (1) a violation that the department determines:

1 (A) results in serious harm to or death of a
2 person attending the facility;

3 (B) constitutes a serious threat to the health
4 and safety of a person attending the facility; or

5 (C) substantially limits the facility's capacity
6 to provide care;

7 (2) a violation described by Sections
8 103.012(a)(2)-(7); or

9 (3) a violation of Section 103.011.

10 (c) An adult day-care facility that corrects a violation
11 must maintain the correction. If the facility fails to maintain the
12 correction until at least the first anniversary after the date the
13 correction was made, the department may assess and collect an
14 administrative penalty for the subsequent violation. An
15 administrative penalty assessed under this subsection is equal to
16 three times the amount of the original penalty assessed but not
17 collected. The department is not required to provide the facility
18 with an opportunity under this section to correct the subsequent
19 violation.

20 Sec. 103.014. REPORT RECOMMENDING ADMINISTRATIVE PENALTY;
21 NOTICE. (a) The department shall issue a preliminary report
22 stating the facts on which the department concludes that a
23 violation of this chapter, a rule, standard, or order adopted under
24 this chapter, or a term of a license issued under this chapter has
25 occurred if the department has:

26 (1) examined the possible violation and facts
27 surrounding the possible violation; and

1 (2) concluded that a violation has occurred.

2 (b) The report may recommend a penalty under Section 103.012
3 and the amount of the penalty.

4 (c) The department shall give written notice of the report
5 to the person charged with the violation not later than the 10th day
6 after the date on which the report is issued. The notice must
7 include:

8 (1) a brief summary of the charges;

9 (2) a statement of the amount of penalty recommended;

10 (3) a statement of whether the violation is subject to
11 correction under Section 103.013 and, if the violation is subject
12 to correction under that section, a statement of:

13 (A) the date on which the adult day-care facility
14 must file a plan of correction with the department that the
15 department shall review and may approve, if satisfactory; and

16 (B) the date on which the plan of correction must
17 be completed to avoid assessment of the penalty; and

18 (4) a statement that the person charged has a right to
19 a hearing on the occurrence of the violation, the amount of the
20 penalty, or both.

21 (d) Not later than the 20th day after the date on which the
22 notice under Subsection (c) is received, the person charged may:

23 (1) give to the department written notice that the
24 person agrees with the department's report and consents to the
25 recommended penalty; or

26 (2) make a written request for a hearing.

27 (e) If the violation is subject to correction under Section

1 103.013, the adult day-care facility shall submit a plan of
2 correction to the department for approval not later than the 10th
3 day after the date on which the notice under Subsection (c) is
4 received.

5 (f) If the violation is subject to correction under Section
6 103.013 and the person reports to the department that the violation
7 has been corrected, the department shall inspect the correction or
8 take any other step necessary to confirm the correction and shall
9 notify the person that:

10 (1) the correction is satisfactory and a penalty will
11 not be assessed; or

12 (2) the correction is not satisfactory and a penalty
13 is recommended.

14 (g) Not later than the 20th day after the date on which a
15 notice under Subsection (f)(2) is received, the person charged with
16 the violation may:

17 (1) give to the department written notice that the
18 person agrees with the department's report and consents to the
19 recommended penalty; or

20 (2) make a written request for a hearing.

21 (h) If the person charged with the violation consents to the
22 penalty recommended by the department or does not timely respond to
23 a notice sent under Subsection (c) or (f)(2), the department's
24 commissioner or the commissioner's designee shall assess the
25 penalty recommended by the department.

26 (i) If the department's commissioner or the commissioner's
27 designee assesses the recommended penalty, the department shall

1 give written notice of the decision to the person charged with the
2 violation and the person shall pay the penalty.

3 Sec. 103.015. ADMINISTRATIVE PENALTY HEARING. (a) An
4 administrative law judge shall order a hearing and give notice of
5 the hearing if a person assessed a penalty under Section 103.013(c)
6 requests a hearing.

7 (b) The hearing shall be held before an administrative law
8 judge.

9 (c) The administrative law judge shall make findings of fact
10 and conclusions of law regarding the occurrence of a violation of
11 this chapter, a rule or order adopted under this chapter, or a term
12 of a license issued under this chapter.

13 (d) Based on the findings of fact and conclusions of law,
14 and the recommendation of the administrative law judge, the
15 department's commissioner or the commissioner's designee by order
16 shall find:

17 (1) a violation has occurred and assess an
18 administrative penalty; or

19 (2) a violation has not occurred.

20 (e) Proceedings under this section are subject to Chapter
21 2001, Government Code.

22 Sec. 103.016. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY;
23 INTEREST; REFUND. (a) The department's commissioner or the
24 commissioner's designee shall give notice of the findings made
25 under Section 103.015(d) to the person charged with a violation. If
26 the commissioner or the commissioner's designee finds that a
27 violation has occurred, the commissioner or the commissioner's

1 designee shall give to the person charged written notice of:

2 (1) the findings;

3 (2) the amount of the administrative penalty;

4 (3) the rate of interest payable with respect to the
5 penalty and the date on which interest begins to accrue; and

6 (4) the person's right to judicial review of the order
7 of the commissioner or the commissioner's designee.

8 (b) Not later than the 30th day after the date on which the
9 order of the department's commissioner or the commissioner's
10 designee is final, the person assessed the penalty shall:

11 (1) pay the full amount of the penalty; or

12 (2) file a petition for judicial review contesting the
13 occurrence of the violation, the amount of the penalty, or both the
14 occurrence of the violation and the amount of the penalty.

15 (c) Notwithstanding Subsection (b), the department may
16 permit the person to pay a penalty in installments.

17 (d) If the person does not pay the penalty within the period
18 provided by Subsection (b) or in accordance with Subsection (c), if
19 applicable:

20 (1) the penalty is subject to interest; and

21 (2) the department may refer the matter to the
22 attorney general for collection of the penalty and interest.

23 (e) Interest under Subsection (d)(1) accrues:

24 (1) at a rate equal to the rate charged on loans to
25 depository institutions by the New York Federal Reserve Bank; and

26 (2) for the period beginning on the day after the date
27 on which the penalty becomes due and ending on the date the penalty

1 is paid.

2 (f) If the amount of the penalty is reduced or the
3 assessment of a penalty is not upheld on judicial review, the
4 department's commissioner or the commissioner's designee shall:

5 (1) remit to the person charged the appropriate amount
6 of any penalty payment plus accrued interest; or

7 (2) execute a release of the supersedeas bond if one
8 has been posted.

9 (g) Accrued interest on the amount remitted by the
10 department's commissioner or the commissioner's designee under
11 Subsection (f)(1) shall be paid:

12 (1) at a rate equal to the rate charged on loans to
13 depository institutions by the New York Federal Reserve Bank; and

14 (2) for the period beginning on the date the penalty is
15 paid and ending on the date the penalty is remitted to the person
16 charged with the violation.

17 SECTION 34. Section 531.1131, Government Code, as added by
18 this Act, applies to the investigation of a fraudulent Medicaid or
19 child health plan program claim or other program abuse that
20 commences on or after the effective date of this Act. An
21 investigation that commences before the effective date of this Act
22 is governed by the law in effect when the investigation commenced,
23 and the former law is continued in effect for that purpose.

24 SECTION 35. As soon as practicable after the effective date
25 of this Act but not later than July 1, 2012, the executive
26 commissioner of the Health and Human Services Commission shall
27 adopt the rules necessary to implement the changes in law made by

1 this Act to Chapter 142, Health and Safety Code.

2 SECTION 36. Subsection (e), Section 242.032, Health and
3 Safety Code, as amended by this Act, applies only to an application,
4 including a renewal application, filed on or after the effective
5 date of this Act. An application filed before the effective date of
6 this Act is governed by the law in effect when the application was
7 filed, and the former law is continued in effect for that purpose.

8 SECTION 37. Subsection (b), Section 242.0615, Health and
9 Safety Code, as amended by this Act, applies only to conduct that
10 occurs on or after the effective date of this Act. Conduct that
11 occurs before the effective date of this Act is governed by the law
12 in effect at the time the conduct occurred, and the former law is
13 continued in effect for that purpose.

14 SECTION 38. As soon as practicable after the effective date
15 of this Act but not later than July 1, 2012, the executive
16 commissioner of the Health and Human Services Commission shall
17 adopt rules necessary to implement Section 22.039, Human Resources
18 Code, as amended by this Act.

19 SECTION 39. If before implementing any provision of this
20 Act a state agency determines that a waiver or authorization from a
21 federal agency is necessary for implementation of that provision,
22 the agency affected by the provision shall request the waiver or
23 authorization and may delay implementing that provision until the
24 waiver or authorization is granted.

25 SECTION 40. If before implementing any provision of this
26 Act a state agency determines that a waiver or authorization from a
27 federal agency is necessary for implementation of that provision,

1 the agency affected by the provision shall request the waiver or
2 authorization and may delay implementing that provision until the
3 waiver or authorization is granted.

4 SECTION 41. This Act takes effect September 1, 2011.

President of the Senate

Speaker of the House

I certify that H.B. No. 1720 was passed by the House on May 4, 2011, by the following vote: Yeas 138, Nays 0, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1720 on May 27, 2011, by the following vote: Yeas 136, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1720 was passed by the Senate, with amendments, on May 23, 2011, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor