

By: Nelson

S.B. No. 223

A BILL TO BE ENTITLED

AN ACT

relating to certain facilities and care providers, including providers under the state Medicaid program; providing penalties.

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

ARTICLE 1. HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

SECTION 1.01. Section 142.001, Health and Safety Code, is amended by adding Subdivisions (11-a), (11-b), and (12-a) to read as follows:

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

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

(12-a) "Home and community support services agency administrator" or "administrator" means an individual who engages in the practice of home and community support services agency administration, without regard to whether the individual has an ownership interest in the agency or whether the individual's administrative functions and duties are shared with any other individual.

SECTION 1.02. Section 142.0025, Health and Safety Code, is amended to read as follows:

Sec. 142.0025. TEMPORARY LICENSE. If a person is in the process of becoming certified by the United States Department of Health and Human Services to qualify as a certified agency, the

1 department may issue a temporary home and community support
2 services agency license to the person authorizing the person to
3 provide certified home health services. A temporary license is
4 effective as provided by [~~board~~] rules adopted by the executive
5 commissioner.

6 SECTION 1.03. Section 142.009, Health and Safety Code, is
7 amended by adding Subsections (a-1) and (i) and amending Subsection
8 (g) to read as follows:

9 (a-1) A license applicant or license holder must provide the
10 person conducting the survey with a reasonable and safe workspace
11 at the premises that allows the person to conduct the survey in
12 private. The executive commissioner may adopt rules to implement
13 this subsection.

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

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

- 20 (A) the specific nature of the survey;
- 21 (B) any alleged violations of a specific statute
22 or rule;
- 23 (C) the specific nature of any finding regarding
24 an alleged violation or deficiency; and
- 25 (D) if a deficiency is alleged, the severity of
26 the deficiency;

27 (2) information on the identity, including the name

1 ~~[signature]~~, of each department representative conducting or~~[7]~~
2 reviewing~~[7, or approving]~~ the results of the survey and the date on
3 which the department representative acted on the matter; and

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

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

12 SECTION 1.04. The heading to Section 142.0091, Health and
13 Safety Code, is amended to read as follows:

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

15 SECTION 1.05. Section 142.0091, Health and Safety Code, is
16 amended by amending Subsection (b) and adding Subsection (c) to
17 read as follows:

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

24 (c) The department shall provide semiannually training for
25 home and community support services agencies on subjects that
26 address at least one of the 10 most common violations of federal or
27 state law by home and community support services agencies. The

1 department may charge a fee, not to exceed \$50 per person, for the
2 training. Other persons regulated by the department may
3 participate in the training.

4 SECTION 1.06. Subchapter A, Chapter 142, Health and Safety
5 Code, is amended by adding Section 142.0104 to read as follows:

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

13 (b) The executive commissioner by rule shall:

14 (1) specify the information provided in an application
15 that a license holder shall report to the department if the
16 information changes;

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

19 (3) establish which changes required to be reported
20 under Subdivision (1) will require department evaluation and
21 approval; and

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

25 SECTION 1.07. Subsection (a), Section 142.011, Health and
26 Safety Code, is amended to read as follows:

27 (a) The department may deny a license application or suspend

1 or revoke the license of a person who:

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

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

6 SECTION 1.08. Subsections (a), (b), and (c), Section
7 142.012, Health and Safety Code, are amended to read as follows:

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

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

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

17 (3) an administrator's implementation of agency policy
18 and procedures; and

19 (4) the average hours per week an administrator must
20 spend on administrative duties.

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

24 (1) qualifications for professional and
25 nonprofessional personnel, including volunteers;

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

1 (3) the provision and coordination of treatment and
2 services, including support and bereavement services, as
3 appropriate;

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

8 (5) clinical and business records;

9 (6) financial ability to carry out the functions as
10 proposed;

11 (7) safety, fire prevention, and sanitary standards
12 for residential units and inpatient units; and

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

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

21 SECTION 1.09. As soon as practicable after the effective
22 date of this Act but not later than December 1, 2011, the executive
23 commissioner of the Health and Human Services Commission shall
24 adopt the rules necessary to implement the changes in law made by
25 this article to Chapter 142, Health and Safety Code.

26 ARTICLE 2. NURSING INSTITUTIONS

27 SECTION 2.01. Subsection (e), Section 242.032, Health and

1 Safety Code, is amended to read as follows:

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

22 SECTION 2.02. Subsection (b), Section 242.0615, Health and
23 Safety Code, is amended to read as follows:

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

27 SECTION 2.03. Subsection (e), Section 242.032, Health and

1 Safety Code, as amended by this article, applies only to an
2 application, including a renewal application, filed on or after the
3 effective date of this Act. An application filed before the
4 effective date of this Act is governed by the law in effect when the
5 application was filed, and the former law is continued in effect for
6 that purpose.

7 SECTION 2.04. Subsection (b), Section 242.0615, Health and
8 Safety Code, as amended by this article, applies only to conduct
9 that occurs on or after the effective date of this Act. Conduct
10 that occurs before the effective date of this Act is governed by the
11 law in effect at the time the conduct occurred, and the former law
12 is continued in effect for that purpose.

13 ARTICLE 3. PREVENTION OF CRIMINAL OR FRAUDULENT CONDUCT BY
14 CERTAIN FACILITIES OR PROVIDERS

15 SECTION 3.01. Section 250.001, Health and Safety Code, is
16 amended by amending Subdivision (1) and adding Subdivisions (3-a)
17 and (3-b) to read as follows:

18 (1) "Nurse aide registry" means a list maintained by
19 the [~~Texas~~] Department of Aging and Disability [~~Human~~] Services of
20 nurse aides under the Omnibus Budget Reconciliation Act of 1987
21 (Pub. L. No. 100-203).

22 (3-a) "Financial management services agency" means an
23 entity that contracts with the Department of Aging and Disability
24 Services to serve as a fiscal and employer agent for an individual
25 employer in the consumer-directed service option described by
26 Section 531.051, Government Code.

27 (3-b) "Individual employer" means an individual or

1 legally authorized representative who participates in the
2 consumer-directed service option described by Section 531.051,
3 Government Code, and is responsible for hiring service providers to
4 deliver program services.

5 SECTION 3.02. Section 250.002, Health and Safety Code, is
6 amended by amending Subsection (a) and adding Subsection (c-1) to
7 read as follows:

8 (a) A facility, a regulatory agency, a financial management
9 services agency on behalf of an individual employer, or a private
10 agency on behalf of a facility is entitled to obtain from the
11 Department of Public Safety of the State of Texas criminal history
12 record information maintained by the Department of Public Safety
13 that relates to a person who is:

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

16 (2) an employee of a facility other than a facility
17 licensed under Chapter 142; ~~or~~

18 (3) an applicant for employment at or an employee of a
19 facility licensed under Chapter 142 whose employment duties would
20 or do involve direct contact with a consumer in the facility; or

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

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

26 SECTION 3.03. Section 250.003, Health and Safety Code, is
27 amended by amending Subsection (a) and adding Subsection (c-1) to

1 read as follows:

2 (a) A facility or individual employer may not employ an
3 applicant:

4 (1) if the facility or individual employer determines,
5 as a result of a criminal history check, that the applicant has been
6 convicted of an offense listed in this chapter that bars employment
7 or that a conviction is a contraindication to employment with the
8 consumers the facility or individual employer serves;

9 (2) if the applicant is a nurse aide, until the
10 facility further verifies that the applicant is listed in the nurse
11 aide registry; and

12 (3) until the facility verifies that the applicant is
13 not designated in the registry maintained under this chapter or in
14 the employee misconduct registry maintained under Section 253.007
15 as having a finding entered into the registry concerning abuse,
16 neglect, or mistreatment of a consumer of a facility, or
17 misappropriation of a consumer's property.

18 (c-1) An individual employer shall immediately discharge
19 any employee whose criminal history check reveals conviction of a
20 crime that bars employment or that the individual employer
21 determines is a contraindication to employment as provided by this
22 chapter.

23 SECTION 3.04. Section 250.004, Health and Safety Code, is
24 amended to read as follows:

25 Sec. 250.004. CRIMINAL HISTORY RECORD OF EMPLOYEES.

26 (a) Identifying information of an employee in a covered facility
27 or of an employee of an individual employer shall be submitted

1 electronically, on disk, or on a typewritten form to the Department
2 of Public Safety to obtain the person's criminal conviction record
3 when the person applies for employment and at other times as the
4 facility or individual employer may determine appropriate. In this
5 subsection, "identifying information" includes:

- 6 (1) the complete name, race, and sex of the employee;
7 (2) any known identifying number of the employee,
8 including social security number, driver's license number, or state
9 identification number; and
10 (3) the employee's date of birth.

11 (b) If the Department of Public Safety reports that a person
12 has a criminal conviction of any kind, the conviction shall be
13 reviewed by the facility, the financial management services agency,
14 or the individual employer to determine if the conviction may bar
15 the person from employment in a facility or by the individual
16 employer under Section 250.006 or if the conviction may be a
17 contraindication to employment.

18 SECTION 3.05. Section 250.005, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 250.005. NOTICE AND OPPORTUNITY TO BE HEARD CONCERNING
21 ACCURACY OF INFORMATION. (a) If a facility, financial management
22 services agency, or individual employer believes that a conviction
23 may bar a person from employment in a facility or by the individual
24 employer under Section 250.006 or may be a contraindication to
25 employment, the facility or individual employer shall notify the
26 applicant or employee.

27 (b) The Department of Public Safety of the State of Texas

1 shall give a person notified under Subsection (a) the opportunity
2 to be heard concerning the accuracy of the criminal history record
3 information and shall notify the facility or individual employer if
4 inaccurate information is discovered.

5 SECTION 3.06. Subsections (a) and (b), Section 250.006,
6 Health and Safety Code, are amended to read as follows:

7 (a) A person for whom the facility or the individual
8 employer is entitled to obtain criminal history record information
9 may not be employed in a facility or by an individual employer if
10 the person has been convicted of an offense listed in this
11 subsection:

12 (1) an offense under Chapter 19, Penal Code (criminal
13 homicide);

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

16 (3) an offense under Section 21.02, Penal Code
17 (continuous sexual abuse of young child or children), or Section
18 21.11, Penal Code (indecent with a child);

19 (4) an offense under Section 22.011, Penal Code
20 (sexual assault);

21 (5) an offense under Section 22.02, Penal Code
22 (aggravated assault);

23 (6) an offense under Section 22.04, Penal Code (injury
24 to a child, elderly individual, or disabled individual);

25 (7) an offense under Section 22.041, Penal Code
26 (abandoning or endangering child);

27 (8) an offense under Section 22.08, Penal Code (aiding

- 1 suicide);
- 2 (9) an offense under Section 25.031, Penal Code
- 3 (agreement to abduct from custody);
- 4 (10) an offense under Section 25.08, Penal Code (sale
- 5 or purchase of a child);
- 6 (11) an offense under Section 28.02, Penal Code
- 7 (arson);
- 8 (12) an offense under Section 29.02, Penal Code
- 9 (robbery);
- 10 (13) an offense under Section 29.03, Penal Code
- 11 (aggravated robbery);
- 12 (14) an offense under Section 21.08, Penal Code
- 13 (indecent exposure);
- 14 (15) an offense under Section 21.12, Penal Code
- 15 (improper relationship between educator and student);
- 16 (16) an offense under Section 21.15, Penal Code
- 17 (improper photography or visual recording);
- 18 (17) an offense under Section 22.05, Penal Code
- 19 (deadly conduct);
- 20 (18) an offense under Section 22.021, Penal Code
- 21 (aggravated sexual assault);
- 22 (19) an offense under Section 22.07, Penal Code
- 23 (terroristic threat);
- 24 (20) an offense under Section 33.021, Penal Code
- 25 (online solicitation of a minor);
- 26 (21) an offense under Section 34.02, Penal Code (money
- 27 laundering);

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

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

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

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

13 (1) an offense under Section 22.01, Penal Code
14 (assault), that is punishable as a Class A misdemeanor or as a
15 felony;

16 (2) an offense under Section 30.02, Penal Code
17 (burglary);

18 (3) an offense under Chapter 31, Penal Code (theft),
19 that is punishable as a felony;

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

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

27 (6) an offense under Section 37.12, Penal Code (false

1 identification as peace officer); or

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

4 SECTION 3.07. Subsections (a) and (b), Section 250.007,
5 Health and Safety Code, are amended to read as follows:

6 (a) The criminal history records are for the exclusive use
7 of the regulatory agency, the requesting facility, the private
8 agency on behalf of the requesting facility, the financial
9 management services agency on behalf of the individual employer,
10 the individual employer, and the applicant or employee who is the
11 subject of the records.

12 (b) All criminal records and reports and the information
13 they contain that are received by the regulatory agency or private
14 agency for the purpose of being forwarded to the requesting
15 facility or received by the financial management services agency
16 under this chapter are privileged information.

17 SECTION 3.08. Subsection (a), Section 250.009, Health and
18 Safety Code, is amended to read as follows:

19 (a) A facility, ~~or~~ an officer or employee of a facility, a
20 financial management services agency, or an individual employer is
21 not civilly liable for failure to comply with this chapter if the
22 facility, financial management services agency, or individual
23 employer makes a good faith effort to comply.

24 SECTION 3.09. Section 411.1143, Government Code, is amended
25 by amending Subsection (a) and adding Subsection (a-1) to read as
26 follows:

27 (a) The Health and Human Services Commission, ~~or~~ an agency

1 operating part of the medical assistance program under Chapter 32,
2 Human Resources Code, or the office of inspector general
3 established under Chapter 531, Government Code, is entitled to
4 obtain from the department the criminal history record information
5 maintained by the department that relates to a provider under the
6 medical assistance program or a person applying to enroll as a
7 provider under the medical assistance program.

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

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

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

17 SECTION 3.10. Subdivision (2), Subsection (g), Section
18 531.102, Government Code, is amended to read as follows:

19 (2) In addition to other instances authorized under
20 state or federal law, the office shall impose without prior notice a
21 hold on payment of claims for reimbursement submitted by a provider
22 to compel production of records, ~~[or]~~ when requested by the state's
23 Medicaid fraud control unit, or on receipt of reliable evidence
24 that the circumstances giving rise to the hold on payment involve
25 fraud or wilful misrepresentation under the state Medicaid program
26 in accordance with 42 C.F.R Section 455.23, as applicable. The
27 office must notify the provider of the hold on payment in accordance

1 with 42 C.F.R. Section 455.23(b) [~~not later than the fifth working~~
2 ~~day after the date the payment hold is imposed~~].

3 SECTION 3.11. The heading to Section 531.1031, Government
4 Code, is amended to read as follows:

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

7 SECTION 3.12. Subdivision (2), Subsection (a), Section
8 531.1031, Government Code, is amended to read as follows:

9 (2) "Participating agency" means:

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

12 (B) each board or agency with authority to
13 license, register, regulate, or certify a health care professional
14 or managed care organization that may participate in the state
15 Medicaid program; and

16 (C) the commission's office of inspector
17 general.

18 SECTION 3.13. Section 531.1031, Government Code, is amended
19 by amending Subsections (b) and (c) and adding Subsection (c-1) to
20 read as follows:

21 (b) This section applies only to criminal history record
22 information held by a participating agency that relates to a health
23 care professional and information held by a participating agency
24 that relates to a health care professional or managed care
25 organization that is the subject of an investigation by a
26 participating agency for alleged fraud or abuse under the state
27 Medicaid program.

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

9 (1) the release of the information would jeopardize an
10 ongoing investigation or prosecution by the participating agency
11 with possession of the information; or

12 (2) the release of the information is prohibited by
13 other law.

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

24 SECTION 3.14. Section 32.0322, Human Resources Code, is
25 amended to read as follows:

26 Sec. 32.0322. CRIMINAL HISTORY RECORD INFORMATION;
27 ENROLLMENT OF PROVIDERS. (a) The department or the office of

1 inspector general established under Chapter 531, Government Code,
2 may obtain from any law enforcement or criminal justice agency the
3 criminal history record information that relates to a provider
4 under the medical assistance program or a person applying to enroll
5 as a provider under the medical assistance program.

6 (a-1) The criminal history record information the
7 department and the office of inspector general are authorized to
8 obtain under Subsection (a) includes criminal history record
9 information relating to:

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

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

15 (b) The executive commissioner of the Health and Human
16 Services Commission [~~department~~] by rule shall establish criteria
17 for the department or the commission's office of inspector general
18 to suspend a provider's billing privileges under the medical
19 assistance program, revoke [~~revoking~~] a provider's enrollment
20 under the program, or deny [~~denying~~] a person's application to
21 enroll as a provider under the [~~medical assistance~~] program based
22 on:

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

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

26 (3) the provider's failure to bill for medical
27 assistance or refer clients for medical assistance within a

1 12-month period; or

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

4 (c) As a condition of eligibility to participate as a
5 provider in the medical assistance program, the executive
6 commissioner of the Health and Human Services Commission by rule
7 shall:

8 (1) require a provider or a person applying to enroll
9 as a provider to disclose all persons described by Subsection
10 (a-1)(1) and any agents, managing employees, and subcontractors of
11 the provider; and

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

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

25 SECTION 3.15. Section 32.039, Human Resources Code, is
26 amended by amending Subsection (b) and adding Subsection (b-1) to
27 read as follows:

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

2 (1) presents or causes to be presented to the
3 department a claim that contains a statement or representation the
4 person knows or should know to be false;

5 (1-a) engages in conduct that violates Section
6 102.001, Occupations Code;

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

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

24 (1-d) offers or pays, directly or indirectly, overtly
25 or covertly any remuneration, including any kickback, bribe, or
26 rebate, in cash or in kind to induce a person to refer an individual
27 to another person for the furnishing of, or for arranging the

1 furnishing of, any item or service for which payment may be made, in
2 whole or in part, under the medical assistance program, provided
3 that this subdivision does not prohibit the referral of a patient to
4 another practitioner within a multispecialty group or university
5 medical services research and development plan (practice plan) for
6 medically necessary services;

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

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

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

21 (B) the use of goods or services provided under
22 the medical assistance program; or

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

25 (2) is a managed care organization that contracts with
26 the department to provide or arrange to provide health care
27 benefits or services to individuals eligible for medical assistance

1 and:

2 (A) fails to provide to an individual a health
3 care benefit or service that the organization is required to
4 provide under the contract with the department;

5 (B) fails to provide to the department
6 information required to be provided by law, department rule, or
7 contractual provision;

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

13 (D) engages in actions that indicate a pattern
14 of:

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

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

23 (3) fails to maintain adequate documentation to
24 support a claim for payment or engages in any other conduct that a
25 department rule has defined as a violation of the medical
26 assistance program.

27 (b-1) A person who commits a violation described by

1 Subsection (b)(3) is liable to the department for either the amount
2 paid in response to the claim for payment or the payment of an
3 administrative penalty in an amount not to exceed \$500 for each
4 violation, as determined by the department.

5 SECTION 3.16. Subsection (a), Section 103.009, Human
6 Resources Code, is amended to read as follows:

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

11 ARTICLE 4. ADULT DAY-CARE FACILITIES

12 SECTION 4.01. Chapter 103, Human Resources Code, is amended
13 by adding Sections 103.012 through 103.016 to read as follows:

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

16 (1) violates this chapter, a rule, standard, or order
17 adopted under this chapter, or a term of a license issued under this
18 chapter;

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

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

23 (B) with respect to a matter under investigation
24 by the department;

25 (3) refuses to allow a representative of the
26 department to inspect:

27 (A) a book, record, or file required to be

1 maintained by an adult day-care facility; or

2 (B) any portion of the premises of an adult
3 day-care facility;

4 (4) wilfully interferes with the work of a
5 representative of the department or the enforcement of this
6 chapter;

7 (5) wilfully interferes with a representative of the
8 department preserving evidence of a violation of this chapter, a
9 rule, standard, or order adopted under this chapter, or a term of a
10 license issued under this chapter;

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

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

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

18 (c) Each day of a continuing violation constitutes a
19 separate violation.

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

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

24 (1) the gradations of penalties established under
25 Subsection (d);

26 (2) the seriousness of the violation, including the
27 nature, circumstances, extent, and gravity of the prohibited act

1 and the hazard or potential hazard created by the act to the health
2 or safety of the public;

3 (3) the history of previous violations;

4 (4) the deterrence of future violations; and

5 (5) the efforts to correct the violation.

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

8 Sec. 103.013. RIGHT TO CORRECT BEFORE IMPOSITION OF
9 ADMINISTRATIVE PENALTY. (a) The department may not collect an
10 administrative penalty from an adult day-care facility under
11 Section 103.012 if, not later than the 45th day after the date the
12 facility receives notice under Section 103.014(c), the facility
13 corrects the violation.

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

15 (1) a violation that the department determines:

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

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

20 (C) substantially limits the facility's capacity
21 to provide care;

22 (2) a violation described by Sections
23 103.012(a)(2)-(7); or

24 (3) a violation of Section 103.011.

25 (c) An adult day-care facility that corrects a violation
26 must maintain the correction. If the facility fails to maintain the
27 correction until at least the first anniversary after the date the

1 correction was made, the department may assess and collect an
2 administrative penalty for the subsequent violation. An
3 administrative penalty assessed under this subsection is equal to
4 three times the amount of the original penalty assessed but not
5 collected. The department is not required to provide the facility
6 with an opportunity under this section to correct the subsequent
7 violation.

8 Sec. 103.014. REPORT RECOMMENDING ADMINISTRATIVE PENALTY;

9 NOTICE. (a) The department shall issue a preliminary report
10 stating the facts on which the department concludes that a
11 violation of this chapter, a rule, standard, or order adopted under
12 this chapter, or a term of a license issued under this chapter has
13 occurred if the department has:

14 (1) examined the possible violation and facts
15 surrounding the possible violation; and

16 (2) concluded that a violation has occurred.

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

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

23 (1) a brief summary of the charges;

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

25 (3) a statement of whether the violation is subject to
26 correction under Section 103.013 and, if the violation is subject
27 to correction under that section, a statement of:

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

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

6 (4) a statement that the person charged has a right to
7 a hearing on the occurrence of the violation, the amount of the
8 penalty, or both.

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

11 (1) give to the department written notice that the
12 person agrees with the department's report and consents to the
13 recommended penalty; or

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

15 (e) If the violation is subject to correction under Section
16 103.013, the adult day-care facility shall submit a plan of
17 correction to the department for approval not later than the 10th
18 day after the date on which the notice under Subsection (c) is
19 received.

20 (f) If the violation is subject to correction under Section
21 103.013 and the person reports to the department that the violation
22 has been corrected, the department shall inspect the correction or
23 take any other step necessary to confirm the correction and shall
24 notify the person that:

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

27 (2) the correction is not satisfactory and a penalty

1 is recommended.

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

5 (1) give to the department written notice that the
6 person agrees with the department's report and consents to the
7 recommended penalty; or

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

9 (h) If the person charged with the violation consents to the
10 penalty recommended by the department or does not timely respond to
11 a notice sent under Subsection (c) or (f)(2), the department's
12 commissioner or the commissioner's designee shall assess the
13 penalty recommended by the department.

14 (i) If the department's commissioner or the commissioner's
15 designee assesses the recommended penalty, the department shall
16 give written notice of the decision to the person charged with the
17 violation and the person shall pay the penalty.

18 Sec. 103.015. ADMINISTRATIVE PENALTY HEARING. (a) An
19 administrative law judge shall order a hearing and give notice of
20 the hearing if a person assessed a penalty under Section 103.013(c)
21 requests a hearing.

22 (b) The hearing shall be held before an administrative law
23 judge.

24 (c) The administrative law judge shall make findings of fact
25 and conclusions of law regarding the occurrence of a violation of
26 this chapter, a rule or order adopted under this chapter, or a term
27 of a license issued under this chapter.

1 (d) Based on the findings of fact and conclusions of law,
2 and the recommendation of the administrative law judge, the
3 department's commissioner or the commissioner's designee by order
4 shall find:

5 (1) a violation has occurred and assess an
6 administrative penalty; or

7 (2) a violation has not occurred.

8 (e) Proceedings under this section are subject to Chapter
9 2001, Government Code.

10 Sec. 103.016. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY;
11 INTEREST; REFUND. (a) The department's commissioner or the
12 commissioner's designee shall give notice of the findings made
13 under Section 103.015(d) to the person charged with a violation. If
14 the commissioner or the commissioner's designee finds that a
15 violation has occurred, the commissioner or the commissioner's
16 designee shall give to the person charged written notice of:

17 (1) the findings;

18 (2) the amount of the administrative penalty;

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

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

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

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

27 (2) file a petition for judicial review contesting the

1 occurrence of the violation, the amount of the penalty, or both the
2 occurrence of the violation and the amount of the penalty.

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

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

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

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

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

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 day after the date
15 on which the penalty becomes due and ending on the date the penalty
16 is paid.

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

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

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

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

27 (1) at a rate equal to the rate charged on loans to

1 depository institutions by the New York Federal Reserve Bank; and
2 (2) for the period beginning on the date the penalty is
3 paid and ending on the date the penalty is remitted to the person
4 charged with the violation.

5 ARTICLE 5. WAIVER; EFFECTIVE DATE

6 SECTION 5.01. If before implementing any provision of this
7 Act a state agency determines that a waiver or authorization from a
8 federal agency is necessary for implementation of that provision,
9 the agency affected by the provision shall request the waiver or
10 authorization and may delay implementing that provision until the
11 waiver or authorization is granted.

12 SECTION 5.02. This Act takes effect September 1, 2011.