

By: Nelson
(Gonzalez)

S.B. No. 223

Substitute the following for S.B. No. 223:

By: Raymond

C.S.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 the person who is responsible for implementing and supervising the administrative policies and operations of the home and community support services agency and for administratively supervising the provision of all services to agency clients on a day-to-day basis.

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 department may issue a temporary home and community support

1 services agency license to the person authorizing the person to
2 provide certified home health services. A temporary license is
3 effective as provided by ~~[board]~~ rules adopted by the executive
4 commissioner.

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

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

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

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

18 (A) the specific nature of the survey;

19 (B) any alleged violations of a specific statute
20 or rule;

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

23 (D) if a deficiency is alleged, the severity of
24 the deficiency;

25 (2) information on the identity, including the name
26 ~~[signature]~~, of each department representative conducting or~~[r]~~
27 reviewing~~[, or approving]~~ the results of the survey and the date on

1 which the department representative acted on the matter; and

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

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

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

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

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

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

22 (c) The department at least semiannually shall provide
23 joint training for home and community support services agencies and
24 surveyors on subjects that address the 10 most common violations of
25 federal or state law by home and community support services
26 agencies. The department may charge a home and community support
27 services agency a fee, not to exceed \$50 per person, for the

1 training.

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

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

11 (b) The executive commissioner by rule shall:

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

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

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

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

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

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

27 (1) fails to comply with the rules or standards for

1 licensing required by this chapter; or

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

4 SECTION 1.08. Subsections (a), (b), and (c), Section
5 142.012, Health and Safety Code, are amended to read as follows:

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

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

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

15 (3) an administrator's implementation of agency policy
16 and procedures; and

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

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

22 (1) qualifications for professional and
23 nonprofessional personnel, including volunteers;

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

26 (3) the provision and coordination of treatment and
27 services, including support and bereavement services, as

1 appropriate;

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

6 (5) clinical and business records;

7 (6) financial ability to carry out the functions as
8 proposed;

9 (7) safety, fire prevention, and sanitary standards
10 for residential units and inpatient units; and

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

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

19 SECTION 1.09. As soon as practicable after the effective
20 date of this Act but not later than July 1, 2012, the executive
21 commissioner of the Health and Human Services Commission shall
22 adopt the rules necessary to implement the changes in law made by
23 this article to Chapter 142, Health and Safety Code.

24 ARTICLE 2. NURSING INSTITUTIONS

25 SECTION 2.01. Subsection (e), Section 242.032, Health and
26 Safety Code, is amended to read as follows:

27 (e) In making the evaluation required by Subsection (d), the

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

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

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

25 SECTION 2.03. Subsection (e), Section 242.032, Health and
26 Safety Code, as amended by this article, applies only to an
27 application, including a renewal application, filed on or after the

1 effective date of this Act. An application filed before the
2 effective date of this Act is governed by the law in effect when the
3 application was filed, and the former law is continued in effect for
4 that purpose.

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

11 ARTICLE 3. PREVENTION OF CRIMINAL OR FRAUDULENT CONDUCT BY
12 CERTAIN FACILITIES OR PROVIDERS

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

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

20 (3-a) "Financial management services agency" means an
21 entity that contracts with the Department of Aging and Disability
22 Services to serve as a fiscal and employer agent for an individual
23 employer in the consumer-directed service option described by
24 Section 531.051, Government Code.

25 (3-b) "Individual employer" means an individual or
26 legally authorized representative who participates in the
27 consumer-directed service option described by Section 531.051,

1 Government Code, and is responsible for hiring service providers to
2 deliver program services.

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

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

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

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

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

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

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

24 SECTION 3.03. Section 250.003, Health and Safety Code, is
25 amended by amending Subsection (a) and adding Subsection (c-1) to
26 read as follows:

27 (a) A facility or individual employer may not employ an

1 applicant:

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

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

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

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

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

23 Sec. 250.004. CRIMINAL HISTORY RECORD OF EMPLOYEES.

24 (a) Identifying information of an employee in a covered facility
25 or of an employee of an individual employer shall be submitted
26 electronically, on disk, or on a typewritten form to the Department
27 of Public Safety to obtain the person's criminal conviction record

1 when the person applies for employment and at other times as the
2 facility or individual employer may determine appropriate. In this
3 subsection, "identifying information" includes:

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

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

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

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

25 (b) The Department of Public Safety of the State of Texas
26 shall give a person notified under Subsection (a) the opportunity
27 to be heard concerning the accuracy of the criminal history record

1 information and shall notify the facility or individual employer if
2 inaccurate information is discovered.

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

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

10 (1) an offense under Chapter 19, Penal Code (criminal
11 homicide);

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

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

17 (4) an offense under Section 22.011, Penal Code
18 (sexual assault);

19 (5) an offense under Section 22.02, Penal Code
20 (aggravated assault);

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

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

25 (8) an offense under Section 22.08, Penal Code (aiding
26 suicide);

27 (9) an offense under Section 25.031, Penal Code

- 1 (agreement to abduct from custody);
- 2 (10) an offense under Section 25.08, Penal Code (sale
3 or purchase of a child);
- 4 (11) an offense under Section 28.02, Penal Code
5 (arson);
- 6 (12) an offense under Section 29.02, Penal Code
7 (robbery);
- 8 (13) an offense under Section 29.03, Penal Code
9 (aggravated robbery);
- 10 (14) an offense under Section 21.08, Penal Code
11 (indecent exposure);
- 12 (15) an offense under Section 21.12, Penal Code
13 (improper relationship between educator and student);
- 14 (16) an offense under Section 21.15, Penal Code
15 (improper photography or visual recording);
- 16 (17) an offense under Section 22.05, Penal Code
17 (deadly conduct);
- 18 (18) an offense under Section 22.021, Penal Code
19 (aggravated sexual assault);
- 20 (19) an offense under Section 22.07, Penal Code
21 (terroristic threat);
- 22 (20) an offense under Section 33.021, Penal Code
23 (online solicitation of a minor);
- 24 (21) an offense under Section 34.02, Penal Code (money
25 laundering);
- 26 (22) an offense under Section 35A.02, Penal Code
27 (Medicaid fraud);

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

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

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

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

14 (2) an offense under Section 30.02, Penal Code
15 (burglary);

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

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

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

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

27 (7) an offense under Section 42.01(a)(7), (8), or (9),

1 Penal Code (disorderly conduct).

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

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

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

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

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

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

25 (a) The Health and Human Services Commission, ~~or~~ an agency
26 operating part of the medical assistance program under Chapter 32,
27 Human Resources Code, or the office of inspector general

1 established under Chapter 531, Government Code, is entitled to
2 obtain from the department the criminal history record information
3 maintained by the department that relates to a provider under the
4 medical assistance program or a person applying to enroll as a
5 provider under the medical assistance program.

6 (a-1) Criminal history record information an agency or the
7 office of inspector general is authorized to obtain under
8 Subsection (a) includes criminal history record information
9 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 SECTION 3.10. Subdivision (2), Subsection (g), Section
16 531.102, Government Code, is amended to read as follows:

17 (2) In addition to other instances authorized under
18 state or federal law, the office shall impose without prior notice a
19 hold on payment of claims for reimbursement submitted by a provider
20 to compel production of records, ~~[or]~~ when requested by the state's
21 Medicaid fraud control unit, or on receipt of reliable evidence
22 that the circumstances giving rise to the hold on payment involve
23 fraud or wilful misrepresentation under the state Medicaid program
24 in accordance with 42 C.F.R. Section 455.23, as applicable. The
25 office must notify the provider of the hold on payment in accordance
26 with 42 C.F.R. Section 455.23(b) [not later than the fifth working
27 day after the date the payment hold is imposed].

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

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

5 SECTION 3.12. Subdivision (2), Subsection (a), Section
6 531.1031, Government Code, is amended to read as follows:

7 (2) "Participating agency" means:

8 (A) the Medicaid fraud enforcement divisions of
9 the office of the attorney general; ~~and~~

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

14 (C) the commission's office of inspector
15 general.

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

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

26 (c) A participating agency may submit to another
27 participating agency a written request for information described by

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

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

10 (2) the release of the information is prohibited by
11 other law.

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

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

24 Sec. 32.0322. CRIMINAL HISTORY RECORD INFORMATION;
25 ENROLLMENT OF PROVIDERS. (a) The department or the office of
26 inspector general established under Chapter 531, Government Code,
27 may obtain from any law enforcement or criminal justice agency the

1 criminal history record information that relates to a provider
2 under the medical assistance program or a person applying to enroll
3 as a provider under the medical assistance program.

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

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

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

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

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

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

24 (3) the provider's failure to bill for medical
25 assistance or refer clients for medical assistance within a
26 12-month period; or

27 (4) any of the provider screening or enrollment

1 provisions contained in 42 C.F.R. Part 455, Subpart E.

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

6 (1) require a provider or a person applying to enroll
7 as a provider to disclose:

8 (A) all persons described by Subsection
9 (a-1)(1);

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

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

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

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

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

22 (d) In adopting rules under this section, the executive
23 commissioner of the Health and Human Services Commission shall
24 adopt rules as authorized by and in conformity with 42 C.F.R.
25 Section 455.470 for the imposition of a temporary moratorium on
26 enrollment of new providers, or to impose numerical caps or other
27 limits on the enrollment of providers, that the department or the

1 commission's office of inspector general, in consultation with the
2 department, determines have a significant potential for fraud,
3 waste, or abuse.

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

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

8 (1) presents or causes to be presented to the
9 department a claim that contains a statement or representation the
10 person knows or should know to be false;

11 (1-a) engages in conduct that violates Section
12 102.001, Occupations Code;

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

23 (1-c) solicits or receives, directly or indirectly,
24 overtly or covertly any remuneration, including any kickback,
25 bribe, or rebate, in cash or in kind for purchasing, leasing, or
26 ordering, or arranging for or recommending the purchasing, leasing,
27 or ordering of, any good, facility, service, or item for which

1 payment may be made, in whole or in part, under the medical
2 assistance program;

3 (1-d) offers or pays, directly or indirectly, overtly
4 or covertly any remuneration, including any kickback, bribe, or
5 rebate, in cash or in kind to induce a person to refer an individual
6 to another person for the furnishing of, or for arranging the
7 furnishing of, any item or service for which payment may be made, in
8 whole or in part, under the medical assistance program, provided
9 that this subdivision does not prohibit the referral of a patient to
10 another practitioner within a multispecialty group or university
11 medical services research and development plan (practice plan) for
12 medically necessary services;

13 (1-e) offers or pays, directly or indirectly, overtly
14 or covertly any remuneration, including any kickback, bribe, or
15 rebate, in cash or in kind to induce a person to purchase, lease, or
16 order, or arrange for or recommend the purchase, lease, or order of,
17 any good, facility, service, or item for which payment may be made,
18 in whole or in part, under the medical assistance program;

19 (1-f) provides, offers, or receives an inducement in a
20 manner or for a purpose not otherwise prohibited by this section or
21 Section 102.001, Occupations Code, to or from a person, including a
22 recipient, provider, employee or agent of a provider, third-party
23 vendor, or public servant, for the purpose of influencing or being
24 influenced in a decision regarding:

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

27 (B) the use of goods or services provided under

1 the medical assistance program; or

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

4 (2) is a managed care organization that contracts with
5 the department to provide or arrange to provide health care
6 benefits or services to individuals eligible for medical assistance
7 and:

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

11 (B) fails to provide to the department
12 information required to be provided by law, department rule, or
13 contractual provision;

14 (C) engages in a fraudulent activity in
15 connection with the enrollment in the organization's managed care
16 plan of an individual eligible for medical assistance or in
17 connection with marketing the organization's services to an
18 individual eligible for medical assistance; or

19 (D) engages in actions that indicate a pattern
20 of:

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

24 (ii) wrongful delay of at least 45 days or a
25 longer period specified in the contract with the department, not to
26 exceed 60 days, in making payment for a health care benefit or
27 service that the organization is required to provide under the

1 contract with the department; or

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

7 (b-1) A person who commits a violation described by
8 Subsection (b)(3) is liable to the department for either the amount
9 paid in response to the claim for payment or the payment of an
10 administrative penalty in an amount not to exceed \$500 for each
11 violation, as determined by the department.

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

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

18 ARTICLE 4. ADULT DAY-CARE FACILITIES

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

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

23 (1) violates this chapter, a rule, standard, or order
24 adopted under this chapter, or a term of a license issued under this
25 chapter;

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

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

3 (B) with respect to a matter under investigation
4 by the department;

5 (3) refuses to allow a representative of the
6 department to inspect:

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

9 (B) any portion of the premises of an adult
10 day-care facility;

11 (4) wilfully interferes with the work of a
12 representative of the department or the enforcement of this
13 chapter;

14 (5) wilfully interferes with a representative of the
15 department preserving evidence of a violation of this chapter, a
16 rule, standard, or order adopted under this chapter, or a term of a
17 license issued under this chapter;

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

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

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

25 (c) Each day of a continuing violation constitutes a
26 separate violation.

27 (d) The department shall establish gradations of penalties

1 in accordance with the relative seriousness of the violation.

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

4 (1) the gradations of penalties established under
5 Subsection (d);

6 (2) the seriousness of the violation, including the
7 nature, circumstances, extent, and gravity of the prohibited act
8 and the hazard or potential hazard created by the act to the health
9 or safety of the public;

10 (3) the history of previous violations;

11 (4) the deterrence of future violations; and

12 (5) the efforts to correct the violation.

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

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

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

22 (1) a violation that the department determines:

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

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

27 (C) substantially limits the facility's capacity

1 to provide care;

2 (2) a violation described by Sections
3 103.012(a)(2)-(7); or

4 (3) a violation of Section 103.011.

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

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

21 (1) examined the possible violation and facts
22 surrounding the possible violation; and

23 (2) concluded that a violation has occurred.

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

26 (c) The department shall give written notice of the report
27 to the person charged with the violation not later than the 10th day

1 after the date on which the report is issued. The notice must
2 include:

- 3 (1) a brief summary of the charges;
4 (2) a statement of the amount of penalty recommended;
5 (3) a statement of whether the violation is subject to
6 correction under Section 103.013 and, if the violation is subject
7 to correction under that section, a statement of:

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

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

13 (4) a statement that the person charged has a right to
14 a hearing on the occurrence of the violation, the amount of the
15 penalty, or both.

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

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

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

22 (e) If the violation is subject to correction under Section
23 103.013, the adult day-care facility shall submit a plan of
24 correction to the department for approval not later than the 10th
25 day after the date on which the notice under Subsection (c) is
26 received.

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

1 103.013 and the person reports to the department that the violation
2 has been corrected, the department shall inspect the correction or
3 take any other step necessary to confirm the correction and shall
4 notify the person that:

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

7 (2) the correction is not satisfactory and a penalty
8 is recommended.

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

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

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

16 (h) If the person charged with the violation consents to the
17 penalty recommended by the department or does not timely respond to
18 a notice sent under Subsection (c) or (f)(2), the department's
19 commissioner or the commissioner's designee shall assess the
20 penalty recommended by the department.

21 (i) If the department's commissioner or the commissioner's
22 designee assesses the recommended penalty, the department shall
23 give written notice of the decision to the person charged with the
24 violation and the person shall pay the penalty.

25 Sec. 103.015. ADMINISTRATIVE PENALTY HEARING. (a) An
26 administrative law judge shall order a hearing and give notice of
27 the hearing if a person assessed a penalty under Section 103.013(c)

1 requests a hearing.

2 (b) The hearing shall be held before an administrative law
3 judge.

4 (c) The administrative law judge shall make findings of fact
5 and conclusions of law regarding the occurrence of a violation of
6 this chapter, a rule or order adopted under this chapter, or a term
7 of a license issued under this chapter.

8 (d) Based on the findings of fact and conclusions of law,
9 and the recommendation of the administrative law judge, the
10 department's commissioner or the commissioner's designee by order
11 shall find:

12 (1) a violation has occurred and assess an
13 administrative penalty; or

14 (2) a violation has not occurred.

15 (e) Proceedings under this section are subject to Chapter
16 2001, Government Code.

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

24 (1) the findings;

25 (2) the amount of the administrative penalty;

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

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

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

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

7 (2) file a petition for judicial review contesting the
8 occurrence of the violation, the amount of the penalty, or both the
9 occurrence of the violation and the amount of the penalty.

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

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

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

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

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

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

21 (2) for the period beginning on the day after the date
22 on which the penalty becomes due and ending on the date the penalty
23 is paid.

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

27 (1) remit to the person charged the appropriate amount

1 of any penalty payment plus accrued interest; or

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

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

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

9 (2) for the period beginning on the date the penalty is
10 paid and ending on the date the penalty is remitted to the person
11 charged with the violation.

12 ARTICLE 5. TRAINING AND CONTINUING EDUCATION RELATED TO
13 CERTAIN LONG-TERM CARE FACILITIES

14 SECTION 5.01. Section 22.039(c), Human Resources Code, is
15 amended to read as follows:

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

21 SECTION 5.02. As soon as practicable after the effective
22 date of this Act but not later than July 1, 2012, the executive
23 commissioner of the Health and Human Services Commission shall
24 adopt rules necessary to implement Section 22.039, Human Resources
25 Code, as amended by this article.

26 ARTICLE 6. WAIVER; EFFECTIVE DATE

27 SECTION 6.01. If before implementing any provision of this

1 Act a state agency determines that a waiver or authorization from a
2 federal agency is necessary for implementation of that provision,
3 the agency affected by the provision shall request the waiver or
4 authorization and may delay implementing that provision until the
5 waiver or authorization is granted.

6 SECTION 6.02. This Act takes effect September 1, 2011.