

By: Nelson

S.B. No. 223

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the licensing and regulation of home and community  
3 support services agencies and of the administrators of those  
4 agencies; providing penalties.

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

6 SECTION 1. Section 142.001, Health and Safety Code, is  
7 amended by adding Subdivisions (8-a), (11-a), (11-b), (11-c), and  
8 (12-a) to read as follows:

9 (8-a) "Commissioner" means the commissioner of aging  
10 and disability services.

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

13 (11-b) "Executive commissioner" means the executive  
14 commissioner of the Health and Human Services Commission.

15 (11-c) "Geographic service area" means the geographic  
16 area in which a home and community support services agency is  
17 licensed to provide home health, hospice, or personal assistance  
18 services.

19 (12-a) "Home and community support services agency  
20 administrator" or "administrator" means an individual who engages  
21 in the practice of home and community support services agency  
22 administration, without regard to whether the individual has an  
23 ownership interest in the agency or whether the individual's  
24 administrative functions and duties are shared with any other

1 individual.

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

4 (e) Subject to Section 142.0021, a [A] license issued under  
5 this chapter may not be transferred to another person, but may be  
6 transferred from one location to another location. A change of  
7 ownership or location shall be reported to the department.

8 SECTION 3. Subchapter A, Chapter 142, Health and Safety  
9 Code, is amended by adding Sections 142.0021, 142.0022, 142.0023,  
10 142.0024, 142.00241, 142.00242, and 142.00243 to read as follows:

11 Sec. 142.0021. CERTIFICATE OF NEED REQUIRED; SWORN  
12 APPLICATION. (a) Except as provided by Section 142.0022, unless  
13 the person holds a certificate of need issued by the department:

14 (1) a person may not apply for an initial home and  
15 community support services agency license, initial branch office  
16 license, or initial alternate delivery site license;

17 (2) a person who holds a license issued under this  
18 subchapter may not transfer a home and community support services  
19 agency license, branch office license, or alternate delivery site  
20 license to a different geographic service area; or

21 (3) a person who holds a license issued under this  
22 subchapter may not expand the boundaries of the geographic service  
23 area covered by the home and community support services agency  
24 license, branch office license, or alternate delivery site license.

25 (b) An applicant for a certificate of need must submit a  
26 sworn application on the form prescribed by the department  
27 accompanied by an application fee in the amount specified by

1 Section 142.0024.

2 (c) The executive commissioner by rule may establish the  
3 dates by which applications and fees must be received under this  
4 section.

5 Sec. 142.0022. CERTIFICATE OF NEED: EXEMPTION. A person  
6 who holds a home and community support services agency license, a  
7 branch office license, or an alternate delivery site license issued  
8 under this subchapter before September 1, 2011, is exempt from the  
9 requirement to obtain a certificate of need to provide home health,  
10 hospice, or personal assistance services in the geographic service  
11 area covered by the license.

12 Sec. 142.0023. CERTIFICATE OF NEED: ELIGIBILITY CRITERIA.  
13 The executive commissioner by rule shall establish criteria for  
14 issuance of a certificate of need to an applicant. The criteria must  
15 include:

16 (1) standards for determining whether the issuance of  
17 an initial license under this subchapter, the transfer of the  
18 license to a different geographic service area, or the expansion of  
19 the boundaries of the geographic service area covered by the  
20 license is necessary to meet the health care needs of the community  
21 or population in the area to be served by the agency; and

22 (2) any other factors the executive commissioner  
23 determines are relevant to the issuance of the certificate of need.

24 Sec. 142.0024. CERTIFICATE OF NEED: APPLICATION FEE. (a)  
25 The application fee for a certificate of need is \$2,500. The fee is  
26 nonrefundable.

27 (b) All application fees received for a certificate of need

1 shall be deposited to the credit of the general revenue fund and may  
2 be appropriated only to the department to administer and enforce  
3 Sections 142.0021, 142.0022, 142.0023, 142.0024, 142.00241,  
4 142.00242, and 142.00243.

5 Sec. 142.00241. ISSUANCE OF CERTIFICATE OF NEED. The  
6 department shall issue a certificate of need to an applicant if:

7 (1) the applicant submits a sworn application as  
8 required by Section 142.0021(b) and pays the application fee in the  
9 amount specified by Section 142.0024; and

10 (2) the department determines the applicant  
11 sufficiently satisfies the criteria established under Section  
12 142.0023 and executive commissioner rule for issuance of the  
13 certificate of need.

14 Sec. 142.00242. DENIAL OF CERTIFICATE OF NEED;  
15 APPLICABILITY OF OTHER LAW. (a) A person whose application for a  
16 certificate of need is denied by the department is entitled to a  
17 hearing before the department if the person submits to the  
18 department a written request for the hearing.

19 (b) The provisions of Chapter 2001, Government Code,  
20 relating to contested case hearings apply to hearings conducted  
21 under this section and to appeals from department decisions.

22 Sec. 142.00243. CERTIFICATE OF NEED NONTRANSFERABLE. A  
23 certificate of need is not transferable.

24 SECTION 4. Section 142.0025, Health and Safety Code, is  
25 amended to read as follows:

26 Sec. 142.0025. TEMPORARY LICENSE. If a person is in the  
27 process of becoming certified by the United States Department of

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

7 SECTION 5. Subchapter A, Chapter 142, Health and Safety  
8 Code, is amended by adding Section 142.00605 to read as follows:

9 Sec. 142.00605. LIMITATION ON ADMINISTRATOR. A person who  
10 holds a home and community support services agency license may not  
11 have as an administrator or alternate administrator of the agency  
12 an individual who is serving as an administrator or alternate  
13 administrator of more than one other home and community support  
14 services agency.

15 SECTION 6. Subchapter A, Chapter 142, Health and Safety  
16 Code, is amended by adding Section 142.0064 to read as follows:

17 Sec. 142.0064. INDEPENDENT ASSESSMENT OF CLIENTS. (a) A  
18 home and community support services agency may not provide home  
19 health, hospice, or personal assistance services to a client unless  
20 an independent administrative service organization has:

21 (1) assessed the service needs of the client; and  
22 (2) issued to the agency a written assessment of the  
23 medical necessity for and the amount and type of home health,  
24 hospice, or personal assistance services to be provided by the  
25 agency to the client.

26 (b) The executive commissioner shall adopt the rules  
27 necessary to implement this section, including rules to:

1           (1) establish the procedures by which an  
2 administrative service organization may obtain authorization to  
3 assess the service needs of clients of home and community support  
4 services agencies; and

5           (2) prescribe the form of the written assessment  
6 required under this section.

7           SECTION 7. Section 142.009, Health and Safety Code, is  
8 amended by amending Subsections (g) and (j) and adding Subsection  
9 (i) to read as follows:

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

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

16                   (A) the specific nature of the survey;

17                   (B) any alleged violations of a specific statute  
18 or rule;

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

21                   (D) if a deficiency is alleged, the severity of  
22 the deficiency;

23           (2) information on the identity, including the name  
24 [~~signature~~] of each department representative conducting or [7]  
25 reviewing [~~or approving~~] the results of the survey and the date on  
26 which the department representative acted on the matter; and

27           (3) if requested by the agency, copies of all

1 documents relating to the survey maintained by the department or  
2 provided by the department to any other state or federal agency that  
3 are not confidential under state law.

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

8 (j) Except as provided by Subsection (h), the department:

9 (1) shall conduct an initial on-site survey of a home  
10 and community support services agency not later than the first  
11 anniversary of the date the initial license is issued;

12 (2) may conduct an additional [~~Except as provided by~~  
13 ~~Subsections (h) and (1), an~~] on-site survey of the agency [~~must be~~  
14 ~~conducted~~] within 18 months of the date of the initial on-site  
15 [~~after a~~] survey; and

16 (3) after the later of the date the initial or any  
17 additional on-site survey is conducted, shall conduct subsequent  
18 [~~for an initial license. After that time, an~~] on-site surveys of  
19 the agency [~~survey must be conducted~~] at least every 36 months.

20 SECTION 8. Section 142.011(a), Health and Safety Code, is  
21 amended to read as follows:

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

24 (1) fails to comply with the rules or standards for  
25 licensing required by this subchapter [~~chapter~~]; or

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

1 SECTION 9. Section 142.014(a), Health and Safety Code, is  
2 amended to read as follows:

3 (a) A person who engages in the business of providing home  
4 health, hospice, or personal assistance service, or represents to  
5 the public that the person is a provider of home health, hospice,  
6 and personal assistance services for pay, without a license issued  
7 under this subchapter [~~chapter~~] authorizing the services that are  
8 being provided is liable for a civil penalty of not less than \$1,000  
9 or more than \$2,500 for each day of violation. Penalties may be  
10 appropriated only to the department and to administer this chapter.

11 SECTION 10. Sections 142.017(a), (h), and (j), Health and  
12 Safety Code, are amended to read as follows:

13 (a) The department may assess an administrative penalty  
14 against a person who violates:

15 (1) this subchapter, Subchapter B, [~~chapter~~] or a rule  
16 adopted under this subchapter or Subchapter B [~~chapter~~]; or

17 (2) Section 102.001, Occupations Code, if the  
18 violation relates to the provision of home health, hospice, or  
19 personal assistance services.

20 (h) All proceedings for the assessment of an administrative  
21 penalty under this subchapter [~~chapter~~] are subject to Chapter  
22 2001, Government Code.

23 (j) The department may assess an administrative penalty  
24 without providing a reasonable period of time to the agency to  
25 correct the violation if the violation:

26 (1) results in serious harm or death;

27 (2) constitutes a serious threat to health or safety;



1           (3) substantially limits the agency's capacity to  
2 provide care;

3           (4) is a violation in which a person:

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

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

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

10                 (B) refuses to allow a representative of the  
11 department to inspect a book, record, or file required to be  
12 maintained by an agency;

13                 (C) wilfully interferes with the work of a  
14 representative of the department or the enforcement of this  
15 subchapter or Subchapter B [~~chapter~~];

16                 (D) wilfully interferes with a representative of  
17 the department preserving evidence of a violation of this  
18 subchapter or Subchapter B [~~chapter~~] or a rule, standard, or order  
19 adopted or license issued under this subchapter or Subchapter B  
20 [~~chapter~~];

21                 (E) fails to pay a penalty assessed by the  
22 department under this subchapter [~~chapter~~] not later than the 10th  
23 day after the date the assessment of the penalty becomes final; or

24                 (F) fails to submit:

25                     (i) a plan of correction not later than the  
26 10th day after the date the person receives a statement of licensing  
27 violations; or

1 (ii) an acceptable plan of correction not  
2 later than the 30th day after the date the person receives  
3 notification from the department that the previously submitted plan  
4 of correction is not acceptable;

5 (5) is a violation of Section 142.0145; or

6 (6) involves the rights of the elderly under Chapter  
7 102, Human Resources Code.

8 SECTION 11. Chapter 142, Health and Safety Code, is amended  
9 by adding Subchapter C to read as follows:

10 SUBCHAPTER C. HOME AND COMMUNITY SUPPORT SERVICES AGENCY

11 ADMINISTRATION; ENFORCEMENT; PENALTIES

12 Sec. 142.051. DEFINITIONS. In this subchapter:

13 (1) "Advisory committee" means the home and community  
14 support services agency administrators advisory committee.

15 (2) "Applicant" means a person who applies for a home  
16 and community support services agency administrator license.

17 (3) "License holder" means a person who is issued a  
18 home and community support services agency administrator license  
19 under this subchapter.

20 (4) "Practice of home and community support services  
21 agency administration" means the performance of the act of  
22 administering, managing, supervising, or being in general  
23 administrative charge of a home and community support services  
24 agency.

25 Sec. 142.052. LICENSE REQUIRED; EXEMPTION. (a) Except as  
26 provided by Subsection (b), a person may not act as a home and  
27 community support services agency administrator or represent to

1 others that the person is a home and community support services  
2 agency administrator unless the person holds a license issued under  
3 this subchapter.

4 (b) A person employed by or serving as a home and community  
5 support services agency administrator for a home and community  
6 support services agency on August 31, 2011, is not required to  
7 obtain a license under this subchapter while the person remains  
8 continuously employed by or continuously serves as a home and  
9 community support services agency administrator for that agency or  
10 another home and community support services agency.

11 Sec. 142.053. LICENSE APPLICATION; QUALIFICATIONS. (a) An  
12 applicant for a home and community support services agency  
13 administrator license must submit a sworn application on the form  
14 prescribed by the department. The application must be accompanied  
15 by an application fee in the amount set by the executive  
16 commissioner under Section 142.060.

17 (b) The executive commissioner by rule may establish the  
18 dates by which applications and fees must be received.

19 (c) To qualify for a license under this subchapter, an  
20 applicant for a home and community support services agency  
21 administrator license must pass the licensing examination required  
22 under Section 142.054. To be eligible to take the licensing  
23 examination, the applicant must have satisfactorily completed a  
24 course of instruction and training prescribed by the department  
25 that is conducted by or in cooperation with an accredited  
26 postsecondary educational institution and that is designed and  
27 administered to provide sufficient knowledge of:

1           (1) the service needs of clients served by home and  
2 community support services agencies;

3           (2) the laws governing the operation of home and  
4 community support services agencies and the protection of the  
5 interests of home and community support services agency clients;  
6 and

7           (3) the functions and duties of home and community  
8 support services agency administrators.

9           (d) An applicant who has not completed the course of  
10 instruction and training described by Subsection (c) may qualify  
11 for the licensing examination by presenting evidence satisfactory  
12 to the department that the applicant has completed sufficient  
13 education, training, and experience in the fields described by  
14 Subsection (c) to enable the applicant to engage in the practice of  
15 home and community support services agency administration.

16           Sec. 142.054. EXAMINATION. (a) The department shall  
17 prepare or approve the licensing examination for issuance of a  
18 license under this subchapter and shall administer the examination  
19 to qualified applicants at least twice each calendar year. The  
20 department shall have any written portion of the examination  
21 validated by a testing professional.

22           (b) Not later than the 30th day after the date on which a  
23 licensing examination is administered under this subchapter, the  
24 department shall notify each examinee of the results of the  
25 examination. If an examination is graded or reviewed by a national  
26 or state testing service, the department shall notify examinees of  
27 the results of the examination not later than two weeks after the

1 date the department receives the results from the testing service.  
2 If the notice of the examination results will be delayed for more  
3 than 90 days after the examination date, the department shall  
4 notify the examinee of the reason for the delay before the 90th day.

5 (c) If requested in writing by a person who fails the  
6 licensing examination, the department shall furnish the person with  
7 an analysis of the person's performance on the examination.

8 (d) The executive commissioner by rule may establish  
9 additional educational requirements to be met by an applicant who  
10 fails the examination three times.

11 Sec. 142.055. LICENSE: ISSUANCE, TERM, NONTRANSFERABILITY,  
12 INFORMATION CHANGE, AND INACTIVE STATUS. (a) The department shall  
13 issue a home and community support services agency administrator  
14 license to a person who meets the requirements for licensing under  
15 this subchapter.

16 (b) A license issued under this subchapter is valid for two  
17 years.

18 (c) A home and community support services agency  
19 administrator license is not transferable.

20 (d) A license holder must notify the department of a change  
21 in the license holder's name or mailing address.

22 (e) The executive commissioner by rule may adopt a system  
23 under which licenses expire on various dates during the two-year  
24 period prescribed by Subsection (b). For the year in which a  
25 license expiration date is changed, license fees payable on the  
26 original expiration date shall be prorated on a monthly basis so  
27 that each license holder pays only that portion of the license fee

1 that is allocable to the number of months during which the license  
2 is valid. On renewal of the license on the new expiration date, the  
3 total license renewal fee is payable.

4 (f) The executive commissioner by rule may provide for a  
5 license holder to be placed on inactive status.

6 Sec. 142.056. TEMPORARY LICENSE. The executive  
7 commissioner by rule may provide for the issuance of a temporary  
8 license under this subchapter. Rules adopted under this section  
9 must include a time limit for a license holder to practice under a  
10 temporary license.

11 Sec. 142.057. PROVISIONAL LICENSE. (a) The department  
12 shall issue a provisional license to an applicant currently  
13 licensed in another jurisdiction who submits an application for a  
14 home and community support services agency administrator license in  
15 this state and who:

16 (1) has been licensed in good standing as a home  
17 health, hospice, or personal assistance services agency  
18 administrator for at least two years in another jurisdiction,  
19 including a foreign country, that has licensing requirements that  
20 are substantially equivalent to the requirements of this  
21 subchapter;

22 (2) has passed a national or other examination  
23 recognized by the department as substantially equivalent to the  
24 licensing examination administered under this subchapter; and

25 (3) is sponsored by a person licensed by the  
26 department under this subchapter with whom the provisional license  
27 holder will practice during the time the person holds a provisional

1 license.

2 (b) The department may waive the requirement of Subsection  
3 (a)(3) for an applicant if the department determines that  
4 compliance with that subsection would be a hardship to the  
5 applicant. Waiver of the requirement of Subsection (a)(3) is in the  
6 sole discretion of the department.

7 (c) A provisional license is valid until the date the  
8 department approves or denies the application for a home and  
9 community support services agency administrator license as  
10 provided by this subchapter. The department shall issue a license  
11 under this subchapter to the provisional license holder if:

12 (1) the provisional license holder meets the  
13 qualifications for a home and community support services agency  
14 administrator license under Section 142.053; or

15 (2) the provisional license holder passes the part of  
16 the examination required under Section 142.054 that relates to the  
17 applicant's knowledge and understanding of the laws and rules  
18 regarding the practice of home and community support services  
19 agency administration in this state and:

20 (A) the department verifies that the provisional  
21 license holder meets the academic and experience requirements for a  
22 license under this subchapter; and

23 (B) the provisional license holder satisfies all  
24 other license requirements under this subchapter.

25 (d) The department must approve or deny a provisional  
26 license holder's application for a license not later than the 180th  
27 day after the date the provisional license is issued. The

1 department may extend the 180-day period if the results of an  
2 examination have not been received by the department before the end  
3 of that period.

4 (e) The department may establish a provisional license fee  
5 in an amount reasonable and necessary to cover the cost of issuing  
6 the license.

7 Sec. 142.058. LICENSE RENEWAL. (a) A person with an  
8 unexpired license who is otherwise eligible for renewal may renew  
9 the license by submitting an application and paying the required  
10 renewal fee to the department before the expiration date of the  
11 license. A person whose license has expired may not engage in  
12 activities that require a license until the license has been  
13 renewed.

14 (b) A person whose license has been expired for 90 days or  
15 less may renew the license by paying to the department a renewal fee  
16 that is equal to 1-1/2 times the normally required renewal fee.

17 (c) A person whose license has been expired for more than 90  
18 days but less than one year may renew the license by paying to the  
19 department a renewal fee that is equal to two times the normally  
20 required renewal fee.

21 (d) A person whose license has been expired for one year or  
22 more may not renew the license. The person may obtain a new license  
23 by complying with the requirements and procedures, including the  
24 examination requirements, for obtaining a home and community  
25 support services agency administrator license.

26 (e) Not later than the 31st day before the date a person's  
27 license is scheduled to expire, the department shall send written



1 notice of the impending expiration to the person at the person's  
2 last known address according to the records of the department.

3 Sec. 142.059. ADMINISTRATOR REQUIRED; EXEMPTION;  
4 ADMINISTRATOR RESPONSIBILITIES. (a) Except as provided by  
5 Subsection (b), each home and community support services agency  
6 must employ or be served by at least one licensed home and community  
7 support services agency administrator.

8 (b) A home and community support services agency is exempt  
9 from the requirements of Subsection (a) if the agency:

10 (1) was established before September 1, 2011; or

11 (2) has on staff or is served by a home and community  
12 support services agency administrator who is exempt from licensing  
13 under Section 142.052(b).

14 (c) A home and community support services agency  
15 administrator:

16 (1) shall manage the day-to-day operation of the  
17 agency;

18 (2) is responsible for:

19 (A) administratively supervising the provision  
20 of quality care to all agency clients; and

21 (B) implementing the policies and procedures of  
22 the agency; and

23 (3) shall work at least 40 hours per week on  
24 administrative duties for the agency in accordance with executive  
25 commissioner rules.

26 Sec. 142.060. FEES; FUNDS. (a) The executive commissioner  
27 by rule shall set application and license fees as provided by this

1 subchapter in the amounts necessary to cover the cost of  
2 administering this subchapter. The executive commissioner by rule  
3 may set different licensing fee amounts for different categories of  
4 licenses.

5 (b) The department shall account for money received under  
6 this subchapter. The money shall be deposited to the credit of the  
7 general revenue fund and shall be appropriated to the department  
8 only to administer this subchapter.

9 (c) The department may disburse money received from any  
10 federal source for the furtherance of the department's functions  
11 under this subchapter.

12 Sec. 142.061. MANDATORY CONTINUING EDUCATION. (a) The  
13 executive commissioner by rule shall establish a minimum number of  
14 continuing education hours required to renew a license under this  
15 subchapter. The department may assess the continuing education  
16 needs of license holders and may require license holders to attend  
17 continuing education courses specified by the department.

18 (b) The department shall identify the key factors required  
19 for the competent performance by a license holder of the license  
20 holder's professional duties. The department shall adopt a  
21 procedure to assess a license holder's participation in continuing  
22 education programs.

23 Sec. 142.062. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER.

24 (a) To protect the health and safety of clients served by home and  
25 community support services agencies, the executive commissioner by  
26 rule shall:

27 (1) adopt and publish a code of ethics for home and

1 community support services agency administrators;

2 (2) establish the qualifications of applicants for  
3 issuance of licenses and renewal of licenses under this subchapter;

4 (3) establish a minimum number of continuing education  
5 hours required to renew a license issued under this subchapter; and

6 (4) periodically assess the continuing education  
7 needs of license holders to determine whether to require specific  
8 course content.

9 (b) The executive commissioner may adopt other rules  
10 consistent with this subchapter as necessary to administer this  
11 subchapter.

12 Sec. 142.063. HOME AND COMMUNITY SUPPORT SERVICES AGENCY  
13 ADMINISTRATORS ADVISORY COMMITTEE. (a) The Home and Community  
14 Support Services Agency Administrators Advisory Committee is  
15 established.

16 (b) The advisory committee is composed of the following  
17 seven members appointed by the governor:

18 (1) three members who are licensed home and community  
19 support services agency administrators, with one member appointed  
20 from:

21 (A) a home and community support services agency  
22 licensed to provide personal assistance services;

23 (B) a home and community support services agency  
24 licensed to provide licensed home health services or to provide  
25 licensed and certified home health services; and

26 (C) a home and community support services agency  
27 licensed to provide hospice services;

1           (2) one member who is a registered nurse with  
2 experience in home care and who is not employed by a home and  
3 community support services agency; and

4           (3) three public members.

5           (c) Appointments to the advisory committee shall be made  
6 without regard to the race, color, disability, sex, religion, age,  
7 or national origin of the person appointed.

8           (d) Members of the advisory committee serve staggered  
9 six-year terms, with the terms of two or three members expiring on  
10 February 1 of each odd-numbered year.

11           (e) A vacancy in a position on the advisory committee shall  
12 be filled by appointment of the governor. A person appointed to  
13 fill a vacancy must meet the qualifications of the vacated  
14 position.

15           (f) The advisory committee shall:

16           (1) advise the department and commissioner on the  
17 licensing of home and community support services agency  
18 administrators, including the content of license applications and  
19 of the examination administered to applicants under Section  
20 142.054;

21           (2) review and recommend rules and minimum standards  
22 of conduct for the practice of home and community support services  
23 agency administration; and

24           (3) review all complaints against administrators and  
25 make recommendations to the department regarding disciplinary  
26 actions.

27           (g) Failure of the advisory committee to review complaints

1 and make recommendations in a timely manner may not preclude the  
2 department from taking disciplinary action.

3 (h) A member of the advisory committee is not entitled to  
4 compensation for service on the advisory committee but is entitled  
5 to reimbursement for actual and necessary expenses incurred in  
6 performing the member's duties under this section.

7 (i) The department shall pay the expenses of the advisory  
8 committee and supply necessary personnel and supplies.

9 (j) Chapter 2110, Government Code, does not apply to the  
10 advisory committee.

11 Sec. 142.064. COMPLAINT RECEIPT, INVESTIGATION, AND  
12 DISPOSITION. (a) The department shall keep an information file  
13 concerning each complaint filed with the department regarding a  
14 person licensed or required to be licensed under this subchapter.  
15 The department's information file shall be kept current and shall  
16 contain for each complaint:

17 (1) a record of all persons contacted in relation to  
18 the complaint;

19 (2) a summary of findings made at each step of the  
20 complaint process;

21 (3) an explanation of the legal basis and reason for a  
22 complaint that is dismissed; and

23 (4) other relevant information.

24 (b) If a written complaint is filed with the department that  
25 the department has authority to resolve, the department, at least  
26 quarterly and until final disposition of the complaint, shall  
27 notify the parties to the complaint of the status of the complaint

1 unless the notice would jeopardize an undercover investigation.

2 (c) The executive commissioner by rule shall adopt a form to  
3 standardize information concerning complaints made to the  
4 department. The executive commissioner by rule shall prescribe  
5 information to be provided to a person when the person files a  
6 complaint with the department.

7 (d) The department shall provide reasonable assistance to a  
8 person who wishes to file a complaint with the department.

9 (e) The executive commissioner shall adopt rules concerning  
10 the investigation of complaints filed with the department. The  
11 rules adopted under this subsection shall:

12 (1) distinguish between categories of complaints;

13 (2) ensure that complaints are not dismissed without  
14 appropriate consideration;

15 (3) require that the commissioner be advised at least  
16 quarterly of complaints that have been dismissed and require that a  
17 letter be sent to each person who has filed a complaint that is  
18 dismissed explaining the action taken on the complaint;

19 (4) ensure that the person who filed the complaint has  
20 an opportunity to explain the allegations made in the complaint;  
21 and

22 (5) prescribe guidelines concerning the categories of  
23 complaints that may require the use of a private investigator and  
24 the procedures to be followed by the department in obtaining the  
25 services of a private investigator.

26 (f) The department shall dispose of all complaints in a  
27 timely manner. The executive commissioner by rule shall establish

1 a schedule for initiating a complaint investigation that is under  
2 the control of the department not later than the 30th day after the  
3 date the complaint is received by the department. The department  
4 shall:

5 (1) keep the schedule in the information file for the  
6 complaint;

7 (2) notify all parties of the projected time  
8 requirements for pursuing the complaint; and

9 (3) note in the information file any change in the  
10 schedule and notify all parties to the complaint not later than the  
11 seventh day after the date the change is made.

12 Sec. 142.065. SANCTIONS. (a) The department may revoke,  
13 suspend, or refuse to renew a home and community support services  
14 agency administrator's license, assess an administrative penalty  
15 against, issue a written reprimand to, or require participation in  
16 continuing education by the license holder, or place the license  
17 holder on probation, after due notice and the opportunity for a  
18 hearing, on proof of any of the following grounds:

19 (1) the license holder has wilfully or repeatedly  
20 violated this subchapter or a rule adopted under this subchapter;

21 (2) the license holder has wilfully or repeatedly  
22 acted in a manner inconsistent with the health and safety of the  
23 clients of a home and community support services agency of which the  
24 license holder is an administrator;

25 (3) the license holder obtained or attempted to obtain  
26 a license through misrepresentation or deceit or by making a  
27 material misstatement of fact on a license application;

1           (4) the license holder's use of alcohol or drugs  
2 creates a hazard to the clients of a home and community support  
3 services agency;

4           (5) a judgment of a court finds that the license holder  
5 is mentally incapacitated;

6           (6) the license holder has been convicted in a court of  
7 a misdemeanor or felony involving moral turpitude;

8           (7) the license holder has been convicted in a court of  
9 an offense listed in Section 250.006 or listed in a rule adopted by  
10 the executive commissioner regarding convictions barring  
11 licensure; or

12           (8) the license holder has been negligent or  
13 incompetent in the license holder's duties as a home and community  
14 support services agency administrator.

15           (b) If a license sanction is probated, the department may  
16 require the license holder to:

17           (1) report regularly to the department on matters that  
18 are the basis of the probation;

19           (2) limit practice to the areas prescribed by the  
20 department; or

21           (3) continue or review continuing professional  
22 education until the license holder attains a degree of skill  
23 satisfactory to the department in those areas that are the basis of  
24 the probation.

25           (c) A license holder is entitled to a hearing in accordance  
26 with rules adopted by the executive commissioner before a sanction  
27 is imposed under this section.



1       (d) The executive commissioner by rule shall adopt a broad  
2 schedule of sanctions for violations under this subchapter. The  
3 department shall use the schedule for any sanction imposed in  
4 accordance with the rules.

5       (e) The executive commissioner by rule shall establish  
6 criteria to determine whether deficiencies from a home and  
7 community support services agency's survey warrant action against  
8 an administrator. The criteria must include a determination of  
9 whether survey findings indicate substantial noncompliance related  
10 to an act or failure to act by the administrator and whether a  
11 deficiency is related to an act or failure to act by the  
12 administrator. If a deficiency on which a disciplinary action  
13 against an administrator is initiated or completed is not  
14 substantiated, the disciplinary action shall be reversed.

15       Sec. 142.066. WRITTEN REPRIMAND AND CONTINUING EDUCATION AS  
16 SANCTIONS. (a) In addition to the other disciplinary actions  
17 authorized under this subchapter, the department may issue a  
18 written reprimand to a license holder who violates this subchapter  
19 or may require that a license holder who violates this subchapter  
20 participate in continuing education programs.

21       (b) The department shall specify the continuing education  
22 programs that may be attended and the number of hours that must be  
23 completed by a license holder to fulfill the requirements of this  
24 section.

25       Sec. 142.067. ADMINISTRATIVE PENALTY. (a) The department  
26 may impose an administrative penalty against a person licensed or  
27 regulated under this subchapter who violates this subchapter or a

1 rule adopted by the executive commissioner under this subchapter.

2 (b) The penalty for a violation may be in an amount not to  
3 exceed \$1,000.

4 (c) The amount of the penalty shall be based on:

5 (1) the seriousness of the violation, including the  
6 nature, circumstances, extent, and gravity of any prohibited acts,  
7 and the hazard or potential hazard created to the health, safety, or  
8 economic welfare of the public;

9 (2) the history of previous violations;

10 (3) the amount necessary to deter future violations;

11 (4) efforts to correct the violations; and

12 (5) any other matter that justice may require.

13 Sec. 142.068. ADMINISTRATIVE PENALTY: NOTICE AND HEARING.

14 (a) If the department determines that a violation has occurred, the  
15 department shall give written notice of the determination to the  
16 person alleged to have committed the violation. The notice may be  
17 given by certified mail. The notice must:

18 (1) include a brief summary of the alleged violation  
19 and a statement of the amount of the recommended penalty; and

20 (2) inform the person that the person has a right to a  
21 hearing on the occurrence of the violation, the amount of the  
22 penalty, or both the occurrence of the violation and the amount of  
23 the penalty.

24 (b) Not later than the 20th day after the date the person  
25 receives the notice, the person in writing may accept the  
26 determination and the penalty recommended by the department or may  
27 make a written request for a hearing on the occurrence of the

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

3 (c) If the person accepts the determination and the penalty  
4 recommended by the department, or if the person fails to timely  
5 respond to the notice, the department shall impose the recommended  
6 penalty.

7 (d) If the person requests a hearing, the department shall  
8 set a hearing and give notice of the hearing to the person. The  
9 hearing shall be held in accordance with the provisions in Chapter  
10 2001, Government Code, related to contested case hearings.

11 (e) The notice of the hearing decision given to the person  
12 under Chapter 2001, Government Code, must include a statement of  
13 the right of the person to judicial review of the decision.

14 (f) Not later than the 30th day after the date the  
15 department's decision is final as provided by Section 2001.144,  
16 Government Code, the person shall:

17 (1) pay the amount of the penalty;

18 (2) pay the amount of the penalty and file a petition  
19 for judicial review contesting the occurrence of the violation, the  
20 amount of the penalty, or both the occurrence of the violation and  
21 the amount of the penalty; or

22 (3) without paying the amount of the penalty, file a  
23 petition for judicial review contesting the occurrence of the  
24 violation, the amount of the penalty, or both the occurrence of the  
25 violation and the amount of the penalty.

26 (g) Within the period prescribed by Subsection (f), a person  
27 who acts under Subsection (f)(3) may:

1           (1) stay enforcement of the penalty by:

2                   (A) paying the amount of the penalty to the court  
3 for placement in an escrow account; or

4                   (B) giving to the court a supersedeas bond that  
5 is approved by the court for the amount of the penalty and that is  
6 effective until all judicial review of the department's decision is  
7 final; or

8           (2) request the court to stay enforcement of the  
9 penalty by:

10                   (A) filing with the court a sworn affidavit of  
11 the person stating that the person is financially unable to pay the  
12 amount of the penalty and is financially unable to give the  
13 supersedeas bond; and

14                   (B) sending a copy of the affidavit to the  
15 department by certified mail.

16           (h) If the department receives a copy of an affidavit under  
17 Subsection (g)(2), the department may file with the court, not  
18 later than the fifth day after the date the copy is received, a  
19 contest to the affidavit. The court shall hold a hearing on the  
20 facts alleged in the affidavit as soon as practicable and shall stay  
21 the enforcement of the penalty on finding that the alleged facts are  
22 true. The person who files an affidavit has the burden of proving  
23 that the person is financially unable to pay the amount of the  
24 penalty and to give a supersedeas bond.

25           (i) If the person does not pay the amount of the penalty and  
26 the enforcement of the penalty is not stayed, the department may  
27 refer the matter to the attorney general for collection of the

1 amount of the penalty. The attorney general, on behalf of the  
2 attorney general and the department, may recover the reasonable  
3 expenses incurred by the attorney general and the department in  
4 obtaining the penalty, including court costs, reasonable  
5 attorney's fees, investigative costs, witness fees, and deposition  
6 costs.

7 (j) Judicial review of the decision of the department:

8 (1) is instituted by filing a petition as provided by  
9 Section 2001.176, Government Code; and

10 (2) is under the substantial evidence rule.

11 (k) If the court sustains the occurrence of the violation,  
12 the court may uphold or reduce the amount of the penalty and order  
13 the person to pay the full or reduced amount of the penalty. If the  
14 court does not sustain the occurrence of the violation, the court  
15 shall order that no penalty is owed.

16 (l) When the judgment of the court becomes final, the court  
17 shall proceed under this subsection. If the person paid the amount  
18 of the penalty and if that amount is reduced or is not upheld by the  
19 court, the court shall order that the appropriate amount plus  
20 accrued interest be remitted to the person. The rate of the  
21 interest is the rate charged on loans to depository institutions by  
22 the New York Federal Reserve Bank, and the interest shall be paid  
23 for the period beginning on the date the penalty was paid and ending  
24 on the date the penalty is remitted. If the person gave a  
25 supersedeas bond and if the amount of the penalty is not upheld by  
26 the court, the court shall order the release of the bond. If the  
27 person gave a supersedeas bond and if the amount of the penalty is

1 reduced, the court shall order the release of the bond after the  
2 person pays the amount.

3 (m) A penalty collected under this section shall be remitted  
4 to the comptroller for deposit in the general revenue fund.

5 (n) All proceedings under this section are subject to  
6 Chapter 2001, Government Code.

7 Sec. 142.069. INFORMAL PROCEEDINGS. (a) The executive  
8 commissioner by rule shall adopt procedures governing:

9 (1) informal disposition of a contested case under  
10 Section 2001.056, Government Code; and

11 (2) informal proceedings held in compliance with  
12 Section 2001.054, Government Code.

13 (b) Rules adopted under this section must provide the  
14 complainant and the license holder an opportunity to be heard.

15 Sec. 142.070. MONITORING OF LICENSE HOLDER. (a) The  
16 executive commissioner by rule shall develop a system for  
17 monitoring a license holder's compliance with the requirements of  
18 this subchapter.

19 (b) Rules adopted under this section shall include  
20 procedures for monitoring a license holder who is required by the  
21 department to perform certain acts to ascertain that the license  
22 holder performs the required acts and to identify and monitor  
23 license holders who represent a risk to the public.

24 Sec. 142.071. CIVIL PENALTY. (a) A person who violates  
25 this subchapter is liable to the state for a civil penalty of \$1,000  
26 for each day of violation.

27 (b) At the request of the department, the attorney general

1 shall bring an action to recover a civil penalty established by this  
2 section.

3 (c) The attorney general, on behalf of the attorney general  
4 and the department, may recover reasonable expenses incurred by the  
5 attorney general and the department in obtaining a civil penalty  
6 under this section, including court costs, reasonable attorney's  
7 fees, investigative costs, witness fees, and deposition costs.

8 Sec. 142.072. ASSISTANCE OF ATTORNEY GENERAL. The attorney  
9 general shall provide legal assistance as necessary in enforcing  
10 the provisions of this subchapter. This requirement does not  
11 relieve a local prosecuting officer of any of the prosecuting  
12 officer's duties under the law.

13 Sec. 142.073. OFFENSE. (a) A person commits an offense if  
14 the person knowingly or intentionally violates Section 142.052.

15 (b) An offense under this section is a Class B misdemeanor.

16 Sec. 142.074. PROTECTION FOR REFUSAL TO ENGAGE IN CERTAIN  
17 CONDUCT. (a) A person may not suspend, terminate, or otherwise  
18 discipline or discriminate against a licensed home and community  
19 support services agency administrator who refuses to engage in an  
20 act or omission relating to the administrator's job duties or  
21 responsibilities that would constitute a violation of this  
22 subchapter or of a rule adopted under this subchapter, if the  
23 administrator notifies the person at the time of the refusal that  
24 the reason for refusing is that the act or omission constitutes a  
25 violation of this subchapter or of a rule adopted under this  
26 subchapter.

27 (b) An act by a person under Subsection (a) does not

1 constitute a violation of this section if:

2 (1) the act or omission the administrator refused to  
3 commit was not conduct that constitutes a violation of this  
4 subchapter or of a rule adopted under this subchapter; or

5 (2) the act or omission the administrator refused to  
6 commit was conduct that constitutes a violation of this subchapter  
7 or of a rule adopted under this subchapter, and the person rescinds  
8 any disciplinary or discriminatory action taken against the  
9 administrator, compensates the administrator for lost wages, and  
10 restores any lost benefits to the administrator.

11 (c) A violation of this section is an unlawful employment  
12 practice, and a civil action may be brought by a licensed home and  
13 community support services agency administrator against a person  
14 for the violation. The relief available in a civil action shall be  
15 the same as the relief available to complainants in a civil action  
16 for violations of Chapter 21, Labor Code. An action may not be  
17 brought under this section later than the second anniversary of the  
18 date of the administrator's refusal to engage in an act or omission  
19 that would constitute a violation of this subchapter or of a rule  
20 adopted under this subchapter.

21 (d) In this section, "person" includes an individual,  
22 organization, corporation, home and community support services  
23 agency, or other entity.

24 SECTION 12. (a) As soon as practicable after the effective  
25 date of this Act but not later than December 1, 2011, the executive  
26 commissioner of the Health and Human Services Commission shall  
27 adopt the rules necessary to implement the changes in law made by



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

2 (b) As soon as practicable after the effective date of this  
3 Act but not later than December 1, 2011, the Department of Aging and  
4 Disability Services shall prescribe the application forms  
5 necessary to implement the changes in law made by this Act to  
6 Chapter 142, Health and Safety Code.

7 (c) Notwithstanding Section 142.052, Health and Safety  
8 Code, as added by this Act, a person is not required to hold a home  
9 and community support services agency administrator license under  
10 Subchapter C, Chapter 142, Health and Safety Code, as added by this  
11 Act, until January 1, 2012.

12 (d) Notwithstanding Section 142.0064, Health and Safety  
13 Code, as added by this Act, a home and community support services  
14 agency is not required to obtain an independent written assessment  
15 of client service needs under that section until September 1, 2012.

16 (e) As soon as practicable after the effective date of this  
17 Act but not later than October 1, 2011, the governor shall appoint  
18 the initial members of the Home and Community Support Services  
19 Agency Administrators Advisory Committee in accordance with  
20 Section 142.063, Health and Safety Code, as added by this Act. In  
21 making the initial appointments, the governor shall appoint two  
22 members to terms expiring February 1, 2013, two members to terms  
23 expiring February 1, 2015, and three members to terms expiring  
24 February 1, 2017.

25 SECTION 13. (a) Except as provided by Subsection (b) of  
26 this section, this Act takes effect September 1, 2011.

27 (b) Sections 142.065 through 142.073, Health and Safety

S.B. No. 223

1 Code, as added by this Act, take effect January 1, 2012.