

1-1 By: Nelson S.B. No. 223
1-2 (In the Senate - Filed November 18, 2010; January 31, 2011,
1-3 read first time and referred to Committee on Health and Human
1-4 Services; April 4, 2011, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;
1-6 April 4, 2011, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 223 By: Nelson

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

1-10 relating to certain facilities and care providers, including
1-11 providers under the state Medicaid program; providing penalties.

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

1-13 ARTICLE 1. HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

1-14 SECTION 1.01. Section 142.001, Health and Safety Code, is
1-15 amended by adding Subdivisions (11-a), (11-b), and (12-a) to read
1-16 as follows:

1-17 (11-a) "Department" means the Department of Aging and
1-18 Disability Services.

1-19 (11-b) "Executive commissioner" means the executive
1-20 commissioner of the Health and Human Services Commission.

1-21 (12-a) "Home and community support services agency
1-22 administrator" or "administrator" means an individual who engages
1-23 in the practice of home and community support services agency
1-24 administration, without regard to whether the individual has an
1-25 ownership interest in the agency or whether the individual's
1-26 administrative functions and duties are shared with any other
1-27 individual.

1-28 SECTION 1.02. Section 142.0025, Health and Safety Code, is
1-29 amended to read as follows:

1-30 Sec. 142.0025. TEMPORARY LICENSE. If a person is in the
1-31 process of becoming certified by the United States Department of
1-32 Health and Human Services to qualify as a certified agency, the
1-33 department may issue a temporary home and community support
1-34 services agency license to the person authorizing the person to
1-35 provide certified home health services. A temporary license is
1-36 effective as provided by ~~board~~ rules adopted by the executive
1-37 commissioner.

1-38 SECTION 1.03. Section 142.009, Health and Safety Code, is
1-39 amended by adding Subsections (a-1) and (i) and amending Subsection
1-40 (g) to read as follows:

1-41 (a-1) A license applicant or license holder must provide the
1-42 person conducting the survey with a reasonable and safe workspace
1-43 at the premises that allows the person to conduct the survey in
1-44 private. The executive commissioner may adopt rules to implement
1-45 this subsection.

1-46 (g) After a survey of a home and community support services
1-47 agency by the department, the department shall provide to the home
1-48 and community support services ~~[chief executive officer of the]~~
1-49 agency administrator:

1-50 (1) specific and timely written notice of the official
1-51 findings of the survey, including:

1-52 (A) the specific nature of the survey;

1-53 (B) any alleged violations of a specific statute
1-54 or rule;

1-55 (C) the specific nature of any finding regarding
1-56 an alleged violation or deficiency; and

1-57 (D) if a deficiency is alleged, the severity of
1-58 the deficiency;

1-59 (2) information on the identity, including the name
1-60 [signature], of each department representative conducting or
1-61 reviewing~~[, or approving]~~ the results of the survey and the date on
1-62 which the department representative acted on the matter; and

1-63 (3) if requested by the agency, copies of all

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

2-4 (i) Except as provided by Subsection (h), the department may
 2-5 not renew an initial home and community support services agency
 2-6 license unless the department has conducted an initial on-site
 2-7 survey of the agency.

2-8 SECTION 1.04. The heading to Section 142.0091, Health and
 2-9 Safety Code, is amended to read as follows:

2-10 Sec. 142.0091. ~~[SURVEYOR]~~ TRAINING.

2-11 SECTION 1.05. Section 142.0091, Health and Safety Code, is
 2-12 amended by amending Subsection (b) and adding Subsection (c) to
 2-13 read as follows:

2-14 (b) In developing and updating the training required by
 2-15 Subsection (a) [~~this section~~], the department shall consult with
 2-16 and include providers of home health, hospice, and personal
 2-17 assistance services, recipients of those services and their family
 2-18 members, and representatives of appropriate advocacy
 2-19 organizations.

2-20 (c) The department shall provide semiannually training for
 2-21 home and community support services agencies on subjects that
 2-22 address at least one of the 10 most common violations of federal or
 2-23 state law by home and community support services agencies. The
 2-24 department may charge a fee, not to exceed \$50 per person, for the
 2-25 training. Other persons regulated by the department may
 2-26 participate in the training.

2-27 SECTION 1.06. Subchapter A, Chapter 142, Health and Safety
 2-28 Code, is amended by adding Section 142.0104 to read as follows:

2-29 Sec. 142.0104. CHANGE IN APPLICATION INFORMATION. (a) If
 2-30 certain application information as specified by executive
 2-31 commissioner rule changes after the applicant submits an
 2-32 application to the department for a license under this chapter or
 2-33 after the department issues the license, the license holder shall
 2-34 report the change to the department and pay a \$50 fee not later than
 2-35 the time specified by executive commissioner rule.

2-36 (b) The executive commissioner by rule shall:

2-37 (1) specify the information provided in an application
 2-38 that a license holder shall report to the department if the
 2-39 information changes;

2-40 (2) prescribe the time for reporting a change in the
 2-41 application information required by Subdivision (1);

2-42 (3) establish which changes required to be reported
 2-43 under Subdivision (1) will require department evaluation and
 2-44 approval; and

2-45 (4) set the amount of a late fee to be assessed against
 2-46 a license holder who fails to report a change in the application
 2-47 information within the time prescribed under Subdivision (2).

2-48 SECTION 1.07. Subsection (a), Section 142.011, Health and
 2-49 Safety Code, is amended to read as follows:

2-50 (a) The department may deny a license application or suspend
 2-51 or revoke the license of a person who:

2-52 (1) fails to comply with the rules or standards for
 2-53 licensing required by this chapter; or

2-54 (2) engages in conduct that violates Section 102.001,
 2-55 Occupations Code [~~161.091~~].

2-56 SECTION 1.08. Subsections (a), (b), and (c), Section
 2-57 142.012, Health and Safety Code, are amended to read as follows:

2-58 (a) The executive commissioner [~~board, with the~~
 2-59 ~~recommendations of the council,~~] shall adopt rules necessary to
 2-60 implement this chapter. The executive commissioner may adopt rules
 2-61 governing the duties and responsibilities of home and community
 2-62 support services agency administrators, including rules regarding:

2-63 (1) an administrator's management of daily operations
 2-64 of the home and community support services agency;

2-65 (2) an administrator's responsibility for supervising
 2-66 the provision of quality care to agency clients;

2-67 (3) an administrator's implementation of agency policy
 2-68 and procedures; and

2-69 (4) the average hours per week an administrator must

3-1 spend on administrative duties.

3-2 (b) The executive commissioner [~~board~~] by rule shall set
3-3 minimum standards for home and community support services agencies
3-4 licensed under this chapter that relate to:

3-5 (1) qualifications for professional and
3-6 nonprofessional personnel, including volunteers;

3-7 (2) supervision of professional and nonprofessional
3-8 personnel, including volunteers;

3-9 (3) the provision and coordination of treatment and
3-10 services, including support and bereavement services, as
3-11 appropriate;

3-12 (4) the management, ownership, and organizational
3-13 structure, including lines of authority and delegation of
3-14 responsibility and, as appropriate, the composition of an
3-15 interdisciplinary team;

3-16 (5) clinical and business records;

3-17 (6) financial ability to carry out the functions as
3-18 proposed;

3-19 (7) safety, fire prevention, and sanitary standards
3-20 for residential units and inpatient units; and

3-21 (8) any other aspects of home health, hospice, or
3-22 personal assistance services as necessary to protect the public.

3-23 (c) The initial minimum standards adopted [~~by the board~~]
3-24 under Subsection (b) for hospice services must be at least as
3-25 stringent as the conditions of participation for a Medicare
3-26 certified provider of hospice services in effect on April 30, 1993,
3-27 under Title XVIII, Social Security Act (42 U.S.C. Section 1395 et
3-28 seq.).

3-29 SECTION 1.09. As soon as practicable after the effective
3-30 date of this Act but not later than December 1, 2011, the executive
3-31 commissioner of the Health and Human Services Commission shall
3-32 adopt the rules necessary to implement the changes in law made by
3-33 this article to Chapter 142, Health and Safety Code.

3-34 ARTICLE 2. NURSING INSTITUTIONS

3-35 SECTION 2.01. Subsection (e), Section 242.032, Health and
3-36 Safety Code, is amended to read as follows:

3-37 (e) In making the evaluation required by Subsection (d), the
3-38 department shall require the applicant or license holder to file a
3-39 sworn affidavit of a satisfactory compliance history and any other
3-40 information required by the department to substantiate a
3-41 satisfactory compliance history relating to each state or other
3-42 jurisdiction in which the applicant or license holder and any other
3-43 person described by Subsection (d) operated an institution at any
3-44 time before [~~during the five-year period preceding~~] the date on
3-45 which the application is made. The department by rule shall
3-46 determine what constitutes a satisfactory compliance history. The
3-47 department may consider and evaluate the compliance history of the
3-48 applicant and any other person described by Subsection (d) for any
3-49 period during which the applicant or other person operated an
3-50 institution in this state or in another state or jurisdiction. The
3-51 department may also require the applicant or license holder to file
3-52 information relating to the history of the financial condition of
3-53 the applicant or license holder and any other person described by
3-54 Subsection (d) with respect to an institution operated in another
3-55 state or jurisdiction at any time before [~~during the five-year~~
3-56 ~~period preceding~~] the date on which the application is made.

3-57 SECTION 2.02. Subsection (b), Section 242.0615, Health and
3-58 Safety Code, is amended to read as follows:

3-59 (b) Exclusion of a person under this section must extend for
3-60 a period of at least two years and [~~but~~] may extend throughout the
3-61 person's lifetime or existence [~~not exceed a period of 10 years~~].

3-62 SECTION 2.03. Subsection (e), Section 242.032, Health and
3-63 Safety Code, as amended by this article, applies only to an
3-64 application, including a renewal application, filed on or after the
3-65 effective date of this Act. An application filed before the
3-66 effective date of this Act is governed by the law in effect when the
3-67 application was filed, and the former law is continued in effect for
3-68 that purpose.

3-69 SECTION 2.04. Subsection (b), Section 242.0615, Health and

4-1 Safety Code, as amended by this article, applies only to conduct
 4-2 that occurs on or after the effective date of this Act. Conduct
 4-3 that occurs before the effective date of this Act is governed by the
 4-4 law in effect at the time the conduct occurred, and the former law
 4-5 is continued in effect for that purpose.

4-6 ARTICLE 3. PREVENTION OF CRIMINAL OR FRAUDULENT CONDUCT BY
 4-7 CERTAIN FACILITIES OR PROVIDERS

4-8 SECTION 3.01. Section 250.001, Health and Safety Code, is
 4-9 amended by amending Subdivision (1) and adding Subdivisions (3-a)
 4-10 and (3-b) to read as follows:

4-11 (1) "Nurse aide registry" means a list maintained by
 4-12 the [~~Texas~~] Department of Aging and Disability [~~Human~~] Services of
 4-13 nurse aides under the Omnibus Budget Reconciliation Act of 1987
 4-14 (Pub. L. No. 100-203).

4-15 (3-a) "Financial management services agency" means an
 4-16 entity that contracts with the Department of Aging and Disability
 4-17 Services to serve as a fiscal and employer agent for an individual
 4-18 employer in the consumer-directed service option described by
 4-19 Section 531.051, Government Code.

4-20 (3-b) "Individual employer" means an individual or
 4-21 legally authorized representative who participates in the
 4-22 consumer-directed service option described by Section 531.051,
 4-23 Government Code, and is responsible for hiring service providers to
 4-24 deliver program services.

4-25 SECTION 3.02. Section 250.002, Health and Safety Code, is
 4-26 amended by amending Subsection (a) and adding Subsection (c-1) to
 4-27 read as follows:

4-28 (a) A facility, a regulatory agency, a financial management
 4-29 services agency on behalf of an individual employer, or a private
 4-30 agency on behalf of a facility is entitled to obtain from the
 4-31 Department of Public Safety of the State of Texas criminal history
 4-32 record information maintained by the Department of Public Safety
 4-33 that relates to a person who is:

4-34 (1) an applicant for employment at a facility other
 4-35 than a facility licensed under Chapter 142;

4-36 (2) an employee of a facility other than a facility
 4-37 licensed under Chapter 142; [~~or~~]

4-38 (3) an applicant for employment at or an employee of a
 4-39 facility licensed under Chapter 142 whose employment duties would
 4-40 or do involve direct contact with a consumer in the facility; or

4-41 (4) an applicant for employment by or an employee of an
 4-42 individual employer.

4-43 (c-1) A financial management services agency shall forward
 4-44 criminal history record information received under this section to
 4-45 the individual employer requesting the information.

4-46 SECTION 3.03. Section 250.003, Health and Safety Code, is
 4-47 amended by amending Subsection (a) and adding Subsection (c-1) to
 4-48 read as follows:

4-49 (a) A facility or individual employer may not employ an
 4-50 applicant:

4-51 (1) if the facility or individual employer determines,
 4-52 as a result of a criminal history check, that the applicant has been
 4-53 convicted of an offense listed in this chapter that bars employment
 4-54 or that a conviction is a contraindication to employment with the
 4-55 consumers the facility or individual employer serves;

4-56 (2) if the applicant is a nurse aide, until the
 4-57 facility further verifies that the applicant is listed in the nurse
 4-58 aide registry; and

4-59 (3) until the facility verifies that the applicant is
 4-60 not designated in the registry maintained under this chapter or in
 4-61 the employee misconduct registry maintained under Section 253.007
 4-62 as having a finding entered into the registry concerning abuse,
 4-63 neglect, or mistreatment of a consumer of a facility, or
 4-64 misappropriation of a consumer's property.

4-65 (c-1) An individual employer shall immediately discharge
 4-66 any employee whose criminal history check reveals conviction of a
 4-67 crime that bars employment or that the individual employer
 4-68 determines is a contraindication to employment as provided by this
 4-69 chapter.

5-1 SECTION 3.04. Section 250.004, Health and Safety Code, is
5-2 amended to read as follows:

5-3 Sec. 250.004. CRIMINAL HISTORY RECORD OF EMPLOYEES.

5-4 (a) Identifying information of an employee in a covered facility
5-5 or of an employee of an individual employer shall be submitted
5-6 electronically, on disk, or on a typewritten form to the Department
5-7 of Public Safety to obtain the person's criminal conviction record
5-8 when the person applies for employment and at other times as the
5-9 facility or individual employer may determine appropriate. In this
5-10 subsection, "identifying information" includes:

- 5-11 (1) the complete name, race, and sex of the employee;
5-12 (2) any known identifying number of the employee,
5-13 including social security number, driver's license number, or state
5-14 identification number; and
5-15 (3) the employee's date of birth.

5-16 (b) If the Department of Public Safety reports that a person
5-17 has a criminal conviction of any kind, the conviction shall be
5-18 reviewed by the facility, the financial management services agency,
5-19 or the individual employer to determine if the conviction may bar
5-20 the person from employment in a facility or by the individual
5-21 employer under Section 250.006 or if the conviction may be a
5-22 contraindication to employment.

5-23 SECTION 3.05. Section 250.005, Health and Safety Code, is
5-24 amended to read as follows:

5-25 Sec. 250.005. NOTICE AND OPPORTUNITY TO BE HEARD CONCERNING
5-26 ACCURACY OF INFORMATION. (a) If a facility, financial management
5-27 services agency, or individual employer believes that a conviction
5-28 may bar a person from employment in a facility or by the individual
5-29 employer under Section 250.006 or may be a contraindication to
5-30 employment, the facility or individual employer shall notify the
5-31 applicant or employee.

5-32 (b) The Department of Public Safety of the State of Texas
5-33 shall give a person notified under Subsection (a) the opportunity
5-34 to be heard concerning the accuracy of the criminal history record
5-35 information and shall notify the facility or individual employer if
5-36 inaccurate information is discovered.

5-37 SECTION 3.06. Subsections (a) and (b), Section 250.006,
5-38 Health and Safety Code, are amended to read as follows:

5-39 (a) A person for whom the facility or the individual
5-40 employer is entitled to obtain criminal history record information
5-41 may not be employed in a facility or by an individual employer if
5-42 the person has been convicted of an offense listed in this
5-43 subsection:

- 5-44 (1) an offense under Chapter 19, Penal Code (criminal
5-45 homicide);
5-46 (2) an offense under Chapter 20, Penal Code
5-47 (kidnapping and unlawful restraint);
5-48 (3) an offense under Section 21.02, Penal Code
5-49 (continuous sexual abuse of young child or children), or Section
5-50 21.11, Penal Code (indecent with a child);
5-51 (4) an offense under Section 22.011, Penal Code
5-52 (sexual assault);
5-53 (5) an offense under Section 22.02, Penal Code
5-54 (aggravated assault);
5-55 (6) an offense under Section 22.04, Penal Code (injury
5-56 to a child, elderly individual, or disabled individual);
5-57 (7) an offense under Section 22.041, Penal Code
5-58 (abandoning or endangering child);
5-59 (8) an offense under Section 22.08, Penal Code (aiding
5-60 suicide);
5-61 (9) an offense under Section 25.031, Penal Code
5-62 (agreement to abduct from custody);
5-63 (10) an offense under Section 25.08, Penal Code (sale
5-64 or purchase of a child);
5-65 (11) an offense under Section 28.02, Penal Code
5-66 (arson);
5-67 (12) an offense under Section 29.02, Penal Code
5-68 (robbery);
5-69 (13) an offense under Section 29.03, Penal Code

6-1 (aggravated robbery);
6-2 (14) an offense under Section 21.08, Penal Code
6-3 (indecent exposure);
6-4 (15) an offense under Section 21.12, Penal Code
6-5 (improper relationship between educator and student);
6-6 (16) an offense under Section 21.15, Penal Code
6-7 (improper photography or visual recording);
6-8 (17) an offense under Section 22.05, Penal Code
6-9 (deadly conduct);
6-10 (18) an offense under Section 22.021, Penal Code
6-11 (aggravated sexual assault);
6-12 (19) an offense under Section 22.07, Penal Code
6-13 (terroristic threat);
6-14 (20) an offense under Section 33.021, Penal Code
6-15 (online solicitation of a minor);
6-16 (21) an offense under Section 34.02, Penal Code (money
6-17 laundering);
6-18 (22) an offense under Section 35A.02, Penal Code
6-19 (Medicaid fraud);
6-20 (23) an offense under Section 42.09, Penal Code
6-21 (cruelty to animals); or
6-22 (24) a conviction under the laws of another state,
6-23 federal law, or the Uniform Code of Military Justice for an offense
6-24 containing elements that are substantially similar to the elements
6-25 of an offense listed by this subsection.
6-26 (b) A person may not be employed in a position the duties of
6-27 which involve direct contact with a consumer in a facility or may
6-28 not be employed by an individual employer before the fifth
6-29 anniversary of the date the person is convicted of:
6-30 (1) an offense under Section 22.01, Penal Code
6-31 (assault), that is punishable as a Class A misdemeanor or as a
6-32 felony;
6-33 (2) an offense under Section 30.02, Penal Code
6-34 (burglary);
6-35 (3) an offense under Chapter 31, Penal Code (theft),
6-36 that is punishable as a felony;
6-37 (4) an offense under Section 32.45, Penal Code
6-38 (misapplication of fiduciary property or property of a financial
6-39 institution), that is punishable as a Class A misdemeanor or a
6-40 felony;
6-41 (5) an offense under Section 32.46, Penal Code
6-42 (securing execution of a document by deception), that is punishable
6-43 as a Class A misdemeanor or a felony;
6-44 (6) an offense under Section 37.12, Penal Code (false
6-45 identification as peace officer); or
6-46 (7) an offense under Section 42.01(a)(7), (8), or (9),
6-47 Penal Code (disorderly conduct).
6-48 SECTION 3.07. Subsections (a) and (b), Section 250.007,
6-49 Health and Safety Code, are amended to read as follows:
6-50 (a) The criminal history records are for the exclusive use
6-51 of the regulatory agency, the requesting facility, the private
6-52 agency on behalf of the requesting facility, the financial
6-53 management services agency on behalf of the individual employer,
6-54 the individual employer, and the applicant or employee who is the
6-55 subject of the records.
6-56 (b) All criminal records and reports and the information
6-57 they contain that are received by the regulatory agency or private
6-58 agency for the purpose of being forwarded to the requesting
6-59 facility or received by the financial management services agency
6-60 under this chapter are privileged information.
6-61 SECTION 3.08. Subsection (a), Section 250.009, Health and
6-62 Safety Code, is amended to read as follows:
6-63 (a) A facility, ~~or~~ an officer or employee of a facility, a
6-64 financial management services agency, or an individual employer is
6-65 not civilly liable for failure to comply with this chapter if the
6-66 facility, financial management services agency, or individual
6-67 employer makes a good faith effort to comply.
6-68 SECTION 3.09. Section 411.1143, Government Code, is amended
6-69 by amending Subsection (a) and adding Subsection (a-1) to read as

7-1 follows:

7-2 (a) The Health and Human Services Commission, ~~[or]~~ an agency
7-3 operating part of the medical assistance program under Chapter 32,
7-4 Human Resources Code, or the office of inspector general
7-5 established under Chapter 531, Government Code, is entitled to
7-6 obtain from the department the criminal history record information
7-7 maintained by the department that relates to a provider under the
7-8 medical assistance program or a person applying to enroll as a
7-9 provider under the medical assistance program.

7-10 (a-1) Criminal history record information an agency or the
7-11 office of inspector general is authorized to obtain under
7-12 Subsection (a) includes criminal history record information
7-13 relating to:

7-14 (1) a person with a direct or indirect ownership or
7-15 control interest, as defined by 42 C.F.R. Section 455.101, in a
7-16 provider of five percent or more; and

7-17 (2) a person whose information is required to be
7-18 disclosed in accordance with 42 C.F.R. Part 1001.

7-19 SECTION 3.10. Subdivision (2), Subsection (g), Section
7-20 531.102, Government Code, is amended to read as follows:

7-21 (2) In addition to other instances authorized under
7-22 state or federal law, the office shall impose without prior notice a
7-23 hold on payment of claims for reimbursement submitted by a provider
7-24 to compel production of records, ~~[or]~~ when requested by the state's
7-25 Medicaid fraud control unit, or on receipt of reliable evidence
7-26 that the circumstances giving rise to the hold on payment involve
7-27 fraud or wilful misrepresentation under the state Medicaid program
7-28 in accordance with 42 C.F.R. Section 455.23, as applicable. The
7-29 office must notify the provider of the hold on payment in accordance
7-30 with 42 C.F.R. Section 455.23(b) ~~[not later than the fifth working~~
7-31 ~~day after the date the payment hold is imposed].~~

7-32 SECTION 3.11. The heading to Section 531.1031, Government
7-33 Code, is amended to read as follows:

7-34 Sec. 531.1031. DUTY TO EXCHANGE INFORMATION ~~[REGARDING~~
7-35 ~~ALLEGATIONS OF MEDICAID FRAUD OR ABUSE].~~

7-36 SECTION 3.12. Subdivision (2), Subsection (a), Section
7-37 531.1031, Government Code, is amended to read as follows:

7-38 (2) "Participating agency" means:

7-39 (A) the Medicaid fraud enforcement divisions of
7-40 the office of the attorney general; ~~[and]~~

7-41 (B) each board or agency with authority to
7-42 license, register, regulate, or certify a health care professional
7-43 or managed care organization that may participate in the state
7-44 Medicaid program; and

7-45 (C) the commission's office of inspector
7-46 general.

7-47 SECTION 3.13. Section 531.1031, Government Code, is amended
7-48 by amending Subsections (b) and (c) and adding Subsection (c-1) to
7-49 read as follows:

7-50 (b) This section applies only to criminal history record
7-51 information held by a participating agency that relates to a health
7-52 care professional and information held by a participating agency
7-53 that relates to a health care professional or managed care
7-54 organization that is the subject of an investigation by a
7-55 participating agency for alleged fraud or abuse under the state
7-56 Medicaid program.

7-57 (c) A participating agency may submit to another
7-58 participating agency a written request for information described by
7-59 Subsection (b) regarding a health care professional or managed care
7-60 organization ~~[that is the subject of an investigation by the~~
7-61 ~~participating agency to any other participating agency].~~ The
7-62 participating agency that receives the request shall provide the
7-63 requesting agency with the information regarding the health care
7-64 professional or managed care organization unless:

7-65 (1) the release of the information would jeopardize an
7-66 ongoing investigation or prosecution by the participating agency
7-67 with possession of the information; or

7-68 (2) the release of the information is prohibited by
7-69 other law.

8-1 (c-1) Notwithstanding any other law, a participating agency
 8-2 may enter into a memorandum of understanding or agreement with
 8-3 another participating agency for the purpose of exchanging criminal
 8-4 history record information relating to a health care professional
 8-5 to which both participating agencies are authorized to access under
 8-6 Chapter 411. Confidential criminal history record information in
 8-7 the possession of a participating agency that is provided to
 8-8 another participating agency in accordance with this subsection
 8-9 remains confidential while in the possession of the participating
 8-10 agency that receives the information.

8-11 SECTION 3.14. Section 32.0322, Human Resources Code, is
 8-12 amended to read as follows:

8-13 Sec. 32.0322. CRIMINAL HISTORY RECORD INFORMATION;
 8-14 ENROLLMENT OF PROVIDERS. (a) The department or the office of
 8-15 inspector general established under Chapter 531, Government Code,
 8-16 may obtain from any law enforcement or criminal justice agency the
 8-17 criminal history record information that relates to a provider
 8-18 under the medical assistance program or a person applying to enroll
 8-19 as a provider under the medical assistance program.

8-20 (a-1) The criminal history record information the
 8-21 department and the office of inspector general are authorized to
 8-22 obtain under Subsection (a) includes criminal history record
 8-23 information relating to:

8-24 (1) a person with a direct or indirect ownership or
 8-25 control interest, as defined by 42 C.F.R. Section 455.101, in a
 8-26 provider of five percent or more; and

8-27 (2) a person whose information is required to be
 8-28 disclosed in accordance with 42 C.F.R. Part 1001.

8-29 (b) The executive commissioner of the Health and Human
 8-30 Services Commission [~~department~~] by rule shall establish criteria
 8-31 for the department or the commission's office of inspector general
 8-32 to suspend a provider's billing privileges under the medical
 8-33 assistance program, revoke [~~revoking~~] a provider's enrollment
 8-34 under the program, or deny [~~denying~~] a person's application to
 8-35 enroll as a provider under the [~~medical assistance~~] program based
 8-36 on:

8-37 (1) the results of a criminal history check;

8-38 (2) any exclusion or debarment of the provider from
 8-39 participation in a state or federally funded health care program;

8-40 (3) the provider's failure to bill for medical
 8-41 assistance or refer clients for medical assistance within a
 8-42 12-month period; or

8-43 (4) any of the provider screening or enrollment
 8-44 provisions contained in 42 C.F.R. Part 455, Subpart E.

8-45 (c) As a condition of eligibility to participate as a
 8-46 provider in the medical assistance program, the executive
 8-47 commissioner of the Health and Human Services Commission by rule
 8-48 shall:

8-49 (1) require a provider or a person applying to enroll
 8-50 as a provider to disclose all persons described by
 8-51 Subsection(a-1)(1) and any agents, managing employees, and
 8-52 subcontractors of the provider; and

8-53 (2) require disclosure by persons applying for
 8-54 enrollment as providers and provide for screening of applicants for
 8-55 enrollment in conformity and compliance with the requirements of 42
 8-56 C.F.R. Part 455, Subparts B and E.

8-57 (d) In adopting rules under this section, the executive
 8-58 commissioner of the Health and Human Services Commission shall
 8-59 adopt rules as authorized by and in conformity with 42 C.F.R.
 8-60 Section 455.470 for the imposition of a temporary moratorium on
 8-61 enrollment of new providers, or to impose numerical caps or other
 8-62 limits on the enrollment of providers, that the department or the
 8-63 commission's office of inspector general, in consultation with the
 8-64 department, determines have a significant potential for fraud,
 8-65 waste, or abuse.

8-66 SECTION 3.15. Section 32.039, Human Resources Code, is
 8-67 amended by amending Subsection (b) and adding Subsection (b-1) to
 8-68 read as follows:

8-69 (b) A person commits a violation if the person:

9-1 (1) presents or causes to be presented to the
9-2 department a claim that contains a statement or representation the
9-3 person knows or should know to be false;
9-4 (1-a) engages in conduct that violates Section
9-5 102.001, Occupations Code;
9-6 (1-b) solicits or receives, directly or indirectly,
9-7 overtly or covertly any remuneration, including any kickback,
9-8 bribe, or rebate, in cash or in kind for referring an individual to
9-9 a person for the furnishing of, or for arranging the furnishing of,
9-10 any item or service for which payment may be made, in whole or in
9-11 part, under the medical assistance program, provided that this
9-12 subdivision does not prohibit the referral of a patient to another
9-13 practitioner within a multispecialty group or university medical
9-14 services research and development plan (practice plan) for
9-15 medically necessary services;
9-16 (1-c) solicits or receives, directly or indirectly,
9-17 overtly or covertly any remuneration, including any kickback,
9-18 bribe, or rebate, in cash or in kind for purchasing, leasing, or
9-19 ordering, or arranging for or recommending the purchasing, leasing,
9-20 or ordering of, any good, facility, service, or item for which
9-21 payment may be made, in whole or in part, under the medical
9-22 assistance program;
9-23 (1-d) offers or pays, directly or indirectly, overtly
9-24 or covertly any remuneration, including any kickback, bribe, or
9-25 rebate, in cash or in kind to induce a person to refer an individual
9-26 to another person for the furnishing of, or for arranging the
9-27 furnishing of, any item or service for which payment may be made, in
9-28 whole or in part, under the medical assistance program, provided
9-29 that this subdivision does not prohibit the referral of a patient to
9-30 another practitioner within a multispecialty group or university
9-31 medical services research and development plan (practice plan) for
9-32 medically necessary services;
9-33 (1-e) offers or pays, directly or indirectly, overtly
9-34 or covertly any remuneration, including any kickback, bribe, or
9-35 rebate, in cash or in kind to induce a person to purchase, lease, or
9-36 order, or arrange for or recommend the purchase, lease, or order of,
9-37 any good, facility, service, or item for which payment may be made,
9-38 in whole or in part, under the medical assistance program;
9-39 (1-f) provides, offers, or receives an inducement in a
9-40 manner or for a purpose not otherwise prohibited by this section or
9-41 Section 102.001, Occupations Code, to or from a person, including a
9-42 recipient, provider, employee or agent of a provider, third-party
9-43 vendor, or public servant, for the purpose of influencing or being
9-44 influenced in a decision regarding:
9-45 (A) selection of a provider or receipt of a good
9-46 or service under the medical assistance program;
9-47 (B) the use of goods or services provided under
9-48 the medical assistance program; or
9-49 (C) the inclusion or exclusion of goods or
9-50 services available under the medical assistance program; ~~or~~
9-51 (2) is a managed care organization that contracts with
9-52 the department to provide or arrange to provide health care
9-53 benefits or services to individuals eligible for medical assistance
9-54 and:
9-55 (A) fails to provide to an individual a health
9-56 care benefit or service that the organization is required to
9-57 provide under the contract with the department;
9-58 (B) fails to provide to the department
9-59 information required to be provided by law, department rule, or
9-60 contractual provision;
9-61 (C) engages in a fraudulent activity in
9-62 connection with the enrollment in the organization's managed care
9-63 plan of an individual eligible for medical assistance or in
9-64 connection with marketing the organization's services to an
9-65 individual eligible for medical assistance; or
9-66 (D) engages in actions that indicate a pattern
9-67 of:
9-68 (i) wrongful denial of payment for a health
9-69 care benefit or service that the organization is required to

10-1 provide under the contract with the department; or
 10-2 (ii) wrongful delay of at least 45 days or a
 10-3 longer period specified in the contract with the department, not to
 10-4 exceed 60 days, in making payment for a health care benefit or
 10-5 service that the organization is required to provide under the
 10-6 contract with the department; or

10-7 (3) fails to maintain adequate documentation to
 10-8 support a claim for payment or engages in any other conduct that a
 10-9 department rule has defined as a violation of the medical
 10-10 assistance program.

10-11 (b-1) A person who commits a violation described by
 10-12 Subsection (b)(3) is liable to the department for either the amount
 10-13 paid in response to the claim for payment or the payment of an
 10-14 administrative penalty in an amount not to exceed \$500 for each
 10-15 violation, as determined by the department.

10-16 SECTION 3.16. Subsection (a), Section 103.009, Human
 10-17 Resources Code, is amended to read as follows:

10-18 (a) The department may deny, suspend, or revoke the license
 10-19 of an applicant or holder of a license who fails to comply with the
 10-20 rules or standards for licensing required by this chapter or has
 10-21 committed an act described by Sections 103.012(a)(2)-(7).

10-22 ARTICLE 4. ADULT DAY-CARE FACILITIES

10-23 SECTION 4.01. Chapter 103, Human Resources Code, is amended
 10-24 by adding Sections 103.012 through 103.016 to read as follows:

10-25 Sec. 103.012. ADMINISTRATIVE PENALTY. (a) The department
 10-26 may assess an administrative penalty against a person who:

10-27 (1) violates this chapter, a rule, standard, or order
 10-28 adopted under this chapter, or a term of a license issued under this
 10-29 chapter;

10-30 (2) makes a false statement of a material fact that the
 10-31 person knows or should know is false:

10-32 (A) on an application for issuance or renewal of
 10-33 a license or in an attachment to the application; or

10-34 (B) with respect to a matter under investigation
 10-35 by the department;

10-36 (3) refuses to allow a representative of the
 10-37 department to inspect:

10-38 (A) a book, record, or file required to be
 10-39 maintained by an adult day-care facility; or

10-40 (B) any portion of the premises of an adult
 10-41 day-care facility;

10-42 (4) wilfully interferes with the work of a
 10-43 representative of the department or the enforcement of this
 10-44 chapter;

10-45 (5) wilfully interferes with a representative of the
 10-46 department preserving evidence of a violation of this chapter, a
 10-47 rule, standard, or order adopted under this chapter, or a term of a
 10-48 license issued under this chapter;

10-49 (6) fails to pay a penalty assessed under this chapter
 10-50 not later than the 30th day after the date the assessment of the
 10-51 penalty becomes final; or

10-52 (7) fails to notify the department of a change of
 10-53 ownership before the effective date of the change of ownership.

10-54 (b) Except as provided by Section 103.013(c), the penalty
 10-55 may not exceed \$500 for each violation.

10-56 (c) Each day of a continuing violation constitutes a
 10-57 separate violation.

10-58 (d) The department shall establish gradations of penalties
 10-59 in accordance with the relative seriousness of the violation.

10-60 (e) In determining the amount of a penalty, the department
 10-61 shall consider any matter that justice may require, including:

10-62 (1) the gradations of penalties established under
 10-63 Subsection (d);

10-64 (2) the seriousness of the violation, including the
 10-65 nature, circumstances, extent, and gravity of the prohibited act
 10-66 and the hazard or potential hazard created by the act to the health
 10-67 or safety of the public;

10-68 (3) the history of previous violations;

10-69 (4) the deterrence of future violations; and

11-1 (5) the efforts to correct the violation.

11-2 (f) A penalty assessed under Subsection (a)(6) is in
 11-3 addition to the penalty previously assessed and not timely paid.

11-4 Sec. 103.013. RIGHT TO CORRECT BEFORE IMPOSITION OF
 11-5 ADMINISTRATIVE PENALTY. (a) The department may not collect an
 11-6 administrative penalty from an adult day-care facility under
 11-7 Section 103.012 if, not later than the 45th day after the date the
 11-8 facility receives notice under Section 103.014(c), the facility
 11-9 corrects the violation.

11-10 (b) Subsection (a) does not apply to:

11-11 (1) a violation that the department determines:

11-12 (A) results in serious harm to or death of a
 11-13 person attending the facility;

11-14 (B) constitutes a serious threat to the health
 11-15 and safety of a person attending the facility; or

11-16 (C) substantially limits the facility's capacity
 11-17 to provide care;

11-18 (2) a violation described by Sections
 11-19 103.012(a)(2)-(7); or

11-20 (3) a violation of Section 103.011.

11-21 (c) An adult day-care facility that corrects a violation
 11-22 must maintain the correction. If the facility fails to maintain the
 11-23 correction until at least the first anniversary after the date the
 11-24 correction was made, the department may assess and collect an
 11-25 administrative penalty for the subsequent violation. An
 11-26 administrative penalty assessed under this subsection is equal to
 11-27 three times the amount of the original penalty assessed but not
 11-28 collected. The department is not required to provide the facility
 11-29 with an opportunity under this section to correct the subsequent
 11-30 violation.

11-31 Sec. 103.014. REPORT RECOMMENDING ADMINISTRATIVE PENALTY;
 11-32 NOTICE. (a) The department shall issue a preliminary report
 11-33 stating the facts on which the department concludes that a
 11-34 violation of this chapter, a rule, standard, or order adopted under
 11-35 this chapter, or a term of a license issued under this chapter has
 11-36 occurred if the department has:

11-37 (1) examined the possible violation and facts
 11-38 surrounding the possible violation; and

11-39 (2) concluded that a violation has occurred.

11-40 (b) The report may recommend a penalty under Section 103.012
 11-41 and the amount of the penalty.

11-42 (c) The department shall give written notice of the report
 11-43 to the person charged with the violation not later than the 10th day
 11-44 after the date on which the report is issued. The notice must
 11-45 include:

11-46 (1) a brief summary of the charges;

11-47 (2) a statement of the amount of penalty recommended;

11-48 (3) a statement of whether the violation is subject to
 11-49 correction under Section 103.013 and, if the violation is subject
 11-50 to correction under that section, a statement of:

11-51 (A) the date on which the adult day-care facility
 11-52 must file a plan of correction with the department that the
 11-53 department shall review and may approve, if satisfactory; and

11-54 (B) the date on which the plan of correction must
 11-55 be completed to avoid assessment of the penalty; and

11-56 (4) a statement that the person charged has a right to
 11-57 a hearing on the occurrence of the violation, the amount of the
 11-58 penalty, or both.

11-59 (d) Not later than the 20th day after the date on which the
 11-60 notice under Subsection (c) is received, the person charged may:

11-61 (1) give to the department written notice that the
 11-62 person agrees with the department's report and consents to the
 11-63 recommended penalty; or

11-64 (2) make a written request for a hearing.

11-65 (e) If the violation is subject to correction under Section
 11-66 103.013, the adult day-care facility shall submit a plan of
 11-67 correction to the department for approval not later than the 10th
 11-68 day after the date on which the notice under Subsection (c) is
 11-69 received.

12-1 (f) If the violation is subject to correction under Section
 12-2 103.013 and the person reports to the department that the violation
 12-3 has been corrected, the department shall inspect the correction or
 12-4 take any other step necessary to confirm the correction and shall
 12-5 notify the person that:

12-6 (1) the correction is satisfactory and a penalty will
 12-7 not be assessed; or

12-8 (2) the correction is not satisfactory and a penalty
 12-9 is recommended.

12-10 (g) Not later than the 20th day after the date on which a
 12-11 notice under Subsection (f)(2) is received, the person charged with
 12-12 the violation may:

12-13 (1) give to the department written notice that the
 12-14 person agrees with the department's report and consents to the
 12-15 recommended penalty; or

12-16 (2) make a written request for a hearing.

12-17 (h) If the person charged with the violation consents to the
 12-18 penalty recommended by the department or does not timely respond to
 12-19 a notice sent under Subsection (c) or (f)(2), the department's
 12-20 commissioner or the commissioner's designee shall assess the
 12-21 penalty recommended by the department.

12-22 (i) If the department's commissioner or the commissioner's
 12-23 designee assesses the recommended penalty, the department shall
 12-24 give written notice of the decision to the person charged with the
 12-25 violation and the person shall pay the penalty.

12-26 Sec. 103.015. ADMINISTRATIVE PENALTY HEARING. (a) An
 12-27 administrative law judge shall order a hearing and give notice of
 12-28 the hearing if a person assessed a penalty under Section 103.013(c)
 12-29 requests a hearing.

12-30 (b) The hearing shall be held before an administrative law
 12-31 judge.

12-32 (c) The administrative law judge shall make findings of fact
 12-33 and conclusions of law regarding the occurrence of a violation of
 12-34 this chapter, a rule or order adopted under this chapter, or a term
 12-35 of a license issued under this chapter.

12-36 (d) Based on the findings of fact and conclusions of law,
 12-37 and the recommendation of the administrative law judge, the
 12-38 department's commissioner or the commissioner's designee by order
 12-39 shall find:

12-40 (1) a violation has occurred and assess an
 12-41 administrative penalty; or

12-42 (2) a violation has not occurred.

12-43 (e) Proceedings under this section are subject to Chapter
 12-44 2001, Government Code.

12-45 Sec. 103.016. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY;
 12-46 INTEREST; REFUND. (a) The department's commissioner or the
 12-47 commissioner's designee shall give notice of the findings made
 12-48 under Section 103.015(d) to the person charged with a violation. If
 12-49 the commissioner or the commissioner's designee finds that a
 12-50 violation has occurred, the commissioner or the commissioner's
 12-51 designee shall give to the person charged written notice of:

12-52 (1) the findings;

12-53 (2) the amount of the administrative penalty;

12-54 (3) the rate of interest payable with respect to the
 12-55 penalty and the date on which interest begins to accrue; and

12-56 (4) the person's right to judicial review of the order
 12-57 of the commissioner or the commissioner's designee.

12-58 (b) Not later than the 30th day after the date on which the
 12-59 order of the department's commissioner or the commissioner's
 12-60 designee is final, the person assessed the penalty shall:

12-61 (1) pay the full amount of the penalty; or

12-62 (2) file a petition for judicial review contesting the
 12-63 occurrence of the violation, the amount of the penalty, or both the
 12-64 occurrence of the violation and the amount of the penalty.

12-65 (c) Notwithstanding Subsection (b), the department may
 12-66 permit the person to pay a penalty in installments.

12-67 (d) If the person does not pay the penalty within the period
 12-68 provided by Subsection (b) or in accordance with Subsection (c), if
 12-69 applicable:

13-1 (1) the penalty is subject to interest; and
13-2 (2) the department may refer the matter to the
13-3 attorney general for collection of the penalty and interest.

13-4 (e) Interest under Subsection (d)(1) accrues:
13-5 (1) at a rate equal to the rate charged on loans to
13-6 depository institutions by the New York Federal Reserve Bank; and
13-7 (2) for the period beginning on the day after the date
13-8 on which the penalty becomes due and ending on the date the penalty
13-9 is paid.

13-10 (f) If the amount of the penalty is reduced or the
13-11 assessment of a penalty is not upheld on judicial review, the
13-12 department's commissioner or the commissioner's designee shall:

13-13 (1) remit to the person charged the appropriate amount
13-14 of any penalty payment plus accrued interest; or

13-15 (2) execute a release of the supersedeas bond if one
13-16 has been posted.

13-17 (g) Accrued interest on the amount remitted by the
13-18 department's commissioner or the commissioner's designee under
13-19 Subsection (f)(1) shall be paid:

13-20 (1) at a rate equal to the rate charged on loans to
13-21 depository institutions by the New York Federal Reserve Bank; and

13-22 (2) for the period beginning on the date the penalty is
13-23 paid and ending on the date the penalty is remitted to the person
13-24 charged with the violation.

13-25 ARTICLE 5. WAIVER; EFFECTIVE DATE

13-26 SECTION 5.01. If before implementing any provision of this
13-27 Act a state agency determines that a waiver or authorization from a
13-28 federal agency is necessary for implementation of that provision,
13-29 the agency affected by the provision shall request the waiver or
13-30 authorization and may delay implementing that provision until the
13-31 waiver or authorization is granted.

13-32 SECTION 5.02. This Act takes effect September 1, 2011.

13-33 * * * * *