

By: Raymond, Faircloth

H.B. No. 4001

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the provision of habilitation and certain health care
3 services by a home and community support services agency;
4 authorizing a fee, providing penalties, and requiring an
5 occupational license.

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

7 SECTION 1. Section 142.001, Health and Safety Code, is
8 amended by adding Subdivision (11-c) and amending Subdivisions (12)
9 and (23) to read as follows:

10 (11-c) "Habilitation" means habilitation services, as
11 defined by Section 534.001, Government Code, delivered by a
12 licensed home and community support services agency.

13 (12) "Home and community support services agency"
14 means a person who provides home health, hospice, habilitation, or
15 personal assistance services for pay or other consideration in a
16 client's residence, an independent living environment, or another
17 appropriate location.

18 (23) "Place of business" means an office of a home and
19 community support services agency that maintains client records or
20 directs home health, hospice, habilitation, or personal assistance
21 services. The term does not include an administrative support
22 site.

23 SECTION 2. Section 142.0011, Health and Safety Code, as
24 amended by S.B. 219, Acts of the 84th Legislature, Regular Session,

1 2015, is amended to read as follows:

2 Sec. 142.0011. SCOPE, PURPOSE, AND IMPLEMENTATION. (a)
3 The purpose of this chapter is to ensure that home and community
4 support services agencies in this state deliver the highest
5 possible quality of care. This chapter and the rules adopted under
6 this chapter establish minimum standards for acceptable quality of
7 care, and a violation of a minimum standard established or adopted
8 under this chapter is a violation of law. For purposes of this
9 chapter, components of quality of care include:

- 10 (1) client independence and self-determination;
- 11 (2) humane treatment;
- 12 (3) continuity of care;
- 13 (4) coordination of services;
- 14 (5) professionalism of service providers;
- 15 (6) quality of life; ~~and~~
- 16 (7) client satisfaction with services; and
- 17 (8) person-centered service delivery.

18 (b) The executive commissioner shall protect clients of
19 home and community support services agencies by adopting rules
20 relating to quality of care and quality of life.

21 (c) The department shall protect clients of home and
22 community support services agencies by:

- 23 (1) regulating those agencies;
- 24 (2) strictly monitoring factors relating to the
25 health, safety, welfare, and dignity of each client;
- 26 (3) imposing prompt and effective remedies for
27 violations of this chapter and rules and standards adopted under

1 this chapter;

2 (4) enabling agencies to provide person-centered
3 services that allow clients to maintain the highest possible degree
4 of independence and self-determination; and

5 (5) providing the public with helpful and
6 understandable information relating to agencies in this state.

7 SECTION 3. Section 142.002(a), Health and Safety Code, is
8 amended to read as follows:

9 (a) Except as provided by Section 142.003, a person,
10 including a health care facility licensed under this code, may not
11 engage in the business of providing home health, hospice,
12 habilitation, or personal assistance services, or represent to the
13 public that the person is a provider of home health, hospice,
14 habilitation, or personal assistance services for pay without a
15 home and community support services agency license authorizing the
16 person to perform those services issued by the department for each
17 place of business from which home health, hospice, habilitation, or
18 personal assistance services are directed. A certified agency must
19 have a license to provide certified home health services.

20 SECTION 4. Section 142.003(a), Health and Safety Code, is
21 amended to read as follows:

22 (a) The following persons need not be licensed under this
23 chapter:

24 (1) a physician, dentist, registered nurse,
25 occupational therapist, or physical therapist licensed under the
26 laws of this state who provides home health services to a client
27 only as a part of and incidental to that person's private office

1 practice;

2 (2) a registered nurse, licensed vocational nurse,
3 physical therapist, occupational therapist, speech therapist,
4 medical social worker, or any other health care professional as
5 determined by the department who provides home health services as a
6 sole practitioner;

7 (3) a registry that operates solely as a clearinghouse
8 to put consumers in contact with persons who provide home health,
9 hospice, habilitation, or personal assistance services and that
10 does not maintain official client records, direct client services,
11 or compensate the person who is providing the service;

12 (4) an individual whose permanent residence is in the
13 client's residence;

14 (5) an employee of a person licensed under this
15 chapter who provides home health, hospice, habilitation, or
16 personal assistance services only as an employee of the license
17 holder and who receives no benefit for providing the services,
18 other than wages from the license holder;

19 (6) a home, nursing home, convalescent home, assisted
20 living facility, special care facility, or other institution for
21 individuals who are elderly or who have disabilities that provides
22 home health or personal assistance services only to residents of
23 the home or institution;

24 (7) a person who provides one health service through a
25 contract with a person licensed under this chapter;

26 (8) a durable medical equipment supply company;

27 (9) a pharmacy or wholesale medical supply company

1 that does not furnish services, other than supplies, to a person at
2 the person's house;

3 (10) a hospital or other licensed health care facility
4 that provides home health or personal assistance services only to
5 inpatient residents of the hospital or facility;

6 (11) a person providing home health or personal
7 assistance services to an injured employee under Title 5, Labor
8 Code;

9 (12) a visiting nurse service that:

10 (A) is conducted by and for the adherents of a
11 well-recognized church or religious denomination; and

12 (B) provides nursing services by a person exempt
13 from licensing by Section 301.004, Occupations Code, because the
14 person furnishes nursing care in which treatment is only by prayer
15 or spiritual means;

16 (13) an individual hired and paid directly by the
17 client or the client's family or legal guardian to provide home
18 health or personal assistance services;

19 (14) a business, school, camp, or other organization
20 that provides home health or personal assistance services,
21 incidental to the organization's primary purpose, to individuals
22 employed by or participating in programs offered by the business,
23 school, or camp that enable the individual to participate fully in
24 the business's, school's, or camp's programs;

25 (15) a person or organization providing
26 sitter-companion services or chore or household services that do
27 not involve personal care, health, or health-related services;

1 (16) a licensed health care facility that provides
2 hospice services under a contract with a hospice;

3 (17) a person delivering residential acquired immune
4 deficiency syndrome hospice care who is licensed and designated as
5 a residential AIDS hospice under Chapter 248;

6 (18) the Texas Department of Criminal Justice;

7 (19) a person that provides home health, hospice,
8 habilitation, or personal assistance services only to persons
9 receiving benefits under:

10 (A) the home and community-based services (HCS)
11 waiver program;

12 (B) the Texas home living (TxHmL) waiver program;
13 [~~or~~]

14 (C) the STAR + PLUS or other Medicaid managed
15 care program under the program's HCS or TxHmL certification; or

16 (D) Section 534.152, Government Code; or

17 (20) an individual who provides home health or
18 personal assistance services as the employee of a consumer or an
19 entity or employee of an entity acting as a consumer's fiscal agent
20 under Section 531.051, Government Code.

21 SECTION 5. Sections 142.004(a) and (c), Health and Safety
22 Code, are amended to conform to S.B. 219, Acts of the 84th
23 Legislature, Regular Session, 2015, and further amended to read as
24 follows:

25 (a) An applicant for a license to provide home health,
26 hospice, habilitation, or personal assistance services must:

27 (1) file a written application on a form prescribed by

1 the department indicating the type of service the applicant wishes
2 to provide;

3 (2) cooperate with any surveys required by the
4 department for a license; and

5 (3) pay the license fee prescribed by this chapter.

6 (c) The executive commissioner by rule shall require that,
7 at a minimum, before the department may approve a license
8 application, the applicant must provide to the department:

9 (1) documentation establishing that, at a minimum, the
10 applicant has sufficient financial resources to provide the
11 services required by this chapter and by the department during the
12 term of the license;

13 (2) a list of the management personnel for the
14 proposed home and community support services agency, a description
15 of personnel qualifications, and a plan for providing continuing
16 training and education for the personnel during the term of the
17 license;

18 (3) documentation establishing that the applicant is
19 capable of meeting the minimum standards established by the
20 executive commissioner relating to the quality of care;

21 (4) a plan that provides for the orderly transfer of
22 care of the applicant's clients if the applicant cannot maintain or
23 deliver home health, hospice, habilitation, or personal assistance
24 services under the license;

25 (5) identifying information on the home and community
26 support services agency owner, administrator, and chief financial
27 officer to enable the department to conduct criminal background

1 checks on those persons;

2 (6) identification of any controlling person with
3 respect to the applicant; and

4 (7) documentation relating to any controlling person
5 identified under Subdivision (6), if requested by the department
6 and relevant to the controlling person's compliance with any
7 applicable licensing standard required or adopted under this
8 chapter.

9 SECTION 6. Sections 142.006(a) and (g), Health and Safety
10 Code, are amended to conform to S.B. 219, Acts of the 84th
11 Legislature, Regular Session, 2015, and further amended to read as
12 follows:

13 (a) The department shall issue a home and community support
14 services agency license to provide home health, hospice,
15 habilitation, or personal assistance services for each place of
16 business to an applicant if:

17 (1) the applicant:

18 (A) qualifies for the license to provide the type
19 of service that is to be offered by the applicant;

20 (B) submits an application and license fee as
21 required by this chapter; and

22 (C) complies with all applicable licensing
23 standards required or adopted under this chapter; and

24 (2) any controlling person with respect to the
25 applicant complies with all applicable licensing standards
26 required or adopted under this chapter.

27 (g) The license must designate the types of services that

1 the home and community support services agency is authorized to
2 provide at or from the designated place of business. The types of
3 services that may be designated include dialysis and habilitation.

4 SECTION 7. Sections 142.009(b) and (c), Health and Safety
5 Code, are amended to read as follows:

6 (b) A home and community support services agency shall
7 provide each person who receives home health, hospice,
8 habilitation, or personal assistance services with a written
9 statement that contains the name, address, and telephone number of
10 the department and a statement that informs the recipient that a
11 complaint against a home and community support services agency may
12 be directed to the department.

13 (c) The department or its authorized representative shall
14 investigate each complaint received regarding the provision of home
15 health, hospice, habilitation, or personal assistance services,
16 including any allegation of abuse, neglect, or exploitation of a
17 child under the age of 18, and may, as a part of the investigation:

18 (1) conduct an unannounced survey of a place of
19 business, including an inspection of medical and personnel records,
20 if the department has reasonable cause to believe that the place of
21 business is in violation of this chapter or a rule adopted under
22 this chapter;

23 (2) conduct an interview with a recipient of home
24 health, hospice, habilitation, or personal assistance services,
25 which may be conducted in the recipient's home if the recipient
26 consents;

27 (3) conduct an interview with a family member of a

1 recipient of home health, hospice, habilitation, or personal
2 assistance services who is deceased or other person who may have
3 knowledge of the care received by the deceased recipient of the home
4 health, hospice, habilitation, or personal assistance services; or

5 (4) interview a physician or other health care
6 practitioner, including a member of the personnel of a home and
7 community support services agency, who cares for a recipient of
8 home health, hospice, habilitation, or personal assistance
9 services.

10 SECTION 8. Sections 142.0091(a) and (b), Health and Safety
11 Code, are amended to read as follows:

12 (a) The department shall provide specialized training to
13 representatives of the department who survey home and community
14 support services agencies. The training must include information
15 relating to:

16 (1) the conduct of appropriate surveys that do not
17 focus exclusively on medical standards under an acute care model;
18 ~~and~~

19 (2) acceptable delegation of nursing tasks; and

20 (3) the provision of person-centered services.

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

27 SECTION 9. Section 142.0092(a), Health and Safety Code, is

1 amended to read as follows:

2 (a) The department shall maintain records or documents
3 relating to complaints directed to the department by consumers of
4 home health, hospice, habilitation, or personal assistance
5 services. The department shall organize the records or documents
6 according to standard, statewide categories as determined by the
7 department. In determining appropriate categories, the department
8 shall make distinctions based on factors useful to the public in
9 assessing the quality of services provided by a home and community
10 support services agency, including whether the complaint:

- 11 (1) was determined to be valid or invalid;
12 (2) involved significant physical harm or death to a
13 patient;
14 (3) involved financial exploitation of a patient; or
15 (4) resulted in any sanction imposed against the
16 agency.

17 SECTION 10. Section 142.0093(a), Health and Safety Code, is
18 amended to read as follows:

19 (a) A person licensed under this chapter may not retaliate
20 against another person for filing a complaint, presenting a
21 grievance, or providing in good faith information relating to home
22 health, hospice, habilitation, or personal assistance services
23 provided by the license holder.

24 SECTION 11. Section 142.010(a), Health and Safety Code, as
25 amended by S.B. 219, Acts of the 84th Legislature, Regular Session,
26 2015, is amended to read as follows:

27 (a) The executive commissioner by rule shall set license

1 fees for home and community support services agencies in amounts
2 that are reasonable to meet the costs of administering this
3 chapter, except that the fees may not be less than \$600 or more than
4 \$2,000 for a license to provide home health, hospice, habilitation,
5 or personal assistance services.

6 SECTION 12. Sections 142.012(b) and (e), Health and Safety
7 Code, are amended to read as follows:

8 (b) The executive commissioner by rule shall set minimum
9 standards for home and community support services agencies licensed
10 under this chapter that relate to:

11 (1) qualifications for professional and
12 nonprofessional personnel, including volunteers;

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

15 (3) the provision and coordination of treatment and
16 services, including support and bereavement services, as
17 appropriate;

18 (4) the management, ownership, and organizational
19 structure, including lines of authority and delegation of
20 responsibility and, as appropriate, the composition of an
21 interdisciplinary team;

22 (5) clinical and business records;

23 (6) financial ability to carry out the functions as
24 proposed;

25 (7) safety, fire prevention, and sanitary standards
26 for residential units and inpatient units; and

27 (8) any other aspects of home health, hospice,

1 habilitation, or personal assistance services as necessary to
2 protect the public.

3 (e) The department shall require each person or home and
4 community support services agency providing home health, hospice,
5 habilitation, or personal assistance services to implement and
6 enforce the applicable provisions of Chapter 102, Human Resources
7 Code.

8 SECTION 13. Section 142.014(a), Health and Safety Code, is
9 amended to read as follows:

10 (a) A person who engages in the business of providing home
11 health, hospice, habilitation, or personal assistance service, or
12 represents to the public that the person is a provider of home
13 health, hospice, habilitation, and personal assistance services
14 for pay, without a license issued under this chapter authorizing
15 the services that are being provided is liable for a civil penalty
16 of not less than \$1,000 or more than \$2,500 for each day of
17 violation. Penalties may be appropriated only to the department
18 and to administer this chapter.

19 SECTION 14. Section 142.017(a), Health and Safety Code, is
20 amended to read as follows:

21 (a) The department may assess an administrative penalty
22 against a person who violates:

23 (1) this chapter or a rule adopted under this chapter;
24 or

25 (2) Section 102.001, Occupations Code, if the
26 violation relates to the provision of home health, hospice,
27 habilitation, or personal assistance services.

1 SECTION 15. (a) Not later than December 1, 2015, the
2 executive commissioner of the Health and Human Services Commission
3 shall adopt the rules necessary to implement the changes in law made
4 by this Act.

5 (b) Notwithstanding Section [142.017](#), Health and Safety
6 Code, as amended by this Act, a person is not required to hold a
7 license under Chapter 142, Health and Safety Code, to engage in the
8 business of habilitation services until January 1, 2016.

9 SECTION 16. This Act takes effect September 1, 2015.