

AN ACT

relating to providers of certain home and community support services; authorizing a fee, providing penalties, and requiring an occupational license.

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

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

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

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

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

SECTION 2. Section 142.0011, Health and Safety Code, as amended by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015, is amended to read as follows:

1           Sec. 142.0011. SCOPE, PURPOSE, AND IMPLEMENTATION. (a)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25           (8) a durable medical equipment supply company;

26           (9) a pharmacy or wholesale medical supply company  
27 that does not furnish services, other than supplies, to a person at

1 the person's house;

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

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

8 (12) a visiting nurse service that:

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

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

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

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

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

27 (16) a licensed health care facility that provides

1 hospice services under a contract with a hospice;

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

5 (18) the Texas Department of Criminal Justice;

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

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

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

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

15 (D) Section 534.152, Government Code; or

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

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

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

26 (1) file a written application on a form prescribed by  
27 the department indicating the type of service the applicant wishes

1 to provide;

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

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

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

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

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

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

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

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

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

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

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

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

16                   (1) the applicant:

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

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

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

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

26           (g) The license must designate the types of services that  
27 the home and community support services agency is authorized to



1 provide at or from the designated place of business. The types of  
2 services that may be designated include dialysis and habilitation.

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

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

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

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

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

26 (3) conduct an interview with a family member of a  
27 recipient of home health, hospice, habilitation, or personal

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

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

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

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

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

18 (2) acceptable delegation of nursing tasks; and

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

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

26 SECTION 9. Section 142.0092(a), Health and Safety Code, is  
27 amended to read as follows:

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

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

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

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

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

26           (a) The executive commissioner by rule shall set license  
27 fees for home and community support services agencies in amounts

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

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

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

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

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

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

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

21 (5) clinical and business records;

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

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

26 (8) any other aspects of home health, hospice,  
27 habilitation, or personal assistance services as necessary to

1 protect the public.

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

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

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

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

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

22 (1) this chapter or a rule adopted under this chapter;

23 or

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

27 SECTION 15. Subchapter D, Chapter 161, Human Resources

1 Code, is amended by adding Section 161.088 to read as follows:

2 Sec. 161.088. ADMINISTRATIVE PENALTIES. (a) This section  
3 applies to the following waiver programs established under Section  
4 1915(c), Social Security Act (42 U.S.C. Section 1396n(c)), and  
5 administered by the department to serve persons with an  
6 intellectual or developmental disability:

7 (1) the home and community-based services (HCS) waiver  
8 program; and

9 (2) the Texas home living (TxHmL) waiver program.

10 (b) The department may assess and collect an administrative  
11 penalty against a provider who participates in a program to which  
12 this section applies for a violation of a law or rule relating to  
13 the program. If the department assesses an administrative penalty  
14 against a provider for a violation of a law or rule, the department  
15 may not impose a payment hold against or otherwise withhold  
16 contract payments from the provider for the same violation of a law  
17 or rule.

18 (c) After consulting with appropriate stakeholders, the  
19 executive commissioner shall develop and adopt rules regarding the  
20 imposition of administrative penalties under this section. The  
21 rules must:

22 (1) specify the types of violations that warrant  
23 imposition of an administrative penalty;

24 (2) establish a schedule of progressive  
25 administrative penalties in accordance with the relative type,  
26 frequency, and seriousness of a violation;

27 (3) prescribe reasonable amounts to be imposed for

1 each violation giving rise to an administrative penalty, subject to  
2 Subdivision (4);

3 (4) authorize the imposition of an administrative  
4 penalty in an amount not to exceed \$5,000 for each violation;

5 (5) provide that a provider commits a separate  
6 violation each day the provider continues to violate the law or  
7 rule;

8 (6) ensure standard and consistent application of  
9 administrative penalties throughout the state; and

10 (7) provide for an administrative appeals process to  
11 adjudicate claims and appeals relating to the imposition of an  
12 administrative penalty under this section that is in accordance  
13 with Chapter 2001, Government Code.

14 (d) In specifying the types of violations that warrant  
15 imposition of an administrative penalty under Subsection (c), the  
16 executive commissioner shall specify the types of minor violations  
17 that allow a provider an opportunity to take corrective action  
18 before a penalty is imposed.

19 (e) In establishing the schedule of progressive  
20 administrative penalties and penalty amounts under Subsection (c),  
21 the executive commissioner must consider:

22 (1) the seriousness of a violation, including:

23 (A) the nature, circumstances, extent, and  
24 gravity of the violation; and

25 (B) the hazard to the health or safety of  
26 recipients resulting from the violation;

27 (2) the provider's history of previous violations;

1           (3) whether the provider:

2                   (A) had prior knowledge of the violation,  
3 including whether the provider identified the violation through the  
4 provider's internal quality assurance process; and

5                   (B) made any efforts to mitigate or correct the  
6 identified violation;

7           (4) the penalty amount necessary to deter future  
8 violations; and

9           (5) any other matter justice may require.

10           (f) In lieu of imposing an administrative penalty under this  
11 section, the department shall allow a provider found to have  
12 committed a minor violation specified by rule in accordance with  
13 Subsection (d) to have a reasonable period of time that is not less  
14 than 45 days after the date the department sends notice to the  
15 provider of the violation to take corrective action regarding the  
16 violation. The department may not allow time for corrective action  
17 for any violation that is not a minor violation.

18           SECTION 16. (a) Not later than December 1, 2015, the  
19 executive commissioner of the Health and Human Services Commission  
20 shall adopt the rules necessary to implement the changes in law made  
21 by this Act.

22           (b) Notwithstanding Section 142.017, Health and Safety  
23 Code, as amended by this Act, a person is not required to hold a  
24 license under Chapter 142, Health and Safety Code, to engage in the  
25 business of habilitation services until January 1, 2016.

26           SECTION 17. The Department of Aging and Disability Services  
27 may impose an administrative penalty in accordance with Section



1 161.088, Human Resources Code, as added by this Act, only for  
2 conduct that occurs on or after the effective date of this Act.

3 SECTION 18. If before implementing any provision of this  
4 Act a state agency determines that a waiver or authorization from a  
5 federal agency is necessary for implementation of that provision,  
6 the agency affected by the provision shall request the waiver or  
7 authorization and may delay implementing that provision until the  
8 waiver or authorization is granted.

9 SECTION 19. This Act takes effect September 1, 2015.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 4001 was passed by the House on April 23, 2015, by the following vote: Yeas 134, Nays 7, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 4001 on May 26, 2015, by the following vote: Yeas 136, Nays 6, 2 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 4001 was passed by the Senate, with amendments, on May 22, 2015, by the following vote: Yeas 29, Nays 2.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor