

By: Raymond

H.B. No. 4001

A BILL TO BE ENTITLED

1 AN ACT
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 Subdivisions (11-c) and (11-d) and amending
9 Subdivisions (12) and (23) to read as follows:

10 (11-c) "Habilitation" means a service that allows an
11 individual to reside successfully in a community setting by
12 training the individual to acquire, retain, and improve self-help,
13 socialization, and daily living skills or assisting the individual
14 with activities of daily living. The term includes habilitation
15 training.

16 (11-d) "Habilitation training" means interacting
17 face-to-face with an individual who is awake to train the
18 individual in:

- 19 (A) self-care;
20 (B) personal hygiene;
21 (C) household tasks;
22 (D) mobility;
23 (E) money management;
24 (F) community integration;

- 1 (G) use of adaptive equipment;
- 2 (H) management of caregivers;
- 3 (I) personal decision making;
- 4 (J) interpersonal communication;
- 5 (K) reduction of maladaptive behaviors;
- 6 (L) socialization and the development of
7 relationships;
- 8 (M) participation in leisure and recreational
9 activities;
- 10 (N) use of natural supports and community
11 services typically available to the public;
- 12 (O) self-administration of medication; and
- 13 (P) strategies to restore or compensate for
14 reduced cognitive skills.

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

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

25 SECTION 2. Section [142.0011](#), Health and Safety Code, is
26 amended to read as follows:

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

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

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

16 (b) The department shall protect clients of home and
17 community support services agencies by regulating those agencies
18 and:

- 19 (1) adopting rules relating to quality of care and
20 quality of life;
- 21 (2) strictly monitoring factors relating to the
22 health, safety, welfare, and dignity of each client;
- 23 (3) imposing prompt and effective remedies for
24 violations of this chapter and rules and standards adopted under
25 this chapter;
- 26 (4) enabling agencies to provide person-centered
27 services that allow clients to maintain the highest possible degree

1 of independence and self-determination; and

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

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

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

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

19 (a) The following persons need not be licensed under this
20 chapter:

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

26 (2) a registered nurse, licensed vocational nurse,
27 physical therapist, occupational therapist, speech therapist,

1 medical social worker, or any other health care professional as
2 determined by the department who provides home health services as a
3 sole practitioner;

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

9 (4) an individual whose permanent residence is in the
10 client's residence;

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

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

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

23 (8) a durable medical equipment supply company;

24 (9) a pharmacy or wholesale medical supply company
25 that does not furnish services, other than supplies, to a person at
26 the person's house;

27 (10) a hospital or other licensed health care facility

1 that provides home health or personal assistance services only to
2 inpatient residents of the hospital or facility;

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

6 (12) a visiting nurse service that:

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

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

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

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

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

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

27 (17) a person delivering residential acquired immune

1 deficiency syndrome hospice care who is licensed and designated as
2 a residential AIDS hospice under Chapter 248;

3 (18) the Texas Department of Criminal Justice;

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

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

9 (B) the Texas home living (TxHmL) waiver program;
10 or

11 (C) Section 534.152, Government Code; or

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

16 SECTION 5. Sections 142.004(a) and (c), Health and Safety
17 Code, are amended to read as follows:

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

20 (1) file a written application on a form prescribed by
21 the department indicating the type of service the applicant wishes
22 to provide;

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

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

26 (c) The board by rule shall require that, at a minimum,
27 before the department may approve a license application, the

1 applicant must provide to the department:

2 (1) documentation establishing that, at a minimum, the
3 applicant has sufficient financial resources to provide the
4 services required by this chapter and by the department during the
5 term of the license;

6 (2) a list of the management personnel for the
7 proposed home and community support services agency, a description
8 of personnel qualifications, and a plan for providing continuing
9 training and education for the personnel during the term of the
10 license;

11 (3) documentation establishing that the applicant is
12 capable of meeting the minimum standards established by the board
13 relating to the quality of care;

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

18 (5) identifying information on the home and community
19 support services agency owner, administrator, and chief financial
20 officer to enable the department to conduct criminal background
21 checks on those persons;

22 (6) identification of any controlling person with
23 respect to the applicant; and

24 (7) documentation relating to any controlling person
25 identified under Subdivision (6), if requested by the department
26 and relevant to the controlling person's compliance with any
27 applicable licensing standard required or adopted by the board

1 under this chapter.

2 SECTION 6. Sections 142.006(a) and (g), Health and Safety
3 Code, are amended to read as follows:

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

8 (1) the applicant:

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

11 (B) submits an application and license fee as
12 required by this chapter; and

13 (C) complies with all applicable licensing
14 standards required or adopted by the board under this chapter; and

15 (2) any controlling person with respect to the
16 applicant complies with all applicable licensing standards
17 required or adopted by the board under this chapter.

18 (g) The license must designate the types of services that
19 the home and community support services agency is authorized to
20 provide at or from the designated place of business. The types of
21 services that may be designated include dialysis and habilitation.

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

24 (b) A home and community support services agency shall
25 provide each person who receives home health, hospice,
26 habilitation, or personal assistance services with a written
27 statement that contains the name, address, and telephone number of

1 the department and a statement that informs the recipient that a
2 complaint against a home and community support services agency may
3 be directed to the department.

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

9 (1) conduct an unannounced survey of a place of
10 business, including an inspection of medical and personnel records,
11 if the department has reasonable cause to believe that the place of
12 business is in violation of this chapter or a rule adopted under
13 this chapter;

14 (2) conduct an interview with a recipient of home
15 health, hospice, habilitation, or personal assistance services,
16 which may be conducted in the recipient's home if the recipient
17 consents;

18 (3) conduct an interview with a family member of a
19 recipient of home health, hospice, habilitation, or personal
20 assistance services who is deceased or other person who may have
21 knowledge of the care received by the deceased recipient of the home
22 health, hospice, habilitation, or personal assistance services; or

23 (4) interview a physician or other health care
24 practitioner, including a member of the personnel of a home and
25 community support services agency, who cares for a recipient of
26 home health, hospice, habilitation, or personal assistance
27 services.

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

3 (a) The department shall provide specialized training to
4 representatives of the department who survey home and community
5 support services agencies. The training must include information
6 relating to:

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

10 (2) acceptable delegation of nursing tasks; and

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

12 (b) In developing and updating the training required by
13 Subsection (a), the department shall consult with and include
14 providers of home health, hospice, habilitation, and personal
15 assistance services, recipients of those services and their family
16 members, and representatives of appropriate advocacy
17 organizations.

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

20 (a) The department shall maintain records or documents
21 relating to complaints directed to the department by consumers of
22 home health, hospice, habilitation, or personal assistance
23 services. The department shall organize the records or documents
24 according to standard, statewide categories as determined by the
25 department. In determining appropriate categories, the department
26 shall make distinctions based on factors useful to the public in
27 assessing the quality of services provided by a home and community

1 support services agency, including whether the complaint:

- 2 (1) was determined to be valid or invalid;
- 3 (2) involved significant physical harm or death to a
4 patient;
- 5 (3) involved financial exploitation of a patient; or
- 6 (4) resulted in any sanction imposed against the
7 agency.

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

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

15 SECTION 11. Section 142.010(a), Health and Safety Code, is
16 amended to read as follows:

17 (a) The department shall set license fees for home and
18 community support services agencies in amounts that are reasonable
19 to meet the costs of administering this chapter, except that the
20 fees may not be less than \$600 or more than \$2,000 for a license to
21 provide home health, hospice, habilitation, or personal assistance
22 services.

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

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

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

3 (2) supervision of professional and nonprofessional
4 personnel, including volunteers;

5 (3) the provision and coordination of treatment and
6 services, including support and bereavement services, as
7 appropriate;

8 (4) the management, ownership, and organizational
9 structure, including lines of authority and delegation of
10 responsibility and, as appropriate, the composition of an
11 interdisciplinary team;

12 (5) clinical and business records;

13 (6) financial ability to carry out the functions as
14 proposed;

15 (7) safety, fire prevention, and sanitary standards
16 for residential units and inpatient units; and

17 (8) any other aspects of home health, hospice,
18 habilitation, or personal assistance services as necessary to
19 protect the public.

20 (e) The department shall require each person or home and
21 community support services agency providing home health, hospice,
22 habilitation, or personal assistance services to implement and
23 enforce the applicable provisions of Chapter 102, Human Resources
24 Code.

25 SECTION 13. Section [142.014\(a\)](#), Health and Safety Code, is
26 amended to read as follows:

27 (a) A person who engages in the business of providing home

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

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

11 (a) The department may assess an administrative penalty
12 against a person who violates:

13 (1) this chapter or a rule adopted under this chapter;
14 or

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

18 SECTION 15. (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 16. This Act takes effect September 1, 2015.