

1-1 By: Raymond, Faircloth H.B. No. 4001  
 1-2 (Senate Sponsor - Schwertner)  
 1-3 (In the Senate - Received from the House April 27, 2015;  
 1-4 May 4, 2015, read first time and referred to Committee on Health  
 1-5 and Human Services; May 15, 2015, reported favorably by the  
 1-6 following vote: Yeas 9, Nays 0; May 15, 2015, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 A BILL TO BE ENTITLED  
 1-19 AN ACT

1-20 relating to the provision of habilitation and certain health care  
 1-21 services by a home and community support services agency;  
 1-22 authorizing a fee, providing penalties, and requiring an  
 1-23 occupational license.

1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-25 SECTION 1. Section 142.001, Health and Safety Code, is  
 1-26 amended by adding Subdivision (11-c) and amending Subdivisions (12)  
 1-27 and (23) to read as follows:

1-28 (11-c) "Habilitation" means habilitation services, as  
 1-29 defined by Section 534.001, Government Code, delivered by a  
 1-30 licensed home and community support services agency.

1-31 (12) "Home and community support services agency"  
 1-32 means a person who provides home health, hospice, habilitation, or  
 1-33 personal assistance services for pay or other consideration in a  
 1-34 client's residence, an independent living environment, or another  
 1-35 appropriate location.

1-36 (23) "Place of business" means an office of a home and  
 1-37 community support services agency that maintains client records or  
 1-38 directs home health, hospice, habilitation, or personal assistance  
 1-39 services. The term does not include an administrative support  
 1-40 site.

1-41 SECTION 2. Section 142.0011, Health and Safety Code, as  
 1-42 amended by S.B. 219, Acts of the 84th Legislature, Regular Session,  
 1-43 2015, is amended to read as follows:

1-44 Sec. 142.0011. SCOPE, PURPOSE, AND IMPLEMENTATION. (a)  
 1-45 The purpose of this chapter is to ensure that home and community  
 1-46 support services agencies in this state deliver the highest  
 1-47 possible quality of care. This chapter and the rules adopted under  
 1-48 this chapter establish minimum standards for acceptable quality of  
 1-49 care, and a violation of a minimum standard established or adopted  
 1-50 under this chapter is a violation of law. For purposes of this  
 1-51 chapter, components of quality of care include:

- 1-52 (1) client independence and self-determination;
- 1-53 (2) humane treatment;
- 1-54 (3) continuity of care;
- 1-55 (4) coordination of services;
- 1-56 (5) professionalism of service providers;
- 1-57 (6) quality of life; ~~and~~
- 1-58 (7) client satisfaction with services; and
- 1-59 (8) person-centered service delivery.

1-60 (b) The executive commissioner shall protect clients of  
 1-61 home and community support services agencies by adopting rules

2-1 relating to quality of care and quality of life.

2-2 (c) The department shall protect clients of home and  
2-3 community support services agencies by:

2-4 (1) regulating those agencies;

2-5 (2) strictly monitoring factors relating to the  
2-6 health, safety, welfare, and dignity of each client;

2-7 (3) imposing prompt and effective remedies for  
2-8 violations of this chapter and rules and standards adopted under  
2-9 this chapter;

2-10 (4) enabling agencies to provide person-centered  
2-11 services that allow clients to maintain the highest possible degree  
2-12 of independence and self-determination; and

2-13 (5) providing the public with helpful and  
2-14 understandable information relating to agencies in this state.

2-15 SECTION 3. Section 142.002(a), Health and Safety Code, is  
2-16 amended to read as follows:

2-17 (a) Except as provided by Section 142.003, a person,  
2-18 including a health care facility licensed under this code, may not  
2-19 engage in the business of providing home health, hospice,  
2-20 habilitation, or personal assistance services, or represent to the  
2-21 public that the person is a provider of home health, hospice,  
2-22 habilitation, or personal assistance services for pay without a  
2-23 home and community support services agency license authorizing the  
2-24 person to perform those services issued by the department for each  
2-25 place of business from which home health, hospice, habilitation, or  
2-26 personal assistance services are directed. A certified agency must  
2-27 have a license to provide certified home health services.

2-28 SECTION 4. Section 142.003(a), Health and Safety Code, is  
2-29 amended to read as follows:

2-30 (a) The following persons need not be licensed under this  
2-31 chapter:

2-32 (1) a physician, dentist, registered nurse,  
2-33 occupational therapist, or physical therapist licensed under the  
2-34 laws of this state who provides home health services to a client  
2-35 only as a part of and incidental to that person's private office  
2-36 practice;

2-37 (2) a registered nurse, licensed vocational nurse,  
2-38 physical therapist, occupational therapist, speech therapist,  
2-39 medical social worker, or any other health care professional as  
2-40 determined by the department who provides home health services as a  
2-41 sole practitioner;

2-42 (3) a registry that operates solely as a clearinghouse  
2-43 to put consumers in contact with persons who provide home health,  
2-44 hospice, habilitation, or personal assistance services and that  
2-45 does not maintain official client records, direct client services,  
2-46 or compensate the person who is providing the service;

2-47 (4) an individual whose permanent residence is in the  
2-48 client's residence;

2-49 (5) an employee of a person licensed under this  
2-50 chapter who provides home health, hospice, habilitation, or  
2-51 personal assistance services only as an employee of the license  
2-52 holder and who receives no benefit for providing the services,  
2-53 other than wages from the license holder;

2-54 (6) a home, nursing home, convalescent home, assisted  
2-55 living facility, special care facility, or other institution for  
2-56 individuals who are elderly or who have disabilities that provides  
2-57 home health or personal assistance services only to residents of  
2-58 the home or institution;

2-59 (7) a person who provides one health service through a  
2-60 contract with a person licensed under this chapter;

2-61 (8) a durable medical equipment supply company;

2-62 (9) a pharmacy or wholesale medical supply company  
2-63 that does not furnish services, other than supplies, to a person at  
2-64 the person's house;

2-65 (10) a hospital or other licensed health care facility  
2-66 that provides home health or personal assistance services only to  
2-67 inpatient residents of the hospital or facility;

2-68 (11) a person providing home health or personal  
2-69 assistance services to an injured employee under Title 5, Labor

3-1 Code;

3-2 (12) a visiting nurse service that:

3-3 (A) is conducted by and for the adherents of a

3-4 well-recognized church or religious denomination; and

3-5 (B) provides nursing services by a person exempt

3-6 from licensing by Section 301.004, Occupations Code, because the

3-7 person furnishes nursing care in which treatment is only by prayer

3-8 or spiritual means;

3-9 (13) an individual hired and paid directly by the

3-10 client or the client's family or legal guardian to provide home

3-11 health or personal assistance services;

3-12 (14) a business, school, camp, or other organization

3-13 that provides home health or personal assistance services,

3-14 incidental to the organization's primary purpose, to individuals

3-15 employed by or participating in programs offered by the business,

3-16 school, or camp that enable the individual to participate fully in

3-17 the business's, school's, or camp's programs;

3-18 (15) a person or organization providing

3-19 sitter-companion services or chore or household services that do

3-20 not involve personal care, health, or health-related services;

3-21 (16) a licensed health care facility that provides

3-22 hospice services under a contract with a hospice;

3-23 (17) a person delivering residential acquired immune

3-24 deficiency syndrome hospice care who is licensed and designated as

3-25 a residential AIDS hospice under Chapter 248;

3-26 (18) the Texas Department of Criminal Justice;

3-27 (19) a person that provides home health, hospice,

3-28 habilitation, or personal assistance services only to persons

3-29 receiving benefits under:

3-30 (A) the home and community-based services (HCS)

3-31 waiver program;

3-32 (B) the Texas home living (TxHmL) waiver program;

3-33 [~~or~~]

3-34 (C) the STAR + PLUS or other Medicaid managed

3-35 care program under the program's HCS or TxHmL certification; or

3-36 (D) Section 534.152, Government Code; or

3-37 (20) an individual who provides home health or

3-38 personal assistance services as the employee of a consumer or an

3-39 entity or employee of an entity acting as a consumer's fiscal agent

3-40 under Section 531.051, Government Code.

3-41 SECTION 5. Sections 142.004(a) and (c), Health and Safety

3-42 Code, are amended to conform to S.B. 219, Acts of the 84th

3-43 Legislature, Regular Session, 2015, and further amended to read as

3-44 follows:

3-45 (a) An applicant for a license to provide home health,

3-46 hospice, habilitation, or personal assistance services must:

3-47 (1) file a written application on a form prescribed by

3-48 the department indicating the type of service the applicant wishes

3-49 to provide;

3-50 (2) cooperate with any surveys required by the

3-51 department for a license; and

3-52 (3) pay the license fee prescribed by this chapter.

3-53 (c) The executive commissioner by rule shall require that,

3-54 at a minimum, before the department may approve a license

3-55 application, the applicant must provide to the department:

3-56 (1) documentation establishing that, at a minimum, the

3-57 applicant has sufficient financial resources to provide the

3-58 services required by this chapter and by the department during the

3-59 term of the license;

3-60 (2) a list of the management personnel for the

3-61 proposed home and community support services agency, a description

3-62 of personnel qualifications, and a plan for providing continuing

3-63 training and education for the personnel during the term of the

3-64 license;

3-65 (3) documentation establishing that the applicant is

3-66 capable of meeting the minimum standards established by the

3-67 executive commissioner relating to the quality of care;

3-68 (4) a plan that provides for the orderly transfer of

3-69 care of the applicant's clients if the applicant cannot maintain or

4-1 deliver home health, hospice, habilitation, or personal assistance  
4-2 services under the license;

4-3 (5) identifying information on the home and community  
4-4 support services agency owner, administrator, and chief financial  
4-5 officer to enable the department to conduct criminal background  
4-6 checks on those persons;

4-7 (6) identification of any controlling person with  
4-8 respect to the applicant; and

4-9 (7) documentation relating to any controlling person  
4-10 identified under Subdivision (6), if requested by the department  
4-11 and relevant to the controlling person's compliance with any  
4-12 applicable licensing standard required or adopted under this  
4-13 chapter.

4-14 SECTION 6. Sections 142.006(a) and (g), Health and Safety  
4-15 Code, are amended to conform to S.B. 219, Acts of the 84th  
4-16 Legislature, Regular Session, 2015, and further amended to read as  
4-17 follows:

4-18 (a) The department shall issue a home and community support  
4-19 services agency license to provide home health, hospice,  
4-20 habilitation, or personal assistance services for each place of  
4-21 business to an applicant if:

4-22 (1) the applicant:

4-23 (A) qualifies for the license to provide the type  
4-24 of service that is to be offered by the applicant;

4-25 (B) submits an application and license fee as  
4-26 required by this chapter; and

4-27 (C) complies with all applicable licensing  
4-28 standards required or adopted under this chapter; and

4-29 (2) any controlling person with respect to the  
4-30 applicant complies with all applicable licensing standards  
4-31 required or adopted under this chapter.

4-32 (g) The license must designate the types of services that  
4-33 the home and community support services agency is authorized to  
4-34 provide at or from the designated place of business. The types of  
4-35 services that may be designated include dialysis and habilitation.

4-36 SECTION 7. Sections 142.009(b) and (c), Health and Safety  
4-37 Code, are amended to read as follows:

4-38 (b) A home and community support services agency shall  
4-39 provide each person who receives home health, hospice,  
4-40 habilitation, or personal assistance services with a written  
4-41 statement that contains the name, address, and telephone number of  
4-42 the department and a statement that informs the recipient that a  
4-43 complaint against a home and community support services agency may  
4-44 be directed to the department.

4-45 (c) The department or its authorized representative shall  
4-46 investigate each complaint received regarding the provision of home  
4-47 health, hospice, habilitation, or personal assistance services,  
4-48 including any allegation of abuse, neglect, or exploitation of a  
4-49 child under the age of 18, and may, as a part of the investigation:

4-50 (1) conduct an unannounced survey of a place of  
4-51 business, including an inspection of medical and personnel records,  
4-52 if the department has reasonable cause to believe that the place of  
4-53 business is in violation of this chapter or a rule adopted under  
4-54 this chapter;

4-55 (2) conduct an interview with a recipient of home  
4-56 health, hospice, habilitation, or personal assistance services,  
4-57 which may be conducted in the recipient's home if the recipient  
4-58 consents;

4-59 (3) conduct an interview with a family member of a  
4-60 recipient of home health, hospice, habilitation, or personal  
4-61 assistance services who is deceased or other person who may have  
4-62 knowledge of the care received by the deceased recipient of the home  
4-63 health, hospice, habilitation, or personal assistance services; or

4-64 (4) interview a physician or other health care  
4-65 practitioner, including a member of the personnel of a home and  
4-66 community support services agency, who cares for a recipient of  
4-67 home health, hospice, habilitation, or personal assistance  
4-68 services.

4-69 SECTION 8. Sections 142.0091(a) and (b), Health and Safety



5-1 Code, are amended to read as follows:

5-2 (a) The department shall provide specialized training to  
5-3 representatives of the department who survey home and community  
5-4 support services agencies. The training must include information  
5-5 relating to:

5-6 (1) the conduct of appropriate surveys that do not  
5-7 focus exclusively on medical standards under an acute care model;  
5-8 [~~and~~]

5-9 (2) acceptable delegation of nursing tasks; and

5-10 (3) the provision of person-centered services.

5-11 (b) In developing and updating the training required by  
5-12 Subsection (a), the department shall consult with and include  
5-13 providers of home health, hospice, habilitation, and personal  
5-14 assistance services, recipients of those services and their family  
5-15 members, and representatives of appropriate advocacy  
5-16 organizations.

5-17 SECTION 9. Section 142.0092(a), Health and Safety Code, is  
5-18 amended to read as follows:

5-19 (a) The department shall maintain records or documents  
5-20 relating to complaints directed to the department by consumers of  
5-21 home health, hospice, habilitation, or personal assistance  
5-22 services. The department shall organize the records or documents  
5-23 according to standard, statewide categories as determined by the  
5-24 department. In determining appropriate categories, the department  
5-25 shall make distinctions based on factors useful to the public in  
5-26 assessing the quality of services provided by a home and community  
5-27 support services agency, including whether the complaint:

5-28 (1) was determined to be valid or invalid;

5-29 (2) involved significant physical harm or death to a  
5-30 patient;

5-31 (3) involved financial exploitation of a patient; or

5-32 (4) resulted in any sanction imposed against the  
5-33 agency.

5-34 SECTION 10. Section 142.0093(a), Health and Safety Code, is  
5-35 amended to read as follows:

5-36 (a) A person licensed under this chapter may not retaliate  
5-37 against another person for filing a complaint, presenting a  
5-38 grievance, or providing in good faith information relating to home  
5-39 health, hospice, habilitation, or personal assistance services  
5-40 provided by the license holder.

5-41 SECTION 11. Section 142.010(a), Health and Safety Code, as  
5-42 amended by S.B. 219, Acts of the 84th Legislature, Regular Session,  
5-43 2015, is amended to read as follows:

5-44 (a) The executive commissioner by rule shall set license  
5-45 fees for home and community support services agencies in amounts  
5-46 that are reasonable to meet the costs of administering this  
5-47 chapter, except that the fees may not be less than \$600 or more than  
5-48 \$2,000 for a license to provide home health, hospice, habilitation,  
5-49 or personal assistance services.

5-50 SECTION 12. Sections 142.012(b) and (e), Health and Safety  
5-51 Code, are amended to read as follows:

5-52 (b) The executive commissioner by rule shall set minimum  
5-53 standards for home and community support services agencies licensed  
5-54 under this chapter that relate to:

5-55 (1) qualifications for professional and  
5-56 nonprofessional personnel, including volunteers;

5-57 (2) supervision of professional and nonprofessional  
5-58 personnel, including volunteers;

5-59 (3) the provision and coordination of treatment and  
5-60 services, including support and bereavement services, as  
5-61 appropriate;

5-62 (4) the management, ownership, and organizational  
5-63 structure, including lines of authority and delegation of  
5-64 responsibility and, as appropriate, the composition of an  
5-65 interdisciplinary team;

5-66 (5) clinical and business records;

5-67 (6) financial ability to carry out the functions as  
5-68 proposed;

5-69 (7) safety, fire prevention, and sanitary standards

6-1 for residential units and inpatient units; and  
6-2 (8) any other aspects of home health, hospice,  
6-3 habilitation, or personal assistance services as necessary to  
6-4 protect the public.

6-5 (e) The department shall require each person or home and  
6-6 community support services agency providing home health, hospice,  
6-7 habilitation, or personal assistance services to implement and  
6-8 enforce the applicable provisions of Chapter 102, Human Resources  
6-9 Code.

6-10 SECTION 13. Section 142.014(a), Health and Safety Code, is  
6-11 amended to read as follows:

6-12 (a) A person who engages in the business of providing home  
6-13 health, hospice, habilitation, or personal assistance service, or  
6-14 represents to the public that the person is a provider of home  
6-15 health, hospice, habilitation, and personal assistance services  
6-16 for pay, without a license issued under this chapter authorizing  
6-17 the services that are being provided is liable for a civil penalty  
6-18 of not less than \$1,000 or more than \$2,500 for each day of  
6-19 violation. Penalties may be appropriated only to the department  
6-20 and to administer this chapter.

6-21 SECTION 14. Section 142.017(a), Health and Safety Code, is  
6-22 amended to read as follows:

6-23 (a) The department may assess an administrative penalty  
6-24 against a person who violates:

6-25 (1) this chapter or a rule adopted under this chapter;  
6-26 or

6-27 (2) Section 102.001, Occupations Code, if the  
6-28 violation relates to the provision of home health, hospice,  
6-29 habilitation, or personal assistance services.

6-30 SECTION 15. (a) Not later than December 1, 2015, the  
6-31 executive commissioner of the Health and Human Services Commission  
6-32 shall adopt the rules necessary to implement the changes in law made  
6-33 by this Act.

6-34 (b) Notwithstanding Section 142.017, Health and Safety  
6-35 Code, as amended by this Act, a person is not required to hold a  
6-36 license under Chapter 142, Health and Safety Code, to engage in the  
6-37 business of habilitation services until January 1, 2016.

6-38 SECTION 16. This Act takes effect September 1, 2015.

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