

**House Bill 4001**  
Senate Amendments  
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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:

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

- (1) client independence and self-determination;
- (2) humane treatment;
- (3) continuity of care;

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- (4) coordination of services;
  - (5) professionalism of service providers;
  - (6) quality of life; ~~and~~
  - (7) client satisfaction with services; and
  - (8) person-centered service delivery.
- (b) The executive commissioner shall protect clients of home and community support services agencies by adopting rules relating to quality of care and quality of life.
- (c) The department shall protect clients of home and community support services agencies by:
- (1) regulating those agencies;
  - (2) strictly monitoring factors relating to the health, safety, welfare, and dignity of each client;
  - (3) imposing prompt and effective remedies for violations of this chapter and rules and standards adopted under this chapter;
  - (4) enabling agencies to provide person-centered services that allow clients to maintain the highest possible degree of independence and self-determination; and
  - (5) providing the public with helpful and understandable information relating to agencies in this state.

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

(a) Except as provided by Section 142.003, a person, including a health care facility licensed under this code, may not engage in the business of providing home health, hospice, habilitation, or personal assistance services, or represent to the public that the person is a provider of home health, hospice, habilitation, or personal assistance services for pay without a home and community support services agency license authorizing the person to perform those services issued by the

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department for each place of business from which home health, hospice, habilitation, or personal assistance services are directed. A certified agency must have a license to provide certified home health services.

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

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

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

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

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

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

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

(6) a home, nursing home, convalescent home, assisted living facility, special care facility, or other institution for

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individuals who are elderly or who have disabilities that provides home health or personal assistance services only to residents of the home or institution;

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

(8) a durable medical equipment supply company;

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

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

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

(12) a visiting nurse service that:

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

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

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

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

(15) a person or organization providing sitter-companion

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services or chore or household services that do not involve personal care, health, or health-related services;

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

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

(18) the Texas Department of Criminal Justice;

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

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

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

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

(D) Section 534.152, Government Code; or

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

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

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

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

(2) cooperate with any surveys required by the department for

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a license; and

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

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

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

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

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

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

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

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

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

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

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

(1) the applicant:

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

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

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

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

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

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

(b) A home and community support services agency shall provide each person who receives home health, hospice, habilitation, or personal assistance services with a written statement that contains the name, address, and telephone number of the department and a statement that informs the recipient that a complaint against a home and community

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support services agency may be directed to the department.

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

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

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

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

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

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

(a) The department shall provide specialized training to representatives of the department who survey home and

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community support services agencies. The training must include information relating to:

- (1) the conduct of appropriate surveys that do not focus exclusively on medical standards under an acute care model; ~~and~~
- (2) acceptable delegation of nursing tasks; and
- (3) the provision of person-centered services.

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

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

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

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

SECTION 10. Section 142.0093(a), Health and Safety Code,

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is amended to read as follows:

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

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

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

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

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

- (1) qualifications for professional and nonprofessional personnel, including volunteers;
- (2) supervision of professional and nonprofessional personnel, including volunteers;
- (3) the provision and coordination of treatment and services, including support and bereavement services, as appropriate;
- (4) the management, ownership, and organizational structure, including lines of authority and delegation of responsibility and, as appropriate, the composition of an interdisciplinary team;

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- (5) clinical and business records;
  - (6) financial ability to carry out the functions as proposed;
  - (7) safety, fire prevention, and sanitary standards for residential units and inpatient units; and
  - (8) any other aspects of home health, hospice, habilitation, or personal assistance services as necessary to protect the public.
- (e) The department shall require each person or home and community support services agency providing home health, hospice, habilitation, or personal assistance services to implement and enforce the applicable provisions of Chapter 102, Human Resources Code.

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

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

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

- (a) The department may assess an administrative penalty against a person who violates:
- (1) this chapter or a rule adopted under this chapter; or
  - (2) Section 102.001, Occupations Code, if the violation relates to the provision of home health, hospice, habilitation, or personal assistance services.

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No equivalent provision.

SECTION \_\_. Subchapter D, Chapter 161, Human Resources Code, is amended by adding Section 161.088 to read as follows:

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

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

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

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

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

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

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

(3) prescribe reasonable amounts to be imposed for each violation giving rise to an administrative penalty, subject to Subdivision (4);

(4) authorize the imposition of an administrative penalty in an

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amount not to exceed \$5,000 for each violation;  
(5) provide that a provider commits a separate violation each day the provider continues to violate the law or rule;  
(6) ensure standard and consistent application of administrative penalties throughout the state; and  
(7) provide for an administrative appeals process to adjudicate claims and appeals relating to the imposition of an administrative penalty under this section that is in accordance with Chapter 2001, Government Code.  
(d) In specifying the types of violations that warrant imposition of an administrative penalty under Subsection (c), the executive commissioner shall specify the types of minor violations that allow a provider an opportunity to take corrective action before a penalty is imposed.  
(e) In establishing the schedule of progressive administrative penalties and penalty amounts under Subsection (c), the executive commissioner must consider:  
(1) the seriousness of a violation, including:  
(A) the nature, circumstances, extent, and gravity of the violation; and  
(B) the hazard to the health or safety of recipients resulting from the violation;  
(2) the provider's history of previous violations;  
(3) whether the provider:  
(A) had prior knowledge of the violation, including whether the provider identified the violation through the provider's internal quality assurance process; and  
(B) made any efforts to mitigate or correct the identified violation;  
(4) the penalty amount necessary to deter future violations;  
and  
(5) any other matter justice may require.

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(f) In lieu of imposing an administrative penalty under this section, the department shall allow a provider found to have committed a minor violation specified by rule in accordance with Subsection (d) to have a reasonable period of time that is not less than 45 days after the date the department sends notice to the provider of the violation to take corrective action regarding the violation. The department may not allow time for corrective action for any violation that is not a minor violation. [FA1]

No equivalent provision.

SECTION \_\_. The Department of Aging and Disability Services may impose an administrative penalty in accordance with Section 161.088, Human Resources Code, as added by this Act, only for conduct that occurs on or after the effective date of this Act. [FA1]

No equivalent provision.

SECTION \_\_. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted. [FA1]

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

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

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

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