

HEALTH & SAFETY CODE
CHAPTER 142. HOME AND COMMUNITY SUPPORT SERVICES
SUBCHAPTER A. HOME AND COMMUNITY SUPPORT SERVICES LICENSE

Sec. 142.001. DEFINITIONS. In this chapter:

(1) "Administrative support site" means a facility or site where a home and community support services agency performs administrative and other support functions but does not provide direct home health, hospice, or personal assistance services.

(2) "Alternate delivery site" means a facility or site, including a residential unit or an inpatient unit:

(A) that is owned or operated by a hospice;
(B) that is not the hospice's principal place of business;

(C) that is located in the geographical area served by the hospice; and

(D) from which the hospice provides hospice services.

(3) "Bereavement" means the process by which a survivor of a deceased person mourns and experiences grief.

(4) "Bereavement services" means support services offered to a family during bereavement.

(5) "Branch office" means a facility or site in the geographical area served by a home and community support agency where home health or personal assistance services are delivered or active client records are maintained.

(6) "Certified agency" means a home and community support services agency, or a portion of the agency, that:

(A) provides a home health service; and
(B) is certified by an official of the Department of Health and Human Services as in compliance with conditions of participation in Title XVIII, Social Security Act (42 U.S.C. Section 1395 et seq.).

(7) "Certified home health services" means home health services that are provided by a certified agency.

(8) "Chief financial officer" means an individual who is responsible for supervising and managing all financial activities for a home and community support services agency.

(9) "Controlling person" means a person who controls a home and community support services agency or other person as described by Section 142.0012.

(10) "Council" means the Home and Community Support Services Advisory Council.

(11) "Counselor" means an individual qualified under Medicare standards to provide counseling services, including bereavement, dietary, spiritual, and other counseling services, to both the client and the family.

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

(13) "Home health service" means the provision of one or more of the following health services required by an individual in a residence or independent living environment:

(A) nursing, including blood pressure monitoring and diabetes treatment;

(B) physical, occupational, speech, or respiratory therapy;

(C) medical social service;

(D) intravenous therapy;

(E) dialysis;

(F) service provided by unlicensed personnel under the delegation or supervision of a licensed health professional;

(G) the furnishing of medical equipment and supplies, excluding drugs and medicines; or

(H) nutritional counseling.

(14) "Hospice" means a person licensed under this chapter to provide hospice services, including a person who owns or operates a residential unit or an inpatient unit.

(15) "Hospice services" means services, including services provided by unlicensed personnel under the delegation of a registered nurse or physical therapist, provided to a client or a client's family as part of a coordinated program consistent with the standards and rules adopted under this chapter. These services

include palliative care for terminally ill clients and support services for clients and their families that:

(A) are available 24 hours a day, seven days a week, during the last stages of illness, during death, and during bereavement;

(B) are provided by a medically directed interdisciplinary team; and

(C) may be provided in a home, nursing home, residential unit, or inpatient unit according to need. These services do not include inpatient care normally provided in a licensed hospital to a terminally ill person who has not elected to be a hospice client.

(16) "Inpatient unit" means a facility that provides a continuum of medical or nursing care and other hospice services to clients admitted into the unit and that is in compliance with:

(A) the conditions of participation for inpatient units adopted under Title XVIII, Social Security Act (42 U.S.C. Section 1395 et seq.); and

(B) standards adopted under this chapter.

(17) "Independent living environment" means:

(A) a client's individual residence, which may include a group home or foster home; or

(B) other settings where a client participates in activities, including school, work, or church.

(18) "Interdisciplinary team" means a group of individuals who work together in a coordinated manner to provide hospice services and must include a physician, registered nurse, social worker, and counselor.

(19) "Investigation" means an inspection or survey conducted by a representative of the department to determine if a licensee is in compliance with this chapter.

(20) "Palliative care" means intervention services that focus primarily on the reduction or abatement of physical, psychosocial, and spiritual symptoms of a terminal illness.

(21) "Person" means an individual, corporation, or association.

(22) "Personal assistance service" means routine ongoing care or services required by an individual in a residence or independent living environment that enable the individual to engage in the activities of daily living or to perform the physical functions required for independent living, including respite services. The term includes:

(A) personal care;

(B) health-related services performed under circumstances that are defined as not constituting the practice of professional nursing by the Board of Nurse Examiners through a memorandum of understanding with the department in accordance with Section 142.016; and

(C) health-related tasks provided by unlicensed personnel under the delegation of a registered nurse or that a registered nurse determines do not require delegation.

(22-a) "Personal care" means the provision of one or more of the following services required by an individual in a residence or independent living environment:

(A) bathing;

(B) dressing;

(C) grooming;

(D) feeding;

(E) exercising;

(F) toileting;

(G) positioning;

(H) assisting with self-administered medications;

(I) routine hair and skin care; and

(J) transfer or ambulation.

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

(24) "Residence" means a place where a person resides and includes a home, a nursing home, a convalescent home, or a residential unit.

(25) "Residential unit" means a facility that provides living quarters and hospice services to clients admitted into the unit and that is in compliance with standards adopted under this

chapter.

(26) "Respite services" means support options that are provided temporarily for the purpose of relief for a primary caregiver in providing care to individuals of all ages with disabilities or at risk of abuse or neglect.

(27) "Social worker" means an individual licensed as a social worker under Chapter 505, Occupations Code.

(28) "Support services" means social, spiritual, and emotional care provided to a client and a client's family by a hospice.

(29) "Terminal illness" means an illness for which there is a limited prognosis if the illness runs its usual course.

(30) "Volunteer" means an individual who provides assistance to a home and community support services agency without compensation other than reimbursement for actual expenses.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 42, 43, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 800, Sec. 3, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1191, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 276, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 702, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 198, Sec. 2.193, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 892, Sec. 25, eff. Sept. 1, 2003.

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;
- (4) coordination of services;
- (5) professionalism of service providers;
- (6) quality of life; and
- (7) client satisfaction with services.

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

- (1) adopting rules relating to quality of care and quality of life;
- (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 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.

Added by Acts 1999, 76th Leg., ch. 276, Sec. 2, eff. Sept. 1, 1999.

Sec. 142.0012. CONTROLLING PERSON. (a) A person is a controlling person if the person, acting alone or with others, has the ability to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of a home and community support services agency or other person.

(b) For purposes of this chapter, "controlling person" includes:

- (1) a management company or other business entity that operates or contracts with others for the operation of a home and community support services agency;
- (2) a person who is a controlling person of a management company or other business entity that operates a home and community support services agency or that contracts with another person for the operation of a home and community support services agency; and
- (3) any other individual who, because of a personal, familial, or other relationship with the owner, manager, or provider of a home and community support services agency, is in a position of actual control or authority with respect to the agency, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant,

contractor, or employee of the agency.

(c) A controlling person described by Subsection (b)(3) does not include an employee, lender, secured creditor, or other person who does not exercise formal or actual influence or control over the operation of a home and community support services agency.

(d) The department may adopt rules that specify the ownership interests and other relationships that qualify a person as a controlling person.

Added by Acts 1999, 76th Leg., ch. 276, Sec. 2, eff. Sept. 1, 1999.

Sec. 142.002. LICENSE REQUIRED. (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, or personal assistance services, or represent to the public that the person is a provider of home health, hospice, 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 department for each place of business from which home health, hospice, or personal assistance services are directed. A certified agency must have a license to provide certified home health services.

(b) A person who is not licensed to provide home health services under this chapter may not indicate or imply that the person is licensed to provide home health services by the use of the words "home health services" or in any other manner.

(c) A person who is not licensed to provide hospice services under this chapter may not use the word "hospice" in a title or description of a facility, organization, program, service provider, or services or use any other words, letters, abbreviations, or insignia indicating or implying that the person holds a license to provide hospice services under this chapter.

(d) A license to provide hospice services issued under this chapter authorizes a hospice to own or operate a residential unit or inpatient unit at the licensed site in compliance with the standards and rules adopted under this chapter.

(e) A license issued under this chapter may not be transferred to another person, but may be transferred from one location to another location. A change of ownership or location shall be reported to the department.

(f) A person who is not licensed to provide personal assistance services under this chapter may not indicate or imply that the person is licensed to provide personal assistance services by the use of the words "personal assistance services" or in any other manner.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 4, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 198, Sec. 2.194, eff. Sept. 1, 2003.

Sec. 142.0025. TEMPORARY LICENSE. If a person is in the process of becoming certified by the Department of Health and Human Services to qualify as a certified agency, the department may issue a temporary home and community support services agency license to the person authorizing the person to provide certified home health services. A temporary license is effective as provided by board rules.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 44, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 5, eff. Sept. 1, 1993.

Sec. 142.003. EXEMPTIONS FROM LICENSING REQUIREMENT. (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, 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, 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 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 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, or personal assistance services only to persons enrolled in a program funded wholly or partly by the Texas Department of Mental Health and Mental Retardation and monitored by the Texas Department of Mental Health and Mental Retardation or its designated local authority in accordance with standards set by the Texas Department of Mental Health and Mental Retardation; 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.

(b) A home and community support services agency that owns or operates an administrative support site is not required to obtain a separate license under this chapter for the administrative support site.

(c) A hospice that operates or provides hospice services to an inpatient unit under a contract with a licensed health care facility is not required to obtain an alternate delivery site license for that inpatient unit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 6, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 769, Sec. 2, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 276, Sec. 3, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 14.777, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 198, Sec. 2.55, eff. Sept. 1, 2003.

Sec. 142.004. LICENSE APPLICATION. (a) An applicant for a license to provide home health, hospice, 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 a license; and

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

(b) In addition to the requirements of Subsection (a), if the applicant is a certified agency when the application for a license to provide certified home health services is filed, the applicant must maintain its Medicare certification. If the applicant is not a certified agency when the application for a license to provide certified home health services is filed, the applicant must establish that it is in the process of receiving its certification from the United States Department of Health and Human Services.

(c) The board 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 board 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, 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 by the board under this chapter.

(d) Information received by the department relating to the competence and financial resources of the applicant or a controlling person with respect to the applicant is confidential and may not be disclosed to the public.

(e) A home and community support services agency owned or operated by a state agency directly providing services is not required to provide the information described in Subsections (c)(1) and (5).

(f) The department shall evaluate and consider all information collected during the application process.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 45, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 800, Sec. 7, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1191, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 276, Sec. 4, eff. Sept. 1, 1999.

Sec. 142.005. COMPLIANCE RECORD IN OTHER STATES. The department may require an applicant or license holder to provide the department with information relating to compliance by the applicant, the license holder, or a controlling person with respect to the applicant or license holder with regulatory requirements in any other state in which the applicant, license holder, or controlling person operates or operated a home and community support services agency.

Added by Acts 1999, 76th Leg., ch. 276, Sec. 5, eff. Sept. 1, 1999.

Sec. 142.006. LICENSE ISSUANCE; TERM. (a) The department shall issue a home and community support services agency license to provide home health, hospice, 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 by the board under this chapter; and

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

(b) A license issued under this chapter expires one year after the date of issuance. The department may issue an initial license for a term of less than one year to conform expiration dates for a locality or an applicant. The department, in accordance with board rules, may issue a temporary license to an applicant for an initial license.

(c) The department may find that a home and community support services agency has satisfied the requirements for licensing if the agency is accredited by an accreditation organization, such as the Joint Commission on Accreditation of Healthcare Organizations or the Community Health Accreditation Program, and the department finds that the accreditation organization has standards that meet or exceed the requirements for licensing under this chapter. A license fee is required of the home and community support services agency at the time of a license application.

(d) to (f) Repealed by Acts 2003, 78th Leg., ch. 198, Sec. 2.156(a)(1).

(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.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 8, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1191, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 276, Sec. 6, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 198, Sec. 2.156(a)(1), eff. Sept. 1, 2003.

Sec. 142.0061. POSSESSION OF STERILE WATER OR SALINE . A home and community support services agency or its employees who are registered nurses or licensed vocational nurses may purchase, store, or transport for the purpose of administering to their home health or hospice patients under physician's orders:

(1) sterile water for injection and irrigation; and

(2) sterile saline for injection and irrigation.

Added by Acts 1993, 73rd Leg., ch. 16, Sec. 1, eff. April 2, 1993. Amended by Acts 1993, 73rd Leg., ch. 789, Sec. 23, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 307, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1129, Sec. 1, eff. Sept. 1, 1997.

Sec. 142.0062. POSSESSION OF CERTAIN VACCINES OR TUBERCULIN. (a) A home and community support services agency or its employees who are registered nurses or licensed vocational nurses may purchase, store, or transport for the purpose of administering to the agency's employees, home health or hospice patients, or patient family members under physician's standing orders the following dangerous drugs:

(1) hepatitis B vaccine;

(2) influenza vaccine;

(3) tuberculin purified protein derivative for tuberculosis testing; and

(4) pneumococcal polysaccharide vaccine.

(b) A home and community support services agency that purchases, stores, or transports a vaccine or tuberculin under this section shall ensure that any standing order for the vaccine or tuberculin:

(1) is signed and dated by the physician;

(2) identifies the vaccine or tuberculin covered by the order;

(3) indicates that the recipient of the vaccine or tuberculin has been assessed as an appropriate candidate to receive the vaccine or tuberculin and has been assessed for the absence of any contraindication;

(4) indicates that appropriate procedures are established for responding to any negative reaction to the vaccine or tuberculin; and

(5) orders that a specific medication or category of medication be administered if the recipient has a negative reaction to the vaccine or tuberculin.

Added by Acts 1997, 75th Leg., ch. 1129, Sec. 1, eff. Sept. 1, 1997.

Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.195, eff. Sept. 1, 2003.

Sec. 142.0063. POSSESSION OF CERTAIN DANGEROUS DRUGS. (a) A home and community support services agency in compliance with this section or its employees who are registered nurses or licensed vocational nurses may purchase, store, or transport for the purpose of administering to their home health or hospice patients in accordance with Subsection (c) the following dangerous drugs:

(1) any of the following items in a sealed portable container of a size determined by the dispensing pharmacist:

(A) 1,000 milliliters of 0.9 percent sodium chloride intravenous infusion;

(B) 1,000 milliliters of five percent dextrose in water injection; or

(C) sterile saline; or

(2) not more than five dosage units of any of the following items in an individually sealed, unused portable container:

(A) heparin sodium lock flush in a concentration of 10 units per milliliter or 100 units per milliliter;

(B) epinephrine HCl solution in a concentration of 1 to 1,000;

(C) diphenhydramine HCl solution in a concentration of 50 milligrams per milliliter;

(D) methylprednisolone in a concentration of 125 milligrams per two milliliters;

(E) naloxone in a concentration of one milligram per milliliter in a two-milliliter vial;

(F) promethazine in a concentration of 25 milligrams per milliliter;

(G) glucagon in a concentration of one milligram per milliliter;

(H) furosemide in a concentration of 10 milligrams per milliliter;

(I) lidocaine 2.5 percent and prilocaine 2.5 percent cream in a five-gram tube; or

(J) lidocaine HCl solution in a concentration of one percent in a two-milliliter vial.

(b) A home and community support services agency or the agency's authorized employees may purchase, store, or transport dangerous drugs in a sealed portable container under this section only if the agency has established policies and procedures to ensure that:

(1) the container is handled properly with respect to storage, transportation, and temperature stability;

(2) a drug is removed from the container only on a physician's written or oral order;

(3) the administration of any drug in the container is performed in accordance with a specific treatment protocol; and

(4) the agency maintains a written record of the dates and times the container is in the possession of a registered nurse or licensed vocational nurse.

(c) A home and community support services agency or the agency's authorized employee who administers a drug listed in Subsection (a) may administer the drug only in the patient's residence under physician's orders in connection with the provision of emergency treatment or the adjustment of:

(1) parenteral drug therapy; or

(2) vaccine or tuberculin administration.

(d) If a home and community support services agency or the agency's authorized employee administers a drug listed in Subsection (a) pursuant to a physician's oral order, the physician shall promptly send a signed copy of the order to the agency, and the agency shall:

(1) not later than 24 hours after receipt of the order, reduce the order to written form and send a copy of the form to the dispensing pharmacy by mail or facsimile transmission; and

(2) not later than 20 days after receipt of the order, send a copy of the order as signed by and received from the physician to the dispensing pharmacy.

(e) A pharmacist that dispenses a sealed portable container under this section shall ensure that the container:

(1) is designed to allow access to the contents of the container only if a tamper-proof seal is broken;

(2) bears a label that lists the drugs in the container

and provides notice of the container's expiration date, which is the earlier of:

(A) the date that is six months after the date on which the container is dispensed; or

(B) the earliest expiration date of any drug in the container; and

(3) remains in the pharmacy or under the control of a pharmacist, registered nurse, or licensed vocational nurse.

(f) If a home and community support services agency or the agency's authorized employee purchases, stores, or transports a sealed portable container under this section, the agency shall deliver the container to the dispensing pharmacy for verification of drug quality, quantity, integrity, and expiration dates not later than the earlier of:

(1) the seventh day after the date on which the seal on the container is broken; or

(2) the date for which notice is provided on the container label.

(g) A pharmacy that dispenses a sealed portable container under this section shall take reasonable precautionary measures to ensure that the home and community support services agency receiving the container complies with Subsection (f). On receipt of a container under Subsection (f), the pharmacy shall perform an inventory of the drugs used from the container and shall restock and reseal the container before delivering the container to the agency for reuse.

Added by Acts 1997, 75th Leg., ch. 1129, Sec. 1, eff. Sept. 1, 1997.

Sec. 142.0065. DISPLAY OF LICENSE. A license issued under this chapter shall be displayed in a conspicuous place in the designated place of business and must show:

(1) the name and address of the licensee;

(2) the name of the owner or owners, if different from the information provided under Subdivision (1);

(3) the license expiration date; and

(4) the types of services authorized to be provided under the license.

Added by Acts 1993, 73rd Leg., ch. 800, Sec. 9, eff. Sept. 1, 1993.

Sec. 142.007. NOTICE OF DRUG TESTING POLICY. An agency licensed under this chapter shall provide to the following persons a written statement describing the agency's policy for the drug testing of employees who have direct contact with clients:

(1) each person applying for services from the agency; and

(2) any person requesting the information.

Added by Acts 1999, 76th Leg., ch. 1020, Sec. 1, eff. Sept. 1, 1999.

Sec. 142.008. BRANCH OFFICE. (a) The department may issue a branch office license to a person who holds a license to provide home health or personal assistance services.

(b) The board by rule shall establish eligibility requirements for a branch office license.

(c) A branch office license expires on the same date as the license to provide home health or personal assistance services held by the applicant for the branch office license.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 10, eff. Sept. 1, 1993.

Sec. 142.0085. ALTERNATE DELIVERY SITE LICENSE. (a) The department shall issue an alternate delivery site license to a qualified hospice.

(b) The board by rule shall establish standards required for the issuance of an alternate delivery site license.

(c) An alternate delivery site license expires on the same date as the license to provide hospice services held by the hospice.

Added by Acts 1993, 73rd Leg., ch. 800, Sec. 11, eff. Sept. 1, 1993.

Sec. 142.009. SURVEYS; CONSUMER COMPLAINTS. (a) The department or its representative may enter the premises of a license applicant or license holder at reasonable times to conduct a survey incidental to the issuance of a license and at other times as the department considers necessary to ensure compliance with this chapter and the rules adopted under this chapter.

(b) A home and community support services agency shall provide each person who receives home health, hospice, 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 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, or personal assistance services 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, 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, 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, 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, or personal assistance services.

(d) The reports, records, and working papers used or developed in an investigation made under this section are confidential and may not be released or made public except:

(1) to a state or federal agency;

(2) to federal, state, or local law enforcement personnel;

(3) with the consent of each person identified in the information released;

(4) in civil or criminal litigation matters or licensing proceedings as otherwise allowed by law or judicial rule;

(5) on a form developed by the department that identifies any deficiencies found without identifying a person, other than the home and community support services agency;

(6) on a form required by a federal agency if:

(A) the information does not reveal the identity of an individual, including a patient or a physician or other medical practitioner;

(B) the service provider subject to the investigation had a reasonable opportunity to review the information and offer comments to be included with the information released or made public; and

(C) the release of the information complies with any other federal requirement; or

(7) as provided by Section 142.0092.

(e) The department's representative shall hold a conference with the person in charge of the home and community support services agency before beginning the on-site survey to explain the nature and scope of the survey. When the survey is completed, the department's representative shall hold a conference with the person who is in charge of the agency and shall identify any records that were duplicated. Agency records may be removed from an agency only with the agency's consent.

(f) The department shall fully inform the person who is in charge of the home and community support services agency of the preliminary findings of the survey and shall give the person a reasonable opportunity to submit additional facts or other information to the department's authorized representative in response to those findings. The response shall be made a part of the record of the survey for all purposes.

(g) After a survey of a home and community support services agency by the department, the department shall provide to the chief executive officer of the agency:

(1) specific and timely written notice of the preliminary findings of the survey, including:

(A) the specific nature of the survey;

(B) any alleged violations of a specific statute or rule;

(C) the specific nature of any finding regarding an alleged violation or deficiency; and

(D) if a deficiency is alleged, the severity of the deficiency;

(2) information on the identity, including the signature, of each department representative conducting,

reviewing, or approving the results of the survey and the date on which the department representative acted on the matter; and

(3) if requested by the agency, copies of all documents relating to the survey maintained by the department or provided by the department to any other state or federal agency that are not confidential under state law.

(h) Except for the investigation of complaints, a home and community support services agency licensed by the department under this chapter is not subject to additional surveys relating to home health, hospice, or personal assistance services while the agency maintains accreditation for the applicable service from the Joint Commission for Accreditation of Healthcare Organizations, the Community Health Accreditation Program, or other accreditation organizations that meet or exceed the regulations adopted under this chapter. Each provider must submit to the department documentation from the accrediting body indicating that the provider is accredited when the provider is applying for the initial license and annually when the license is renewed.

(i) Repealed by Acts 2003, 78th Leg., ch. 198, Sec. 2.156(a)(1).

(j) Except as provided by Subsections (h) and (l), an on-site survey must be conducted within 18 months after a survey for an initial license. After that time, an on-site survey must be conducted at least every 36 months.

(k) If a person is renewing or applying for a license to provide more than one type of service under this chapter, the surveys required for each of the services the license holder or applicant seeks to provide shall be completed during the same surveyor visit.

(l) The department and other state agencies that are under the Health and Human Services Commission and that contract with home and community support services agencies to deliver services for which a license is required under this chapter shall execute a memorandum of understanding that establishes procedures to eliminate or reduce duplication of standards or conflicts between standards and of functions in license, certification, or compliance surveys and complaint investigations. The Health and Human Services Commission shall review the recommendation of the council relating to the memorandum of understanding before considering approval. The memorandum of understanding must be approved by the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 46, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 800, Sec. 12, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1191, Sec. 4, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 276, Sec. 7, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 198, Sec. 2.56, 2.156(a)(1), eff. Sept. 1, 2003.

Sec. 142.0091. SURVEYOR TRAINING. (a) The department shall provide specialized training to representatives of the department who survey home and 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.

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

Added by Acts 1999, 76th Leg., ch. 276, Sec. 8, eff. Sept. 1, 1999.

Sec. 142.0092. CONSUMER COMPLAINT DATA. (a) The department shall maintain records or documents relating to complaints directed to the department by consumers of home health, hospice, 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.

(b) The department shall make the information maintained under this section available to the public in a useful format that does not identify individuals implicated in the complaints.

Added by Acts 1999, 76th Leg., ch. 276, Sec. 8, eff. Sept. 1, 1999.

Sec. 142.0093. RETALIATION PROHIBITED. (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, or personal assistance services provided by the license holder.

(b) This section does not prohibit a license holder from terminating an employee for a reason other than retaliation.

Added by Acts 1999, 76th Leg., ch. 276, Sec. 8, eff. Sept. 1, 1999.

Sec. 142.0094. USE OF REGULATORY SURVEY REPORTS AND OTHER DOCUMENTS. (a) Except as otherwise provided by this section, a survey report or other document prepared by the department that relates to regulation of a home and community support services agency is not admissible as evidence in a civil action to prove that the agency violated a standard prescribed under this chapter.

(b) Subsection (a) does not:

(1) bar the admission into evidence of department survey reports or other documents in an enforcement action in which the state or an agency or political subdivision of the state is a party, including:

(A) an action seeking injunctive relief under Section 142.013;

(B) an action seeking imposition of a civil penalty under Section 142.014;

(C) a contested case hearing involving imposition of an administrative penalty under Section 142.017; and

(D) a contested case hearing involving denial, suspension, or revocation of a license issued under this chapter;

(2) bar the admission into evidence of department survey reports or other documents that are offered:

(A) to establish warning or notice to a home and community support services agency of a relevant department determination; or

(B) under any rule or evidentiary predicate of the Texas Rules of Evidence;

(3) prohibit or limit the testimony of a department employee, in accordance with the Texas Rules of Evidence, as to observations, factual findings, conclusions, or determinations that a home and community support services agency violated a standard prescribed under this chapter if the observations, factual findings, conclusions, or determinations were made in the discharge of the employee's official duties for the department; or

(4) prohibit or limit the use of department survey reports or other documents in depositions or other forms of discovery conducted in connection with a civil action if use of the survey reports or other documents appears reasonably calculated to lead to the discovery of admissible evidence.

Added by Acts 1999, 76th Leg., ch. 276, Sec. 8, eff. Sept. 1, 1999.

Sec. 142.010. FEES. (a) The board 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 \$300 or more than \$1,000 for a license to provide home health, hospice, or personal assistance services.

(b) The board shall consider the size of the home and community support services agency, the number of clients served, the number of services provided, and the necessity for review of other accreditation documentation in determining the amount of initial and renewal license fees.

(c) A fee charged under this section is nonrefundable. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 13, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1191, Sec. 5, eff. Sept. 1, 1997.

Sec. 142.0105. LICENSE RENEWAL. (a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the department before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(b) A person whose license has been expired for 90 days or

less may renew the license by paying to the department a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(c) A person whose license has been expired for more than 90 days may obtain a new license by complying with the requirements and procedures for obtaining an original license.

(d) Not later than the 60th day before the date a person's license is scheduled to expire, the department shall send written notice of the impending expiration to the person at the person's last known address according to the records of the department.

Added by Acts 1999, 76th Leg., ch. 887, Sec. 1, eff. Sept. 1, 1999.

Sec. 142.011. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. (a) The department may deny a license application or suspend or revoke the license of a person who:

(1) fails to comply with the rules or standards for licensing required by this chapter; or

(2) engages in conduct that violates Section 161.091.

(b) The department may immediately suspend or revoke a license when the health and safety of persons are threatened. If the department issues an order of immediate suspension or revocation, the department shall immediately give the chief executive officer of the home and community support services agency adequate notice of the action taken, the legal grounds for the action, and the procedure governing appeal of the action. A person whose license is suspended or revoked under this subsection is entitled to a hearing not later than the seventh day after the effective date of the suspension or revocation.

(c) The department may suspend or revoke a home and community support services agency's license to provide certified home health services if the agency fails to maintain its certification qualifying the agency as a certified agency. A home and community support services agency that is licensed to provide certified home health services and that submits a request for a hearing as provided by Subsection (d) is subject to the requirements of this chapter relating to a home and community support services agency that is licensed to provide home health services, but not certified home health services, until the suspension or revocation is finally determined by the department or, if the license is suspended or revoked, until the last day for seeking review of the department order or a later date fixed by order of the reviewing court.

(d) A person whose application is denied or whose license is suspended or revoked is entitled to a hearing before the department if the person submits a written request to the department. Chapter 2001, Government Code and the department's rules for contested case hearings apply to hearings conducted under this section and to appeals from department decisions.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 47, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 800, Sec. 14, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 276, Sec. 9, eff. Sept. 1, 1999.

Sec. 142.012. POWERS AND DUTIES. (a) The board, with the recommendations of the council, shall adopt rules necessary to implement this chapter.

(b) The board 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;

(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, or personal assistance services as necessary to protect the public.

(c) The initial minimum standards adopted by the board under Subsection (b) for hospice services must be at least as stringent as the conditions of participation for a Medicare certified provider of hospice services in effect on April 30, 1993, under Title XVIII, Social Security Act (42 U.S.C. Section 1395 et seq.).

(d) The department shall prescribe forms necessary to perform its duties.

(e) The department shall require each person or home and community support services agency providing home health, hospice, or personal assistance services to implement and enforce the applicable provisions of Chapter 102, Human Resources Code. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 15, eff. Sept. 1, 1993.

Sec. 142.013. INJUNCTION. (a) A district court, on petition of the department and on a finding by the court that a person is violating this chapter, may by injunction:

(1) prohibit the person from continuing the violation; or
(2) grant any other injunctive relief warranted by the facts.

(b) The attorney general shall institute and conduct a suit authorized by this section at the request of the department and in the name of the state.

(c) A suit for injunctive relief must be brought in Travis County. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 142.014. CIVIL PENALTY. (a) A person who engages in the business of providing home health, hospice, or personal assistance service, or represents to the public that the person is a provider of home health, hospice, 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.

(b) An action to recover a civil penalty is in addition to an action brought for injunctive relief under Section 142.013 or any other remedy provided by law. The attorney general shall bring suit on behalf of the state to collect the civil penalty. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 16, eff. Sept. 1, 1993.

Sec. 142.0145. VIOLATION OF LAW RELATING TO ADVANCE DIRECTIVES. (a) The department shall assess an administrative penalty against a home and community support services agency that violates Section 166.004.

(b) A penalty assessed under this section shall be \$500.

(c) The penalty shall be assessed in accordance with department rules. The rules must provide for notice and an opportunity for a hearing. Added by Acts 1999, 76th Leg., ch. 450, Sec. 2.02, eff. Sept. 1, 1999.

Sec. 142.015. ADVISORY COUNCIL. (a) The Home and Community Support Services Advisory Council is composed of the following 13 members, appointed by the governor:

(1) three consumer representatives;
(2) two representatives of agencies that are licensed to provide certified home health services;
(3) two representatives of agencies that are licensed to provide home health services but are not certified home health services;

(4) three representatives of agencies that are licensed to provide hospice services, with one representative appointed from:

(A) a community-based non-profit provider of hospice services;

(B) a community-based proprietary provider of hospice services; and

(C) a hospital-based provider of hospice services; and

(5) three representatives of agencies that are licensed to provide personal assistance services.

(b) Repealed by Acts 1991, 72nd Leg., 1st C.S., ch. 17, Sec. 7.01(18), eff. Nov. 12, 1991.

(c) The council shall advise the department on licensing standards and on the implementation of this chapter. At each

meeting of the council, the department shall provide an analysis of enforcement actions taken under this chapter, including the type of enforcement action, the results of the action, and the basis for the action. The council may advise the department on its implementation of the enforcement provisions of this chapter.

(d) Members of the council serve staggered two-year terms, with the terms of seven members expiring on January 31 of each even-numbered year and the terms of six members expiring on January 31 of each odd-numbered year.

(e) The council shall elect a presiding officer from among its members to preside at meetings and to notify members of meetings. The presiding officer shall serve for one year and may not serve in that capacity for more than two years.

(f) The council shall meet at least once a year and may meet at other times at the call of the presiding officer, any three members of the council, or the commissioner.

(g) Members of the council serve without compensation. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 48, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 17, Sec. 7.01(18), eff. Nov. 12, 1991; Acts 1993, 73rd Leg., ch. 800, Sec. 17, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1191, Sec. 6, eff. Sept. 1, 1997.

Sec. 142.016. MEMORANDUM OF UNDERSTANDING RELATING TO NURSING SERVICES; GUIDELINES. (a) The Board of Nurse Examiners and the department shall adopt a memorandum of understanding governing the circumstances under which the provision of health-related tasks or services do not constitute the practice of professional nursing. The agencies periodically shall review and shall renew or modify the memorandum as necessary.

(b) The Board of Nurse Examiners and the department shall consult with an advisory committee in developing, modifying, or renewing the memorandum of understanding. The advisory committee shall be appointed by the Board of Nurse Examiners and the department and at a minimum shall include:

(1) one representative from the Board of Nurse Examiners and one representative from the department to serve as cochairmen;

(2) one representative from the Texas Department of Mental Health and Mental Retardation;

(3) one representative from the Texas Nurses Association;

(4) one representative from the Texas Association for Home Care, Incorporated, or its successor;

(5) one representative from the Texas Hospice Organization, Incorporated, or its successor;

(6) one representative of the Texas Respite Resource Network or its successor; and

(7) two representatives of organizations such as the Personal Assistance Task Force or the Disability Consortium that advocate for clients in community-based settings.

(c) The department shall prepare guidelines according to the memorandum of understanding required by Subsection (a) for licensed home and community support services agencies in providing personal assistance services to clients.

Added by Acts 1993, 73rd Leg., ch. 800, Sec. 18, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.196, eff. Sept. 1, 2003.

Sec. 142.017. ADMINISTRATIVE PENALTY. (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, or personal assistance services.

(b) The penalty shall be not less than \$100 or more than \$1,000 for each violation. Each day of a violation that occurs before the day on which the person receives written notice of the violation from the department does not constitute a separate violation and shall be considered to be one violation. Each day of a continuing violation that occurs after the day on which the person receives written notice of the violation from the department constitutes a separate violation.

(c) The department by rule shall specify each violation for which an administrative penalty may be assessed. In determining which violations warrant penalties, the department shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard of the violation to the health or safety of clients; and

(2) whether the affected home and community support services agency had identified the violation as a part of its internal quality assurance process and had made appropriate progress on correction.

(d) The department by rule shall establish a schedule of appropriate and graduated penalties for each violation based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard or safety of clients;

(2) the history of previous violations by the person or a controlling person with respect to that person;

(3) whether the affected home and community support services agency had identified the violation as a part of its internal quality assurance process and had made appropriate progress on correction;

(4) the amount necessary to deter future violations;

(5) efforts made to correct the violation; and

(6) any other matters that justice may require.

(e) The department by rule shall provide the home and community support services agency with a reasonable period of time following the first day of a violation to correct the violation before assessing an administrative penalty if a plan of correction has been implemented.

(f) An administrative penalty may not be assessed for minor violations unless those violations are of a continuing nature or are not corrected.

(g) The department shall establish a system to ensure standard and consistent application of penalties regardless of the home and community support services agency location.

(h) All proceedings for the assessment of an administrative penalty under this chapter are subject to Chapter 2001, Government Code.

(i) The department may not assess an administrative penalty against a state agency.

Added by Acts 1997, 75th Leg., ch. 1191, Sec. 7, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 276, Sec. 10, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 14.778, eff. Sept. 1, 2001.

Sec. 142.0171. NOTICE; REQUEST FOR HEARING. (a) If, after investigation of a possible violation and the facts surrounding that possible violation, the department determines that a violation has occurred, the department shall give written notice of the violation to the person alleged to have committed the violation. The notice shall include:

(1) a brief summary of the alleged violation;

(2) a statement of the amount of the proposed penalty based on the factors listed in Section 142.017(d); and

(3) a statement of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(b) Not later than the 20th day after the date on which the notice is received, the person notified may accept the determination of the department made under this section, including the proposed penalty, or may make a written request for a hearing on that determination.

(c) If the person notified of the violation accepts the determination of the department or if the person fails to respond in a timely manner to the notice, the commissioner or the commissioner's designee shall issue an order approving the determination and ordering that the person pay the proposed penalty.

Added by Acts 1997, 75th Leg., ch. 1191, Sec. 7, eff. Sept. 1, 1997.

Sec. 142.0172. HEARING; ORDER. (a) If the person notified requests a hearing, the department shall:

(1) set a hearing;

(2) give written notice of the hearing to the person; and

(3) designate a hearings examiner to conduct the hearing.

(b) The hearings examiner shall make findings of fact and conclusions of law and shall promptly issue to the commissioner or the commissioner's designee a proposal for decision as to the

occurrence of the violation and a recommendation as to the amount of the proposed penalty if a penalty is determined to be warranted.

(c) Based on the findings of fact and conclusions of law and the recommendations of the hearings examiner, the commissioner or the commissioner's designee by order may find that a violation has occurred and may assess a penalty or may find that no violation has occurred.

Added by Acts 1997, 75th Leg., ch. 1191, Sec. 7, eff. Sept. 1, 1997.

Sec. 142.0173. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW; REFUND. (a) The department shall give notice of the order under Section 142.0172(c) to the person alleged to have committed the violation. The notice must include:

(1) separate statements of the findings of fact and conclusions of law;

(2) the amount of any penalty assessed; and

(3) a statement of the right of the person to judicial review of the order.

(b) Not later than the 30th day after the date on which the decision is final as provided by Chapter 2001, Government Code, the person shall:

(1) pay the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) Within the 30-day period, a person who acts under Subsection (b)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department by certified mail.

(d) If the department receives a copy of an affidavit under Subsection (c)(2), the department may file with the court, within 10 days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

(e) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the penalty.

(f) Judicial review of the order:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(g) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(h) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty under Subsection (b)(2) and if that amount is reduced or is not upheld by the court, the court shall order that the department pay the appropriate amount plus accrued interest to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If

the person paid the penalty under Subsection (c)(1)(A), or gave a supersedeas bond, and if the amount of the penalty is not upheld by the court, the court shall order the release of the escrow account or bond. If the person paid the penalty under Subsection (c)(1)(A) and the amount of the penalty is reduced, the court shall order that the amount of the penalty be paid to the department from the escrow account and that the remainder of the account be released. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

Added by Acts 1997, 75th Leg., ch. 1191, Sec. 7, eff. Sept. 1, 1997.

Sec. 142.0174. USE OF ADMINISTRATIVE PENALTY. An administrative penalty collected under this subchapter may be appropriated for the purpose of funding the grant program established under Section 161.074, Human Resources Code.

Added by Acts 1997, 75th Leg., ch. 1191, Sec. 7, eff. Sept. 1, 1997. Amended by Acts 2005, 79th Leg., ch. 786, Sec. 1, eff. Sept. 1, 2005.

Sec. 142.0175. EXPENSES AND COSTS FOR COLLECTION OF CIVIL OR ADMINISTRATIVE PENALTY. (a) If the attorney general brings an action against a person under Section 142.013 or 142.014 or to enforce an administrative penalty assessed under Section 142.0173 and an injunction is granted against the person or the person is found liable for a civil or administrative penalty, the attorney general may recover, on behalf of the attorney general and the department, reasonable expenses and costs.

(b) For purposes of this section, reasonable expenses and costs include expenses incurred by the department and the attorney general in the investigation, initiation, and prosecution of an action, including reasonable investigative costs, attorney's fees, witness fees, and deposition expenses.

Added by Acts 1997, 75th Leg., ch. 1191, Sec. 7, eff. Sept. 1, 1997.

Sec. 142.018. REPORTS OF ABUSE, EXPLOITATION, OR NEGLECT. (a) In this section, "abuse," "exploitation," and "neglect" have the meanings assigned by Section 48.002, Human Resources Code.

(b) A home and community support services agency that has cause to believe that a person receiving services from the agency has been abused, exploited, or neglected by an employee of the agency shall report the information to:

(1) the department; and

(2) the Department of Protective and Regulatory Services or other appropriate state agency as required by Section 48.051, Human Resources Code.

(c) This section does not affect the duty or authority of any state agency to conduct an investigation of alleged abuse, exploitation, or neglect as provided by other law. An investigation of alleged abuse, exploitation, or neglect may be conducted without an on-site survey, as appropriate.

Added by Acts 1999, 76th Leg., ch. 276, Sec. 11, eff. Sept. 1, 1999.

Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.197, eff. Sept. 1, 2003.

Sec. 142.019. CERTAIN PHYSICIAN REFERRALS PROHIBITED. A physician may not refer a patient to a home and community support services agency if the referral violates 42 U.S.C. Section 1395nn and its subsequent amendments.

Added by Acts 1999, 76th Leg., ch. 276, Sec. 11, eff. Sept. 1, 1999.

Sec. 142.020. DISPOSAL OF SPECIAL OR MEDICAL WASTE. (a) A home and community support services agency that generates special or medical waste while providing home health services must dispose of the waste in the same manner that the home and community support services agency disposes of special or medical waste generated in the agency's office location.

(b) A home and community support services agency shall provide both verbal and written instructions to the agency's client regarding the proper procedure for disposing of sharps. Sharps include hypodermic needles; hypodermic syringes with attached needles; scalpel blades; razor blades, disposable razors, and disposable scissors used in medical procedures; and intravenous stylets and rigid introducers.

Added by Acts 1999, 76th Leg., ch. 276, Sec. 12, eff. Sept. 1, 1999;

Acts 1999, 76th Leg., ch. 1317, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. PERMITS TO ADMINISTER MEDICATION

Sec. 142.021. ADMINISTRATION OF MEDICATION. A person may not administer medication to a client of a home and community

support services agency unless the person:

(1) holds a license under state law that authorizes the person to administer medication;

(2) holds a permit issued under Section 142.025 and acts under the delegated authority of a person who holds a license under state law that authorizes the person to administer medication;

(3) administers a medication to a client of a home and community support service agency in accordance with rules of the Board of Nurse Examiners that permit delegation of the administration of medication to a person not holding a permit under Section 142.025; or

(4) administers noninjectable medication under circumstances authorized by the memorandum of understanding adopted under Section 142.016.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 31, Sec. 3, eff. June 19, 1990. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 19, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1191, Sec. 8, eff. Sept. 1, 1997.

Sec. 142.022. EXEMPTIONS FOR NURSING STUDENTS AND MEDICATION AIDE TRAINEES. (a) Sections 142.021 and 142.029 do not apply to:

(1) a graduate nurse holding a temporary permit issued by the Board of Nurse Examiners;

(2) a student enrolled in an accredited school of nursing or program for the education of registered nurses who is administering medications as part of the student's clinical experience;

(3) a graduate vocational nurse holding a temporary permit issued by the Board of Nurse Examiners;

(4) a student enrolled in an accredited school of vocational nursing or program for the education of vocational nurses who is administering medications as part of the student's clinical experience; or

(5) a trainee in a medication aide training program approved by the department under Section 142.024 who is administering medications as part of the trainee's clinical experience.

(b) The administration of medications by persons exempted under Subdivisions (1) through (4) of Subsection (a) is governed by the terms of the memorandum of understanding executed by the department and the Board of Nurse Examiners.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 31, Sec. 4, eff. June 19, 1990. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 2.009, eff. Feb. 1, 2004.

Sec. 142.023. RULES FOR ADMINISTRATION OF MEDICATION. The board by rule shall establish:

(1) minimum requirements for the issuance, denial, renewal, suspension, emergency suspension, and revocation of a permit to a home health medication aide;

(2) curricula to train a home health medication aide;

(3) minimum standards for the approval of home health medication aide training programs and for rescinding approval;

(4) the acts and practices that are allowed or prohibited to a permit holder; and

(5) minimum standards for on-site supervision of a permit holder by a registered nurse.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 31, Sec. 3, eff. June 19, 1990. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 20, eff. Sept. 1, 1993.

Sec. 142.024. HOME HEALTH MEDICATION AIDE TRAINING PROGRAMS. (a) An application for the approval of a home health medication aide training program must be made to the department on a form and under rules prescribed by the board.

(b) The department shall approve a home health medication aide training program that meets the minimum standards adopted under Section 142.023. The department may review the approval annually.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 31, Sec. 3, eff. June 19, 1990. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 21, eff. Sept. 1, 1993.

Sec. 142.025. ISSUANCE AND RENEWAL OF HOME HEALTH MEDICATION AIDE PERMIT. (a) To be issued or to have renewed a home health medication aide permit, a person shall apply to the department on a form prescribed and under rules adopted by the board.

(b) The department shall prepare and conduct an examination

for the issuance of a permit.

(c) The department shall require a permit holder to satisfactorily complete a continuing education course approved by the department for renewal of the permit.

(d) The department shall issue a permit or renew a permit to an applicant who:

(1) meets the minimum requirements adopted under Section 142.023;

(2) successfully completes the examination or the continuing education requirements; and

(3) pays a nonrefundable application fee determined by the board.

(e) A permit is valid for one year and is not transferable. Added by Acts 1990, 71st Leg., 6th C.S., ch. 31, Sec. 3, eff. June 19, 1990. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 22, 23, eff. Sept. 1, 1993.

Sec. 142.026. FEES FOR ISSUANCE AND RENEWAL OF HOME HEALTH MEDICATION AIDE PERMIT. (a) The board shall set the fees in amounts reasonable and necessary to recover the amount projected by the department as required to administer its functions under this subchapter. The fees may not exceed:

(1) \$25 for a combined permit application and examination fee; and

(2) \$15 for a renewal permit application fee.

(b) Fees received under this section may only be appropriated to the department to administer this subchapter.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 31, Sec. 3, eff. June 19, 1990. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 24, eff. Sept. 1, 1993.

Sec. 142.027. VIOLATION OF HOME HEALTH MEDICATION AIDE PERMITS. (a) For the violation of this subchapter or a rule adopted under this subchapter, the department may:

(1) deny, suspend, revoke, or refuse to renew a permit;

(2) suspend a permit in an emergency; or

(3) rescind training program approval.

(b) Except as provided by Section 142.028, the procedure by which the department takes a disciplinary action and the procedure by which a disciplinary action is appealed are governed by the department's rules for a formal hearing and by Chapter 2001, Government Code.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 31, Sec. 3, eff. June 19, 1990. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 25, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 142.028. EMERGENCY SUSPENSION OF HOME HEALTH MEDICATION AIDE PERMITS. (a) The department shall issue an order to suspend a permit issued under Section 142.025 if the department has reasonable cause to believe that the conduct of the permit holder creates an imminent danger to the public health or safety.

(b) An emergency suspension is effective immediately without a hearing on notice to the permit holder.

(c) If requested in writing by a permit holder whose permit is suspended, the department shall conduct a hearing to continue, modify, or rescind the emergency suspension.

(d) The hearing must be held not earlier than the 10th day or later than the 30th day after the date on which the hearing request is received.

(e) The hearing and an appeal from a disciplinary action related to the hearing are governed by the department's rules for a formal hearing and Chapter 2001, Government Code.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 31, Sec. 3, eff. June 19, 1990. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 26, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 142.029. ADMINISTRATION OF MEDICATION; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly administers medication to a client of a home and community support services agency and the person is not authorized to administer the medication under Section 142.021 or 142.022.

(b) An offense under this section is a Class B misdemeanor. Added by Acts 1990, 71st Leg., 6th C.S., ch. 31, Sec. 3, eff. June 19, 1990. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 27, eff. Sept. 1, 1993.

Sec. 142.030. DISPENSING DANGEROUS DRUGS OR CONTROLLED

SUBSTANCES; CRIMINAL PENALTY. (a) A person authorized by this subchapter to administer medication to a client of a home and community support services agency may not dispense dangerous drugs or controlled substances without complying with Subtitle J, Title 3, Occupations Code.

(b) An offense under this section is a Class A misdemeanor. Added by Acts 1990, 71st Leg., 6th C.S., ch. 31, Sec. 3, eff. June 19, 1990. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 28, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 1420, Sec. 14.779, eff. Sept. 1, 2001.