

CHAPTER 825

S.B. No. 957

An Act relating to the licensing and regulation of home health agencies and to the handling of complaints; prescribing certain fees and their use; providing for civil penalties; amending Chapter 642, Acts of the 66th Legislature, Regular Session, 1979, as amended (Article 4447u, Vernon's Texas Civil Statutes), by amending Sections 8, 9, 10, and 12.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 8, Chapter 642, Acts of the 66th Legislature, Regular Session, 1979, as amended (Article 4447u, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 8. LICENSE FEES. *The board shall set the home health service license fee in an amount that is reasonable to meet the costs of administering this Act; but the fee may not be less than \$300 nor more than \$750 for a Class A or Class B license, nor less than \$100 nor more than \$300 for a branch office license. A fee charged under this section is nonrefundable except as provided by Subsection (b) of this section. [(a) Except as provided by Subsections (b) and (c) of this section, the Class A home health service license fee and the Class B home health service license fee for each place of business is \$100.*

"[(b) The Class A home health service license fee for each place of business of a certified agency that has been operated during the year immediately preceding the date of the application is a figure in dollars that equals one percent of the total number of home visits made by the agency from the place of business during the year immediately preceding the date of the application, but not less than \$100 nor more than \$100.

"[(c) The Class B home health service license fee for each place of business of a person, other than a certified agency, providing home health services during the year immediately preceding the date of the application is the fee specified in the following schedule according to the number of home health service hours billed from the place of business during the year immediately preceding the date of the application:

<u>Fee</u>	<u>No. Hrs. Billed</u>
\$100	0/10,000
\$200	over 10,000 but not more than 100,000
\$400	over 100,000]"

SECTION 2. Section 9, Chapter 642, Acts of the 66th Legislature, Regular Session, 1979, as amended (Article 4447u, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 9. ISSUANCE OF LICENSE; HOSPICES; BRANCH OFFICE. (a) The department shall issue a Class A or Class B home health service license for each place of business to each applicant who:

"(1) qualifies for the type of license requested;

"(2) submits an application *and application fee* as required by this Act; and

"(3) complies with all licensing standards required or adopted by the *board* [department] under this Act.

"(b) *A license issued under this Act may not be transferred from one person to another person. A license may be transferred from one location to another location with the approval of the department. The board shall adopt rules prescribing the criteria for approval of the relocation of a license. [Without the approval of the department, a license issued under this Act may not be transferred from one location to another or assigned.]*

"(c) A license issued under this Act expires one year from the date of issuance. *The department may issue an initial license for a term of less than one year in order to conform expiration dates for a locality or an applicant. In accordance with rules adopted by the board, the department may issue a temporary license to an applicant for an initial license.*

"(d) *If an agency meets the standards adopted by the board for hospice services, the Class A or Class B home health service license may designate that the agency is a hospice.*

"(e) *The department may issue a branch office license to a person who holds a current Class A or Class B license. The board shall adopt rules to establish eligibility for a branch office license. A branch office license expires on the same expiration date as the Class A or Class B license."*

SECTION 3. Section 10, Chapter 642, Acts of the 66th Legislature, Regular Session, 1979, as amended (Article 4447u, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 10. (a) The department or its authorized representatives may enter the premises of a license applicant or license holder *after reasonable prior notice and* at reasonable times to make an inspection incidental to the issuance of a license, *and at other times as it considers necessary to insure compliance with this Act and the rules adopted under this Act.*

"(b) *A home health agency shall provide each person who receives home health services with a written statement that contains the name, address, and telephone number of the department and a statement that informs consumers that a complaint against a home health 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 services and may, as a part of such investigation:*

"(1) *conduct an unannounced inspection 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 Act or a rule adopted under this Act;*

"(2) *conduct an interview with any recipient of home health services which may be conducted in the home if the recipient consents;*

“(3) interview any physician or other health care practitioner, including home health agency personnel, who cares for a recipient of home health services.

“(d) The reports, records, and working papers used or developed in an investigation made under this section are confidential.

“(e) The department’s authorized representative shall hold a conference with the person who is in charge of a home health agency prior to commencing the on-site inspection for the purpose of explaining the nature and scope of the inspection. The department’s representative shall hold a conference with the person who is in charge of the agency when the inspection is completed, and the department’s representative shall identify any records that were duplicated. Any agency records that are removed from an agency shall be removed only with the consent of the agency.”

SECTION 4. Section 12, Chapter 642, Acts of the 66th Legislature, Regular Session, 1979, as amended (Article 4447u, Vernon’s Texas Civil Statutes), is amended to read as follows:

“Section 12. **INJUNCTIONS; CIVIL PENALTY.** (a) When a person violates the licensing requirements of this Act, the department may petition a district court to restrain the person from continuing the violation. A suit for injunctive relief must be brought in Travis County.

“(b) On application for injunctive relief and a finding that a person is violating this Act, the district court shall grant the injunctive relief the facts may warrant.

“(c) At the request of the department, the attorney general shall institute and conduct the suit authorized in Subsection (a) of this section in the name of the State of Texas.

“(d) In addition to a suit brought for injunctive relief under this section or any other remedy provided by law, a person who operates a home health agency without a license issued under this Act is liable for a civil penalty of not less than \$100 nor more than \$500 for each day of violation. All penalties collected under this subsection shall be deposited to the credit of the General Revenue Fund.”

SECTION 5. All fees received by the Texas Department of Health under Chapter 642, Acts of the 66th Legislature, Regular Session, 1979, as amended (Article 4447u, Vernon’s Texas Civil Statutes), are hereby appropriated to the department from the General Revenue Fund to be used only in the administration of this Act.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on May 9, 1985, by the following vote: Yeas 31, Nays 0; Senate concurred in House amendment on May 27, 1985, by the following vote: Yeas 31, Nays 0; passed subject to the provisions of Article III, Section 49a of the Constitution of Texas; passed the House, with amendment, on May 24, 1985, by the following vote: Yeas 147, Nays 1, one present not voting; passed subject to the provisions of Article III, Section 49a of the Constitution of Texas.

Approved: June 15, 1985

Effective: Immediately