

CHAPTER 800

H.B. No. 1551

AN ACT

relating to home care and community support services.

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

SECTION 1. The heading of Chapter 142, Health and Safety Code, is amended to read as follows:

CHAPTER 142. HOME AND COMMUNITY SUPPORT [~~HEALTH~~] SERVICES

SECTION 2. The heading of Subchapter A, Chapter 142, Health and Safety Code, is amended to read as follows:

SUBCHAPTER A. HOME AND COMMUNITY SUPPORT
[~~HEALTH~~] SERVICES LICENSE [~~LICENSES~~]

SECTION 3. Section 142.001, Health and Safety Code, is amended to read as follows:
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 that ~~person who~~:

(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) ~~(2)~~ "Council" means the Home and Community Support ~~Health~~ Services Advisory Council.

(9) "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.

~~(3) "Health service" means:~~

~~(A) nursing;~~

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

~~(C) a medical social service;~~

~~(D) the service of a home health aide;~~

~~(E) the furnishing of medical equipment and supplies, excluding drugs and medicines;~~

~~or~~

~~(F) nutritional counseling.]~~

(10) ~~(4)~~ "Home and community support services ~~health~~ 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 ~~[place of business, including a hospice, that provides a home health service].~~

(11) ~~(5)~~ "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;

(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 of a licensed health professional;

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

(H) nutritional counseling~~[, for pay or other consideration, of a health service in a patient's residence. The term does not include the provision of care under an attendant care program administered by the Texas Department of Human Services].~~

(12) "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.

(13) "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 terminal-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.

(14) "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.

(15) "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.

(16) "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.

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

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

(19) [(6)] "Person" means an individual, corporation, or association.

(20) "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 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 health-related tasks provided by unlicensed personnel under the delegation of a registered nurse.

(21) [(7)] "Place of business" means an office of a home and community support services [health] agency that maintains client [patient] records or directs home health, hospice, or personal assistance services. The term does not include an administrative support site [~~includes a suboffice, a branch office, a workroom, or any other subsidiary location~~].

(22) [(8)] "Residence" means a place where a person resides and includes a home, a nursing home, [or] a convalescent home, or a residential unit [~~for the disabled or aged~~].

(23) "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.

(24) "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.

(25) "Social worker" means an individual certified as a social worker under Chapter 50, Human Resources Code.

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

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

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

SECTION 4. Section 142.002, Health and Safety Code, is amended to read as follows:

Sec. 142.002. LICENSE REQUIRED. (a) Except as provided by Section 142.003, a [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 [services] without a home and community support services agency license authorizing the person to perform those services [~~an appropriate license~~] 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 [Class A] license to provide certified home health services[, and any other person must have a Class B license].

(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) [(b)] 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 [with the approval of] the department. [The board by rule shall prescribe criteria for the approval of the relocation of a license.]

SECTION 5. Section 142.0025, Health and Safety Code, is amended to read as follows:

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 [Class A] home and community support services agency [health service] license to the person authorizing the person to provide certified home health services. A temporary license is effective as provided by board rules.

SECTION 6. Section 142.003, Health and Safety Code, is amended to read as follows:

Sec. 142.003. EXEMPTIONS FROM LICENSING REQUIREMENT. (a) The following persons need not be licensed under this chapter:

(1) a physician, dentist, registered nurse, or physical therapist licensed under the laws of this state who provides home health services to a client [patient] 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 [nonprofit] registry [~~operated by a national or state professional association or society of licensed health care practitioners, or a subdivision of the association or society,~~] that operates solely as a clearinghouse to put consumers in contact with persons who provide home health, hospice, or personal assistance services [~~licensed health care practitioners who give care in a patient's residence~~] and that does not maintain official client [patient] records, [or] direct client [patient] services, or compensate the person who is providing the service;

(4) an individual whose permanent residence is in the client's [patient'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, personal care facility, special care facility, or other institution for individuals who are elderly or who have disabilities that provides home health or personal assistance ~~[the disabled or aged that provides health]~~ 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 ~~[serves]~~ only to inpatient residents of the hospital or facility;

(11) a person providing home health or personal assistance services to an injured employee under the Texas Workers' Compensation Act (Article 8308-1.01 et seq., Vernon's Texas Civil ~~[workers' compensation laws of this state (Article 8306 et seq., Revised]~~ Statutes); ~~[or]~~

(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 Article 4528, Revised Statutes, 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; or

(18) until August 31, 1995, a state agency, mental retardation authority, or mental health authority providing the direct delivery of home health, hospice, or personal assistance services.

(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.

SECTION 7. Section 142.004, Health and Safety Code, is amended to read as follows:

Sec. 142.004. LICENSE APPLICATION. (a) An applicant for a license to provide ~~[a]~~ home health, hospice, or personal assistance services ~~[service]~~ must:

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

(2) file with the application:

(A) the name of the owner of the *applicant* [service] or a list of the names of persons who own *at least a 10 percent* [an] interest in the *applicant* [service]; and

(B) a list of any businesses with which the *applicant* [service] subcontracts and in which the owner or owners of the *applicant* [service] hold at least five percent of the ownership; or

(C) *if the applicant is a direct or indirect subsidiary of a publicly held corporation, the name of that publicly held corporation and the names of each subsidiary of the publicly held corporation that owns an interest in the applicant;*

(3) cooperate with any *surveys* [inspections] required by the department for a license; and

(4) 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 [Class 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 [Class 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, other than an application for a renewal or branch office or *alternate delivery site* license, 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* [health] 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; and

(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.

(d) *Information received by the department relating to the competence and financial resources of the applicant is confidential and may not be disclosed to the public.*

SECTION 8. Section 142.006, Health and Safety Code, is amended to read as follows:

Sec. 142.006. LICENSE ISSUANCE; TERM. (a) The department shall issue a [Class A or Class B] *home and community support services agency* [health service] license to *provide home health, hospice, or personal assistance services* for each place of business to each applicant who:

(1) qualifies for the [type of] license to *provide the type of service that is to be offered by the applicant* [requested];

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

(3) complies with all 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) *The department may find that a home and community support services agency has satisfied the requirements for licensing if the agency is certified by a state agency that has certification standards that meet or exceed the requirements for licensing under this chapter. A license fee is required at the time of a license application.*

(e) *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.*

SECTION 9. Subchapter A, Chapter 142, Health and Safety Code, is amended by adding Section 142.0065 to read as follows:

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.*

SECTION 10. Section 142.008, Health and Safety Code, is amended to read as follows:

Sec. 142.008. *BRANCH OFFICE. (a) The department may issue a branch office license to a person who holds a [Class A or Class B] 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 [Class A or Class B] license to provide home health or personal assistance services held by the applicant for the branch office license [that person].*

SECTION 11. Subchapter A, Chapter 142, Health and Safety Code, is amended by adding Section 142.0085 to read as follows:

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.*

SECTION 12. Section 142.009, Health and Safety Code, is amended to read as follows:

Sec. 142.009. *SURVEYS [INSPECTIONS]; 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 [an inspection] 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 [health] 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 [consumers] that a complaint against a home and community support services [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, hospice, or personal assistance services and may, as a part of the investigation:*

- (1) *conduct an unannounced survey [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 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; [or]*

(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 [health] 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; or*

(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.*

(e) *The department's representative shall hold a conference with the person in charge of the home and community support services [health] agency before beginning the on-site survey [inspection] to explain the nature and scope of the survey [inspection]. When the survey [inspection] 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) *Except as provided by Subsections (h) and (k), 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.*

(j) *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.*

(k) *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.*

SECTION 13. Section 142.010, Health and Safety Code, is amended to read as follows:

Sec. 142.010. FEES. (a) The board shall set [~~the home health service~~] 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 \$200 or more than \$1,000 for a license to provide home health, hospice, or personal assistance services*;

[~~(1) less than \$600 or more than \$1,200 for an initial Class A or Class B license; or
(2) less than \$200 or more than \$300 for renewal of a branch office license~~].

(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.

SECTION 14. Sections 142.011(b) and (c), Health and Safety Code, are amended to read as follows:

(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 [~~the license of a Class A home health agency that~~] 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 [~~Class A home health agency~~] 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, [~~Class B home health agency~~] 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.*

SECTION 15. Section 142.012, Health and Safety Code, is amended to read as follows:

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* [~~health~~] 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; ~~and~~

(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) ~~[(4)]~~ The department shall require each person or home *and community support services* ~~health~~ agency providing home health, *hospice, or personal assistance services* to implement and enforce the applicable provisions of Chapter 102, Human Resources Code.

SECTION 16. Section 142.014, Health and Safety Code, is amended to read as follows:

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,* ~~operates a home health agency~~ 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 ~~[\$100]~~ or more than \$2,500 ~~[\$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.*

SECTION 17. Sections 142.015(a) and (d), Health and Safety Code, are amended to read as follows:

(a) The Home *and Community Support* ~~Health~~ Services Advisory Council is composed of the following ~~13~~ ~~14~~ members, appointed by the governor:

(1) *three consumer representatives* ~~[one representative of the department];~~

(2) two representatives of *agencies that are licensed to provide certified home health services* ~~[consumers of home health agency and hospice services];~~

(3) *two representatives of agencies that are licensed to provide home health services but are not certified home health services* ~~[one representative of the Texas Department of Human 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* ~~[one representative of the Texas Association of Home Health Agencies, Incorporated];~~

(5) *three representatives of agencies that are licensed to provide personal assistance services* ~~[one representative of private nonprofit home health agencies;~~

~~[(6) one representative of voluntary nonprofit home health agencies;~~

~~[(7) one representative of proprietary home health agencies;~~

~~[(8) one representative of an official department home health agency;~~

~~[(9) one member to represent Medicare-certified Class A hospice providers affiliated with a home health agency, hospital, or other health service provider; and~~

~~[(10) one member to represent Medicare-certified Class A hospice providers not affiliated with a home health agency, hospital, or other health service provider].~~

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

SECTION 18. Subchapter A, Chapter 142, Health and Safety Code, is amended by adding Section 142.016 to read as follows:

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 annually 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 Department of Human Services;*

(4) *one representative from the Texas Nurses Association;*

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

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

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

(8) *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.*

SECTION 19. Section 142.021, Health and Safety Code, is amended to read as follows:

Sec. 142.021. ADMINISTRATION OF [PERMITS TO ADMINISTER] MEDICATION. A person may not administer medication to a *client* [patient] of a home and community support services [health] 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; [or]

(3) performs duties as a qualified dialysis technician within the scope authorized by board rules;

(4) 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

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

SECTION 20. Section 142.023, Health and Safety Code, is amended to read as follows:

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* [~~administer medication to a patient of a home health agency~~];

(2) curricula to train *a home health medication aide* [~~persons to administer medication to a patient of a home health agency~~];

(3) minimum standards for the approval of *home health medication aide training programs* [~~programs to train persons to administer medication to patients of home health agencies~~] 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.

SECTION 21. Section 142.024, Health and Safety Code, is amended to read as follows:

Sec. 142.024. *HOME HEALTH MEDICATION AIDE TRAINING PROGRAMS* [~~TO ADMINISTER MEDICATION~~]. (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.

SECTION 22. The heading of Section 142.025, Health and Safety Code, is amended to read as follows:

Sec. 142.025. *ISSUANCE AND RENEWAL OF HOME HEALTH MEDICATION AIDE PERMIT* [~~TO ADMINISTER MEDICATION~~].

SECTION 23. Section 142.025(a), Health and Safety Code, is amended to read as follows:

(a) To be issued or to have renewed a *home health medication aide* permit [~~to administer medication~~], a person shall apply to the department on a form prescribed and under rules adopted by the board.

SECTION 24. The heading of Section 142.026, Health and Safety Code, is amended to read as follows:

Sec. 142.026. *FEEES FOR ISSUANCE AND RENEWAL OF HOME HEALTH MEDICATION AIDE PERMIT* [~~TO ADMINISTER MEDICATION~~].

SECTION 25. The heading of Section 142.027, Health and Safety Code, is amended to read as follows:

Sec. 142.027. *VIOLATION OF HOME HEALTH MEDICATION AIDE PERMITS* [~~TO ADMINISTER MEDICATION~~].

SECTION 26. The heading of Section 142.028, Health and Safety Code, is amended to read as follows:

Sec. 142.028. *EMERGENCY SUSPENSION OF HOME HEALTH MEDICATION AIDE PERMITS* [~~TO ADMINISTER MEDICATION~~].

SECTION 27. Section 142.029(a), Health and Safety Code, is amended to read as follows:

(a) A person commits an offense if the person knowingly administers medication to a *client* [~~patient~~] of a *home and community support services* [~~health~~] agency and the person *is not authorized to administer the medication under Section 142.021 or 142.022*;

~~[(1) does not hold a license under state law that authorizes the person to administer medication; or~~

~~[(2) does not hold a permit issued by the department under Section 142.025].~~

SECTION 28. Section 142.030(a), Health and Safety Code, is amended to read as follows:

(a) A person authorized by this subchapter to administer medication to a *client* [~~patient~~] of a *home and community support services* [~~health~~] agency may not dispense dangerous drugs or controlled substances without complying with the Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes).

SECTION 29. Section 248.003, Health and Safety Code, is amended to read as follows:
 Sec. 248.003. EXEMPTIONS. This chapter does not apply to:

- (1) a home and community support services [health] agency required to be licensed under Chapter 142;
- (2) a person required to be licensed under Chapter 241 (Texas Hospital Licensing Law);
- (3) an institution required to be licensed under Chapter 242;
- (4) an ambulatory surgical center required to be licensed under Chapter 243 (Texas Ambulatory Surgical Center Licensing Act);
- (5) a birthing center required to be licensed under Chapter 244 (Texas Birthing Center Licensing Act);
- (6) a facility required to be licensed under Chapter 245 (Texas Abortion Facility Reporting and Licensing Act); or
- (7) a person providing medical or nursing care or services under a license or permit issued under other state law.

SECTION 30. Section 248.002, Health and Safety Code, is amended by adding Subdivisions (9)–(14) to read as follows:

- (9) "Bereavement services" has the meaning assigned by Section 142.001.
- (10) "Palliative care" has the meaning assigned by Section 142.001.
- (11) "Support services" has the meaning assigned by Section 142.001.
- (12) "Residential AIDS hospice" means a facility licensed and designated as a residential AIDS hospice under this chapter.
- (13) "Residential AIDS hospice care" means hospice services provided in a residential AIDS hospice.
- (14) "AIDS" means acquired immune deficiency syndrome.

SECTION 31. Subchapter B, Chapter 248, Health and Safety Code, is amended by adding Section 248.029 to read as follows:

Sec. 248.029. RESIDENTIAL AIDS HOSPICE DESIGNATION. (a) The board by rule shall adopt standards for the designation of a special care facility licensed under this chapter as a residential AIDS hospice. Those standards shall be consistent with other standards adopted under this chapter and consistent with the purposes for which special care facilities are created.

(b) In adopting the standards, the board shall consider rules adopted for the designation of a hospice under Chapter 142 and shall establish specific standards requiring:

- (1) the provision of exclusively palliative care by a facility;
- (2) the provision of bereavement services;
- (3) the provision of support services to the family of a client;
- (4) the participation of a registered nurse in the development of an initial plan of care for a client and periodic review of the plan of care by an interdisciplinary team of the facility; and
- (5) clinical and medical review of patient care services by a physician who acts as a medical consultant.

(c) A special care facility licensed under this chapter that satisfies the standards adopted under this section shall be designated as a residential AIDS hospice.

(d) Notwithstanding Chapter 142, a special care facility licensed and issued a designation as a residential AIDS hospice under this chapter may use the term "residential AIDS hospice" or a similar term or language in its title or in a description or representation of the facility if the similar term or language clearly identifies the facility as a facility regulated under this chapter and clearly distinguishes the facility from a hospice regulated under Chapter 142.

(e) A special care facility licensed under this chapter on July 1, 1994, on notice to the department that it is in compliance with the standards adopted for designation as a

residential AIDS hospice, shall be issued that designation by the department, and that designation is valid until the date the license of the facility expires or is renewed.

SECTION 32. Sections 142.005 and 142.007, Health and Safety Code, are repealed.

SECTION 33. (a) The changes in law made by this Act apply only to an offense or a violation committed on or after July 1, 1994.

(b) An offense or violation committed before July 1, 1994, is covered by the law in effect when the offense or violation was committed, and the former law is continued in effect for that purpose.

SECTION 34. Not later than January 1, 1994, the Board of Nurse Examiners and the Texas Department of Health shall adopt the initial memorandum of understanding required by Section 142.016, Health and Safety Code, as added by this Act.

SECTION 35. The changes in law made by this Act do not affect the validity of a license or of a permit to administer medication issued by the Texas Department of Health under Chapter 142, Health and Safety Code, before the effective date of this Act. Regardless of the changes in law made by this Act, the department shall continue to issue licenses to qualified home health agencies and permits to administer medication under Chapter 142, Health and Safety Code, as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose until July 1, 1994.

SECTION 36. The Texas Department of Health shall propose rules to implement this Act on or before January 1, 1994. The department shall adopt rules to implement this Act on or before June 1, 1994.

SECTION 37. The Texas Department of Health and other state agencies under the Health and Human Services Commission shall distribute to interested persons a draft of the memorandum of understanding required by Section 142.009(k), Health and Safety Code, as added by this Act, on or before January 1, 1994, and shall execute the initial memorandum of understanding required by that section on or before June 1, 1994.

SECTION 38. A home and community support services agency providing home health, hospice, or personal assistance services is not required to obtain a license under this Act until July 1, 1994.

SECTION 39. After the effective date of this Act, a reference to a home health agency in law is a reference to a home and community support services agency.

SECTION 40. A person who, on the effective date of this Act, is serving a term as a member of the Home Health Services Advisory Council shall continue to serve on the Home and Community Support Services Advisory Council until January 31, 1994. At that time, in accordance with Section 142.015, Health and Safety Code, as amended by this Act, the governor shall appoint the 13 members to the council. After the appointment of the new council in 1994, at the first meeting of the council the new members shall draw lots to determine their initial terms. Seven members shall serve for a term expiring January 31, 1995, and six members shall serve for a term expiring January 31, 1996.

SECTION 41. This Act takes effect September 1, 1993.

SECTION 42. 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.

Passed by the House on May 4, 1993, by a non-record vote; the House concurred in Senate amendments to H.B. No. 1551 on May 27, 1993, by a non-record vote; passed by the Senate, with amendments, on May 22, 1993, by a viva-voce vote.

Approved June 18, 1993.

Effective Sept. 1, 1993.