

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 1247  
By: Madla  
Health & Human Services  
4-4-97  
Committee Report (Substituted)

### **DIGEST**

Currently, the Licensed Home and Community Support Services Agencies (HCSSA) provide home health, hospice, and personal assistance services in the homes of their clients as an alternative to more costly institutional care in hospitals and nursing homes. The only major requirements for a temporary initial HCSSA license are a completed application, an affidavit attesting that the application has adequate financial resources to provide the services required by licensure, and an \$875 application fee. New HCSSA licenses are issued at a rate of 115 per month. The growth in this industry has resulted in documented evidence of exploitation, abuses, and misconduct by the agencies against their employees, clients, and taxpayers. This bill would authorize the Texas Department of Health (TDH) to perform criminal background checks on the owner, administrator and chief financial officer of an HCSSA prior to licensure. Additionally, this bill would authorize TDH to assess administrative penalties against chronic violators of the Health and Safety Code to encourage a correction of their deficiencies on a permanent basis.

### **PURPOSE**

As proposed, C.S.S.B. 1247 authorizes the Texas Department of Health (TDH) to perform criminal background checks on the owner, administrator, and chief financial officer of a home and community support services agency prior to licensure by TDH. Additionally, this bill authorizes TDH to assess administrative penalties against violators of the Health and Safety Code to ensure compliance.

### **RULEMAKING AUTHORITY**

Rulemaking authority is granted to the Texas Department of Health in SECTION 5 (Sections 142.017(c) and (d), Health and Safety Code), and to the commissioner of health or the commissioner's designee in SECTION 5 (Section 142.0172(c), Health and Safety Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 142.001, Health and Safety Code, by adding Subdivision (8) and by renumbering existing Subdivisions (8) through (28), to define "chief financial officer." Makes conforming changes.

SECTION 2. Amends Section 142.004, Health and Safety Code, by amending Subsections (a) and (c) and by adding Subsections (e) and (f), to delete text in reference to certain file application requirements for a license to provide home health, hospice, or personal assistance services. Deletes a clause exempting an application for a renewal or branch officer or alternative delivery site license from certain required rulemaking authority granted to the Board of Health (board). Requires the board, by rule, to require that an applicant must provide to the Department of Health (TDH), among other items, identifying information on the home and community support services agency owner, administrator, and chief financial officer to enable TDH to conduct criminal background checks on those persons. Provides that 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). Requires TDH to evaluate and consider all information collected during the application process.

SECTION 3. Amends Section 142.010(a), Health and Safety Code, to require the board to set license fees for home and community support agencies in amounts that are not less than \$300, rather

than \$200.

SECTION 4. Amends Section 142.015(c), Health and Safety Code, to require TDH, at each meeting of the Home and Community Support Services Advisory Council (council), to provide an analysis of enforcement actions taken under this chapter. Authorizes the council to advise TDH on its implementation of the enforcement provisions of this chapter.

SECTION 5. Amends Chapter 142A, Health and Safety Code, by adding Sections 142.017 through 142.0175, as follows:

Sec. 142.017. ADMINISTRATIVE PENALTY. Sets forth the guidelines authorizing TDH to impose administrative penalties for violation of this chapter or rules adopted under this chapter. Provides that all proceedings for the assessment of an administrative penalty under this chapter are subject to Chapter 2001, Government Code.

Sec. 142.0171. NOTICE; REQUEST FOR HEARING. Requires TDH, upon determining that a violation has occurred, to give written notice of the violation to the person alleged to have committed the violation. Requires the notice to include a brief summary of the alleged violation; a statement of the amount of the proposed penalty based on the factors listed in Subsection 142.017(d); and a statement of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both. Authorizes the person notified to either accept the determination of TDH or make a written request for a hearing on that determination. Requires the commissioner of health (commissioner) or the commissioner's designee to issue an order approving the determination and ordering that a person pay the proposed penalty if the person notified of the violation accepts the determination of TDH or if the person fails to respond in a timely manner to the notice.

Sec. 142.0172. HEARING; ORDER. Requires TDH to set a hearing, give written notice, and designate a hearing examiner upon a request for a hearing by the person notified. Requires the hearing examiner to make findings of fact and conclusions of law and to 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. Authorizes the commissioner or the commissioner's designee, based on the findings of fact and conclusions of law and the recommendations of the hearing examiner, by order, to find that a violation has occurred and to assess a penalty or to find that no violation has occurred.

Sec. 142.0173. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW; REFUND. (a) Requires TDH to give notice of the order under Section 142.0172(c) to the person alleged to have committed the violation. Sets forth the required contents of the notice.

(b) Requires the person to pay the penalty; 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, without paying the penalty, to 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) Authorizes a person who acts under Subsection (b)(3), within the 30-day period, to stay enforcement of the penalty via an escrow account or a supersedeas bond; or to request the court to stay enforcement of the penalty via a sworn affidavit.

(d) Authorizes TDH, if TDH receives a copy of an affidavit under Subsection (c)(2), to file with the court a contest to the affidavit. Requires the court to hold a hearing on the facts alleged in the affidavit and to stay the enforcement of the penalty on finding that the alleged facts are true. Sets forth the burden of proof for the hearing.

(e) Requires TDH, if the person does not pay the penalty and the enforcement of the

penalty is not stayed, to refer the matter to the attorney general for collection of the penalty.

(f) Provides that judicial review of the order is instituted by filing a petition as provided by Chapter 2001G, Government Code; and is under the substantial evidence rule.

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

(h) Sets forth the guidelines for the court when the judgment of the court becomes final.

Sec. 142.0174. PENALTY DEPOSITED TO STATE TREASURY. Requires an administrative penalty collected under this subchapter to be deposited in the state treasury to the credit of the general revenue fund.

Sec. 142.0175. EXPENSES AND COSTS FOR COLLECTION OF CIVIL OR ADMINISTRATIVE PENALTY. (a) Authorizes the attorney general, 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, to recover reasonable expenses and costs.

(c) Defines "reasonable expenses and costs."

SECTION 6. Amends Section 142.021, Health and Safety Code, to prohibit a person from administering medication to a client of a home and community support services agency unless the person, among other items, acts under the delegated authority of a physician, rather than performs duties as a qualified dialysis technician within the scope authorized by board rules.

SECTION 7. Effective date: September 1, 1997.

SECTION 8. Emergency clause.

### **SUMMARY OF COMMITTEE CHANGES**

Revises proposed relating clause.

SECTIONS 1, 2, and 3.

Makes nonsubstantive changes.

SECTION 5.

Amends Section 142.0171, Health and Safety Code, to propose that the required notice include, among other items, a statement of the amount of the proposed penalty based on the factors listed in Section 142.017(d), Health and Safety Code, rather than Section 142.017(c), Health and Safety Code. Makes nonsubstantive changes.

SECTION 6.

Amends Section 142.017(c), Health and Safety Code, to require the schedule of penalties established by TDH to include a period of time for correction by the home and community support services agency, rather than by the agency, of violations which did not adversely affect patient health and safety.