

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 94  
By: Moncrief  
Health Services  
2/24/1999  
Committee Report (Substituted)

### **DIGEST**

Currently, the development of community-based services as an alternative to medical or institutional care, combined with an aging Texas population, has resulted in explosive growth of the home health industry. The Senate Interim Committee on Home Health and Assisted Living, charged with looking at the regulatory structure of the home health in Texas, found immediate issues including abuse and neglect with in-home services, federal changes to the Medicare home health benefits, findings of fraud in the home health industry, and the growing awareness that state regulation has not kept pace with industry growth. Longer-range issues include the impact that projected demographic changes will have as the population ages, people live longer, and the babyboomers come of age. This will have an effect on the need for these services. This bill would clarify the Board of Medical Examiners' authority regarding fraudulent billing and physician referrals, apply controlling person standards from nursing homes reform legislation, and address concerns about how home health agency complaints are processed.

### **PURPOSE**

As proposed, C.S.S.B. 94 sets forth regulations regarding home health services, and provides administrative penalties.

### **RULEMAKING AUTHORITY**

Rulemaking authority is granted to the Texas Department of Health in SECTION 2 (Sections 142.0011(b) and 142.0012(d), Health and Safety Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 142.001, Health and Safety Code, to define "controlling person." Makes conforming changes.

SECTION 2. Amends Chapter 142A, Health and Safety Code, by adding Sections 142.0011 and 142.0012, as follows:

Sec. 142.0011. SCOPE, PURPOSE, AND IMPLEMENTATION. Provides that the purpose of the chapter is to ensure that home and community support services agencies (HCSSA) deliver the highest quality of care. Establishes the minimum standards for acceptable quality of care. Provides that any violation of a minimum standard is a violation of law. Sets forth requirements for the Texas Department of Health (TDH) in regulating home and community support services agencies, including client satisfaction with services and adopting rules relating to quality of care.

Sec. 142.0012. CONTROLLING PERSON. Sets forth provisions regarding actions of a controlling person. Defines "controlling person." Provides that a controlling person does not include an employee, lender, secured creditor, or other person who does not influence or control the operation of an HCSSA. Authorizes TDH to adopt rules regarding a controlling person.

SECTION 3. Amends Section 142.003(a), Health and Safety Code, to make conforming changes.

SECTION 4. Amends Sections 142.004(c) and (d), Health and Safety Code, to require an applicant to provide to TDH identification of any controlling person with respect to the applicant, and documentation relating to any controlling person identified in Subdivision (6) if it is relevant to the controlling person's compliance with any applicable licensing standard or adopted by the Board of Nurse Examiners (board) under this chapter. Makes nonsubstantive changes.

SECTION 5. Amends Chapter 142A, Health and Safety Code, by adding Section 142.005, as follows:

Sec. 142.005. COMPLIANCE RECORD IN OTHER STATES. Authorizes TDH to require an applicant or license holder to provide information on compliance regarding regulatory requirements in any other state.

SECTION 6. Amends Section 142.006(a), Health and Safety Code, to require TDH to issue an HCSSA license to an applicant, if any controlling person complies with all licensing standards required or adopted by the board. Makes conforming changes.

SECTION 7. Amends Section 142.009(d), Health and Safety Code, to provide that reports, records, and working papers used or developed in an investigation are confidential, except on a form required by a federal agency, if 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, among other conditions. Makes conforming changes.

SECTION 8. Amends Chapter 142A, Health and Safety Code, by adding Sections 142.0091-142.0093, as follows:

Sec. 142.0091. SURVEYOR TRAINING. Requires TDH to provide specialized training to TDH representatives who survey HCSSA. Requires the training to include certain information. Requires TDH to consult with and include providers of home health, hospice, or personal assistance services and consumers of home and community support services.

Sec. 142.0092. CONSUMER COMPLAINT DATA. Requires TDH to maintain records or documents relating to complaints directed to TDH by consumers of home health, hospice, or personal assistance services. Requires TDH to organize records or documents according to standard, statewide categories determined by TDH. Requires TDH to make distinctions in assessing the quality of services provided by an HCSSA, including whether the complaint was determined to be valid or invalid. Requires TDH to make the information in this section available to the public in a format that does not identify individuals implicated in the complaints.

Sec. 142.0093. RETALIATION PROHIBITED. Prohibits a licensed person from retaliating 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. Provides that this section does not prohibit a license holder from terminating an employee for a reason other than retaliation.

SECTION 9. Amends Section 142.011(a), Health and Safety Code, to authorize the TDH to deny, suspend, or revoke the license application of a person who engages in conduct that violates Section 161.091. Makes a conforming change.

SECTION 10. Amends Sections 142.017(a) and (d), Health and Safety Code, to authorize TDH to assess an administrative penalty against a person who violates Section 161.091 if the violation relates to the provisions of home health, hospice, or personal assistance services. Requires TDH to establish penalties based on the history of previous violations by the person or a controlling person with respect to that person. Makes conforming changes.

SECTION 11. Amends Chapter 142A, Health and Safety Code, by adding Sections 142.018 and 142.019, as follows:

Sec. 142.018. REPORTS OF ABUSE, EXPLOITATION, OR NEGLECT. Defines “abuse,” “exploitation,” and “neglect.” Requires the HCSSA to notify the TDH, the Department of Protective and Regulatory Services, or other appropriate state agency if there is cause to believe a person receiving services from the agency has been abused, exploited, or neglected by an employee of the agency. Provides that 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.

Sec. 142.019. CERTAIN PHYSICIAN REFERRALS PROHIBITED. Prohibits a physician from

referring a patient to a home and community support services agency, if the referral violates 42 U.S.C. Section 1395nn and its subsequent amendments.

SECTION 12. Amends Chapter 531B, Government Code, by adding Section 531.0431, as follows:

Sec. 531.0431. HOME HEALTH CARE RATES. Requires the Texas Health Facilities Commission and each appropriate health and human services agency to focus on cost-effective services for the residents of this state.

SECTION 13. Amends Chapter 48C, Human Resources Code, by adding Section 48.0381, as follows:

Sec. 48.0381. NOTIFICATION OF LICENSING OR CONTRACTING AGENCY. Requires TDH to notify certain agencies on determining after an investigation that an elderly or disabled person has been abused, exploited, or neglected by an employee of a licensed HCSSA. Provides that providing access to a confidential record or document under this section does not constitute a waiver of confidentiality.

SECTION 14. Requires a state agency to request a waiver or authorization and may delay implementing the provision, if a state agency determines that a waiver or authorization from a federal agency is necessary to implement the provision.

SECTION 15. Provides that this Act prevails over another Act of the 76th Legislature to the extent of any conflict.

SECTION 16. Effective date: September 1, 1999.  
Makes application of this Act prospective.

SECTION 17. Emergency clause.

#### **SUMMARY OF COMMITTEE CHANGES**

Relating clause.

Amends the relating clause as follows: “relating to home health services; providing administrative services,” rather than “relating to home health services.”

SECTION 2.

Amends Section 142.0011(a), Health and Safety Code, to add client satisfaction with services to a list of components of quality of care. Deletes access to affordable care from the list of components of quality of care. Deletes text regarding this chapter being construed broadly.

SECTION 7.

Amends Section 142.009(d), Health and Safety Code, to provide that reports, records, and working papers are confidential except on a form required by a federal agency, if the service provider subject to the investigation had a reasonable opportunity to offer comments to be included with the information released or made public.

SECTION 8.

Amends Section 142.009(b), Health and Safety Code, to require surveyor training to include consumers of home and community support services. Amends Section 142.0092(a), Health and Safety Code, to require the TDH to determine whether a complaint is valid or invalid.

SECTION 11.

Amends Section 142.018, Health and Safety Code, by adding Subsection (c), to provide that 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. Amends Section 142.019, Health and Safety Code, to prohibit a physician from referring a patient to a home and community support

services agency, if the referral violates 42 U.S.C. Section 1395nn and its subsequent amendments. Deletes Subsection (a) and the definitions of “compensation arrangement,” “financial relationship,” “household,” and “immediate family.” Deletes Subsections (b) and (c) regarding physician referrals. Deletes Subsection (d) regarding ownership and investment interest prohibited by Subsection (b). Deletes Subsection (e) regarding prohibiting a physician from making referrals.