

BILL ANALYSIS

Senate Research Center

C.S.S.B. 703
By: Deuell
Health & Human Services
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The professional title "dyslexia practitioner" has no statutory definition in Texas. As a result, services offered by a dyslexia practitioner are often performed by a person without any formal training. Customers that hire a dyslexia practitioner for services to improve their disorder have no guarantee that services rendered are quality professional services.

C.S.S.B. 703 provides certain educational requirements for dyslexia practitioners.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 (Sections 403.052, 403.107, 403.111, 403.112, 403.202, 403.207, 403.209, 403.210, and 403.252, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle G, Title 3, Occupations Code, by adding Chapter 403, as follows:

CHAPTER 403. BASIC DYSLEXIA PRACTITIONERS AND ADVANCED DYSLEXIA THERAPISTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 403.001. DEFINITIONS. Defines "commissioner," "department," "executive commissioner," "license holder," and "multisensory structured language education."

Sec. 403.002. ADMINISTRATION BY DEPARTMENT OF STATE HEALTH SERVICES. Requires the Department of State Health Services (DSHS) to administer this chapter.

Sec. 403.003. APPLICABILITY. Provides that this chapter does not require a school district to employ a person licensed under this chapter or authorize a person who is not licensed under Chapter 401 (Speech-Language Pathologists and Audiologists) to practice audiology or speech-language pathology.

[Reserves Sections 403.004-403.050 for expansion.]

SUBCHAPTER B. POWERS AND DUTIES

Sec. 403.051. ADVISORY COMMITTEE. Requires DSHS to appoint an advisory committee to advise DSHS in administering this chapter.

Sec. 403.052. RULES. Requires the executive commissioner of the Health and Human Services Commission (executive commissioner) to adopt rules necessary to administer and enforce this chapter, including rules that establish standards of ethical practice.

[Reserves Sections 403.053-403.100 for expansion.]

SUBCHAPTER C. LICENSE REQUIREMENTS

Sec. 403.101. LICENSE REQUIRED. Prohibits a person from using the title "basic dyslexia practitioner" or "advanced dyslexia therapist" in this state unless the person holds the appropriate license under this chapter.

Sec. 403.102. ISSUANCE OF LICENSE. Requires DSHS to issue a basic dyslexia practitioner or an advanced dyslexia therapist license to an applicant who meets the requirements of this chapter.

Sec. 403.103. LICENSE APPLICATION. Requires a license applicant to apply to DSHS on a form and in the manner DSHS prescribes, and requires the application to be accompanied by a nonrefundable application fee.

Sec. 403.104. ELIGIBILITY FOR BASIC DYSLEXIA PRACTITIONER LICENSE. (a) Sets forth certain criteria an applicant is required to meet to be eligible for a basic dyslexia practitioner license.

(b) Requires that clinical experience under Subsection (a)(3) be obtained under the supervision of a training program that meets the requirements of Section 403.106, and guidelines approved by DSHS.

Sec. 403.105. ELIGIBILITY FOR ADVANCED DYSLEXIA THERAPIST LICENSE. (a) Sets forth certain criteria an applicant is required to meet to be eligible for an advanced dyslexia therapist license.

(b) Requires that clinical experience required under Subsection (a)(3) be obtained under the supervision of a person holding an advanced dyslexia therapist license, and guidelines approved by DSHS.

Sec. 403.106. REQUIREMENTS FOR TRAINING PROGRAMS. (a) Requires that a multisensory structured language education training program completed by the applicant meet certain criteria for purposes of determining whether an applicant satisfies the training requirements for a license under this chapter.

(b) Requires DSHS, in consultation with the advisory committee, to determine whether a training program meets the requirements of Subsection (a).

Sec. 403.107. EXAMINATION; RULES. (a) Requires an applicant for a license to pass an examination approved by DSHS and pay fees set by the executive commissioner.

(b) Requires DSHS, in consultation with the advisory committee, to administer an examination at least twice each year, determine standards for acceptable performance on the examination, and maintain a record of all examination scores for at least two years after the date of examination.

(c) Authorizes the executive commissioner, in consultation with the advisory committee, by rule to establish procedures for the administration of the examination and require a written examination.

Sec. 403.108. REEXAMINATION. (a) Authorizes a person who fails the examination to take a later examination on payment of a nonrefundable fee for the examination.

(b) Prohibits an applicant who fails two examinations from being reexamined until the person meets certain criteria.

Sec. 403.109. WAIVER OF EXAMINATION REQUIREMENT. Authorizes DSHS, in consultation with the advisory committee, to waive the examination requirement and issue a license to an applicant who holds an appropriate certificate or other accreditation from a national organization recognized by DSHS.

Sec. 403.110. PROVISIONAL LICENSE. (a) Authorizes DSHS, in consultation with the advisory committee, to issue a provisional license to an applicant currently licensed in another jurisdiction who seeks a license in this state and who meets certain criteria.

(b) Authorizes DSHS to waive the requirement of Subsection (a)(3) for an applicant if DSHS determines that compliance with that subsection would be a hardship to the applicant.

(c) Provides that a provisional license is valid until the date DSHS approves or denies the professional license holder's application for a license.

(d) Requires DSHS to issue a license under this chapter to the provisional license holder if the holder meets certain criteria relating to experience and eligibility.

(e) Requires DSHS to approve or deny a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. Authorizes DSHS to extend the 180-day period provided the results of an examination have not been received by DSHS before the end of that period.

Sec. 403.111. TEMPORARY LICENSE; RULES. Authorizes the executive commissioner by rule to provide for the issuance of a temporary license.

Sec. 403.112. INACTIVE STATUS; RULES. (a) Authorizes the executive commissioner by rule to provide for a license holder to be placed on inactive status.

(b) Requires rules adopted under this section to include a time limit for a license holder to remain on inactive status.

[Reserves Sections 403.113-403.150 for expansion.]

SUBCHAPTER D. PRACTICE BY LICENSE HOLDER

Sec. 403.151. PRACTICE SETTING. Authorizes a basic dyslexia practitioner to practice only in a supervised education setting, including a school, learning center, or clinic. Authorizes an advanced dyslexia therapist to practice in a school, clinic, or private practice setting.

Sec. 403.152. CONTINUING EDUCATION. (a) Prohibits a license holder from renewing the person's license unless the person meets certain requirements established by the executive commissioner relating to continuing education.

(b) Requires the executive commissioner, in consultation with the advisory committee, to establish the continuing education requirements in a manner that allows a license holder to comply without an extended absence from the license holder's county of residence.

(c) Requires DSHS to provide to a license applicant, with the application form on which the person is to apply for a license, information describing the continuing education requirements, and notify each license holder of any change in the continuing education requirements at least one year before the date the change takes effect.

[Reserves Sections 403.153-403.200 for expansion.]

SUBCHAPTER E. LICENSE DENIAL; COMPLAINT AND DISCIPLINARY PROCEDURES

Sec. 403.201. COMPLAINTS. Authorizes any person to file a complaint with DSHS alleging a violation of this chapter or a rule adopted under this chapter.

Sec. 403.202. PROHIBITED ACTIONS. Prohibits a license holder from obtaining a license by means of fraud, misrepresentation, or concealment of a material fact, selling, bartering, or offering to sell or barter a license, or engaging in unprofessional conduct that endangers or is likely to endanger the health, welfare, or safety of the public as defined by executive commissioner rule.

Sec. 403.203. GROUNDS FOR DISCIPLINARY ACTION. Requires DSHS to take certain actions if a license holder violates this chapter or a rule or code of ethics adopted by the executive commissioner.

Sec. 403.204. LICENSE DENIAL, REVOCATION, OR SUSPENSION FOR CRIMINAL CONVICTION. (a) Authorizes DSHS to deny a license or to suspend or revoke a license if the applicant or license holder has been convicted of a misdemeanor involving moral turpitude or a felony. Authorizes the commission to take action authorized by this section under certain circumstances.

(b) Provides that a plea or verdict of guilty or a conviction following a plea of nolo contendere is a conviction for purposes of this section.

Sec. 403.205. HEARING. (a) Entitles a person to a hearing before a hearings officer appointed by the State Office of Administrative Hearings (SOAH) if DSHS proposes to revoke, suspend, or refuse to renew that person's license.

(b) Requires the executive commissioner to prescribe procedures for appealing to the commissioner of state health services (commissioner) a decision to revoke, suspend, or refuse to renew a license.

Sec. 403.206. ADMINISTRATIVE PROCEDURE. Provides that a proceeding under this subchapter to suspend, revoke, or refuse to renew a license is governed by Chapter 2001 (Administrative Procedure), Government Code.

Sec. 403.207. SANCTIONS. (a) Requires the executive commissioner by rule to adopt a broad schedule of sanctions for a violation of this chapter.

(b) Requires SOAH to use the schedule of sanctions for a sanction imposed as the result of a hearing conducted by SOAH.

Sec. 403.208. PROBATION. Authorizes DSHS to require a person to follow certain provisions if that person's license suspension is probated.

Sec. 403.209. MONITORING OF LICENSE HOLDER. (a) Requires the executive commissioner by rule to develop a system for monitoring a license holder's compliance with the requirements of this chapter.

(b) Requires rules adopted under this section to include procedures to monitor for compliance a license holder who is ordered by DSHS to perform certain acts and to identify and monitor license holders who represent a risk to the public.

Sec. 403.210. INFORMAL PROCEDURES. (a) Requires the executive commissioner by rule to adopt procedures governing the information disposition of a contested case under Section 2001.056 (Information Disposition of Contested Case), Government Code, and an information proceeding held in compliance with Section 2001.054 (Licenses), Government Code.

(b) Requires rules adopted under Subsection (a) to provide the complainant and the license holder an opportunity to be heard and require the presence of a representative of the attorney general or DSHS's legal counsel to advise DSHS or DSHS's employees.

Sec. 403.211. REFUND. (a) Authorizes DSHS, subject to Subsection (b), to order a license holder to pay a refund to a consumer as provided in an agreement resulting from

an information settlement conference instead of or in addition to imposing an administrative penalty under this chapter.

(b) Prohibits the amount of a refund ordered as provided in an agreement resulting from an information settlement conference from exceeding the amount the consumer paid to the license holder for a service regulated by this chapter. Prohibits DSHS from requiring payment of other damages or estimate harm in a refund order.

Sec. 403.212. REINSTATEMENT. (a) Authorizes a person to apply for reinstatement of a revoked license on or after the first anniversary of the date of revocation.

(b) Authorizes DSHS to accept or reject the application and require an examination as a condition for reinstatement of the license.

Sec. 403.213. REPRIMAND; CONTINUING EDUCATION. (a) Authorizes DSHS to issue a written reprimand to a license holder who violates this chapter, or require that a license holder who violates this chapter attend continuing education programs.

(b) Authorizes DSHS, in consultation with the advisory committee, to specify the number of hours of continuing education that are required to be completed by a license holder to fulfill the requirement of Subsection (a)(2).

Sec. 403.214. EMERGENCY SUSPENSION. (a) Requires DSHS to temporarily suspend the license of a license holder under certain circumstances.

(b) Provides that a license may be suspended under this section without notice or hearing on the complaint under certain circumstances

(c) Requires SOAH to hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare still exists. Requires a final hearing on the matter to be held not later than the 61st day after the date of the temporary suspension.

[Reserves Sections 403.215-403.250 for expansion.]

SUBCHAPTER F. ADMINISTRATIVE PENALTY

Sec. 403.251. IMPOSITION OF ADMINISTRATIVE PENALTY. Authorizes DSHS to impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter.

Sec. 403.252. AMOUNT OF ADMINISTRATIVE PENALTY. (a) Prohibits the amount of the administrative penalty from being more than \$5,000 for each violation. Provides that each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(b) Requires the amount to be based on certain factors.

(c) Requires the executive commissioner by rule to adopt an administrative penalty schedule based on the criteria listed in Subsection (b) for violations of this chapter or applicable rules to ensure that the amounts of penalties imposed are appropriate to the violation. Requires the executive commissioner to provide an administrative penalty schedule to the public on request.

Sec. 403.253. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) Authorizes the commissioner or the commissioner's designee to issue a specific report to DSHS if it is determined that a violation occurred.

(b) Requires the commissioner or the commissioner's designee, within 14 days after the date the report is issued, to give written notice of the report to the person. Requires the notice to contain certain information regarding the violation, penalty, and the person's rights.

Sec. 403.254. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Authorizes the person, within 10 days after the date the person receives the notice, to accept in writing the determination and recommended administrative penalty of the commissioner or the commissioner's designee or to make a request in writing for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) Requires the commissioner by order to approve the determination and impose the recommended penalty if the person accepts the determination and recommended penalty.

Sec. 403.255. HEARING. (a) Requires the commissioner or the commissioner's designee to set a hearing and give written notice of the hearing to the person if the person requests a hearing or fails to respond in a timely manner to the notice.

(b) Requires an administrative law judge of SOAH (judge) to hold the hearing.

(c) Requires the judge to make findings of fact and conclusions of law and promptly issue to the commissioner a proposal for a decision about the occurrence of the violation and the amount of a proposed administrative penalty.

Sec. 403.256. DECISION BY COMMISSIONER. (a) Authorizes the commissioner by order to determine whether a violation occurred and to impose an administrative penalty, if applicable, based on the findings of fact, conclusions of law, and proposal for decision.

(b) Requires the notice of the commissioner's order given to the person to include a statement of the right of the person to judicial review of the order.

Sec. 403.257. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Requires the person to pay the administrative penalty or file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both, within 30 days after the date the commissioner's order becomes final.

(b) Authorizes a person who files a petition for judicial review to stay enforcement of the penalty in a certain manner or to request the court to stay enforcement of the penalty within the 30-day period prescribed by Subsection (a).

(c) Authorizes the commissioner or the commissioner's designee to file with the court, within five days after the date the copy is received, a contest to the affidavit, if the commissioner or designee receives a copy of the affidavit under Subsection (b)(2).

(d) Requires the court to hold a hearing on the facts alleged in the affidavit as soon as practicable and requires the court to stay the enforcement of the penalty on finding that the alleged facts are true. Provides that the person who files an affidavit has the burden of proving that the person is financially unable to pay and to give a supersedeas bond.

Sec. 403.258. COLLECTION OF PENALTY. (a) Authorizes the collection of the penalty if the person does not pay the administrative penalty and the enforcement of the penalty is not stayed.

(b) Authorizes the attorney general to sue to collect the penalty.

Sec. 403.259. DETERMINATION BY COURT. (a) Authorizes the court to uphold or reduce the amount of the administrative penalty and order the person to pay the full or

reduced amount of the penalty if the court sustains the determination that a violation occurred.

(b) Requires the court to order that a penalty is not owed if the court does not sustain the finding that a violation occurred.

Sec. 403.260. REMITTANCE OF PENALTY AND INTEREST. (a) Requires the court to order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to a person if the person paid the administrative penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court.

(b) Provides that the interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) Requires the interest to be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

(d) Requires the court to order, when the court's judgment becomes final, the release of the bond if the person gave a supersedeas bond and the penalty is not upheld by the court.

(e) Requires the court to order the release of the bond after the person pays the reduced amount if the person gave a supersedeas bond and the amount of the penalty is reduced.

Sec. 403.261. ADMINISTRATIVE PROCEDURE. Provides that a proceeding under this subchapter is a contested case under Chapter 2001 (Administrative Procedure), Government Code.

[Reserves Sections 403.262-403.300 for expansion.]

SUBCHAPTER G. PENALTIES AND OTHER ENFORCEMENT PROCEDURES

Sec. 403.301. DECEPTIVE TRADE PRACTICE. Provides that a violation of Section 403.101 is a deceptive trade practice.

Sec. 403.302. INJUNCTION. (a) Authorizes DSHS to request the attorney general or the appropriate county or district attorney to commence an action to enjoin a violation of this chapter.

(b) Provides that the remedy provided by this section is in addition to any other action authorized by law.

Sec. 403.303. CIVIL PENALTY. (a) Provides that a person who violates this chapter, a rule adopted by the executive commissioner, or an order adopted by the commissioner under this chapter is liable for a civil penalty not to exceed \$5,000 a day.

(b) Requires the attorney general, at the request of DSHS, to bring an action to recover a civil penalty authorized under this section.

Sec. 403.304. CRIMINAL PENALTY. (a) Provides that a person commits an offense if the person violates Section 403.101.

(b) Provides that an offense under this section is a Class B misdemeanor.

Sec. 403.305. CEASE AND DESIST ORDER. (a) Authorizes the commissioner after notice and an opportunity for a hearing to issue a cease and desist order to prohibit a person from engaging in certain activities if it appears that the person who is not licensed under this chapter is violating this chapter or a rule adopted under this chapter.

(b) Provides that a violation of an order under this section constitutes grounds for imposing an administrative penalty under this chapter.

SECTION 2. Amends the heading to Subtitle G, Title 3, Occupations Code, to read as follows:

SUBTITLE G. PROFESSIONS RELATED TO HEARING, SPEECH, AND DYSLEXIA

SECTION 3. (a) Effective date: September 1, 2007, except as required by Subsection (b) of this section.

(b) Effective date, Section 403.101 and Subchapters E, F, and G, Chapter 403, Occupations Code, as added by this Act: February 1, 2008.