

## **BILL ANALYSIS**

Senate Research Center  
82R18866 YDB-D

C.S.S.B. 223  
By: Nelson  
Health & Human Services  
4/12/2011  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

C.S.S.B. 223 is intended to combat fraud, waste, and abuse and ensure that Medicaid providers comply with program requirements and licensing rules.

C.S.S.B. 223 allows the state to deny or terminate Medicaid enrollment based on a history of exclusion from Medicare or Medicaid; allows the state to impose a temporary moratorium on Medicaid enrollment if necessary to prevent or combat fraud, waste, or abuse; authorizes the office of the inspector general (OIG) to suspend Medicaid payments during a pending fraud investigation; authorizes OIG to impose administrative penalties for failure to comply with Medicaid program requirements; requires Medicaid providers to disclose all owners and controlling persons upon enrollment; authorizes the state to suspend billing privileges or terminate a provider's Medicaid enrollment if the provider has not billed or referred clients for services within the past 12 months; authorizes the Department of Aging and Disability Services (DADS) to assess an administrative penalty against an adult day care facility that violates licensing requirements; and authorizes DADS to review a nursing home applicant's entire operational history and allows DADS to impose a lifetime ban against bad actors.

C.S.S.B. 223 amends current law relating to certain facilities and care providers, including providers under the state Medicaid program, and provides penalties.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission (executive commissioner) in SECTION 1.03 (Section 142.009, Health and Safety Code), SECTION 1.06 (Section 142.0104, Health and Safety Code), SECTION 1.08 (Section 142.012, Health and Safety Code) and SECTION 3.14 (Section 32.0322, Human Resources Code) of this bill.

Rulemaking authority previously granted to the Texas Board of Health is transferred to the executive commissioner in SECTION 1.02 (Section 142.0025, Health and Safety Code) and SECTION 1.08 (Section 142.012, Health and Safety Code) of this bill.

Rulemaking authority previously granted to the Department of Aging and Disability Services (DADS) is modified in SECTION 2.01 (Section 242.032, Health and Safety Code) of this bill.

Rulemaking authority previously granted to the Health and Human Services Commission is transferred to the executive commissioner in SECTION 3.14 (Section 32.0322, Human Resources Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

#### ARTICLE 1. HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

SECTION 1.01. Amends Section 142.001, Health and Safety Code, by adding Subdivisions (11-a), (11-b), and (12-a) to define, respectively, "department," "executive commissioner," and "home and community support services agency administrator" or "administrator."

SECTION 1.02. Amends Section 142.0025, Health and Safety Code, as follows:

Sec. 142.0025. TEMPORARY LICENSE. Authorizes the Department of Aging and Disability Services (DADS), if a person is in the process of becoming certified by the United States Department of Health and Human Services to qualify as a certified agency, to issue a temporary home and community support services agency license to the person authorizing the person to provide certified home health services. Provides that a temporary license is effective as provided by rules adopted by the executive commissioner of the Health and Human Services Commission (executive commissioner), rather than by Texas Board of Health (board) rules.

SECTION 1.03. Amends Section 142.009, Health and Safety Code, by adding Subsections (a-1) and (i) and amending Subsection (g), as follows:

(a-1) Requires a license applicant or license holder to provide the person conducting the survey with a reasonable and safe workspace at the premises that allows the person to conduct the survey in private. Authorizes the executive commissioner to adopt rules to implement this subsection.

(g) Requires DADS, after a survey of a home and community support services agency by DADS, to provide to the home and community support services agency administrator, rather than the chief executive officer of the agency:

(1) specific and timely written notice of the official 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 name, rather than signature, of each DADS representative conducting or reviewing, rather than conducting, reviewing, or approving, the results of the survey and the date on which the DADS representative acted on the matter; and

(3) if requested by the agency, copies of all documents relating to the survey maintained by DADS or provided by DADS to any other state or federal agency that are not confidential under state law.

(i) Prohibits DADS, except as provided by Subsection (h) (providing that, except for the investigation of complaints, a home and community support services agency licensed by DADS 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), from renewing an initial home and community support services agency license unless DADS has conducted an initial on-site survey of the agency.

SECTION 1.04. Amends the heading to Section 142.0091, Health and Safety Code, to read as follows:

Sec. 142.0091. TRAINING.

SECTION 1.05. Amends Section 142.0091, Health and Safety Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Requires DADS, in developing and updating the training required by Subsection (a) (requiring DADS to provide specialized training to representatives of DADS who survey home and community support services agencies), rather than this section, to consult with and include providers of home health, hospice, and personal assistance services, recipients of those services and their family members, and representatives of appropriate advocacy organizations.

(c) Requires DADS to provide semiannually training for home and community support services agencies on subjects that address at least one of the 10 most common violations of federal or state law by home and community support services agencies. Authorizes DADS to charge a fee, not to exceed \$50 per person, for the training. Authorizes other persons regulated by DADS to participate in the training.

SECTION 1.06. Amends Subchapter A, Chapter 142, Health and Safety Code, by adding Section 142.0104, as follows:

Sec. 142.0104. CHANGE IN APPLICATION INFORMATION. (a) Requires the license holder, if certain application information as specified by executive commissioner rule changes after the applicant submits an application to DADS for a license under this chapter or after DADS issues the license, to report the change to DADS and pay a \$50 fee not later than the time specified by executive commissioner rule.

(b) Requires the executive commissioner by rule to:

(1) specify the information provided in an application that a license holder is required to report to DADS if the information changes;

(2) prescribe the time for reporting a change in the application information required by Subdivision (1);

(3) establish which changes required to be reported under Subdivision (1) will require DADS' evaluation and approval; and

(4) set the amount of a late fee to be assessed against a license holder who fails to report a change in the application information within the time prescribed under Subdivision (2).

SECTION 1.07. Amends Section 142.011(a), Health and Safety Code, as follows:

(a) Authorizes DADS to deny a license application or suspend or revoke the license of a person who:

(1) fails to comply with the rules or standards for licensing required by this chapter; or

(2) engages in conduct that violates Section 102.001 (Soliciting Patients; Offense), Occupations Code, rather than Section 161.091.

SECTION 1.08. Amends Sections 142.012(a), (b), and (c), Health and Safety Code, as follows:

(a) Requires the executive commissioner, rather than requires the board, with the recommendations of the Home and Community Support Services Advisory Council (council), to adopt rules necessary to implement this chapter. Authorizes the executive commissioner to adopt rules governing the duties and responsibilities of home and community support services agency administrators, including rules regarding:

(1) an administrator's management of daily operations of the home and community support services agency;

- (2) an administrator's responsibility for supervising the provision of quality care to agency clients;
- (3) an administrator's implementation of agency policy and procedures; and
- (4) the average hours per week an administrator must spend on administrative duties.

(b) Requires the executive commissioner, rather than the board, by rule to set minimum standards for home and community support services 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;
- (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) Requires that the initial minimum standards adopted under Subsection (b), rather than adopted by the board under Subsection (b), for hospice services, to 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.).

SECTION 1.09. Requires the executive commissioner, as soon as practicable after the effective date of this Act but not later than December 1, 2011, to adopt the rules necessary to implement the changes in law made by this article to Chapter 142, Health and Safety Code.

## ARTICLE 2. NURSING INSTITUTIONS

SECTION 2.01. Amends Section 242.032(e), Health and Safety Code, as follows:

(e) Requires DADS, in making the evaluation required by Subsection (d) (requiring DADS to consider the background and qualifications of the applicant or license holder and other persons affiliated with the institution), to require the applicant or license holder to file a sworn affidavit of a satisfactory compliance history and any other information required by DADS to substantiate a satisfactory compliance history relating to each state or other jurisdiction in which the applicant or license holder and any other person described by Subsection (d) operated an institution at any time before the date, rather than during the five-year period preceding the date, on which the application is made. Requires DADS by rule to determine what constitutes a satisfactory compliance history. Authorizes DADS to consider and evaluate the compliance history of the applicant and any other person described by Subsection (d) for any period during which the applicant or

other person operated an institution in this state or in another state or jurisdiction. Authorizes DADS to also require the applicant or license holder to file information relating to the history of the financial condition of the applicant or license holder and any other person described by Subsection (d) with respect to an institution operated in another state or jurisdiction at any time before the date, rather than during the five-year period preceding the date, on which the application is made.

SECTION 2.02. Amends Section 242.0615(b), Health and Safety Code, to provide that exclusion of a person under this section must extend for a period of at least two years and may extend throughout the person's lifetime or existence, rather than provides that exclusion of a person under this section must extend for a period of at least two years, but may not exceed a period of 10 years.

SECTION 2.03. Provides that Section 242.032(e), Health and Safety Code, as amended by this article, applies only to an application, including a renewal application, filed on or after the effective date of this Act. Provides that an application filed before the effective date of this Act is governed by the law in effect when the application was filed, and the former law is continued in effect for that purpose.

SECTION 2.04. Provides that Section 242.0615(b), Health and Safety Code, as amended by this article, applies only to conduct that occurs on or after the effective date of this Act. Provides that conduct that occurs before the effective date of this Act is governed by the law in effect at the time the conduct occurred, and the former law is continued in effect for that purpose.

### ARTICLE 3. PREVENTION OF CRIMINAL OR FRAUDULENT CONDUCT BY CERTAIN FACILITIES OR PROVIDERS

SECTION 3.01. Amends Section 250.001, Health and Safety Code, by amending Subdivision (1) and adding Subdivisions (3-a) and (3-b), to redefine "nurse aide registry," and define "financial management services agency" and "individual employer," respectively.

SECTION 3.02. Amends Section 250.002, Health and Safety Code, by amending Subsection (a) and adding Subsection (c-1), as follows:

(a) Entitles a facility, a regulatory agency, a financial management services agency on behalf of an individual employer, or a private agency on behalf of a facility to obtain from Department of Public Safety of the State of Texas (DPS) criminal history record information maintained by DPS that relates to a person who is:

- (1) an applicant for employment at a facility other than a facility licensed under Chapter 142 (Home and Community Support Services);
- (2) an employee of a facility other than a facility licensed under Chapter 142;
- (3) an applicant for employment at or an employee of a facility licensed under Chapter 142 whose employment duties would or do involve direct contact with a consumer in the facility; or
- (4) an applicant for employment by or an employee of an individual employer.

(c-1) Requires a financial management services agency to forward criminal history record information received under this section to the individual employer requesting the information. Makes a nonsubstantive change.

SECTION 3.03. Amends Section 250.003, Health and Safety Code, by amending Subsection (a) and adding Subsection (c-1), as follows:

(a) Prohibits a facility or individual employer from employing an applicant:

(1) if the facility or individual employer determines, as a result of a criminal history check, that the applicant has been convicted of an offense listed in this chapter that bars employment or that a conviction is a contraindication to employment with the consumers the facility or individual employer serves;

(2) if the applicant is a nurse aide, until the facility further verifies that the applicant is listed in the nurse aide registry; and

(3) until the facility verifies that the applicant is not designated in the registry maintained under this chapter or in the employee misconduct registry maintained under Section 253.007 (Employee Misconduct Registry) as having a finding entered into the registry concerning abuse, neglect, or mistreatment of a consumer of a facility, or misappropriation of a consumer's property.

(c-1) Requires an individual employer to immediately discharge any employee whose criminal history check reveals conviction of a crime that bars employment or that the individual employer determines is a contraindication to employment as provided by this chapter.

SECTION 3.04. Amends Section 250.004, Health and Safety Code, as follows:

Sec. 250.004. CRIMINAL HISTORY RECORD OF EMPLOYEES. (a) Requires that identifying information of an employee in a covered facility or of an employee of an individual employer be submitted electronically, on disk, or on a typewritten form to DPS to obtain the person's criminal conviction record when the person applies for employment and at other times as the facility or individual employer may determine appropriate. Defines, in this subsection, "identifying information."

(b) Requires that, if DPS reports that a person has a criminal conviction of any kind, the conviction be reviewed by the facility, the financial management services agency, or the individual employer to determine if the conviction may bar the person from employment in a facility or by the individual employer under Section 250.006 (Convictions Barring Employment) or if the conviction may be a contraindication to employment.

SECTION 3.05. Amends Section 250.005, Health and Safety Code, as follows:

Sec. 250.005. NOTICE AND OPPORTUNITY TO BE HEARD CONCERNING ACCURACY OF INFORMATION. (a) Requires a facility or individual employer, if the facility, financial management services agency, or individual employer believes that a conviction may bar a person from employment in a facility or by the individual employer under Section 250.006 or may be a contraindication to employment, to notify the applicant or employee.

(b) Requires DPS to give a person notified under Subsection (a) the opportunity to be heard concerning the accuracy of the criminal history record information and to notify the facility or individual employer if inaccurate information is discovered.

SECTION 3.06. Amends Sections 250.006(a) and (b), Health and Safety Code, as follows:

(a) Prohibits a person for whom the facility or the individual employer is entitled to obtain criminal history record information from being employed in a facility or by an individual employer if the person has been convicted of certain offenses. Sets forth those offenses.

(b) Prohibits a person from being employed in a position the duties of which involve direct contact with a consumer in a facility or may not be employed by an individual employer before the fifth anniversary of the date the person is convicted of certain offenses. Sets forth those offenses.

SECTION 3.07. Amends Sections 250.007(a) and (b), Health and Safety Code, as follows:

(a) Provides that the criminal history records are for the exclusive use of the regulatory agency, the requesting facility, the private agency on behalf of the requesting facility, the financial management services agency on behalf of the individual employer, the individual employer, and the applicant or employee who is the subject of the records.

(b) Provides that all criminal records and reports and the information they contain that are received by the regulatory agency or private agency for the purpose of being forwarded to the requesting facility or received by the financial management services agency under this chapter are privileged information.

SECTION 3.08. Amends Section 250.009(a), Health and Safety Code, to provide that a facility, an officer or employee of a facility, a financial management services agency, or an individual employer is not civilly liable for failure to comply with this chapter if the facility, financial management services agency, or individual employer makes a good faith effort to comply. Makes a nonsubstantive change.

SECTION 3.09. Amends Section 411.1143, Government Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Entitles HHSC, an agency operating part of the medical assistance program under Chapter 32 (Medical Assistance Program), Human Resources Code, or the office of inspector general established under Chapter 531 (Health and Human Services Commission), Government Code, to obtain from DPS the criminal history record information maintained by DPS that relates to a provider under the medical assistance program or a person applying to enroll as a provider under the medical assistance program. Makes a nonsubstantive change.

(a-1) Provides that criminal history record information an agency or the office of inspector general is authorized to obtain under Subsection (a) includes criminal history record information relating to:

(1) a person with a direct or indirect ownership or control interest, as defined by 42 C.F.R. Section 455.101, in a provider of five percent or more; and

(2) a person whose information is required to be disclosed in accordance with 42 C.F.R. Part 1001.

SECTION 3.10. Amends Section 531.102(g)(2), Government Code, as follows:

(2) Requires the HHSC office of inspector general, in addition to other instances authorized under state or federal law, to impose without prior notice a hold on payment of claims for reimbursement submitted by a provider to compel production of records, when requested by the state's Medicaid fraud control unit, or on receipt of reliable evidence that the circumstances giving rise to the hold on payment involve fraud or willful misrepresentation under the state Medicaid program in accordance with 42 C.F.R. Section 455.23, as applicable. Requires the HHSC office of inspector general to notify the provider of the hold on payment in accordance with 42 C.F.R. Section 455.23(b). Deletes existing text requiring the office of inspector general to notify the provider not later than the fifth working day after the date the payment hold is imposed. Makes a nonsubstantive change.

SECTION 3.11. Amends the heading to Section 531.1031, Government Code, to read as follows:

Sec. 531.1031. DUTY TO EXCHANGE INFORMATION.

SECTION 3.12. Amends Section 531.1031(a)(2), Government Code, to redefine "participating agency."

SECTION 3.13. Amends Section 531.1031, Government Code, by amending Subsections (b) and (c) and adding Subsection (c-1), as follows:

(b) Provides that this section applies only to criminal history record information held by a participating agency that relates to a health care professional and information held by a participating agency that relates to a health care professional or managed care organization that is the subject of an investigation by a participating agency for alleged fraud or abuse under the state Medicaid program.

(c) Authorizes a participating agency to submit to another participating agency a written request for information described by Subsection (b) regarding a health care professional or managed care organization, rather than a health care professional or a managed care organization that is the subject of an investigation by the participating agency. Requires the participating agency that receives the request to provide the requesting agency with the information regarding the health care professional or managed care organization unless:

(1) the release of the information would jeopardize an ongoing investigation or prosecution by the participating agency with possession of the information; or

(2) the release of the information is prohibited by other law.

(c-1) Authorizes a participating agency, notwithstanding any other law, to enter into a memorandum of understanding or agreement with another participating agency for the purpose of exchanging criminal history record information relating to a health care professional to which both participating agencies are authorized to access under Chapter 411. Provides that confidential criminal history record information in the possession of a participating agency that is provided to another participating agency in accordance with this subsection remains confidential while in the possession of the participating agency that receives the information.

SECTION 3.14. Amends Section 32.0322, Human Resources Code, as follows:

Sec. 32.0322. New heading: **CRIMINAL HISTORY RECORD INFORMATION; ENROLLMENT OF PROVIDERS.** (a) Authorizes HHSC or the HHSC office of inspector general established under Chapter 531, Government Code, to obtain from any law enforcement or criminal justice agency the criminal history record information that relates to a provider under the medical assistance program or a person applying to enroll as a provider under the medical assistance program.

(a-1) Provides that the criminal history record information HHSC and the HHSC office of inspector general are authorized to obtain under Subsection (a) includes criminal history record information relating to:

(1) a person with a direct or indirect ownership or control interest, as defined by 42 C.F.R. Section 455.101, in a provider of five percent or more; and

(2) a person whose information is required to be disclosed in accordance with 42 C.F.R. Part 1001.

(b) Requires the executive commissioner, rather than HHSC, by rule to establish criteria for HHSC or HHSC's office of inspector general to suspend a provider's billing privileges under the medical assistance program, revoke a provider's enrollment under the program, or deny a person's application to enroll as a provider under the program, rather than the medical assistance program, based on:



- (1) the results of a criminal history check;
- (2) any exclusion or debarment of the provider from participation in a state or federally funded health care program;
- (3) the provider's failure to bill for medical assistance or refer clients for medical assistance within a 12-month period; or
- (4) any of the provider screening or enrollment provisions contained in 42 C.F.R. Part 455, Subpart E.

(c) Requires the executive commissioner by rule, as a condition of eligibility to participate as a provider in the medical assistance program, to:

- (1) require a provider or a person applying to enroll as a provider to disclose all persons described by Subsection(a)(1) and any agents, managing employees, and subcontractors of the provider; and
- (2) require disclosure by persons applying for enrollment as providers and provide for screening of applicants for enrollment in conformity and compliance with the requirements of 42 C.F.R. Part 455, Subparts B and E.

(d) Requires the executive commissioner, in adopting rules under this section, to adopt rules as authorized by and in conformity with 42 C.F.R. Section 455.470 for the imposition of a temporary moratorium on enrollment of new providers, or to impose numerical caps or other limits on the enrollment of providers, that HHSC or HHSC's office of inspector general, in consultation with HHSC determines have a significant potential for fraud, waste, or abuse.

SECTION 3.15. Amends Section 32.039, Human Resources Code, by amending Subsection (b) and adding Subsection (b-1), as follows:

(b) Provides that a person commits a violation if the person:

(1) presents or causes to be presented to HHSC a claim that contains a statement or representation the person knows or should know to be false;

(1-a) engages in conduct that violates Section 102.001, Occupations Code;

(1-b) solicits or receives, directly or indirectly, overtly or covertly any remuneration, including any kickback, bribe, or rebate, in cash or in kind for referring an individual to a person for the furnishing of, or for arranging the furnishing of, any item or service for which payment may be made, in whole or in part, under the medical assistance program, provided that this subdivision does not prohibit the referral of a patient to another practitioner within a multispecialty group or university medical services research and development plan (practice plan) for medically necessary services;

(1-c) solicits or receives, directly or indirectly, overtly or covertly any remuneration, including any kickback, bribe, or rebate, in cash or in kind for purchasing, leasing, or ordering, or arranging for or recommending the purchasing, leasing, or ordering of, any good, facility, service, or item for which payment may be made, in whole or in part, under the medical assistance program;

(1-d) offers or pays, directly or indirectly, overtly or covertly any remuneration, including any kickback, bribe, or rebate, in cash or in kind to induce a person to refer an individual to another person for the furnishing of, or for arranging the furnishing of, any item or service for which payment may be made, in whole or in part, under the medical assistance program, provided that this subdivision does

not prohibit the referral of a patient to another practitioner within a multispecialty group or university medical services research and development plan (practice plan) for medically necessary services;

(1-e) offers or pays, directly or indirectly, overtly or covertly any remuneration, including any kickback, bribe, or rebate, in cash or in kind to induce a person to purchase, lease, or order, or arrange for or recommend the purchase, lease, or order of, any good, facility, service, or item for which payment may be made, in whole or in part, under the medical assistance program;

(1-f) provides, offers, or receives an inducement in a manner or for a purpose not otherwise prohibited by this section or Section 102.001, Occupations Code, to or from a person, including a recipient, provider, employee or agent of a provider, third-party vendor, or public servant, for the purpose of influencing or being influenced in a decision regarding:

(A) selection of a provider or receipt of a good or service under the medical assistance program;

(B) the use of goods or services provided under the medical assistance program; or

(C) the inclusion or exclusion of goods or services available under the medical assistance program;

(2) is a managed care organization that contracts with HHSC to provide or arrange to provide health care benefits or services to individuals eligible for medical assistance and:

(A) fails to provide to an individual a health care benefit or service that the organization is required to provide under the contract with HHSC;

(B) fails to provide to HHSC information required to be provided by law, department rule, or contractual provision;

(C) engages in a fraudulent activity in connection with the enrollment in the organization's managed care plan of an individual eligible for medical assistance or in connection with marketing the organization's services to an individual eligible for medical assistance; or

(D) engages in actions that indicate a pattern of:

(i) wrongful denial of payment for a health care benefit or service that the organization is required to provide under the contract with HHSC; or

(ii) wrongful delay of at least 45 days or a longer period specified in the contract with HHSC, not to exceed 60 days, in making payment for a health care benefit or service that the organization is required to provide under the contract with HHSC; or

(3) fails to maintain adequate documentation to support a claim for payment or engages in any other conduct that an HHSC rule has defined as a violation of the medical assistance program.

(b-1) Provides that a person who commits a violation described by Subsection (b)(3) is liable to HHSC for either the amount paid in response to the claim for payment or the payment of an administrative penalty in an amount not to exceed \$500 for each violation, as determined by HHSC.

SECTION 3.16. Amends Section 103.009(a), Human Resources Code, to authorize HHSC to deny, suspend, or revoke the license of an applicant or holder of a license who fails to comply with the rules or standards for licensing required by this chapter or has committed an act described by Sections 103.012(a)(2)-(7).

#### ARTICLE 4. ADULT DAY-CARE FACILITIES

SECTION 4.01. Amends Chapter 103, Human Resources Code, by adding Sections 103.012 through 103.016, as follows:

Sec. 103.012. ADMINISTRATIVE PENALTY. (a) Authorizes DADS to assess an administrative penalty against a person who:

(1) violates this chapter, a rule, standard, or order adopted under this chapter, or a term of a license issued under this chapter;

(2) makes a false statement of a material fact that the person knows or should know is false:

(A) on an application for issuance or renewal of a license or in an attachment to the application; or

(B) with respect to a matter under investigation by DADS;

(3) refuses to allow a representative of DADS to inspect:

(A) a book, record, or file required to be maintained by an adult day-care facility; or

(B) any portion of the premises of an adult day-care facility;

(4) wilfully interferes with the work of a representative of DADS or the enforcement of this chapter;

(5) wilfully interferes with a representative of DADS preserving evidence of a violation of this chapter, a rule, standard, or order adopted under this chapter, or a term of a license issued under this chapter;

(6) fails to pay a penalty assessed under this chapter not later than the 30th day after the date the assessment of the penalty becomes final; or

(7) fails to notify the department of a change of ownership before the effective date of the change of ownership.

(b) Prohibits the penalty, except as provided by Section 103.013(c), from exceeding \$500 for each violation.

(c) Provides that each day of a continuing violation constitutes a separate violation.

(d) Requires DADS to establish gradations of penalties in accordance with the relative seriousness of the violation.

(e) Requires DADS, in determining the amount of a penalty, to consider any matter that justice may require, including:

(1) the gradations of penalties established under Subsection (d);

- (2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited act and the hazard or potential hazard created by the act to the health or safety of the public;
- (3) the history of previous violations;
- (4) the deterrence of future violations; and
- (5) the efforts to correct the violation.

(f) Provides that a penalty assessed under Subsection (a)(6) is in addition to the penalty previously assessed and not timely paid.

Sec. 103.013. RIGHT TO CORRECT BEFORE IMPOSITION OF ADMINISTRATIVE PENALTY. (a) Prohibits DADS from collecting an administrative penalty from an adult day-care facility under Section 103.012 if, not later than the 45th day after the date the facility receives notice under Section 103.014(c), the facility corrects the violation.

(b) Provides that Subsection (a) does not apply to:

- (1) a violation that DADS determines:
  - (A) results in serious harm to or death of a person attending the facility;
  - (B) constitutes a serious threat to the health and safety of a person attending the facility; or
  - (C) substantially limits the facility's capacity to provide care;
- (2) a violation described by Sections 103.012(a)(2)-(7); or
- (3) a violation of Section 103.011.

(c) Requires an adult day-care facility that corrects a violation to maintain the correction. Authorizes DADS, if the facility fails to maintain the correction until at least the first anniversary after the date the correction was made, to assess and collect an administrative penalty for the subsequent violation. Provides that an administrative penalty assessed under this subsection is equal to three times the amount of the original penalty assessed but not collected. Provides that DADS is not required to provide the facility with an opportunity under this section to correct the subsequent violation.

Sec. 103.014. REPORT RECOMMENDING ADMINISTRATIVE PENALTY; NOTICE. (a) Requires DADS to issue a preliminary report stating the facts on which DADS concludes that a violation of this chapter, a rule, standard, or order adopted under this chapter, or a term of a license issued under this chapter has occurred if DADS has:

- (1) examined the possible violation and facts surrounding the possible violation; and
- (2) concluded that a violation has occurred.

(b) Authorizes that the report recommend a penalty under Section 103.012 and the amount of the penalty.

(c) Requires DADS to give written notice of the report to the person charged with the violation not later than the 10th day after the date on which the report is issued. Requires that the notice include:

- (1) a brief summary of the charges;
- (2) a statement of the amount of penalty recommended;
- (3) a statement of whether the violation is subject to correction under Section 103.013 and, if the violation is subject to correction under that section, a statement of:
  - (A) the date on which the adult day-care facility is required to file a plan of correction with DADS that DADS shall review and may approve, if satisfactory; and
  - (B) the date on which the plan of correction must be completed to avoid assessment of the penalty; and
- (4) a statement that the person charged has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(d) Authorizes the person charged, not later than the 20th day after the date on which the notice under Subsection (c) is received, to:

- (1) give to DADS written notice that the person agrees with DADS's report and consents to the recommended penalty; or
- (2) make a written request for a hearing.

(e) Requires the adult day-care facility, if the violation is subject to correction under Section 103.013, to submit a plan of correction to DADS for approval not later than the 10th day after the date on which the notice under Subsection (c) is received.

(f) Requires DADS, if the violation is subject to correction under Section 103.013, and the person reports to DADS that the violation has been corrected, to inspect the correction or take any other step necessary to confirm the correction and to notify the person that:

- (1) the correction is satisfactory and a penalty will not be assessed; or
- (2) the correction is not satisfactory and a penalty is recommended.

(g) Authorizes the person charged with the violation, not later than the 20th day after the date on which a notice under Subsection (f)(2) is received, to:

- (1) give to DADS written notice that the person agrees with DADS's report and consents to the recommended penalty; or
- (2) make a written request for a hearing.

(h) Requires DADS's commissioner or the commissioner's designee, if the person charged with the violation consents to the penalty recommended by DADS or does not timely respond to a notice sent under Subsection (c) or (f)(2), to assess the penalty recommended by DADS.

(i) Requires DADS, if DADS's commissioner or the commissioner's designee assesses the recommended penalty, to give written notice of the decision to the person charged with the violation and the person is required to pay the penalty.

Sec. 103.015. ADMINISTRATIVE PENALTY HEARING. (a) Requires an administrative law judge to order a hearing and give notice of the hearing if a person assessed a penalty under Section 103.013(c) requests a hearing.

- (b) Requires that the hearing be held before an administrative law judge.
- (c) Requires the administrative law judge to make findings of fact and conclusions of law regarding the occurrence of a violation of this chapter, a rule or order adopted under this chapter, or a term of a license issued under this chapter.
- (d) Requires DADS's commissioner or the commissioner's designee by order, based on the findings of fact and conclusions of law, and the recommendation of the administrative law judge, to find:
  - (1) a violation has occurred and assess an administrative penalty; or
  - (2) a violation has not occurred.
- (e) Provides that proceedings under this section are subject to Chapter 2001, Government Code.

Sec. 103.016. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; INTEREST; REFUND. (a) Requires DADS's commissioner or the commissioner's designee to give notice of the findings made under Section 103.015(d) to the person charged with a violation. Requires DADS's commissioner or the commissioner's designee, if the commissioner or the commissioner's designee finds that a violation has occurred, to give to the person charged written notice of:

- (1) the findings;
  - (2) the amount of the administrative penalty;
  - (3) the rate of interest payable with respect to the penalty and the date on which interest begins to accrue; and
  - (4) the person's right to judicial review of the order of DADS's commissioner or the commissioner's designee.
- (b) Requires the person assessed the penalty, not later than the 30th day after the date on which the order of DADS's commissioner or the commissioner's designee is final, to:
- (1) pay the full amount of the penalty; or
  - (2) 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 DADS, notwithstanding Subsection (b), to permit the person to pay a penalty in installments.
- (d) Provides that if the person does not pay the penalty within the period provided by Subsection (b) or in accordance with Subsection (c), if applicable:
- (1) the penalty is subject to interest; and
  - (2) DADS may refer the matter to the attorney general for collection of the penalty and interest.
- (e) Provides that interest under Subsection (d)(1) accrues:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the day after the date on which the penalty becomes due and ending on the date the penalty is paid.

(f) Requires DADS's commissioner or the commissioner's designee, if the amount of the penalty is reduced or the assessment of a penalty is not upheld on judicial review, to:

(1) remit to the person charged the appropriate amount of any penalty payment plus accrued interest; or

(2) execute a release of the supersedeas bond if one has been posted.

(g) Requires that accrued interest on the amount remitted by DADS's commissioner or the commissioner's designee under Subsection (f)(1) be paid:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted to the person charged with the violation.

#### ARTICLE 5. WAIVER; EFFECTIVE DATE

SECTION 5.01. Requires a state agency, if necessary for implementation of a provision of this Act, to request a waiver or authorization from a federal agency, and authorizes delay of implementation until such waivers or authorizations are granted.

SECTION 5.02. Effective date: September 1, 2011.