

## **BILL ANALYSIS**

Senate Research Center  
82R1377 YDB-F

S.B. 223  
By: Nelson  
Health & Human Services  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

This bill is intended to limit unwarranted growth of home and community support services agencies (HCSSAs) and enhance qualifications and oversight of HCSSA administrators (administrators).

S.B. 223 directs HCSSAs to apply for a certificate of need before applying for a license, and directs administrators to be licensed. The bill limits the number of HCSSAs an administrator may oversee. S.B. 223 also requires independent assessments of individuals before they begin receiving HCSSA services.

As proposed, S.B. 223 amends current law relating to the licensing and regulation of home and community support services agencies and of the administrators of those agencies 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 3 (Sections 142.0021 and 142.0023, Health and Safety Code), SECTION 6 (Section 142.0064, Health and Safety Code), and SECTION 11 (Sections 142.053, 142.054, 142.055, 142.056, 142.059 142.060, 142.061, 142.062, 142.064, 142.065, 142.069, 142.070, Health and Safety Code) of this bill.

Rulemaking authority previously granted to the Texas Department of Health board is transferred to the executive commissioner in SECTION 4 (Section 142.0025, Health and Safety Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 142.001, Health and Safety Code, by adding Subdivisions (8-a), (11-a), (11-b), (11-c), and (12-a) to define, respectively, "commissioner," "department," "executive commissioner," "geographic service area," and "home and community support services agency" or "administrator."

SECTION 2. Amends Section 142.002(e), Health and Safety Code, to provide that, subject to Section 142.0021, a license issued under this chapter may not be transferred to another person, but may be transferred from one location to another location.

SECTION 3. Amends Subchapter A, Chapter 142, Health and Safety Code, by adding Sections 142.0021, 142.0022, 142.0023, 142.0024, 142.00241, 142.00242, and 142.00243, as follows:

Sec. 142.0021. CERTIFICATE OF NEED REQUIRED; SWORN APPLICATION. (a) Prohibits a person, except as provided by Section 142.0022, unless the person holds a certificate of need issued by the Department of Aging and Disability Services (DADS), from:

- (1) applying for an initial home and community support services agency license, initial branch office license, or initial alternate delivery site license;

(2) transferring a home and community support services agency license, branch office license, or alternate delivery site license to a different geographic service area; or

(3) expanding the boundaries of the geographic service area covered by the home and community support services agency license, branch office license, or alternate delivery site license.

(b) Requires an applicant for a certificate of need to submit a sworn application on the form prescribed by DADS accompanied by an application fee in the amount specified by Section 142.0024.

(c) Authorizes the executive commissioner of the Health and Human Services Commission (executive commissioner) by rule to establish the dates by which applications and fees must be received under this section.

Sec. 142.0022. **CERTIFICATE OF NEED: EXEMPTION.** Provides that a person who holds a home and community support services agency license, a branch office license, or an alternate delivery site license issued under this subchapter before September 1, 2011, is exempt from the requirement to obtain a certificate of need to provide home health, hospice, or personal assistance services in the geographic service area covered by the license.

Sec. 142.0023. **CERTIFICATE OF NEED: ELIGIBILITY CRITERIA.** Requires the executive commissioner by rule to establish criteria for issuance of a certificate of need to an applicant. Requires that the criteria include:

(1) standards for determining whether the issuance of an initial license under this subchapter, the transfer of the license to a different geographic service area, or the expansion of the boundaries of the geographic service area covered by the license is necessary to meet the health care needs of the community or population in the area to be served by the agency; and

(2) any other factors the executive commissioner determines are relevant to the issuance of the certificate of need.

Sec. 142.0024. **CERTIFICATE OF NEED: APPLICATION FEE.** (a) Provides that the application fee for a certificate of need is \$2,500, and is nonrefundable.

(b) Requires that all application fees received for a certificate of need be deposited to the credit of the general revenue fund. Authorizes fees received to be appropriated only to DADS to administer and enforce Sections 142.0021, 142.0022, 142.0023, 142.0024, 142.00241, 142.00242, and 142.00243.

Sec. 142.00241. **ISSUANCE OF CERTIFICATE OF NEED.** Requires DADS to issue a certificate of need to an applicant if:

(1) the applicant submits a sworn application as required by Section 142.0021(b) and pays the application fee in the amount specified by Section 142.0024; and

(2) DADS determines the applicant sufficiently satisfies the criteria established under Section 142.0023 and executive commissioner rule for issuance of the certificate of need.

Sec. 142.00242. **DENIAL OF CERTIFICATE OF NEED; APPLICABILITY OF OTHER LAW.** (a) Entitles a person whose application for a certificate of need is denied by DADS to a hearing before DADS if the person submits to DADS a written request for the hearing.

(b) Provides that the provisions of Chapter 2001 (Administrative Procedure), Government Code, relating to contested case hearings apply to hearings conducted under this section and to appeals from DADS decisions.

Sec. 142.00243. CERTIFICATE OF NEED NONTRANSFERABLE. Provides that a certificate of need is not transferable.

SECTION 4. Amends Section 142.0025, Health and Safety Code, as follows:

Sec. 142.0025. TEMPORARY LICENSE. Authorizes 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 issued under this section is effective as provided by rules adopted by the executive commissioner, rather than the Texas Board of Health.

SECTION 5. Amends Subchapter A, Chapter 142, Health and Safety Code, by adding Section 142.00605, as follows:

Sec. 142.00605. LIMITATION ON ADMINISTRATOR. Prohibits a person who holds a home and community support services agency license from having as an administrator or alternate administrator of the agency an individual who is serving as an administrator or alternate administrator of more than one other home and community support services agency.

SECTION 6. Amends Subchapter A, Chapter 142, Health and Safety Code, by adding Section 142.0064, as follows:

Sec. 142.0064. INDEPENDENT ASSESSMENT OF CLIENTS. (a) Prohibits a home and community support services agency from providing home health, hospice, or personal assistance services to a client unless an independent administrative service organization has:

- (1) assessed the service needs of the client; and
- (2) issued to the agency a written assessment of the medical necessity for and the amount and type of home health, hospice, or personal assistance services to be provided by the agency to the client.

(b) Requires the executive commissioner to adopt the rules necessary to implement this section, including rules to:

- (1) establish the procedures by which an administrative service organization may obtain authorization to assess the service needs of clients of home and community support services agencies; and
- (2) prescribe the form of the written assessment required under this section.

SECTION 7. Amends Section 142.009, Health and Safety Code, by amending Subsections (g) and (j) and adding Subsection (i), as follows:

(g) Requires DADS to provide certain information regarding a survey of a home and community support services agency by DADS to the home and community support services agency administrator, rather than the chief executive officer of the agency, including 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. Makes a nonsubstantive change.

(i) Authorizes DADS, except as provided by Subsection (h) (relating to certain accredited agencies not being subject to additional surveys), to not renew an initial home and community support services agency license unless DADS has conducted an initial on-site survey of the agency.

(j) Provides that, except as provided by Subsection (h), DADS:

(1) is required to conduct an initial on-site survey of a home and community support services agency not later than the first anniversary of the date the initial license is issued;

(2) is authorized to conduct an additional on-site survey of the agency within 18 months of the date of the initial on-site survey; and

(3) is required to conduct subsequent on-site surveys of the agency at least every 36 months after the later of the date the initial or any additional on-site survey is conducted.

Deletes existing text requiring that, except as provided by Subsections (h) and (l), an on-site survey must be conducted within 18 months after a survey, for an initial license. Deletes existing text requiring that, after that time, an on-site survey be conducted at least every 36 months.

SECTION 8. 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 fails to comply with the rules or standards for licensing required by this subchapter, rather than chapter, or a person who engages in conduct that violates Section 102.001 (Soliciting Patients; Offense), Occupations Code, rather than Section 161.091 (repealed).

SECTION 9. Amends Section 142.014(a), Health and Safety Code, to make a conforming change.

SECTION 10. Amends Sections 142.017(a), (h), and (j), Health and Safety Code, as follows:

(a) Authorizes DADS to assess an administrative penalty against a person who violates:

(1) this subchapter, Subchapter B, or a rule adopted under this subchapter or Subchapter B, rather than this chapter or a rule adopted under this chapter; or

(2) Section 102.001, Occupations Code, if the violation relates to the provision of home health, hospice, or personal assistance services.

(h) Makes a conforming change.

(j) Makes conforming changes.

SECTION 11. Amends Chapter 142, Health and Safety Code, by adding Subchapter C, as follows:

**SUBCHAPTER C. HOME AND COMMUNITY SUPPORT SERVICES AGENCY  
ADMINISTRATION; ENFORCEMENT; PENALTIES**

Sec. 142.051. DEFINITIONS. Defines "advisory committee," "applicant," "license holder," and "practice of home and community support services agency administration" in this subchapter.

Sec. 142.052. LICENSE REQUIRED; EXEMPTION. (a) Prohibits a person, except as provided by Subsection (b), from acting as a home and community support services agency administrator or representing to others that the person is a home and community support services agency administrator unless the person holds a license issued under this subchapter.

(b) Provides that a person employed by or serving as a home and community support services agency administrator for a home and community support services agency on August 31, 2011, is not required to obtain a license under this subchapter while the person remains continuously employed by or continuously serves as a home and community support services agency administrator for that agency or another home and community support services agency.

Sec. 142.053. LICENSE APPLICATION; QUALIFICATIONS. (a) Requires an applicant for a home and community support services agency administrator license to submit a sworn application on the form prescribed by DADS. Requires that the application be accompanied by an application fee in the amount set by the executive commissioner under Section 142.060.

(b) Authorizes the executive commissioner by rule to establish the dates by which applications and fees must be received.

(c) Requires an applicant for a home and community support services agency administrator license, to qualify for a license under this chapter, to pass the licensing examination required under Section 142.054. Requires the applicant, to be eligible to take the licensing examination, to have satisfactorily completed a course of instruction and training prescribed by DADS that is conducted by or in cooperation with an accredited postsecondary educational institution and that is designed and administered to provide sufficient knowledge of:

(1) the service needs of clients served by home and community support services agencies;

(2) the laws governing the operation of home and community support services agencies and the protection of the interests of home and community support services agency clients; and

(3) the functions and duties of home and community support services agency administrators.

(d) Authorizes an applicant who has not completed the course of instruction and training described by Subsection (c) to qualify for the licensing examination by presenting evidence satisfactory to DADS that the applicant has completed sufficient education, training, and experience in the fields described by Subsection (c) to enable the applicant to engage in the practice of home and community support services agency administration.

Sec. 142.054. EXAMINATION. (a) Requires DADS to prepare or approve the licensing examination for issuance of a license under this subchapter and to administer the examination to qualified applicants at least twice each calendar year. Requires DADS to have any written portion of the examination validated by a testing professional.

(b) Requires DADS, not later than the 30th day after the date on which a licensing examination is administered under this subchapter, to notify each examinee of the results of the examination. Requires DADS, if an examination is graded or reviewed by a national or state testing service, to notify examinees of the results of the examination not later than two weeks after the date DADS receives the results from the testing service. Requires DADS, if the notice of the examination results will be delayed for more than 90 days after the examination date, to notify the examinee of the reason for the delay before the 90th day .

(c) Requires DADS, if requested in writing by a person who fails the licensing examination, to furnish the person with an analysis of the person's performance on the examination.

(d) Authorizes the executive commissioner by rule to establish additional educational requirements to be met by an applicant who fails the examination three times.

Sec. 142.055. LICENSE: ISSUANCE, TERM, NONTRANSFERABILITY, INFORMATION CHANGE, AND INACTIVE STATUS. (a) Requires DADS to issue a home and community support services agency administrator license to a person who meets the requirements for licensing under this subchapter.

(b) Provides that a license issued under this subchapter is valid for two years.

(c) Provides that a home and community support services agency administrator license is not transferable.

(d) Requires a license holder to notify DADS of a change in the license holder's name or mailing address.

(e) Authorizes the executive commissioner by rule to adopt a system under which licenses expire on various dates during the two-year period prescribed by Subsection (b). Requires that license fees payable on the original expiration date, for the year in which a license expiration date is changed, be prorated on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. Provides that, on renewal of the license on the new expiration date, the total license renewal fee is payable.

(f) Authorizes the executive commissioner by rule to provide for a license holder to be placed on inactive status.

Sec. 142.056. TEMPORARY LICENSE. Authorizes the executive commissioner by rule to provide for the issuance of a temporary license under this subchapter. Requires that rules adopted under this section include a time limit for a license holder to practice under a temporary license.

Sec. 142.057. PROVISIONAL LICENSE. (a) Requires DADS to issue a provisional license to an applicant currently licensed in another jurisdiction who submits an application for a home and community support services agency administrator license in this state and who:

(1) has been licensed in good standing as a home health, hospice, or personal assistance services agency administrator for at least two years in another jurisdiction, including a foreign country, that has licensing requirements that are substantially equivalent to the requirements of this subchapter;

(2) has passed a national or other examination recognized by DADS as substantially equivalent to the licensing examination administered under this subchapter; and

(3) is sponsored by a person licensed by DADS under this subchapter with whom the provisional license holder will practice during the time the person holds a provisional license.

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

hardship to the applicant. Provides that waiver of the requirement of Subsection (a)(3) is in the sole discretion of DADS.

(c) Provides that a provisional license is valid until the date DADS approves or denies the application for a home and community support services agency administrator license as provided by this subchapter. Requires DADS to issue a license under this subchapter to the provisional license holder:

(1) the provisional license holder meets the qualifications for a home and community support services agency administrator license under Section 142.053; or

(2) the provisional license holder passes the part of the examination required under Section 142.054 that relates to the applicant's knowledge and understanding of the laws and rules regarding the practice of home and community support services agency administration in this state, and DADS verifies that the provisional license holder meets the academic and experience requirements for a license under this subchapter, and the provisional license holder satisfies all other license requirements under this subchapter.

(d) Requires DADS 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 DADS to extend the 180-day period if the results of an examination have not been received by DADS before the end of that period.

(e) Authorizes DADS to establish a provisional license fee in an amount reasonable and necessary to cover the cost of issuing the license.

Sec. 142.058. LICENSE RENEWAL. (a) Authorizes a person with an unexpired license who is otherwise eligible for renewal to renew the license by submitting an application and paying the required renewal fee to DADS before the expiration date of the license. Prohibits a person whose license has expired from engaging in activities that require a license until the license has been renewed.

(b) Authorizes a person whose license has been expired for 90 days or less to renew the license by paying to DADS a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(c) Authorizes a person whose license has been expired for more than 90 days but less than one year to renew the license by paying to DADS a renewal fee that is equal to two times the normally required renewal fee.

(d) Prohibits a person whose license has been expired for one year or more from renewing the license. Authorizes the person to obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining a home and community support services agency administrator license.

(e) Requires DADS, not later than the 31st day before the date a person's license is scheduled to expire, to send written notice of the impending expiration to the person at the person's last known address according to the records of DADS.

Sec. 142.059. ADMINISTRATOR REQUIRED; EXEMPTION; ADMINISTRATOR RESPONSIBILITIES. (a) Requires each home and community support services agency, except as provided by Subsection (b), to employ or be served by at least one licensed home and community support services administrator.

(b) Provides that a home and community support services agency is exempt from the requirements of Subsection (a) if the agency was established before

September 1, 2011, or has on staff or is served by a home and community support services agency administrator who is exempt from licensing under Section 142.052(b).

(c) Sets forth certain required duties and responsibilities of a home and community support services agency administrator.

Sec. 142.060. FEES; FUNDS. (a) Requires the executive commissioner by rule to set application and license fees as provided by this subchapter in the amounts necessary to cover the cost of administering this subchapter. Authorizes the executive commissioner by rule to set different licensing fee amounts for different categories of licenses.

(b) Requires DADS to account for money received under this subchapter. Requires that the money be deposited to the credit of the general revenue fund and be appropriated to DADS only to administer this subchapter.

(c) Authorizes DADS to disburse money received from any federal source for the furtherance of DADS functions under this subchapter.

Sec. 142.061. MANDATORY CONTINUING EDUCATION. (a) Requires the executive commissioner by rule to establish a minimum number of continuing education hours required to renew a license under this subchapter. Authorizes DADS to assess the continuing education needs of license holders and authorizes DADS to require license holders to attend continuing education courses specified by DADS.

(b) Requires DADS to identify the key factors required for the competent performance by a license holder of the license holder's professional duties. Requires DADS to adopt a procedure to assess a license holder's participation in continuing education programs.

Sec. 142.062. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER. (a) Requires the executive commissioner, to protect the health and safety of clients served by home and community support services agencies, by rule to:

(1) adopt and publish a code of ethics for home and community support services agency administrators;

(2) establish the qualifications of applicants for issuance of licenses and renewal of licenses under this subchapter;

(3) establish a minimum number of continuing education hours required to renew a license issued under this subchapter; and

(4) periodically assess the continuing education needs of license holders to determine whether to require specific course content.

(b) Authorizes the executive commissioner to adopt other rules consistent with this subchapter as necessary to administer this subchapter.

Sec. 142.063. HOME AND COMMUNITY SUPPORT SERVICES AGENCY ADMINISTRATORS ADVISORY COMMITTEE. (a) Establishes the Home and Community Support Services Agency Administrators Advisory Committee (advisory committee).

(b) Provides that the advisory committee is composed of seven certain members appointed by the governor.

(c) Requires that appointments to the advisory committee be made without regard to race, color, disability, sex, religion, age, or national origin of the person appointed.

(d) Provides that members of the advisory committee serve staggered six-year terms, with the terms of two or three members expiring on February 1 of each odd-numbered year.

(e) Requires that a vacancy in a position on the advisory committee be filled by appointment of the governor. Requires a person appointed to fill a vacancy to meet the qualifications of the vacated position.

(f) Requires the advisory committee to advise DADS and the commissioner on the licensing of home and community support services agency administrators, including the content of license applicants and of the examination administered to applicants under Section 142.054; review and recommend rules and minimum standards of conduct for the practice of home and community support services agency administration, and review all complaints against administrators and make recommendations to DADS regarding disciplinary actions.

(g) Prohibits the failure of the advisory committee to review complaints and make recommendations in a timely manner from precluding DADS from taking disciplinary action.

(h) Provides that a member of the advisory committee is not entitled to compensation for service on the advisory committee but is entitled to reimbursement for actual and necessary expenses incurred in performing the member's duties under this section.

(i) Requires DADS to pay the expenses of the advisory committee and supply necessary personnel and supplies.

(j) Provides that Chapter 2110 (State Agency Advisory Committees), Government Code, does not apply to the advisory committee.

Sec. 142.064. COMPLAINT RECEIPT, INVESTIGATION, AND DISPOSITION. (a) Requires DADS to keep an information file concerning each complaint filed with DADS regarding a person licensed or required to be licensed under this subchapter. Requires that DADS' information file be kept current and contain for each complaint:

- (1) a record of all persons contacted in relation to the complaint;
- (2) a summary of findings made at each step of the complaint process;
- (3) an explanation of the legal basis and reason for a complaint that is dismissed; and
- (4) other relevant information.

(b) Requires DADS, if a written complaint is filed with DADS that DADS has authority to resolve, DADS, at least quarterly and until final disposition of the complaint, to notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(c) Requires the executive commissioner by rule to adopt a form to standardize information concerning complaints made to DADS. Requires the executive commissioner by rule to prescribe information to be provided to a person when the person files a complaint with DADS.

(d) Requires DADS to provide reasonable assistance to a person who wishes to file a complaint with DADS.

(e) Requires the executive commissioner to adopt rules concerning the investigation of complaints filed with DADS. Requires that the rules adopted under this subsection:

- (1) distinguish between categories of complaints;
- (2) ensure that complaints are not dismissed without appropriate consideration;
- (3) require that the commissioner be advised at least quarterly of complaints that have been dismissed and require that a letter be sent to each person who has filed a complaint that is dismissed explaining the action take on the complaint;
- (4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint; and
- (5) prescribe guidelines concerning the categories of complaints that may require the use of a private investigator and the procedures to be followed by DADS in obtaining the services of a private investigator.

(f) Requires DADS to dispose of all complaints in a timely manner. Requires the executive commissioner by rule to establish a schedule for initiating a complaint investigation that is under the control of DADS not later than the 30th day after the date the complaint is received by DADS. Requires DADS to:

- (1) keep the schedule in the information file for the complaint;
- (2) notify all parties of the projected time requirements for pursuing the complaint; and
- (3) note in the information file any change in schedule and notify all parties to the complaint not later than the seventh day after the date the change is made.

Sec. 142.065. SANCTIONS. (a) Authorizes DADS to revoke, suspend, or refuse to renew a home and community support services agency administrator's license, assess an administrative penalty against, issue a written reprimand to, or require participation in continuing education by the license holder, or place the license holder on probation, after due notice and the opportunity for a hearing, on proof of any of the following grounds:

- (1) the license holder has willfully or repeatedly violated this subchapter or a rule adopted under this subchapter;
- (2) the license holder has willfully or repeatedly acted in a manner inconsistent with the health and safety of the clients of a home and community support services agency of which the license holder is an administrator;
- (3) the license holder obtained or attempted to obtain a license through misrepresentation or deceit or by making a material misstatement of fact on a license application;
- (4) the license holder's use of alcohol or drugs creates a hazard to the clients of a home and community support services agency;
- (5) a judgment of a court finds that the license holder is mentally incapacitated;

(6) the license holder has been convicted in a court of a misdemeanor or felony involving moral turpitude;

(7) the license holder has been convicted in a court of an offense listed in Section 250.006 or listed in a rule adopted by the executive commissioner regarding convictions barring licensure; or

(8) the license holder has been negligent or incompetent in the license holder's duties as a home and community support services agency administrator.

(b) Authorizes DADS, if a license sanction is probated, to require the license holder to:

(1) report regularly to DADS on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by DADS; or

(3) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to DADS in those areas that are the basis of the probation.

(c) Entitles a license holder to a hearing in accordance with rules adopted by the executive commissioner before a sanction is imposed under this section.

(d) Requires the executive commissioner by rule to adopt a broad schedule of sanctions for violations under this subchapter. Requires DADS to use the schedule for any sanction imposed in accordance with the rules.

(e) Requires the executive commissioner by rule to establish criteria to determine whether deficiencies from a home and community support services agency's survey warrant action against an administrator. Requires that the criteria include a determination of whether survey findings indicate substantial noncompliance related to an act or failure to act by the administrator and whether a deficiency is related to an act or failure to act by the administrator. Requires that the disciplinary action be reversed if a deficiency on which a disciplinary action against an administrator is initiated or completed is not substantiated.

Sec. 142.066. WRITTEN REPRIMAND AND CONTINUING EDUCATION AS SANCTIONS. (a) Authorizes DADS, in addition to the other disciplinary actions authorized under this subchapter, to issue a written reprimand to a license holder who violates this subchapter or may require that a license holder who violates this subchapter participate in continuing education programs.

(b) Requires DADS to specify the continuing education programs that may be attended and the number of hours that must be completed by a license holder to fulfill the requirements of this section.

Sec. 142.067. ADMINISTRATIVE PENALTY. (a) Authorizes DADS to impose an administrative penalty against a person licensed or regulated under this subchapter who violates this subchapter or a rule adopted by the executive commissioner under this subchapter.

(b) Prohibits the penalty for a violation from exceeding \$1,000.

(c) Requires that the amount of penalty be based on:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;
- (2) the history of previous violations;
- (3) the amount necessary to deter future violations;
- (4) efforts to correct the violations; and
- (5) any other matter that justice may require.

Sec. 142.068. ADMINISTRATIVE PENALTY: NOTICE AND HEARING. (a) Requires DADS , if DADS determines that a violation has occurred, to give written notice of the determination to the person alleged to have committed the violation. Authorizes the notice to be given by certified mail. Sets forth certain required information for the notice.

(b) Authorizes the person, not later than the 20th day after the date the person receives the notice, in writing to accept the determination and the penalty recommended by DADS, or the person may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) Requires DADS to impose the recommended penalty if the person accepts the determination and the penalty recommended by DADS, or if the person fails to timely respond to the notice.

(d) Requires DADS, if the person requests a hearing, to set a hearing and give notice of the hearing to the person. Requires that the hearing be held in accordance with the provisions in Chapter 2001 (Administrative Procedure), Government Code, related to contested case hearings.

(e) Requires that the notice of the hearing decision given to the person under Chapter 2001, Government Code, include a statement of the right of the person to judicial review of the decision.

(f) Requires the person, not later than the 30th day after the date DADS' decision is final as provided by Section 2001.144, Government Code, to:

- (1) pay the amount of the penalty;
- (2) 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
- (3) without paying the amount of the penalty, 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.

(g) Authorizes a person who acts under Subsection (f)(3) within the period prescribed by Subsection (f), to:

- (1) stay enforcement of the penalty by:
  - (A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of DADS' decision is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to DADS by certified mail.

(h) Authorizes DADS, if DADS receives a copy of an affidavit under Subsection (g)(2), to file with the court, not later than the fifth day after the date the copy is received, a contest to the affidavit. Requires the court to hold a hearing on the facts alleged in the affidavit as soon as practicable and 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 the amount of the penalty and to give a supersedeas bond.

(i) Authorizes DADS, if the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, to refer the matter to the attorney general for collection of the amount of the penalty. Authorizes the attorney general, on behalf of the attorney general and DADS, to recover the reasonable expenses incurred by the attorney general and DADS in obtaining the penalty, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs.

(j) Provides that judicial review of the decision of DADS:

(1) is instituted by filing a petition as provided by Section 2001.176 (Petition Initiating Judicial Review), Government Code; and

(2) is under the substantial evidence rule.

(k) 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.

(l) Requires the court, when the judgment of the court becomes final, to proceed under this subsection. Requires the court, if the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, to order that the appropriate amount plus accrued interest be remitted to the person. Provides that the rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and requires that the interest be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. Requires the court to order the release of the bond if the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court. Requires the court, if the person gave a supersedeas bond and if the amount of the penalty is reduced, to order the release of the bond after the person pays the amount.

(m) Requires that a penalty collected under this section be remitted to the comptroller of public accounts for deposit in the general revenue fund.

(n) Provides that all proceedings under this section are subject to Chapter 2001, Government Code.

Sec. 142.069. **INFORMAL PROCEEDINGS.** (a) Requires the executive commissioner by rule to adopt procedures governing:

(1) informal disposition of a contested case under Section 2001.056 (Informal Disposition of Contested Case), Government Code; and

(2) informal proceedings held in compliance with Section 2001.054 (Licenses), Government Code.

(b) Requires that rules adopted under this section provide the complainant and the license holder an opportunity to be heard.

Sec. 142.070. **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 subchapter.

(b) Requires that rules adopted under this section include procedures for monitoring a license holder who is required by DADS to perform certain acts to ascertain that the license holder performs the required acts and to identify and monitor license holders who represent a risk to the public.

Sec. 142.071. **CIVIL PENALTY.** (a) Provides that a person who violates this subchapter is liable to the state for a civil penalty of \$1,000 for each day of violation.

(b) Requires the attorney general, at the request of DADS, to bring an action to recover a civil penalty established by this section.

(c) Authorizes the attorney general, on behalf of the attorney general and DADS, to recover reasonable expenses incurred by the attorney general and DADS in obtaining a civil penalty under this section, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs.

Sec. 142.072. **ASSISTANCE OF ATTORNEY GENERAL.** Requires the attorney general to provide legal assistance as necessary in enforcing the provisions of this subchapter. Provides that this requirement does not relieve a local prosecuting officer of any of the prosecuting officer's duties under the law.

Sec. 142.073. **OFFENSE.** (a) Provides that a person commits an offense if the person knowingly or intentionally violates Section 142.052.

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

Sec. 142.074. **PROTECTION FOR REFUSAL TO ENGAGE IN CERTAIN CONDUCT.** (a) Prohibits a person from suspending, terminating, or otherwise disciplining or discriminating against a licensed home and community support services agency administrator who refuses to engage in an act or omission relating to the administrator's job duties or responsibilities that would constitute a violation of this subchapter or of a rule adopted under this subchapter, if the administrator notifies the person at the time of the refusal that the reason for refusing is that the act or omission constitutes a violation of this subchapter or of a rule adopted under this subchapter.

(b) Provides that an act by a person under Subsection (a) does not constitute a violation of this section if:

(1) the act or omission the administrator refused to commit was not conduct that constitutes a violation of this subchapter or of a rule adopted under this subchapter; or

(2) the act or omission the administrator refused to commit was conduct that constitutes a violation of this subchapter or of a rule adopted under

this subchapter, and the person rescinds any disciplinary or discriminatory action taken against the administrator, compensates the administrator for lost wages, and restores any lost benefits to the administrator.

(c) Provides that a violation of this section is an unlawful employment practice, and authorizes a civil action to be brought by a licensed home and community support services agency administrator against a person for the violation. Requires that the relief available in a civil action be the same as the relief available to complainants in a civil action for violations of Chapter 21 (Employment Discrimination), Labor Code. Prohibits an action from being brought under this section later than the second anniversary of the date of the administrator's refusal to engage in an act or omission that would constitute a violation of this subchapter or of a rule adopted under this subchapter.

(d) Provides that, in this section, "person" includes an individual, organization, corporation, home and community support services agency, or other entity.

SECTION 12. (a) 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 Act to Chapter 142, Health and Safety Code.

(b) Requires DADS, as soon as practicable after the effective date of this Act but not later than December 1, 2011, to prescribe the application forms necessary to implement the changes in law made by this Act to Chapter 142, Health and Safety Code.

(c) Provides that a person, notwithstanding Section 142.052, Health and Safety Code, as added by this Act, is not required to hold a home and community support services agency administrator license under Subchapter C, Chapter 142, Health and Safety Code, as added by this Act, until January 1, 2012.

(d) Provides that, notwithstanding Section 142.0064, Health and Safety Code, as added by this Act, a home and community support services agency is not required to obtain an independent written assessment of client service needs under that section until September 1, 2012.

(e) Requires the governor, as soon as practicable after the effective date of this Act but not later than October 1, 2011, to appoint the initial members of the advisory committee in accordance with Section 142.063, Health and Safety Code, as added by this Act. Requires the governor, in making the initial appointments, to appoint two members to terms expiring February 1, 2013, two members to terms expiring February 1, 2015, and three members to terms expiring February 1, 2017.

SECTION 13. (a) Effective date, except as provided by Subsection (b) of this section: September 1, 2011.

(b) Effective date, Sections 142.065-142.073, Health and Safety Code, as added by this Act: January 1, 2012.