



ID# 18959-93

~~ID# 14847~~
MBJ

Texas Department of Health

Robert A. MacLean, M.D.
Acting Commissioner

1100 West 49th Street
Austin, Texas 78756-3199
(512) 458-7111

Members of the Board

Ron J. Anderson, M.D., F.A.C.P., Chairman
Raleigh R. White IV, M.D., Vice-Chairman
Oliver R. Smith, Jr., D.C., Secretary
Joan Wood Biggerstaff
Robert E. Bonham, M.D.
Don L. Brewer
Frank Bryant, Jr., M.D., F.A.A.F.P.
Ramiro R. Casso, M.D.
David L. Collins, P.E.
Gill Harber, D.D.S.
Larry D. Krupala
Donald M. Peterson, D.O., F.A.C.G.P.
Susan B. Place, O.D.
William D. Poteet III, F.A.C.H.E.
Milton L. Risinger, D.V.M.
William A. Scott
Barbara T. Slover, R.Ph.
Ruth F. Stewart, R.N.C.

Dr. David Smith
Commissioner

FAX#
(512) 458-7477

January 31, 1992

The Honorable Dan Morales
Attorney General of Texas
P. O. Box 12548
Austin, Texas 78711-2548

FEB 0 5 92

Attn.: Opinion Committee

Re: Home Health Licensure Law

RQ-491

Dear General Morales:

The Texas Department of Health licenses and regulates home health agencies pursuant to the Health and Safety Code, Chapter 142. This letter is to request an opinion relating to §142.005 which sets forth additional license application requirements for certain applicants. The issues to be addressed are as follows.

- 1) Does the language regarding a corporation "that includes members that are not individuals" apply only to a non-profit corporation?
- 2) Does the language regarding a "corporation the shares of which are owned by another corporation" refer to a corporation where any of the shares are owned by another corporation or where all of the shares are owned by another corporation?
- 3) Is a foreign corporation registered to do business in the State of Texas required to establish a domestic corporation in order to meet the requirements of §142.005(a)(1)?

The enclosed memorandum and flowchart explain the department's current position on each of these three issues. As to issue one, it is the department's position that the language of §142.005(a) refers only to a non-profit corporation because that is the only type of corporation which has members. A for-profit corporation has shareholders but not members. A for-profit corporation might be covered under the second clause in subsection (a) relating to a corporation the shares which are owned by another corporation.

As to issue two, it is the department's position that the language applies when any of the shares are owned by another corporation.

The Honorable Dan Morales
Home Health Licensure Law
Page Two

As to issue three, it is the department's position that a foreign corporation which is registered to do business in the State of Texas is not a "Texas corporation" as that language is used in §142.005; therefore, a foreign corporation which is registered to do business in the State of Texas would be required to establish a Texas corporation (a domestic corporation) in order to comply with the requirements of this section. Of course, this issue will only arise once the foreign corporate applicant has been determined to be either a corporation that includes members that are not individuals or a corporation the shares of which are owned by another corporation. This interpretation may be questionable when one reviews the Texas Business Corporation Act, Article 8.02 which relates to the powers of foreign corporations.

If you require any further information, please contact Linda Wiegman, Attorney with the Office of General Counsel, at (512) 458-7236. Thank you for your attention to this matter.

Sincerely,



Robert A. MacLean, M.D.
Acting Commissioner of Health

TEXAS DEPARTMENT OF HEALTH

AUSTIN TEXAS
INTEROFFICE

THRU: Juanita Carrell, R.N., Ed.D
Associate Commissioner
Special Health Services

THRU: Maurice Shaw, Chief
Bureau of Licensing and Certification

TO: Nance Kerrigan-Stearman, Director
Health Facility Licensure & Certification Division

SUBJECT: The Home Health Law, Section 142.005

I have received several calls and letters in the last couple of months regarding the interpretation of the Health and Safety Code, Section 142.005, which pertains to corporate applicants for home health licenses. This memorandum attempts to outline who is affected by that section and to clarify some issues which arise under that language.

First, the section does not apply to all corporate applicants. Just because a corporation is an applicant, this section is not automatically triggered. This section applies only when all of the following apply.

1. The application is for a license other than a renewal or branch office license.

2. The applicant proposes to operate the agency through one of the following:

A. a partnership, corporation, or other business entity that includes members that are not individuals.

(i) The type of corporate applicant covered by this phrase is a non-profit corporation because a non-profit corporation has members. A for-profit corporation has shareholders, not members, and may be covered under the next clause (B).

(ii) Even though this section's title refers to corporate applicants, this will apply to partnership applicants, non-profit corporate applicants, or other business entities such as limited

liability companies when some or all of the members are not individuals.

(iii) You must ask whether the applicant has members (not shareholders) that are not individuals.

(iv) This section will apply to a partnership applicant when one or more of the partners are not individuals, i.e. are other partnerships or corporations.

(v) If the partnership, non-profit corporation, or other business entity that is applying includes only members that are individuals, this section of the law will not apply.

B. a corporate applicant where the shares of the applicant are owned by another corporation.

(i) This will apply when any of the shares are owned by another corporation. If the corporate applicant has some shares owned by a corporation and other shares owned by individuals, this part of the law will apply.

(ii) This will apply to any type of corporation as long as it has shareholders. Generally the department will see only for-profit corporations under this clause.

3. In determining whether an applicant fits under 1 or 2 above, it makes no difference whether the corporation is a Texas corporation, an out-of-state corporation, or an out-of-state corporation registered to do business in the State of Texas.

Once a determination is made that this section does apply because the above requirements are met, the law requires that the applicant must follow the provisions in paragraphs (1) through (6) of the law. The first requirement is that the applicant must establish a corporation under the laws of this state if the applicant is not a corporation organized under the laws of the state. Paragraphs (2), (3), and (4) and subsection (b) reference "the Texas corporation". An out-of-state corporation which is registered to do business in the State of Texas is not a "Texas corporation"; it is simply an out-of-state corporation registered to do business in the State of Texas. Therefore, in looking at this section of the law in its entirety, it appears that an out-of-state corporation which applies for a home health agency license and which falls under 1 or 2 above must establish a Texas corporation and give that Texas corporation the authority to operate the home health agency. Remember that if this section does not apply (see 1 and 2 above), the out-of-state corporation need not supply any of the information listed in Section 142.005 and need not establish a Texas corporation.

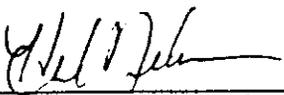
If this section of the law applies to an applicant and that applicant is required to establish a Texas corporation, the applicant may remain the original applicant or be changed to the Texas corporation. This section of the law does not require the applicant to change his application to reflect the Texas corporation as the applicant. It seems to allow the original applicant to remain the applicant and to have the Texas corporation as just the operator of the agency, not necessarily the owner of the agency. See paragraph (4). You should ask the applicant if it wishes to revise the application to reflect the Texas corporation.

If the applicant does not fall under this section, the applicant could be from out of state and the name on the license would be the name of the out-of-state applicant.

I have attached an outline which I hope will be helpful in wading through this section of the law. If you have any questions, please let me know.

Attachment

Approved:



Office of General Counsel

SIGNED Rinda Wiegman
DATE: 12-6-91

APPLICABILITY OF SECTION 142.005

