

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

5/24/19

Date

Honorable Dan Patrick
President of the Senate

Honorable Dennis Bonnen
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on SB 2138 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

J. J. Hinojosa
Hinojosa

Davis, Sarah
Davis, Sarah

McCampbell
Campbell

R. L. P. Raymond
Raymond

Nathan Johnson
Johnson

Sheffield
Sheffield

J. W. Kelker
Kelker

Thompson, Senecia
Thompson, Senecia

On the part of the Senate Nelson
Nelson

On the part of the House Zerwas
Zerwas

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

S.B. No. 2138

A BILL TO BE ENTITLED

AN ACT

relating to the administration and operation of Medicaid.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.021135 to read as follows:

Sec. 531.021135. COMMISSION'S AUTHORITY TO RETAIN CERTAIN MONEY TO ADMINISTER CERTAIN MEDICAID PROGRAMS; REPORT REQUIRED.

(a) In this section, "directed payment program" means a delivery system and provider patient initiative implemented by this state under 42 C.F.R. Section 438.6(c).

(b) This section applies only to money the commission receives from a source other than the general revenue fund to operate a waiver program established under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315) or a directed payment program or successor program as determined by the commission.

(c) Subject to Subsection (e), the commission may retain from money to which this section applies an amount equal to the estimated costs necessary to administer the program for which the money is received, but not to exceed \$8 million for a state fiscal year.

(d) The commission shall spend money retained under this section to assist in paying the costs necessary to administer the program for which the money is received, except that the commission

1 may not use the money to pay any type of administrative cost that,
2 before June 1, 2019, was funded with general revenue.

3 (e) If the commission determines that the commission needs
4 additional money to administer a program described by Subsection
5 (b), the commission may retain an additional amount with the
6 approval of the governor and the Legislative Budget Board, but not
7 to exceed a total retained amount equal to 0.25 percent of the total
8 amount estimated to be received for the program.

9 (f) The commission shall submit an annual report to the
10 governor and the Legislative Budget Board that:

11 (1) details the amount of money retained and spent by
12 the commission under this section during the preceding state fiscal
13 year, including a separate detail of any increase in the amount of
14 money retained for a program under Subsection (e);

15 (2) contains a transparent description of how the
16 commission used the money described by Subdivision (1); and

17 (3) assesses the extent to which the money retained by
18 the commission under this section covered the estimated costs to
19 administer the applicable program and states whether, based on that
20 assessment, the commission adjusted or considered adjustments to
21 the amount retained.

22 (g) The executive commissioner shall adopt rules necessary
23 to implement this section.

24 SECTION 2. Section 531.1023, Government Code, is amended to
25 read as follows:

26 Sec. 531.1023. COMPLIANCE WITH FEDERAL CODING GUIDELINES.

27 (a) The commission's office of inspector general, including office

1 staff and any third party with which the office contracts to perform
2 coding services, and the commission's medical and utilization
3 review appeals unit shall comply with federal coding guidelines,
4 including guidelines for diagnosis-related group (DRG) validation
5 and related audits.

6 (b) In this section, "federal coding guidelines" means the
7 code sets and guidelines adopted by the United States Department of
8 Health and Human Services in accordance with the Health Insurance
9 Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d
10 et seq.).

11 SECTION 3. Subchapter A, Chapter 533, Government Code, is
12 amended by adding Section 533.0031 to read as follows:

13 Sec. 533.0031. MEDICAID MANAGED CARE PLAN ACCREDITATION.

14 (a) A managed care plan offered by a Medicaid managed care
15 organization must be accredited by a nationally recognized
16 accreditation organization. The commission may choose whether to
17 require all managed care plans offered by Medicaid managed care
18 organizations to be accredited by the same organization or to allow
19 for accreditation by different organizations.

20 (b) The commission may use the data, scoring, and other
21 information provided to or received from an accreditation
22 organization in the commission's contract oversight processes.

23 SECTION 4. The Health and Human Services Commission shall
24 require that a managed care plan offered by a Medicaid managed care
25 organization with which the commission enters into or renews a
26 contract under Chapter 533, Government Code, on or after the
27 effective date of this Act complies with Section 533.0031,

1 Government Code, as added by this Act, not later than September 1,
2 2022.

3 SECTION 5. If before implementing any provision of this Act
4 a state agency determines that a waiver or authorization from a
5 federal agency is necessary for implementation of that provision,
6 the agency affected by the provision shall request the waiver or
7 authorization and may delay implementing that provision until the
8 waiver or authorization is granted.

9 SECTION 6. This Act takes effect immediately if it receives
10 a vote of two-thirds of all the members elected to each house, as
11 provided by Section 39, Article III, Texas Constitution. If this
12 Act does not receive the vote necessary for immediate effect, this
13 Act takes effect September 1, 2019.

Senate Bill 2138
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

HOUSE VERSION (IE)

CONFERENCE

No equivalent provision.

SECTION __. Subchapter A, Chapter 531, Government Code, is amended by adding Section 531.01211.

Same as Senate version.

SECTION 1. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.021135 to read as follows:

SECTION 1. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.021135 to read as follows:

SECTION 1. Same as House version.

Sec. 531.021135. COMMISSION'S AUTHORITY TO RETAIN CERTAIN MONEY TO ADMINISTER CERTAIN MEDICAID PROGRAMS.

Sec. 531.021135. COMMISSION'S AUTHORITY TO RETAIN CERTAIN MONEY TO ADMINISTER CERTAIN MEDICAID PROGRAMS; **REPORT REQUIRED.**

(a) In this section, "directed payment program" means a delivery system and provider patient initiative implemented by this state under 42 C.F.R. Section 438.6(c).

(a) In this section, "directed payment program" means a delivery system and provider patient initiative implemented by this state under 42 C.F.R. Section 438.6(c).

(b) This section applies only to money the commission receives from a source other than the general revenue fund to operate a waiver program established under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315) or a directed payment program or successor program as determined by the commission.

(b) This section applies only to money the commission receives from a source other than the general revenue fund to operate a waiver program established under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315) or a directed payment program or successor program as determined by the commission.

(c) The commission may retain from money to which this section applies an amount equal to the estimated costs necessary to administer the program for which the money is received, but not to exceed **one percent of the total amount estimated to be received for the program.**

(c) **Subject to Subsection (e),** the commission may retain from money to which this section applies an amount equal to the estimated costs necessary to administer the program for which the money is received, but not to exceed **\$8 million for a state fiscal year.** [FA1(1)]

The commission shall spend money retained under this section **as provided by the General Appropriations Act and other applicable law.**

(d) The commission shall spend money retained under this section **to assist in paying the costs necessary to administer the program for which the money is received, except that the commission may not use the money to pay any type of administrative cost that, before June 1, 2019, was funded with general revenue.**

(e) **If the commission determines that the commission needs additional money to administer a program described**

Senate Bill 2138
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

HOUSE VERSION (IE)

CONFERENCE

by Subsection (b), the commission may retain an additional amount with the approval of the governor and the Legislative Budget Board, but not to exceed a total retained amount equal to 0.25 percent of the total amount estimated to be received for the program. [FA1(2)]

(f) The commission shall submit an annual report to the governor and the Legislative Budget Board that:

(1) details the amount of money retained and spent by the commission under this section during the preceding state fiscal year, including a separate detail of any increase in the amount of money retained for a program under Subsection (e);

(2) contains a transparent description of how the commission used the money described by Subdivision (1); and

(3) assesses the extent to which the money retained by the commission under this section covered the estimated costs to administer the applicable program and states whether, based on that assessment, the commission adjusted or considered adjustments to the amount retained.

(g) The executive commissioner shall adopt rules necessary to implement this section.

(d) The executive commissioner shall adopt rules necessary to implement this section.

No equivalent provision.

SECTION __. Section 531.0216(f), Government Code, is amended.

Same as Senate version.

No equivalent provision.

SECTION __. Effective September 1, 2019, Section 531.02164, Government Code, is amended by adding Subsection (c-1).

Same as Senate version.

No equivalent provision.

SECTION __. Section 531.02176, Government Code, is repealed. [FA2,3rd(1)]

Same as Senate version.

Senate Bill 2138
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

HOUSE VERSION (IE)

CONFERENCE

No equivalent provision.

SECTION __. The executive commissioner of the Health and Human Services Commission shall adopt the rules necessary to implement Section 531.02164(c-1), Government Code, as added by this Act, not later than December 1, 2019. [FA2,3rd(1)]

Same as Senate version.

No equivalent provision.

SECTION __. Section 531.1023, Government Code, is amended to read as follows:
Sec. 531.1023. COMPLIANCE WITH FEDERAL CODING GUIDELINES. (a) The commission's office of inspector general, including office staff and any third party with which the office contracts to perform coding services, and the commission's medical and utilization review appeals unit shall comply with federal coding guidelines, including guidelines for diagnosis-related group (DRG) validation and related audits.
(b) In this section, "federal coding guidelines" means the code sets and guidelines adopted by the United States Department of Health and Human Services in accordance with the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.). [FA1,3rd]

SECTION 2. Same as House version.

No equivalent provision.

SECTION __. Subchapter A, Chapter 533, Government Code, is amended by adding Section 533.0031 to read as follows:
Sec. 533.0031. MEDICAID MANAGED CARE PLAN ACCREDITATION. (a) A managed care plan offered by a Medicaid managed care organization must be accredited by a nationally recognized accreditation organization. The commission may choose whether to require all managed care plans offered by Medicaid managed care organizations to be

SECTION 3. Same as House version.

Senate Bill 2138
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

HOUSE VERSION (IE)

CONFERENCE

accredited by the same organization or to allow for accreditation by different organizations.

(b) The commission may use the data, scoring, and other information provided to or received from an accreditation organization in the commission's contract oversight processes. [FA4]

No equivalent provision.

SECTION __. The Health and Human Services Commission shall require that a managed care plan offered by a Medicaid managed care organization with which the commission enters into or renews a contract under Chapter 533, Government Code, on or after the effective date of this Act complies with Section 533.0031, Government Code, as added by this Act, not later than September 1, 2022. [FA4]

SECTION 4. Same as House version.

SECTION 2. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 2. Same as Senate version.

SECTION 5. Same as Senate version.

No equivalent provision.

SECTION __. Section 32.024(w), Human Resources Code, is amended.

Same as Senate version.

No equivalent provision.

SECTION __. The change in law made by this Act to Section 32.024(w), Human Resources Code, applies only to a personal needs allowance paid on or after the effective date of this Act. [FA2]

Same as Senate version.

Senate Bill 2138
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

HOUSE VERSION (IE)

CONFERENCE

No equivalent provision.

SECTION __. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted. [FA2]

Same as Senate version.

No equivalent provision.

SECTION __. The statewide behavioral health coordinating council, in coordination with the Legislative Budget Board, annually shall:

- (1) monitor the effects of prior authorization and preferred drug policies for antipsychotic drugs with regard to medication access and continuity of care; and
- (2) make recommendations to the legislature and the Drug Utilization Review Board, including recommendations to improve policies that create adverse impacts on health outcomes or patient access. [FA3]

Same as Senate version.

No equivalent provision.

SECTION __. Using existing resources, the Health and Human Service Commission shall study the feasibility of extending the private duty nursing benefit to individuals that have aged out of the Star Kids program. In determining the feasibility of continuing the benefit as a Medicaid covered service, the Commission shall determine potential cost savings, impact on the health outcomes of these individuals, impacts related to hospitalizations and institutionalizations, and sufficient utilization controls that restrict continued access to individuals with a functional or clinical need. Not later than December 1, 2019, the Health and Human Services Commission shall submit a report containing the commission's findings and recommendations to the governor, the Legislative Budget Board, and the standing

Same as Senate version.

Senate Bill 2138
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

SECTION 3.

This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2019.

HOUSE VERSION (IE)

committees of the senate and the house of representatives with primary justification over health and human services.
[FA3,3rd]

SECTION __. *Except as otherwise provided by this Act:*

(1) this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution; *and*
(2) if this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2019.
[FA2,3rd(2)]

CONFERENCE

SECTION 6. Same as Senate version.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

May 25, 2019

TO: Honorable Dan Patrick, Lieutenant Governor, Senate
 Honorable Dennis Bonnen, Speaker of the House, House of Representatives

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
 Legislative Budget Board

IN RE: SB2138 by Hinojosa (Relating to the administration and operation of Medicaid.),
Conference Committee Report

Estimated Two-year Net Impact to General Revenue Related Funds for SB2138, Conference Committee Report: an impact of \$0 through the biennium ending August 31, 2021.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

| Fiscal Year | Probable Net Positive/(Negative) Impact to General Revenue Related Funds |
|-------------|---|
| 2020 | \$0 |
| 2021 | \$0 |
| 2022 | \$0 |
| 2023 | \$0 |
| 2024 | \$0 |

All Funds, Five-Year Impact:

| Fiscal Year | Probable Savings/(Cost) from <i>Federal Funds</i> 555 | Probable Savings/(Cost) from <i>Approp Receipts- Match For Medicaid</i> 8062 | Probable Revenue Gain from <i>Federal Funds</i> 555 | Probable Revenue Gain from <i>Approp Receipts- Match For Medicaid</i> 8062 |
|-------------|---|--|--|---|
| 2020 | (\$1,288,526) | (\$1,290,703) | \$4,000,000 | \$4,000,000 |
| 2021 | (\$1,051,292) | (\$1,053,319) | \$4,000,000 | \$4,000,000 |
| 2022 | (\$1,051,292) | (\$1,053,319) | \$4,000,000 | \$4,000,000 |
| 2023 | (\$1,051,292) | (\$1,053,319) | \$4,000,000 | \$4,000,000 |
| 2024 | (\$1,051,292) | (\$1,053,319) | \$4,000,000 | \$4,000,000 |

| Fiscal Year | Change in Number of State Employees from FY 2019 |
|--------------------|---|
| 2020 | 10.1 |
| 2021 | 10.1 |
| 2022 | 10.1 |
| 2023 | 10.1 |
| 2024 | 10.1 |

Fiscal Analysis

The bill would authorize HHSC to retain up to \$8.0 million each fiscal year of funds received to operate certain health care programs under the Medicaid program to pay for administration of those programs. The bill would require that HHSC submit an annual report related to the amount retained and spent for administration.

The bill would require HHSC's medical and utilization review appeals unit to comply with the federal coding guidelines adopted by the U.S. Department of Health and Human Services in accordance with the Health Insurance Portability and Privacy Act of 1996.

The bill would amend Chapter 533 of the Government Code to require managed care plans offered by a Medicaid managed care organization (MCO) with which HHSC contracts with to be accredited by a nationally recognized accreditation organization.

Methodology

This analysis assumes that implementing the provisions of the bill would cost \$35.3 million in fiscal year 2020 and \$35.3 million in fiscal year 2021. This analysis assumes the provisions of the bill would result in a revenue gain of \$8.4 million in All Funds in fiscal year 2020 and \$8.4 million in fiscal year 2021.

HHSC estimates that it would need 10.1 Full-Time Equivalent positions (FTEs) to administer certain health care programs under the Medicaid program in each fiscal year. HHSC anticipates salary and employee benefit costs of \$1.1 million in All Funds in each fiscal year. The agency estimates additional operating expenses of \$1.1 million in fiscal year 2020 and \$1.0 million in every year thereafter. This analysis assumes one-time information technology costs of \$0.4 million in fiscal year 2020. Based on the Legislative Budget Board's (LBB) analysis of HHSC, responsibilities associated with submitting an annual report related to the amount retained and spent for administration could be accomplished by utilizing existing resources.

HHSC indicates that approximately \$5.3 billion would be available in fiscal year 2020 to operate certain health care programs under the Medicaid program. This analysis assumes that the agency would retain \$8.0 million in All Funds each fiscal year of the amount available. However, the bill allows HHSC to retain a lower amount as needed to administer the programs. HHSC indicates that it would not need to retain the entire \$8.0 million each fiscal year to implement the provisions of the bill. In addition, the bill allows HHSC to retain additional funds as needed to administer the programs, with the approval of the governor and LBB. The bill prohibits HHSC from retaining a total amount exceeding 0.25 percent of the amount available to operate the programs.

HHSC indicates that the costs associated with the provisions of the bill requiring HHSC's medical and utilization review appeals unit to comply with federal coding guidelines could be absorbed within existing resources. According to HHSC, there would be a minimal cost associated with

increased premiums for MCOs not currently accredited that pursue accreditation due to the requirements in the bill. It is assumed those increased costs can be absorbed within the available resources of the agency.

Technology

To implement the provisions of the bill related to the administration of certain health care programs under the Medicaid program, this analysis assumes one-time information technology costs of \$0.4 million in All Funds in fiscal year 2020 for HHSC to develop a database of hospital financial and payment information. HHSC indicates it would use the database to run reports, track trends, and comply with audits related to certain health care programs under the Medicaid program.

Local Government Impact

To the extent that HHSC retains funds to pay for implementation of certain health care programs under the Medicaid program as provided by the bill, units of local government may see a loss in revenue related to such program funding.

Source Agencies:

LBB Staff: WP, KK, ER, ADe