

BILL ANALYSIS

C.S.H.B. 2570
By: Clardy
Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Concerns have been raised regarding the oversupply of Medicaid beds in nursing facilities throughout Texas. Interested parties contend that such an oversupply can restrict an underutilized facility's ability to improve infrastructure, care for the facility's residents, and retain employees. C.S.H.B. 2570 seeks to address this issue by creating a legislative oversight committee on the allocation of Medicaid beds in licensed nursing facilities.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2570 amends the Human Resources Code to create the legislative oversight committee on the allocation of Medicaid beds in licensed nursing facilities that are providers under Medicaid. The bill sets out the composition of the six-member committee and establishes that a committee member serves at the pleasure of the applicable appointing official. The bill requires each committee member who is a representative of an owner or operator of a nursing facility to reside in Texas and to be involved in the day-to-day operation of the nursing facility. The bill requires the lieutenant governor and the speaker of the house of representatives to appoint the presiding officer of the committee on an alternating basis and requires the speaker of the house of representatives to appoint the first presiding officer. The bill requires the presiding officer to serve a two-year term that expires February 1 of each odd-numbered year and requires a vacancy on the committee to be filled in the same manner as the original appointment. The bill provides for the authorized and required duties of the committee and requires the committee to use the existing staff resources of the senate and the house of representatives to assist the committee in performing those duties. The bill prohibits a member of the committee from receiving compensation for serving on the committee but entitles a member to reimbursement for travel expenses incurred by the member while conducting the business of the committee, as provided in the General Appropriations Act. The bill requires the committee, not later than November 15 of each even-numbered year, to submit a report on the committee's activities and the results of the committee's work to the governor, the lieutenant governor, and the speaker of the house of representatives. The bill's provisions expire and the committee is abolished September 1, 2021.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2570 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 32.0213, Human Resources Code, is amended by adding Subsections (g) through (u) to read as follows:

(g) Notwithstanding Subsection (f), the commission may not exempt applicants for Medicaid beds from the requirements of Subsection (d) on or after September 1, 2017, and before September 1, 2021.

(h) Except as provided in Subsection (i), the commission may not contract for new nursing facility beds under Medicaid unless the statewide occupancy rate of certified Medicaid beds is more than 90 percent, as determined by the commission annually on September 1.

(i) Notwithstanding Subsection (h), the commission may contract for new Medicaid beds in the following types of nursing facilities:

(1) subject to Subsection (k), that is under development on September 1, 2017, and for which there has been filed with the commission an application for Medicaid beds;

(2) subject to Subsections (m), (n), (o), and (p), a small house nursing facility;

(3) subject to Subsections (q) and (r), a replacement nursing facility, without regard to whether the nursing facility is under development or has been constructed on September 1, 2017;

(4) subject to Subsection (s), a nursing facility located in a county where the occupancy rate of certified Medicaid beds is more than 85 percent, as determined by the commission on September 1 and March 1 of a particular year; and

(5) subject to Subsection (t), a nursing facility without any unoccupied Medicaid beds for the purpose of providing a temporary Medicaid bed for a resident of the nursing facility who has exhausted the resident's resources and, as a result, is newly eligible for Medicaid.

(j) Deadlines and any other time limitations

HOUSE COMMITTEE SUBSTITUTE

No equivalent provision.

relating to the commission's allocation or certification of Medicaid beds for nursing facilities not yet under development on September 1, 2017, and prohibited under Subsection (h) are tolled until September 1, 2021.

(k) For purposes of Subsections (i)(1) and (j):

(1) a nursing facility is considered under development if:

(A) funding to construct the nursing facility has been secured and is being used to construct the nursing facility;

(B) any zoning requirements relating to the construction of the nursing facility have been met;

(C) complete construction design plans for the nursing facility have been submitted to the appropriate governmental entities regulating fire and building safety not later than September 1, 2017; and

(D) ongoing construction activities are occurring at the nursing facility site; and

(2) the commission, in the commission's sole discretion, shall determine whether an applicant for Medicaid beds meets the requirements of this subsection.

(1) The construction design plans described in Subsection (k)(1)(c) must be an accurate and true depiction of the nursing facility that is being constructed but may be modified in order to make technical changes, correct errors and omissions, or comply with zoning or other requirements of a governmental entity.

(m) The executive commissioner by rule shall define "small house nursing facility" for purposes of this section.

(n) The commission may not contract under Subsection (i)(2) for more than:

(1) 50 Medicaid beds per small house nursing facility per year; and

(2) a total of 100 new Medicaid beds for small house nursing facilities statewide per year.

(o) The commission shall approve completed applications for Medicaid beds by or on behalf of small house nursing facilities under Subsection (i)(2) in the order in which the applications are received by the commission.

(p) The commission shall rescind approval of an application described by Subsection (o) if:

(1) the small house nursing facility is not

operational on the anniversary of the date the facility's application was approved; and
(2) the commission has previously denied an application for additional Medicaid beds by or on behalf of another small house nursing facility because of the limitation on the total number of Medicaid beds contained in Subsection (n)(2).

(q) The commission may contract for Medicaid beds in a replacement nursing facility under Subsection (i)(3) only if:

(1) the replacement nursing facility:

(A) is licensed under Chapter 242, Health and Safety Code; and

(B) is located in the same county as the nursing facility that is being replaced; and

(2) the nursing facility that is being replaced:

(A) is licensed under Chapter 242, Health and Safety Code, on September 1, 2017; and

(B) surrenders the license described by Paragraph (A) not later than the 60th day after the date the replacement nursing facility is licensed under Chapter 242, Health and Safety Code.

(r) The commission may not contract for more Medicaid beds for a replacement nursing facility under Subsection (i)(3) than were contracted for the nursing facility that the replacement nursing facility replaced.

(s) The commission may not contract under Subsection (i)(4) for:

(1) more than 50 Medicaid beds per nursing facility; or

(2) a number of Medicaid beds that would result in a countywide occupancy rate of certified Medicaid beds that is below the statewide occupancy rate.

(t) The executive commissioner by rule shall develop a process for contracting for temporary Medicaid beds under Subsection (i)(5).

(u) Subsections (g) through (t) and this subsection expire September 1, 2021.

SECTION 2. Section 32.0244, Human Resources Code, is amended by adding Subsection (e) to read as follows:

(e) Notwithstanding Subsections (a) through (d), the commission may not contract for new nursing facility beds under this section on or after September 1, 2017, and before September 1, 2021. This subsection expires September 1, 2021.

No equivalent provision.

SECTION 3. Section 32.0245, Human Resources Code, is amended to read as follows:

Sec. 32.0245. NURSING FACILITY BEDS FOR CERTAIN FACILITIES TREATING ALZHEIMER'S DISEASE.

(a) The commission shall waive for a nursing facility a restriction imposed by state law on the authority to contract under the state Medicaid program for nursing facility beds based on the percentage of beds that are occupied in a geographical area if the facility:

(1) is affiliated with a medical school operated by the state;

(2) is participating in a research program for the care and treatment of persons with Alzheimer's disease; and

(3) is designed to separate and treat Alzheimer's disease by stage or functional level.

(b) Notwithstanding Subsection (a), the commission may not waive a restriction on the commission's authority to contract for nursing facility beds under this section on or after September 1, 2017, and before September 1, 2021. This subsection expires September 1, 2021.

SECTION 4. 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.

No equivalent provision.

No equivalent provision.

No equivalent provision.

SECTION 1. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.02131 to read as follows:

Sec. 32.02131. LEGISLATIVE OVERSIGHT COMMITTEE ON THE ALLOCATION OF MEDICAID BEDS IN NURSING FACILITIES. (a) In this section:

(1) "Committee" means the legislative oversight committee on the allocation of Medicaid beds in nursing facilities.

(2) "Nursing facility" means a nursing

facility licensed under Chapter 242, Health and Safety Code, that is a provider under Medicaid.

(b) The committee is composed of six members as follows:

(1) two members of the senate and, subject to Subsection (d), one representative of an owner or operator of a nursing facility appointed by the lieutenant governor; and

(2) two members of the house of representatives and, subject to Subsection (d), one representative of an owner or operator of a nursing facility appointed by the speaker of the house of representatives.

(c) A committee member serves at the pleasure of the appointing official.

(d) Each committee member who is a representative of an owner or operator of a nursing facility must reside in this state and be involved in the day-to-day operation of the nursing facility.

(e) The lieutenant governor and the speaker of the house of representatives shall appoint the presiding officer of the committee on an alternating basis. The presiding officer shall serve a two-year term that expires February 1 of each odd-numbered year.

(f) A vacancy on the committee shall be filled in the same manner as the original appointment.

(g) The committee shall:

(1) meet at the call of the presiding officer;

(2) research, take public testimony, and issue reports requested by the lieutenant governor or the speaker of the house of representatives relating to the allocation of Medicaid beds in nursing facilities in this state;

(3) monitor the effectiveness of the existing rules adopted by the executive commissioner relating to the procedures for certifying and decertifying Medicaid beds in nursing facilities established under Section 32.0213 and consider the need for modifications to existing rules to better control the procedures for certifying and decertifying Medicaid beds in nursing facilities;

(4) receive, review, and comment on rules proposed by the executive commissioner relating to the procedures for certifying and decertifying Medicaid beds in nursing facilities established under Section 32.0213; and

(5) review recommendations for legislation

relating to the procedures for certifying and decertifying Medicaid beds in nursing facilities.

(h) The committee may:

(1) propose legislation relating to the procedures for certifying and decertifying Medicaid beds in nursing facilities established under Section 32.0213;

(2) request reports and other information from the commission; and

(3) issue process, in accordance with Section 301.024, Government Code, to compel attendance of witnesses and the production of books, records, documents, and instruments required by the committee.

(i) The committee shall use the existing staff resources of the senate and the house of representatives to assist the committee in performing its duties under this section.

(j) A member of the committee may not receive compensation for serving on the committee but is entitled to reimbursement for travel expenses incurred by the member while conducting the business of the committee, as provided in the General Appropriations Act.

(k) Not later than November 15 of each even-numbered year, the committee shall submit a report on the committee's activities and the results of the committee's work to the governor, the lieutenant governor, and the speaker of the house of representatives.

(l) The committee is abolished and this section expires September 1, 2021.

No equivalent provision.

SECTION 2. As soon as practicable after the effective date of this Act, the lieutenant governor and the speaker of the house of representatives shall appoint members to the legislative oversight committee on the allocation of Medicaid beds in nursing facilities as required by Section 32.02131, Human Resources Code, as added by this Act. The speaker of the house of representatives shall appoint the first presiding officer of the committee.

SECTION 5. This Act takes effect September 1, 2017.

SECTION 3. Same as introduced version.