

BILL ANALYSIS

C.S.H.B. 2766
By: Sheffield
Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties have expressed a need to further improve the quality of care for long-term care facility residents and to provide funding to address a significant Medicaid reimbursement shortfall. C.S.H.B. 2766 seeks to create a reinvestment allowance for certain long-term care 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 rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 2766 amends the Health and Safety Code to require the Health and Human Services Commission (HHSC) to impose a reinvestment allowance on licensed convalescent and nursing facilities and related institutions, except for a state-owned veterans nursing facility. The bill requires the executive commissioner of HHSC to establish for each non-Medicare patient day, defined by the bill as a day on which the primary payer for a facility resident is not Medicare Part A or a Medicare Advantage or special needs plan, an amount for use in calculating the reinvestment allowance sufficient to produce annual revenues from all facilities not to exceed the maximum amount that may be assessed within the indirect guarantee threshold provided under federal regulations and requires HHSC to determine the amount using non-Medicare patient days and gross receipts, excluding specified revenue from nonresident care, reported to HHSC and covering a period of at least six months. The reinvestment allowance is the product of that amount multiplied by the number of a facility's non-Medicare patient days calculated by the facility under the bill's provisions, is payable monthly, and is in addition to other amounts imposed under applicable state law regarding convalescent and nursing facilities and related institutions.

C.S.H.B. 2766 prohibits a facility from listing the reinvestment allowance as a separate charge on a resident's billing statement or otherwise directly or indirectly attempting to charge the reinvestment allowance to a resident. The bill requires a facility to determine the number of non-Medicare patient days for each calendar day and sets out the formula for making that determination. The bill requires HHSC to collect the reinvestment allowance and requires each facility, not later than the 25th day after the last day of a month, to file with HHSC a report stating the total non-Medicare patient days for the month and pay the reinvestment allowance.

C.S.H.B. 2766 establishes the nursing facility reinvestment allowance trust fund as a trust fund

to be held by the comptroller of public accounts outside the state treasury and administered by HHSC as trustee. The bill requires interest and income from the trust fund's assets to be credited to and deposited into the fund and requires HHSC to remit the reinvestment allowance and federal matching dollars received by the state to the comptroller for deposit in the fund. The bill restricts HHSC use of money in the trust fund, including any federal matching funds, to paying any HHSC cost to develop and administer systems for managing the reinvestment allowance, reimbursing the Medicaid share of the reinvestment allowance as an allowable cost in the Medicaid daily rate, and increasing reimbursement rates paid under the state Medicaid program to facilities. The bill requires HHSC to allocate 50 percent of the money used to increase those reimbursement rates for increased reimbursement rate payments based on the total rating of the Centers for Medicare and Medicaid Services five-star quality rating system. The bill requires HHSC to devise a formula by which amounts received under the bill's provisions increase those reimbursement rates and sets out related provisions. The bill prohibits money in the trust fund from being used to expand Medicaid eligibility under the federal Patient Protection and Affordable Care Act. The bill requires HHSC, not later than January 1 of each year, to prepare and deliver to the governor, the lieutenant governor, and the speaker of the house of representatives a report relating to the status of the nursing facility reinvestment allowance program, sets out provisions relating to the contents of such a report, and requires the report to be posted on the HHSC website.

C.S.H.B. 2766 requires HHSC to stop collection of the reinvestment allowance if any of the bill's provisions or any procedures under those provisions are held invalid by a final court order that is not subject to appeal or if HHSC determines that the imposition of the reinvestment allowance and the expenditure of amounts collected will not entitle the state to receive federal matching funds under the Medicaid program. The bill requires HHSC to proportionally return to each facility any unspent money deposited to the credit of the trust fund not later than the 30th day after the date collection of the reinvestment allowance is stopped.

C.S.H.B. 2766 requires the executive commissioner to adopt rules to administer the bill's provisions, including rules related to imposing and collecting the reinvestment allowance. The bill caps an administrative penalty assessed for a violation of the bill's provisions at the greater of one-half of the amount of the facility's outstanding reinvestment allowance or \$20,000 and establishes that such a penalty is in addition to the facility's outstanding reinvestment allowance. The bill authorizes the executive commissioner by rule to adopt a definition, a method of computation, or a rate that differs from those expressly provided by or expressly authorized by the bill to the extent the difference is necessary to accomplish the bill's purposes.

C.S.H.B. 2766 requires HHSC, not later than November 1, 2020, to prepare and deliver to the governor, the lieutenant governor, and the speaker of the house of representatives a report that assesses whether and to what degree payments associated with quality-based care are resulting in improvements to overall nursing home quality. The bill's provisions regarding the creation and administration of a reinvestment allowance expire August 31, 2021.

C.S.H.B. 2766 requires the executive commissioner to establish the amount of the initial reinvestment allowance as soon as practicable after the bill's effective date based on available revenue and patient day information. The amount of the initial reinvestment allowance remains in effect until HHSC obtains the information necessary to set the amount of the reinvestment allowance under the bill's provisions.

C.S.H.B. 2766 prohibits a reinvestment allowance from being imposed or collected until an amendment to the state Medicaid plan that increases the rates paid to licensed long-term care facilities for providing services under the state Medicaid program is approved by the Centers for Medicare and Medicaid Services or another applicable federal government agency and those facilities have been compensated retroactively at the increased rate for services provided under the state Medicaid program for the period beginning with the bill's effective date. The bill requires HHSC to discontinue the reinvestment allowance if HHSC reduces Medicaid

reimbursement rates below the rates in effect on September 1, 2017.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2766 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. Chapter 242, Health and Safety Code, is amended by adding Subchapter P to read as follows:

SUBCHAPTER P. REINVESTMENT ALLOWANCE

Sec. 242.701. DEFINITION. In this subchapter,

"gross receipts" means the gross inpatient revenue received by a facility from services provided to facility residents. Gross receipts exclude revenue from nonresident care, including beauty and barber services, vending facilities, interest, charitable contributions, the sale of meals, and outpatient services.

No equivalent provision.

Sec. 242.702. REINVESTMENT ALLOWANCE; COMPUTATION. (a) The commission shall impose a reinvestment allowance on each facility licensed under this chapter. The reinvestment allowance is:

- (1) the product of the amount established under Subsection (b) multiplied by the number of a facility's non-Medicare patient days calculated under Section 242.703;
- (2) payable monthly; and
- (3) in addition to other amounts imposed under this chapter.

(b) The executive commissioner shall establish for each non-Medicare patient day an amount for use in calculating the reinvestment allowance sufficient to produce annual revenues from all facilities

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Chapter 242, Health and Safety Code, is amended by adding Subchapter P to read as follows:

SUBCHAPTER P. REINVESTMENT ALLOWANCE

Sec. 242.701. DEFINITIONS. In this subchapter:

(1) "Gross receipts" means the gross inpatient revenue received by a facility from services provided to facility residents. Gross receipts exclude revenue from nonresident care, including beauty and barber services, vending facilities, interest, charitable contributions, the sale of meals, and outpatient services.

(2) "Non-Medicare patient day" means a day on which the primary payer for a facility resident is not Medicare Part A or a Medicare Advantage or special needs plan.

Sec. 242.702. APPLICABILITY. This subchapter does not apply to a state-owned veterans nursing facility.

Sec. 242.703. Substantially the same as introduced version.

not to exceed the maximum amount that may be assessed within the indirect guarantee threshold provided under 42 C.F.R. Section 433.68(f)(3)(i).

(c) The commission shall determine the amount described by Subsection (b) using non-Medicare patient days and gross receipts:

(1) reported to the commission; and

(2) covering a period of at least six months.

(d) A facility may not list the reinvestment allowance as a separate charge on a resident's billing statement or otherwise directly or indirectly attempt to charge the reinvestment allowance to a resident.

Sec. 242.703. PATIENT DAYS.

Sec. 242.704. COLLECTION AND REPORTING. (a) The commission shall collect the reinvestment allowance.

(b) Not later than the 25th day after the last day of a month, each facility shall:

(1) file with the commission a report stating the total non-Medicare resident days for the month; and

(2) pay the reinvestment allowance.

Sec. 242.705. RULES; ADMINISTRATIVE PENALTY. (a) The executive commissioner shall adopt rules to administer this subchapter, including rules related to imposing and collecting the reinvestment allowance.

(b) Notwithstanding Section 242.066, an administrative penalty assessed under that section for a violation of this subchapter may not exceed the greater of:

(1) one-half of the amount of the facility's outstanding reinvestment allowance; or

(2) \$20,000.

Sec. 242.706. NURSING FACILITY REINVESTMENT ALLOWANCE TRUST FUND. (a) The nursing facility reinvestment allowance trust fund is established as a trust fund to be held by the comptroller outside of the state treasury and administered by the commission as trustee. Interest and income from the assets of the trust fund shall be credited to and deposited in the trust fund. The commission may use money in the fund

Sec. 242.704. PATIENT DAYS.

Sec. 242.705. COLLECTION AND REPORTING. (a) The commission shall collect the reinvestment allowance.

(b) Not later than the 25th day after the last day of a month, each facility shall:

(1) file with the commission a report stating the total non-Medicare patient days for the month; and

(2) pay the reinvestment allowance.

Sec. 242.706. RULES; ADMINISTRATIVE PENALTY. (a) The executive commissioner shall adopt rules to administer this subchapter, including rules related to imposing and collecting the reinvestment allowance.

(b) Notwithstanding Section 242.066, an administrative penalty assessed under that section for a violation of this subchapter may not exceed the greater of:

(1) one-half of the amount of the facility's outstanding reinvestment allowance; or

(2) \$20,000.

(c) An administrative penalty assessed for a violation of this subchapter is in addition to the facility's outstanding reinvestment allowance.

Sec. 242.707. Substantially the same as introduced version.

only as provided by Section 242.707.

Sec. 242.707. REIMBURSEMENT OF FACILITIES. (a) The commission may use money in the nursing facility reinvestment allowance trust fund, including any federal matching funds, only for the following purposes:

- (1) reimbursing the federal share of the reinvestment allowance as a pass-through in the rate;
- (2) increasing reimbursement rates paid under the state Medicaid program to facilities; and
- (3) with any money remaining after funding Subdivisions (1) and (2), providing direct care staff programs related to quality incentives and quality metrics.

(b) The commission shall devise a formula by which amounts received under this subchapter increase the reimbursement rates paid to facilities under the state Medicaid program.

(c) Money in the nursing facility reinvestment allowance trust fund may not be used to expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

Sec. 242.708. INVALIDITY; FEDERAL FUNDS.

Sec. 242.709. AUTHORITY TO ACCOMPLISH PURPOSES OF SUBCHAPTER.

No equivalent provision.

Sec. 242.708. REIMBURSEMENT OF FACILITIES. (a) The commission may use money in the nursing facility reinvestment allowance trust fund, including any federal matching funds, only for the following purposes:

- (1) paying any commission cost to develop and administer systems for managing the reinvestment allowance;
- (2) reimbursing the Medicaid share of the reinvestment allowance as an allowable cost in the Medicaid daily rate; and
- (3) increasing reimbursement rates paid under the state Medicaid program to facilities.

(b) The commission shall allocate 50 percent of the money described by Subsection (a)(3) for increased reimbursement rate payments based on the total rating of the Centers for Medicare and Medicaid Services five-star quality rating system.

(c) The commission shall devise a formula by which amounts received under this subchapter increase the reimbursement rates paid to facilities under the state Medicaid program, including a phase-in of the program described by Subsection (b) beginning on September 1, 2018. The commission must include in the formula consideration of the total rating described by Subsection (b).

(d) Money in the nursing facility reinvestment allowance trust fund may not be used to expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

Sec. 242.709. INVALIDITY; FEDERAL FUNDS.

Sec. 242.710. AUTHORITY TO ACCOMPLISH PURPOSES OF SUBCHAPTER.

Sec. 242.711. ANNUAL REPORT. Not later than January 1 of each year, the

commission shall prepare and deliver to the governor, the lieutenant governor, and the speaker of the house of representatives a report relating to the status of the nursing facility reinvestment allowance program, including fees collected, federal funding applied for and received, quality-based payments made, information on the overall quality of care in the Texas nursing home system, whether quality-based payments are contributing to quality improvements, and any other relevant information necessary for assessing the effectiveness of the nursing facility reinvestment allowance program. The report should include any information associated with the role of the comptroller and the Medicaid managed care participating plans. The report must be posted on the commission's Internet website.

No equivalent provision.

Sec. 242.712. PROGRAM EVALUATION. Not later than November 1, 2020, the commission shall prepare and deliver to the governor, the lieutenant governor, and the speaker of the house of representatives a report that assesses whether and to what degree payments associated with quality-based care are resulting in improvements to overall nursing home quality.

Sec. 242.710. EXPIRATION.

SECTION 2. (a) As soon as practicable after the effective date of this Act, the executive commissioner of the Health and Human Services Commission shall:

(1) adopt the rules necessary to implement Subchapter P, Chapter 242, Health and Safety Code, as added by this Act; and

(2) notwithstanding Section 242.702, Health and Safety Code, as added by this Act, establish the amount of the initial reinvestment allowance imposed under Subchapter P, Chapter 242, Health and Safety Code, as added by this Act, based on available revenue and patient day information.

(b) The amount of the initial reinvestment allowance established under Subsection (a) of this section remains in effect until the Health and Human Services Commission obtains the information necessary to set the amount of the reinvestment allowance under Section 242.702, Health and Safety Code, as added by this Act.

Sec. 242.713. EXPIRATION.

SECTION 2. Substantially the same as introduced version.

SECTION 3. 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 3. Same as introduced version.

SECTION 4. Notwithstanding any other law, a reinvestment allowance may not be imposed under Section 242.702, Health and Safety Code, as added by this Act, or collected under Section 242.704, Health and Safety Code, as added by this Act, until:

SECTION 4. Substantially the same as introduced version.

- (1) an amendment to the state Medicaid plan that increases the rates paid to long-term care facilities licensed under Chapter 242, Health and Safety Code, for providing services under the state Medicaid program is approved by the Centers for Medicare and Medicaid Services or another applicable federal government agency; and
- (2) long-term care facilities licensed under Chapter 242, Health and Safety Code, have been compensated retroactively at the increased rate for services provided under the state Medicaid program for the period beginning with the effective date of this Act.

SECTION 5. The Health and Human Services Commission shall discontinue the reinvestment allowance imposed under Subchapter P, Chapter 242, Health and Safety Code, as added by this Act, if the commission reduces Medicaid reimbursement rates, including rates that increased due to funds from the nursing facility reinvestment allowance trust fund or federal matching funds, below the rates in effect on September 1, 2017.

SECTION 5. Same as introduced version.

SECTION 6. 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, 2017.

SECTION 6. Same as introduced version.