

BILL ANALYSIS

C.S.H.B. 3240
By: Klick
Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Last session, the legislature established the Long-Term Care Facilities Council for purposes of studying and making recommendations regarding a more consistent survey and informal dispute resolution process for long-term care facilities, the Medicaid quality-based payment systems for these facilities, and the allocation of Medicaid beds in these facilities. However, the legislature inadvertently omitted representation of an ICF-IID long-term care facility provider on the council.

During that session, the legislature also enacted legislation that was intended to clarify intent and restore caps on the total amount of penalties that can be assessed for violations in various types of facilities. Application, however, has not been consistent with intent. While community-based ICF-IID facilities must be held accountable for their actions, the intent of penalties is not to financially impact a facility to such an extent that the facility is unable to continue serving its community while attempting to come into compliance with applicable rules and regulations.

Though state law requires that rules governing the imposition of administrative penalties on providers in the home and community-based services (HCS) and Texas home living (TxHmL) Medicaid waiver programs ensure standard and consistent application of penalties, the rules adopted remain subjective and open to interpretation by regulators.

C.S.H.B. 3240 seeks to address these issues.

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 3 of this bill.

ANALYSIS

C.S.H.B. 3240 amends the Government Code to require at least one member appointed to the Long-Term Care Facilities Council to be a community-based provider at a licensed intermediate care facility for individuals with intellectual or developmental disabilities (ICF-IID).

C.S.H.B. 3240 amends the Health and Safety Code to change the nature of the cap on the total amount of certain penalties the Health and Human Services Commission (HHSC) may impose on an ICF-IID for an applicable violation from a cap on the total amount of a penalty assessed for each day a violation occurs or continues to a cap on the total amount of penalties assessed

for an on-site regulatory visit or complaint investigation, regardless of the duration of any ongoing violations.

C.S.H.B. 3240 amends the Human Resources Code to require that the rules developed and adopted by the executive commissioner of HHSC regarding the imposition of administrative penalties against providers participating in the home and community-based services (HCS) and Texas home living (TxHmL) Medicaid waiver programs do the following:

- ensure standard and consistent interpretation of service delivery rules and consistent application of administrative penalties throughout Texas; and
- include interpretative guidelines for regulatory staff and providers regarding the imposition of the penalties.

The bill changes the nature of the cap on the amount of the administrative penalty imposed on a provider for an applicable violation, as authorized by those rules, from a per-violation cap to a cap on the amount of penalties imposed for violations discovered during each on-site regulatory visit or complaint investigation.

C.S.H.B. 3240 requires the executive commissioner to adopt the rules necessary to implement the bill's changes not later than December 1, 2021, and prohibits HHSC from assessing a penalty against an HCS or TxHmL program provider until the executive commissioner adopts the applicable rules.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3240 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

While the original changed the nature of the cap on penalties imposed on an ICF-IID for applicable violations from a daily cap to a cap on the total amount of penalties assessed, the substitute changes that nature to a cap on the total amount of penalties assessed for an on-site regulatory visit or complaint investigation, regardless of the duration of any ongoing violations.

The substitute also similarly changes the nature of the cap on the administrative penalties imposed on an HCS or TxHmL program provider, whereas the original did not make this change.

The substitute changes the deadline for the executive commissioner to adopt rules necessary to implement the bill's provisions from as soon as practicable after the bill's effective date, as in the original, to not later than December 1, 2021. The substitute includes a provision absent from the original prohibiting HHSC from assessing a penalty against an HCS or TxHmL program provider until the applicable rules are adopted.