

## **BILL ANALYSIS**

Senate Research Center  
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H.B. 2590  
By: Raymond (Zaffirini)  
Health & Human Services  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

In 2015 the Texas Legislature authorized the Health and Human Services Commission (HHSC) to develop a system of administrative penalties for providers contracted to deliver services in the Home and Community-based Services (HCS) and Texas Home Living (TxHmL) waiver programs. These providers are certified by HHSC rather than licensed. Administrative penalties were designed to raise the level of enforcement to match other licensed long-term care service and supports (LTSS) providers, however, additional statutory changes are required for the appeal process to match that of other program types.

H.B. 2590 mirrors appeal processes of other LTSS providers by establishing an informal dispute resolution process for HCS and TxHmL. The bill further grants the HHSC the authority to use amelioration as a tool to assist providers with compliance, which is a resource allowed for other LTSS providers. The amelioration process would allow a provider to use a portion of an administrative penalty toward compliance and program improvement.

H.B. 2590 amends current law relating to the amelioration and informal dispute resolution processes for providers participating in certain Medicaid waiver programs.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the executive commissioner of Health and Human Services in SECTION 1 (Section 161.0892, Human Resources Code) and SECTION 2 (Section 161.0882, Human Resources Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter D, Chapter 161, Human Resources Code, by adding Sections 161.0891 and 161.0892, as follows:

Sec. 161.0891. AMELIORATION PROCESS. (a) Authorizes the Health and Human Services Commission (HHSC) in lieu of demanding payment of an administrative penalty assessed under Section 161.089, to, in accordance with this section, allow the provider subject to the penalty to use, under the supervision of HHSC, any portion of the amount of the penalty to ameliorate the violation or to improve services in the waiver program in which the provider participates.

(b) Requires HHSC to offer amelioration to a provider under this section not later than the 10th day after the date the provider receives from HHSC a final notification of the assessment of an administrative penalty that is sent to the provider after an informal dispute resolution process but before an administrative hearing.

(c) Requires a provider to whom amelioration has been offered to file a plan for amelioration not later than the 45th day after the date the provider receives the offer of amelioration from HHSC. Requires the provider, in submitting the plan, to agree to waive the provider's right to an administrative hearing if HHSC approves the plan.

(d) Requires that a plan for amelioration, at a minimum, propose changes to the management or operation of the waiver program in which the provider participates that will improve services to or quality of care for clients in the program, identify, through measurable outcomes, the ways in which and the extent to which the proposed changes will improve services to or quality of care for clients in the waiver program, establish clear goals to be achieved through the proposed changes, establish a timeline for implementing the proposed changes, and identify specific actions necessary to implement the proposed changes.

(e) Authorizes HHSC to require that an amelioration plan propose changes that would result in conditions that exceed the requirements of a law or rule relating to the waiver program in which the provider participates.

(f) Requires HHSC to approve or deny an amelioration plan not later than the 45th day after the date HHSC receives the plan. Requires HHSC or the State Office of Administrative Hearings, as appropriate, on approval of a provider's plan, to deny a pending request for a hearing submitted by the provider.

(g) Prohibits HHSC from offering amelioration to a provider more than three times in a two-year period or more than one time in a two-year period for the same or similar violation.

Sec. 161.0892. INFORMAL DISPUTE RESOLUTION. (a) Requires the executive commissioner of HHSC (executive commissioner) to establish an informal dispute resolution process in accordance with this section. Requires that the process provide for adjudication by an appropriate disinterested person of disputes relating to a proposed enforcement action or related proceeding of HHSC against a provider participating in a waiver program described by Section 161.089. Requires that the informal dispute resolution process require a provider participating in a waiver program described by Section 161.089 to request informal dispute resolution not later than the 10th calendar day after the date of notification by HHSC of the violation of a law or rule relating to the program and HHSC complete the process not later than the 30th calendar day after the date of receipt of a request from a provider for informal dispute resolution.

(b) Requires HHSC, as part of the informal dispute resolution process established under this section, to contract with an appropriate disinterested person who is a nonprofit organization to adjudicate disputes between a provider participating in a program described by Section 161.089 and HHSC concerning a statement of violations prepared by HHSC. Provides that Section 2009.053 (Impartial Third Parties), Government Code, does not apply to the selection of an appropriate disinterested person under this subsection. Requires the person with whom HHSC contracts to adjudicate all disputes described by this subsection.

(c) Requires the executive commissioner to adopt rules to adjudicate claims in contested cases.

(d) Prohibits HHSC from delegating its responsibility to administer the informal dispute resolution process established by this section to another state agency.

SECTION 2. Amends Subchapter D, Chapter 161, Human Resources Code, by adding Sections 161.0881 and 161.0882, as follows:

Sec. 161.0881. AMELIORATION PROCESS. (a) Authorizes HHSC, in lieu of demanding payment of an administrative penalty assessed under Section 161.088, to, in accordance with this section, allow the provider subject to the penalty to use, under the supervision of HHSC, any portion of the amount of the penalty to ameliorate the violation or to improve services in the waiver program in which the provider participates.

(b) Requires HHSC to offer amelioration to a provider under this section not later than the 10th day after the date the provider receives from HHSC a final

notification of the assessment of an administrative penalty that is sent to the provider after an informal dispute resolution process but before an administrative hearing.

(c) Requires a provider to whom amelioration has been offered to file a plan for amelioration not later than the 45th day after the date the provider receives the offer of amelioration from HHSC. Requires the provider, in submitting the plan, to agree to waive the provider's right to an administrative hearing if HHSC approves the plan.

(d) Requires that a plan for amelioration, at a minimum, propose changes to the management or operation of the waiver program in which the provider participates that will improve services to or quality of care for clients in the program, identify, through measurable outcomes, the way in which and the extent to which the proposed changes will improve services to or quality of care for clients in the waiver program, establish clear goals to be achieved through the proposed changes, establish a timeline for implementing the proposed changes, and identify specific actions necessary to implement the proposed changes.

(e) Authorizes HHSC to require that an amelioration plan propose changes that would result in conditions that exceed the requirements of a law or rule relating to the waiver program in which the provider participates.

(f) Requires HHSC to approve or deny an amelioration plan not later than the 45th day after the date HHSC receives the plan. Requires HHSC or the State Office of Administrative Hearings, as appropriate, on approval of a provider's plan, to deny a pending request for a hearing submitted by the provider.

(g) Prohibits HHSC from offering amelioration to a provider more than three times in a two-year period or more than one time in a two-year period for the same or similar violation.

Sec. 161.0882. INFORMAL DISPUTE RESOLUTION. (a) Requires the executive commissioner by rule to establish an informal dispute resolution process in accordance with this section. Requires that the process provide for adjudication by an appropriate disinterested person of disputes relating to a proposed enforcement action or related proceeding of HHSC against a provider participating in a waiver program described by Section 161.088. Requires that the informal dispute resolution process require a provider participating in a waiver program described by Section 161.088 to request informal dispute resolution not later than the 10th calendar day after the date of notification by HHSC of the violation of a law or rule relating to the program and requires HHSC to complete the process not later than the 30th day after the date of receipt of a request from a provider for informal dispute resolution.

(b) Requires HHSC, as part of the informal dispute resolution process established under this section, to contract with an appropriate disinterested person who is a nonprofit organization to adjudicate disputes between a provider participating in a program described by Section 161.088 and HHSC concerning a statement of violations prepared by HHSC. Provides that Section 2009.053, Government Code, does not apply to the selection of an appropriate disinterested person under this subsection. Requires the person with whom HHSC contracts to adjudicate all disputes described by this subsection.

(c) Requires the executive commissioner to adopt rules to adjudicate claims in contested cases.

(d) Prohibits HHSC from delegating its responsibility to administer the informal dispute resolution process established by this section to another state agency.

SECTION 3. (a) Provides that Section 1 of this Act takes effect only if the Act of the 85th Legislature, Regular Session, 2017, relating to nonsubstantive additions to and corrections in enacted codes becomes law.

(b) Provides that Section 2 of this Act takes effect only if the Act of the 85th Legislature, Regular Session, 2017, relating to nonsubstantive additions to and corrections in enacted codes does not become law.

SECTION 4. Requires the executive commissioner to, as soon as practicable after the effective date of this Act, adopt the rules necessary to implement the changes in law made by this Act.

SECTION 5. Effective date: September 1, 2017.