

BILL ANALYSIS

Senate Research Center

H.B. 2766
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Health & Human Services
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 2766 creates the Nursing Facility Reinvestment Allowance (NFRA) that will allow the state to draw down additional Medicaid funding by accessing additional federal dollars specifically for nursing home care. This can be done without using any state funds or general revenue.

An assessment of up to six percent per nursing facility bed would be paid by the provider monthly to the Health and Human Services Commission (HHSC). Those dollars will be used to access the federal dollars available, something 43 other states currently do. After the federal dollars are matched, HHSC will move those enhanced dollars to managed care organizations so those calculations can factor in to the Medicaid rate for Medicaid reimbursement to providers.

Since it is a goal of the Texas Legislature to support quality in our nursing homes, the NFRA has a quality component that allows nursing facility operators to receive additional dollars when they achieve certain quality metrics. Those specific metrics, will be outlined by HHSC. Up to 50 percent of the available dollars will be used for quality payments. This further commits the industry, stakeholders, and state to the goal of improved quality for our long-term care residents. NFRA will provide much-needed funding to address the significant Medicaid reimbursement shortfall, and enhance staffing to improve quality care delivery in communities across Texas.

In the absence of a significant increase in the state's Medicaid reimbursement, this provider-based solution allows nursing facilities to draw down additional and new federal dollars. The NFRA would not expand the number of people eligible for Medicaid and the costs could not be passed on to private pay residents. The NFRA concept is similar to the existing program initiated by HHSC to augment funding for the state's intellectual and developmental disability services.

H.B. 2766 amends current law relating to the creation and administration of a reinvestment allowance for certain long-term care facilities.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 (Sections 242.706 and 242.710, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 242, Health and Safety Code, by adding Subchapter P, as follows:

SUBCHAPTER P. REINVESTMENT ALLOWANCE

Sec. 242.701. DEFINITIONS. Defines "gross receipts" and "non-Medicare patient day."

Sec. 242.702. APPLICABILITY. Provides that this subchapter does not apply to a state-owned veterans nursing facility or a facility that provides on a single campus a combination of services, which may include independent living services, licensed assisted living services, or licensed nursing facility care services, and that either holds a certificate of authority to operate a continuing care retirement community under Chapter 246 (Continuing Care Facilities) or had during the previous 12 months a combined number of

patient days of service provided to independent living and assisted living residents, excluding services provided to persons occupying facility beds in a licensed nursing facility, that exceeded the number of patient days of service provided to nursing facility residents.

Sec. 242.703. REINVESTMENT ALLOWANCE; COMPUTATION. (a) Requires the Health and Human Services Commission (HHSC) to impose a reinvestment allowance on each facility licensed under this chapter. Provides that the reinvestment allowance is the product of the amount established under Subsection (b) multiplied by the number of a facility's non-Medicare patient days calculated under Section 242.704, payable monthly, and in addition to other imposed amounts.

(b) Requires the executive commissioner of HHSC (executive commissioner) to establish for each non-Medicare patient day 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 42 C.F.R. Section 433.68(f)(3)(i).

(c) Requires HHSC to determine the amount described by Subsection (b) using non-Medicare patient days and gross receipts reported to HHSC and covering a period of at least six months.

(d) 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 residence.

Sec. 242.704. PATIENT DAYS. Requires a facility, for each calendar day, to determine the number of non-Medicare patient days by adding the number of non-Medicare residents occupying a bed in the facility immediately before midnight of that day plus the number of residents admitted that day, less the number of residents discharged that day, except a resident is included in the count under this subdivision under certain circumstances, and the number of beds that are on hold that day and that have been placed on hold for a period not to exceed three consecutive calendar days during which a resident is in the hospital or on therapeutic home leave.

Sec. 242.705. COLLECTION AND REPORTING. (a) Requires HHSC to collect the reinvestment allowance.

(b) 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.

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

(b) Prohibits an administrative penalty assessed under Section 242.006 for a violation of this subchapter, notwithstanding Section 242.066, from exceeding the greater of one-half of the amount of the facility's outstanding reinvestment allowance or \$20,000.

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

Sec. 242.707. NURSING FACILITY REINVESTMENT ALLOWANCE TRUST FUND. (a) Provides that the nursing facility reinvestment allowance trust fund is established as a trust fund to be held by the Texas comptroller of public accounts (comptroller) outside of the state treasury and administered by HHSC as trustee. Requires that interest and income from the assets of the trust fund be credited to and deposited in

the trust fund. Authorizes HHSC to use money in the fund only as provided by Section 242.708.

(b) Requires HHSC to remit the reinvestment allowance collected under this subchapter and federal matching funds received by this state to the comptroller for deposit in the trust fund.

Sec. 242.708. REIMBURSEMENT OF FACILITIES. (a) Authorizes HHSC to use money in the nursing facility reinvestment allowance trust fund, including any federal matching funds, only for certain purposes.

(b) Requires HHSC to allocate 50 percent of the money described by Subsection (a)(3) (relating to increasing reimbursement rates paid under the state Medicaid program to facilities) for increased reimbursement rate payments based on the total rating of the Centers for Medicare and Medicaid Services five-star quality rating system.

(c) Requires HHSC to 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. Requires HHSC to include in the formula consideration of the total rating described by Subsection (b).

(d) Prohibits money in the nursing facility reinvestment allowance trust fund from being 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. Requires HHSC, if any provision of or procedure under this subchapter is 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 as prescribed by this subchapter will not entitle the state to receive federal matching funds under the Medicaid program or will be inconsistent with the objectives described by Section 537.002(b)(7), Government Code, to stop collection of the reinvestment allowance and not later than the 30th day after the date collection is stopped, return to each facility, in proportion to the total amount paid by the facility, any money deposited to the credit of the nursing facility reinvestment allowance trust fund but not spent.

Sec. 242.710. AUTHORITY TO ACCOMPLISH PURPOSES OF SUBCHAPTER. 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 this subchapter to the extent the difference is necessary to accomplish the purposes of this subchapter.

Sec. 242.711. ANNUAL REPORT. 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, 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. Provides that the report should include any information associated with the role of the comptroller and the Medicaid managed care participating plans. Requires that the report be posted on HHSC's Internet website.

Sec. 242.712. PROGRAM EVALUATION. 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.

Sec. 242.713. EXPIRATION. Provides that this subchapter expires August 31, 2021.

SECTION 2. (a) Requires the executive commissioner, as soon as practicable after the effective date of this Act, to adopt the rules necessary to implement Subchapter P, Chapter 242, Health and Safety Code, as added by this Act, and notwithstanding Section 242.703, 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) Provides that the amount of the initial reinvestment allowance established under Subsection (a) remains in effect until HHSC obtains the information necessary to set the amount of the reinvestment allowance under Section 242.703, Health and Safety Code, as added by this Act.

SECTION 3. Requires a state agency, if necessary for implementation of a provision of this Act, to request a waiver or authorization from a federal agency, and authorizes a delay of implementation until such a waiver or authorization is granted.

SECTION 4. Prohibits a reinvestment allowance, notwithstanding any other law, from being imposed under Section 242.703, Health and Safety Code, as added by this Act, or collected under Section 242.705, Health and Safety Code, as added by this Act, until 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.

SECTION 5. Requires HHSC to retroactively compensate long-term care facilities licensed under Chapter 242, Health and Safety Code, at the increased rate for services provided under the state Medicaid program beginning on the date the state Medicaid plan amendment is approved by the Centers for Medicare and Medicaid Services or another applicable federal government agency and only for the period for which the reinvestment allowance has been imposed and collected pursuant to the approval.

SECTION 6. Requires HHSC to discontinue the reinvestment allowance imposed under Subchapter P, Chapter 242, Health and Safety Code, as added by this Act, if HHSC 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 7. Effective date: upon passage or September 1, 2017.