

## **BILL ANALYSIS**

Senate Research Center  
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C.S.H.B. 2766  
By: Sheffield et al. (Hinojosa)  
Health & Human Services  
5/23/2017  
Committee Report (Substituted)

### **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.

The committee substitute for H.B. 2766 adds provisions of S.B. 932, 85th Legislature, Regular Session, 2017, the long term care regulatory bill that passed this committee and the full Senate unanimously earlier this session.

- Allows an informal dispute resolution process with an external disinterested party for assisted living facilities;
- Requires the executive commissioner of HHSC to review and streamline how informational letters and policy updates are issued to long-term care providers;
- Requires HHSC to utilize a system to record and track the scope and severity of violations for long-term care providers in order to assess the appropriate enforcement action and deter future violations;
- Disallows a provider from utilizing "right to correct" for violations that:
  - a. represent an immediate threat to the health and safety of a resident;
  - b. result in actual harm to a resident, unless it is an isolated incident; or
  - c. constitute the potential for widespread actual harm;

- Extends the licensure of long-term care provider to three years to align with survey requirements; and
- Increases penalty caps and maximum penalty amounts for certain providers whom Sunset identified as having penalty structures that were too low to actually deter bad actors.

C.S.H.B. 2766 amends current law relating to the regulation of certain long-term care facilities.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission (executive commissioner) in SECTION 1 (Sections 242.706 and 242.710, Health and Safety Code) and SECTION 2 (Section 247.023 and 248A.053, Health and Safety Code ) of this bill.

Rulemaking authority previously granted to the executive commissioner is modified in SECTION 2 (Sections 247.024 and 252.003, Health and Safety Code and Section 103.006, Human Resources 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:

- (1) a state-owned veterans nursing facility; or
- (2) 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 certain certificate 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:

- (1) the product of a certain established amount;
- (2) payable monthly; and
- (3) in addition to certain other 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 resident.

Sec. 242.704. PATIENT DAYS. Requires a facility, for each calendar day, to determine the number of non-Medicare patient days by adding certain information.

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 that section for a violation of this subchapter, notwithstanding Section 242.066, from exceeding the greater of certain amounts.

(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 the certain purposes.

(b) Requires HHSC to allocate 50 percent of certain money 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 HSHC 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:

(1) stop collection of the reinvestment allowance; and

(2) 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. Requires that the report 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) Amends Sections 531.058(a) and (a-1), Government Code, as follows:

(a) 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 under Section 32.021(d), Human Resources Code, or the Department of Aging and Disability Services (DADS) or its successor agency under certain chapters.

(a-1) Requires HHSC, as part of the informal dispute resolution process established under this section, to contract with an appropriate disinterested person, rather than an appropriate disinterested person who is a nonprofit organization, to adjudicate disputes between an institution or facility licensed under Chapter 242 (Convalescent and Nursing Facilities and Related Institutions) or 247 (Assisted Living Facilities), Health and Safety Code, rather than Chapter 242, Health and Safety Code, and DADS or its successor agency concerning a certain statement. Makes a conforming change.

(b) Amends Subchapter B, Chapter 531, Government Code, by adding Section 531.0585, as follows:

Sec. 531.0585. **ISSUANCE OF MATERIALS TO CERTAIN LONG-TERM CARE FACILITIES.** Requires the executive commissioner to review HHSC's methods for issuing informational letters, policy updates, policy clarifications, and

other related materials to an entity licensed under Chapter 103 (Day Activity and Health Services), Human Resources Code, or Chapter 242, 247, 248A (Prescribed Pediatric Extended Care Centers) or 252 (Intermediate Care Facilities for Individuals with an Intellectual Disability), Health and Safety Code, and develop and implement more efficient methods to issue those materials as appropriate.

(c) Amends Section 242.006, Health and Safety Code, by amending Subsections (a) and (e) and adding Subsection (i), as follows:

(a) Authorizes HHSC, rather than DADS, to assess an administrative penalty against a certain person. Makes conforming changes.

(e) Makes a conforming change.

(i) Requires HHSC to develop and use a system to record and track the scope and severity of each violation of this chapter or a rule, standard, or order adopted under this chapter for the purpose of assessing an administrative penalty for the violation or taking some other enforcement action against the appropriate institution to deter future violations. Requires that the system be comparable to the system used by the Center for Medicare and Medicaid Services (CMMS) to categorize the scope and severity of violations for nursing homes and authorizes the system to be modified, as appropriate, to reflect changes in industry practice or changes made to the system used by CMMS.

(d) Amends Section 242.0665, Health and Safety Code, as follows:

Sec. 242.0665. RIGHT TO CORRECT. (a) Prohibits HHSC, rather than DADS, from collecting a certain penalty.

(b) Provides that Subsection (a) does not apply:

(1) to a violation that HHSC determines:

(A) represents a pattern of violation that results in actual harm, rather than results in serious harm to or death of a resident;

(B) is widespread in scope and results in actual harm;

(C) is widespread in scope, constitutes a potential for actual harm, and relates to certain factors;

(D) redesignates existing Paragraph (B) as Paragraph (D). Constitutes an immediate, rather than a serious, threat to the health or safety of a resident; or

(E) redesignates existing Paragraph (C) as Paragraph (E) and makes no further changes to this paragraph.

(c) Makes conforming changes.

(d) Defines "actual harm," "immediate threat," "pattern of violation," and "widespread in scope."

(e) Amends Section 247.023, Health and Safety Code, as follows:

Sec. 247.023. ISSUANCE AND RENEWAL OF LICENSE. (a) Requires HHSC, rather than DADS, to issue a license under certain conditions. Provides that the license expires on the third, rather than second, anniversary of the date of its issuance. Requires the executive commissioner, rather than authorizes, by rule to

adopt a system under which licenses expire on staggered dates during each three-year period, rather than on various dates during the two-year period. Requires HHSC to prorate the license fee as appropriate if the expiration date of a license changes as a result of this subsection. Deletes existing text relating to DADS prorating a license fee and license holders paying appropriate license and license renewal fees.

(b) and (c) Makes conforming changes.

(f) Amends Sections 247.024(a), (d), and (e), Health and Safety Code, as follows:

(a) Increases from a maximum of \$1,500 to a maximum of \$2,250 the amount of a license fee reasonable and necessary to defray the cost of administering this chapter.

(d) Prohibits investigation fees or attorney's fees from being assessed against or collected from an assisted living facility by or on behalf of HHSC, rather than DADS, or another state agency unless HHSC, rather than DADS, or other state agency assesses and collects a penalty authorized by this chapter from the facility.

(e) Makes a conforming change.

(g) Amends Section 247.027, Health and Safety Code, as follows:

Sec. 247.027. INSPECTIONS. (a) Requires HHSC, rather than authorizes DADS, in addition to the inspection required under Section 247.023(a), to inspect each assisted living facility at least every two years following the initial inspection required under Section 247.023(a), rather than to inspect an assisted living facility annually, and authorizes HHSC to inspect a facility at other reasonable times as necessary to assure compliance with this chapter.

(b) Makes conforming changes.

(h) Amends Section 247.0451, Health and Safety Code, by amending Subsections (a), (b), (d), and (f) and adding Subsections (g) and (h), as follows:

(a) Authorizes HHSC, rather than DADS, to assess an administrative penalty against a certain person. Makes conforming changes.

(b) Prohibits the penalty, except as provided by Section 247.0452(c), from exceeding \$5,000 for each violation that represents a pattern of violation that results in actual harm or is widespread in scope and results in actual harm or constitutes an immediate threat to the health or safety of a resident or \$1,000 for each other violation, rather than \$1,000 for each violation.

(d) and (f) Makes conforming changes.

(g) Requires HHSC to develop and use a system to record and track the scope and severity of each violation of this chapter or a rule, standard, or order adopted under this chapter for the purpose of assessing and administrative penalty for the violation or taking some other enforcement action against the appropriate system. Requires that the system be comparable to the system used by CMMS to categorize the scope and severity of violations for nursing homes and authorizes the system to be modified, as appropriate, to reflect changes in industry practice or changes made to the system used by CMMS.

(h) Defines "actual harm," "immediate threat to the health or safety of a resident," "pattern of violation," and "widespread in scope."

(i) Amends Section 247.0452, Health and Safety Code, as follows:

Sec. 247.0452. RIGHT TO CORRECT. (a) Prohibits HHSC, rather than DADS, from collecting a certain administrative penalty.

(b) Provides that Subsection (a) does not apply to certain violations, including to a violation that HHSC determines represents a pattern of violation that results in actual harm, rather than to a violation that DADS determines results in serious harm to or death of a resident, to a violation that HHSC determines is widespread in scope and results in actual harm, to a violation that HHSC determines is widespread in scope, constitutes a potential for actual harm, and relates to certain factors, or to a violation that HHSC determines constitutes an immediate threat to the health or safety of a resident. Redesignates Subdivisions (2) through (4) as Subdivisions (5) through (7), respectively, and makes no changes to these subdivisions.

(c) Makes conforming changes.

(d) Defines "actual harm," "immediate threat to the health or safety of a resident," "pattern of violation," and "widespread in scope."

(j) Amends Section 248A.053, Health and Safety Code, as follows:

Sec. 248A.053. INITIAL OR RENEWAL LICENSE TERM; RENEWAL; NOTIFICATION. (a) Provides that an initial or renewal license issued under this chapter expires on the third, rather than second anniversary of the date of issuance. Requires the executive commissioner by rule to adopt a system under which licenses expire on staggered dates during each three-year period. Requires HHSC to prorate the license fee as appropriate if the expiration date of a license changes as a result of this subsection.

(b) Requires a person applying to renew a center license to submit a renewal application to HHSC on a prescribed form, rather than to DADS on the form prescribed by DADS, at least 60 days but not more than 120 days before expiration of the license, submit the renewal fee in the amount required by agency, rather than DADS rule, and comply with any other requirements specified by agency rule.

(c) and (d) Makes conforming changes.

(k) Amends Subchapter F, Chapter 248A, Health and Safety Code, by adding Section 248A.2515, as follows:

Sec. 248A.2515. SYSTEM FOR ASSESSMENT OF PENALTY. Requires HHSC to develop and use a system to record and track the scope and severity of each violation of this chapter or a rule, standard, or order adopted under this chapter for the purpose of assessing an administrative penalty for the violation or taking some other enforcement action against the appropriate institution to deter future violations. Requires that the system be comparable to the system used by CMMS to categorize the scope and severity of violations for nursing homes and authorizes the system to be modified, as appropriate, to reflect changes in industry practice or changes made to the system used by CMMS.

(l) Amends Sections 252.033(a), (b), (d), (f), and (h), Health and Safety Code, as follows:

(a) Requires HHSC, rather than DADS, after receiving the application, to issue a license if certain conditions are met.

(b) Makes a conforming change.

(d) Provides that a license is renewable on the third, rather than second, anniversary of issuance or renewal of the license after an inspection, filing and approval of a renewal report, and payment of the renewal fee.

(f) Makes a conforming change.

(h) Requires the executive commission by rule to:

(1) creates this subdivision from existing text and makes a conforming change; and

(2) adopt a system under which licenses expire on staggered dates during each three-year period and HHSC prorates the license fee as appropriate if the expiration date of a license changes as a result of the system adopted under Paragraph (A).

(m) Amends Sections 252.034(a), (e), and (f), Health and Safety Code, as follows:

(a) Prohibits the fee for a license issued under this chapter from exceeding \$225 plus \$7.50, rather than from exceeding \$150 plus \$5, for each unit of capacity or bed space for which the license is sought.

(e) Requires that all license fees collected under this section be deposited in the state treasury to the credit of HHSC, rather than DADS, and authorizes the license fees to be appropriated to HHSC, rather than DADS, to administer and enforce this chapter.

(f) Makes a conforming change.

(n) Amends Section 252.041, Health and Safety Code, as follows:

Sec. 252.041. UNANNOUNCED INSPECTIONS. (a) Requires HHSC, rather than DADS, each licensing period, to conduct at least three, rather than two, unannounced inspections of each facility.

(b) Changes a reference to DADS to HHSC.

(c) and (d) Makes conforming changes.

(o) Amends Section 252.065, Health and Safety Code, by amending Subsections (a), (b), (e), (f), (i), and (j) and adding Subsection (l) and (m), as follows:

(a) Changes references to DADS to HHSC.

(b) Deletes existing text prohibiting the total amount of the penalty assessed for a violation continuing or occurring on separate days under this subsection from exceeding \$5,000 for a facility with fewer than 60 beds or \$25,000 for a facility with 60 beds or more.

(e) Provides that this subsection does not apply to a certain violation or to a violation that HHSC determines:

(1) represents a pattern of violation that results in actual harm, rather than has resulted in serious harm to or the death of a resident;

(2) is widespread in scope and results in actual harm;

(3) is widespread in scope, constitutes a potential for actual harm, and relates to certain treatments, practices, or services;

(4) constitutes an immediate, rather than serious, threat to the health or safety of a resident. Creates this subdivision from existing text; or

(5) substantially limits the facility's, rather than the institution's, capacity to provide care. Creates this subdivision from existing text.

Makes conforming changes.

(f) Makes a conforming change.

(i) and (j) Makes conforming changes.

(l) Requires HHSC to develop and use a system to record and track the scope and severity of each violation of this chapter (Intermediate Care Facilities for Individuals With an Intellectual Disability) or a rule, standard, or order adopted under this chapter for the purpose of assessing an administrative penalty for the violation or taking some other enforcement action against the appropriate facility to deter future violations. Provides that the system:

(1) is required to be comparable to the system used by CMMS to categorize the scope and severity of violations for nursing homes; and

(2) is authorized to be modified, as appropriate, to reflect changes in industry practice or changes made to the system used by CMMS.

(m) Defines "actual harm," "immediate threat to the health and safety of a resident," "pattern of violation," and "widespread in scope."

(p) Amends Section 103.003, Human Resources Code, by amending Subdivision (1) and adding Subdivisions (1-a) and (4-b), as follows:

(1) Defines "commission."

(1-a) Creates this subsection from existing text.

(4-b) Defines "facility."

(q) Amends Section 103.006(a) and (b), Human Resources Code, as follows:

(a) Changes a reference to DADS to HHSC.

(b) Provides that the license expires three years, rather than two years, from the date of its issuance. Requires the executive commissioner, by rule, to adopt a system under which licenses expire on staggered dates during the three-year period, rather than authorizes the executive commissioner, by rule, to adopt a system under which licenses expire on various dates during the two-year period. Requires HHSC to prorate the license fee as appropriate if the expiration date of a license changes as a result of this subsection. Deletes existing text requiring DADS, for the year in which a license expiration date is changed, to prorate the license fee on a monthly basis. Deletes existing text requiring each license holder to pay only that portion of the license fee allocable to the number of months for which the license is valid. Deletes existing text requiring a license holder to pay the total license renewal fee at the time of renewal.

(r) Amends Section 103.007, Human Resources Code, as follows:

Sec. 103.007. LICENSE APPLICATION. (a) Requires an applicant for a license to operate a day activity and health services facility to file an application on a form prescribed by HHSC, rather than DADS, together with a license fee of \$75, rather than \$50.

(b) through (d) Makes conforming changes.

(s) Amends Section 103.008, Human Resources Code, as follows:

Sec. 103.008. INSPECTIONS. (a) Provides that, in addition to the inspection required under Section 103.006(a), HHSC:

(1) is required to inspect each facility every two years following the initial inspection required under Section 103.006(a); and

(2) is authorized to inspect a facility at other reasonable times as necessary to ensure compliance with this chapter (Day Activity and Health Services), rather than DADS is authorized to enter the premises of a facility at reasonable times and make an inspection as necessary to issue a license or renew a license. Makes a conforming change.

(b) Makes conforming changes.

(t) Amends Section 103.012, Human Resources Code, by amending Subsection (a) and (e) and adding Subsection (g), as follows:

(a) and (e) Changes references to DADS to HHSC.

(g) Requires HHSC to develop and use a system to record and track the scope and severity of each violation of this chapter or a rule, standard, or order adopted under this chapter for the purpose of assessing an administrative penalty for the violation or taking some other enforcement action against the appropriate facility to deter future violations. Provides that the system:

(1) is required to be comparable to the system used by CMMS to categorize the scope and severity of violations for nursing homes; and

(2) is authorized to be modified, as appropriate, to reflect changes in industry practice or changes made to the system used by CMMS.

(u) Amends Section 103.013, Human Resources Code, as follows:

Sec. 103.013. RIGHT TO CORRECT BEFORE IMPOSITION OF ADMINISTRATIVE PENALTY. (a) Changes a reference to DADS to HHSC.

(b) Provides that Subsection (a) (relating to prohibiting HHSC from collecting an administrative penalty no later than a certain date) does not apply to a violation that HHSC determines:

(A) represents a pattern of violation that results in actual harm, rather than serious harm to or death of a person attending the facility;

(B) is widespread in scope and results in actual harm;

(C) is widespread in scope, constitutes a potential for actual harm, and relates to certain staffing, administrations, or responses;

(D) constitutes an immediate threat to the health or safety of an elderly person or a person with a disability receiving services at a facility, rather than constitutes a serious threat to the health and safety of a person attending the facility. Creates this paragraph from existing text; or

(E) Creates this paragraph from existing text under Paragraph (C).

(c) Makes conforming changes.

(d) Defines "actual harm," "immediate threat to the health or safety of an elderly person or a person with a disability," "pattern of violation," and "widespread in scope."

(v) Repealer: Section 247.0025 (Immediate Threat of Harm), Health and Safety Code.

(w) Makes application of this section prospective.

(x) Effective date, this section: September 1, 2017.

SECTION 3. (a) Requires the executive commissioner, as soon as practicable after the effective date of this Act, to:

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

(2) notwithstanding Section 242.703, 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) of this section remains in effect until HHSC obtains the necessary information to set the amount of the reinvestment allowance under Section 242.703, Health and Safety Code, as added by this Act.

SECTION 4. Requires the agency affected by the provision, 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, to request the waiver or authorization and is authorized to delay implementing that provision until the waiver or authorization is granted.

SECTION 5. 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:

(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 CMMS or another applicable federal government agency; and

(2) the executive commissioner certifies to the Legislative Budget Board that imposition and collection of a reinvestment allowance will not negatively impact the budget neutrality requirement of a waiver under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315) agreed to by HHSC and CMMS.

SECTION 6. 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:

(1) beginning on the date the state Medicaid plan amendment is approved by CMMS or another applicable federal government agency; and

(2) only for the period for which the reinvestment allowance has been imposed and collected pursuant to the approval described by Subdivision (1).

SECTION 7. 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 certain rates, below the rates in effect on September 1, 2017.

SECTION 8. Effective date: upon passage or September 1, 2017.