

BILL ANALYSIS

Senate Research Center

H.B. 1009
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Health & Human Services
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Raul Olguin was a 24-year-old man with autism. He was receiving care in a Northeast Dallas group home when he died due to malnutrition at a weight of 85 pounds. While under investigation for the death, his caregiver was found to have a federal criminal conviction that was not flagged during a statewide background check. Currently, caregivers for individuals with intellectual or developmental disabilities are only subject to a Department of Public Safety of the State of Texas (DPS) background check, which only identifies convictions in Texas courts. These background checks do not flag crimes committed in other states, meaning a caregiver who committed a crime in a different state could pass a background check and be approved to care for this vulnerable population. H.B. 1009 seeks to address this issue by requiring Medicaid providers to review both state and federal criminal history records for certain caregivers who provide services to individuals with intellectual or developmental disabilities through a group home or other residential facility licensed by or operated under the authority of the Health and Human Services Commission.

H.B. 1009 amends the Government Code to entitle a Medicaid provider that provides community-based residential care services to Medicaid recipients through a group home or other residential facility licensed by or operated under the authority of the Health and Human Services Commission (HHSC) to obtain from DPS criminal history record information maintained by DPS that relates to an individual who is an applicant for employment or seeking a contract position with the provider as a residential caregiver or who is employed or contracted by the provider as a residential caregiver.

H.B. 1009 requires a Medicaid provider, including a provider providing services under a federal Section 1915(c) waiver program, that employs or contracts with a residential caregiver to provide community-based residential care services to Medicaid recipients to review state and federal criminal history record information and obtain electronic updates from DPS of arrests and convictions for each residential caregiver the provider employs or contracts with to provide those services to Medicaid recipients. The bill defines "residential caregiver" as an individual who provides, through a group home or other residential facility licensed by or operated under HHSC authority, community-based residential care services as follows:

- to not more than four individuals with an intellectual or developmental disability at any time; and
- at a residence other than the home of the individual providing the services.

H.B. 1009 prohibits an individual who has been convicted of an offense that bars a person from employment serving the elderly, persons with disabilities, or persons with terminal illnesses from being employed or contracted as a residential caregiver or otherwise providing direct care to a Medicaid recipient with an intellectual or developmental disability. The bill subjects an individual who violates this prohibition to disciplinary action by HHSC. The bill requires a Medicaid provider to immediately discharge any individual the provider employs or contracts with as a residential caregiver who is convicted of such an offense and requires HHSC to disenroll a Medicaid provider who violates that requirement from participation in Medicaid.

H.B. 1009 requires the executive commissioner of HHSC to adopt rules necessary to implement the bill's provisions relating to the required review of criminal history record information for

certain residential caregivers, including the provisions about individuals convicted of certain offenses.

H.B. 1009 provides for the delayed implementation of any provision for which an applicable state agency determines a federal waiver or authorization is necessary for implementation until after the waiver or authorization is requested and granted.

H.B. 1009 amends current law relating to criminal history record information reviews of certain individuals providing services to individuals with an intellectual or developmental disability under Medicaid and provides an administrative penalty.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 2 (Section 531.02485, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter F, Chapter 411, Government Code, by adding Section 411.11061, as follows:

Sec. 411.11061. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: CERTAIN MEDICAID PROVIDERS. (a) Defines "residential caregiver."

(b) Provides that a Medicaid provider that provides community-based residential care services to Medicaid recipients through a group home or other residential facility licensed by or operated under the authority of the Health and Human Services Commission (HHSC) is entitled to obtain from the Department of Public Safety of the State of Texas (DPS) criminal history record information maintained by DPS that relates to an individual who is an applicant for employment or seeking a contract position with the provider as a residential caregiver or who is employed or contracted by the provider as a residential caregiver.

SECTION 2. Amends Subchapter B, Chapter 531, Government Code, by adding Section 531.02485, as follows:

Sec. 531.02485. REQUIRED REVIEW OF CRIMINAL HISTORY RECORD INFORMATION FOR CERTAIN RESIDENTIAL CAREGIVERS. (a) Defines "residential caregiver."

(b) Requires a Medicaid provider, including a provider providing services under a 1915(c) waiver program, that employs or contracts with a residential caregiver to provide community-based residential care services to Medicaid recipients to review state and federal criminal history record information and obtain electronic updates from DPS of arrests and convictions for each residential caregiver the provider employs or contracts with to provide community-based residential care services to Medicaid recipients.

(c) Prohibits an individual who has been convicted of an offense described by Section 250.006 (Convictions Barring Employment), Health and Safety Code, from being employed or contracted as a residential caregiver or otherwise provide direct care to a Medicaid recipient with an intellectual or developmental disability to the same extent and, if applicable, for the same period of time prescribed by Section 250.006(a) (relating to prohibiting a person for whom the facility or the individual employer is entitled to obtain criminal history record information is prohibited from being employed in a facility or by an individual employer if the person has been convicted of certain offenses) or (b) (relating to prohibiting person from being employed in a position the duties of which involve direct contact with a consumer in a facility or is prohibited from being employed by an

individual employer before the fifth anniversary of the date the person is convicted of certain offenses), Health and Safety Code, as an individual similarly convicted under those subsections. Provides that an individual who violates this subsection is subject to disciplinary action by HHSC.

(d) Requires a Medicaid provider to immediately discharge any individual the provider employs or contracts with as a residential caregiver who is convicted of an offense described by Section 250.006, Health and Safety Code.

(e) Requires HHSC to take disciplinary action against a Medicaid provider that violates this section, including imposing an administrative penalty or vendor hold, terminating a contract or license, or any other disciplinary action HHSC determines appropriate, notwithstanding any other law. Requires HHSC, in determining the appropriate disciplinary action to take against a Medicaid provider under this subsection, to consider:

(1) the nature and seriousness of the violation;

(2) the history of previous violations; and

(3) any other matter justice may require.

(f) Requires the executive commissioner of HHSC to adopt rules necessary to implement this section.

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. Effective date: September 1, 2023.