

BILL ANALYSIS

Senate Research Center
88R3878 JG-D

S.B. 1629
By: Kolkhorst
Health & Human Services
4/3/2023
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Texas Medicaid provides residential long-term care services for elderly Texans over 65 who qualify. The program covers approximately 390,000 individuals statewide, with an average daily census of roughly 73,000. In 2021, nursing facilities cost the state \$2.6 billion, covering 62 percent of all Texans in these homes.

Historically, Texas has operated several programs to ensure that Medicaid dollars administered to these facilities incentivize the highest levels of care, including the Quality Incentive Payment Program and the nursing facility Direct Care Staff Rate Enhancement Program. However, not all nursing homes leverage these voluntary programs to provide consistent, high quality care.

Ownership models in nursing care have also been found to correlate to the quality of care a resident receives. Recent studies have found that nursing facilities owned by private equity and real estate investment correlate to lower staffing levels, which can influence timeliness in serving residents.

Nursing facility funds are increasing through Medicaid. Texas must ensure these taxpayer funds are directed to better care and outcomes for residents.

S.B. 1629 seeks to improve nursing care by increasing transparency and accountability for nursing homes participating in the Medicaid program. The bill would amend the Human Resources Code to ensure that dollars recouped from the existing nursing facility Direct Care Staff Rate Enhancement Program are reinvested directly into the program to provide an ongoing source of staff rate enhancements for nursing homes that provide better staffing ratios for their residents.

The bill also would establish a "direct care ratio" for Medicaid reimbursements to ensure that 80 percent of Medicaid dollars are spent directly on the care of nursing home residents. Finally, the bill requires disclosures of ownership structure for a Texas nursing facility reimbursed through Medicaid.

As proposed, S.B. 1629 amends current law relating to the regulation of certain nursing facilities and other long-term care facilities, including licensing requirements and Medicaid participation requirements.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the executive commissioner of the Health and Human Services Commission is modified in SECTION 5 (Section 32.028, Human Resources Code) of this bill.

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 6 (Section 32.0286, Human Resources) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 533.00251(c), Government Code, effective September 1, 2023, as follows:

(c) Requires the Health and Human Services Commission (HHSC), in implementing this subsection, to ensure certain requirements are met, including that a nursing facility complies with the direct care expense ratio adopted under Section 32.0286, Human Resources Code.

SECTION 2. Amends Subchapter A, Chapter 533, Government Code, by adding Section 533.00512, as follows:

Sec. 533.00512. NURSING AND OTHER LONG-TERM CARE FACILITY PROVIDER AGREEMENTS: COMPLIANCE WITH DIRECT CARE EXPENSE RATIO. Requires that a contract between a managed care organization and HHSC to provide health care services to recipients require that each provider agreement between the organization and a nursing facility or other long-term care facility include a requirement that the facility comply with the direct care expense ratio adopted under Section 32.0286, Human Resources Code.

SECTION 3. Amends Section 242.032, Health and Safety Code, by adding Subsection (b-1), as follows:

(b-1) Requires that the application:

(1) include the name of each person with an ownership interest in the nursing facility, including a subsidiary or parent company of the facility, and the real property on which the nursing facility is located, including any owner, common owner, tenant, or sublessee; and

(2) describe the exact ownership interest of each of those persons in relation to the facility or property.

SECTION 4. Amends Subchapter B, Chapter 242, Health and Safety Code, by adding Section 242.0333, as follows:

Sec. 242.0333. NOTIFICATION OF CHANGE TO OWNERSHIP INTEREST APPLICATION INFORMATION. Requires a license holder to notify HHSC, in the form and manner HHSC requires, of any change to the ownership interest application information provided under Section 242.032(b-1).

SECTION 5. Amends Section 32.028, Human Resources Code, by amending Subsections (g) and (i) and adding Subsection (i-1), as follows:

(g) Deletes existing text requiring the executive commissioner of HHSC (executive commissioner), subject to Subsection (i), to ensure that the rules governing the determination of rates paid for nursing facility services improve the quality of care by providing a program offering incentives for increasing direct care staff and direct care wages and benefits, but only to the extent that appropriated funds are available after money is allocated to base rate reimbursements as determined by HHSC's nursing facility rate setting methodologies.

(i) Requires the executive commissioner to ensure that rules governing the incentives program described by Subsection (g)(1):

(1)-(2) makes no changes to these subdivisions;

(3)-(4) makes nonsubstantive changes to these subdivisions;

(5) to the extent permitted by federal law, require HHSC to recoup all or part of an incentive payment if the nursing facility fails to satisfy a program requirement.

(i-1) Requires HHSC to use money HHSC recoups in accordance with rules adopted under Subsection (i)(5) to continue funding the incentives program described by Subsection (g)(1).

SECTION 6. Amends Subchapter B, Chapter 32, Human Resources Code, by adding Section 32.0286, as follows:

Sec. 32.0286. ANNUAL DIRECT CARE EXPENSE RATIO FOR REIMBURSEMENT OF CERTAIN LONG-TERM CARE FACILITY PROVIDERS. (a) Defines "direct care expense."

(b) Requires the executive commissioner, notwithstanding any other law, by rule to establish an annual direct care expense ratio, including a process for determining the ratio, applicable to the reimbursement of nursing facility and other long-term care facility providers for providing services to recipients under the medical assistance program. Requires the executive commissioner, in establishing the ratio, to require that at least 80 percent of medical assistance reimbursement amounts paid to a nursing facility or other long-term care facility is spent on direct care expenses.

(c) Requires the executive commissioner to adopt rules necessary to ensure each nursing facility provider and other long-term care facility that participates in the medical assistance program complies with the direct care expense ratio adopted under this section.

SECTION 7. (a) Requires HHSC, in a contract between HHSC and a managed care organization under Chapter 533 (Medicaid Managed Care Program), Government Code, that is entered into or renewed on or after the effective date of this Act, to require the managed care organization to comply with Section 533.00512, Government Code, as added by this Act.

(b) Requires HHSC to seek to amend contracts entered into with managed care organizations under Chapter 533, Government Code, before the effective date of this Act to require those managed care organizations to comply with Section 533.00512, Government Code, as added by this Act. Provides that a provision of a contract with a managed care organization entered into before the effective date of this Act prevails, to the extent of a conflict between that section and the contract provision.

SECTION 8. 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 9. Effective date: September 1, 2023.