

## BILL ANALYSIS

Senate Research Center

S.B. 2435  
By: Uresti  
Jurisprudence  
8/4/2009  
Enrolled

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

The state-administered Medicaid program allows certain recipients to receive medical assistance that is paid to a nursing home. In determining the amount of medical assistance paid by the state to a nursing home, an adjustment is made for the "applied income" that is earned and unearned by the recipient, or if applicable, the recipient and the recipient's spouse. Current Texas statutes and administrative rules related to Medicaid allow for guardian fees to be deducted from the amount of "applied income." The amount of the deduction for guardian fees is currently set by the court as a guardian/fiduciary fee, under Section 358.502 (Allowable Deductions), Texas Administrative Code. As a result of this deduction for guardian fees, higher guardian fees ordered by the court result in a lower "applied income" amount, which increases the amount of medical assistance paid for by the Medicaid program to a nursing home. Although many states limit this deduction from "applied income," the Probate Code and Texas Administrative Code do not place a limit on the amount of court ordered guardian fees that are deductible in calculating the amount of "applied income" for a recipient of medical assistance.

S.B. 2435 amends current law relating to medical assistance program reimbursement for guardianship expenses of certain recipients.

### RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 (Section 32.02451, Human Resources Code) of this bill.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter B, Chapter 32, Human Resources Code, by adding Section 32.02451, as follows:

Sec. 32.02451. REIMBURSEMENT FOR GUARDIANSHIP EXPENSES OF CERTAIN RECIPIENTS. Requires the Health and Human Services Commission (HHSC) or an agency operating part of the medical assistance program, to the extent allowed by federal law, to provide medical assistance reimbursement for compensation and costs ordered under Section 670, Probate Code, in a guardianship established for a medical assistance recipient. Requires the executive commissioner of HHSC to adopt rules providing a procedure by which a person to whom amounts are ordered paid under that section is authorized to submit a claim to and receive reimbursement from the medical assistance program.

SECTION 2. Amends Subpart H, Part 2, Chapter XIII, Probate Code, by adding Section 670, as follows:

Sec. 670. COMPENSATION OF CERTAIN GUARDIANS; CERTAIN OTHER GUARDIANSHIP COSTS. (a) Defines "applied income" and "medical assistance."

(b) Authorizes a court that appoints a guardian for a recipient of a medical assistance who has applied income, notwithstanding any other provision of this chapter and to the extent permitted to by federal law, order certain amounts to be paid under the medical assistance program.

(c) Authorizes costs ordered to be paid under Subsection (b)(2) (relating to costs directly related to establishing or terminating the guardianship) of this section to include compensation and expenses for an attorney ad litem or guardian ad litem and reasonable attorney's fees for an attorney representing the guardian. Authorizes the costs ordered to be paid to exceed \$1,000 if the costs in excess of that amount are supported by documentation acceptable to the court and the costs are approved by the court.

SECTION 3. Provides that changes in law made by this Act apply to a guardianship created before, on, or after the effective date of this Act.

SECTION 4. Requires an agency affected by any provision of this Act, if before implementing the provision the 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 authorizes the agency to delay implementing that provision until the waiver or authorization is granted.

SECTION 5. Effective date: September 1, 2009.