

## **BILL ANALYSIS**

Senate Research Center  
83R22609 JSL-D

C.S.S.B. 1542  
By: Van de Putte  
Health & Human Services  
4/23/2013  
Committee Report (Substituted)

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

In science and technology, as well as within the broad practice of health care, rapid advances are being made in the care and treatment of numerous conditions and ailments. Advances in the treatments of preventable and chronic conditions is developing at such a rapid pace that incorporating those new treatments is a difficult task made almost impossible for the state Medicaid program to track and monitor. As a result, the Medicaid program can fall behind in ensuring the highest levels of practice are in place to control the growing costs of health care services and to ensure that the highest level of quality care is promoted and practiced and monitored within the program.

One example includes the use of early goal directed therapy or other evidence based protocols within a hospital or health care facility which has been shown to decrease the severity of sepsis infections or septicemia, reduce the cost of treating such infections, and reduce the mortality associated with those infections.

Therefore, C.S.S.B. 1542 establishes a new process at the Health and Human Services Commission for the review, analysis, reporting, and implementation of clinical initiatives designed to reduce costs in the Medicaid program and to improve the quality of care in an effort to establish an ongoing process of ensuring the highest quality care and most effective management of costs in the Medicaid program.

C.S.S.B. 1542 amends current law relating to clinical initiatives to improve the quality of care and cost-effectiveness of the Medicaid program.

### **RULEMAKING AUTHORITY**

Rulemaking authority to the Health and Human Services Commission is restricted in SECTION 1 (Section 538.002, Government Code) of this bill.

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 (Section 538.003, Government Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subtitle I, Title 4, Government Code, by adding Chapter 538, as follows:

#### **CHAPTER 538. MEDICAID QUALITY IMPROVEMENT PROCESS FOR CLINICAL INITIATIVES**

##### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 538.001. DEFINITION. In this chapter, "Medicaid program" means the medical assistance program established under Chapter 32 (Medical Assistance Program), Human Resources Code.

Sec. 538.002. EFFECT OF CHAPTER; AUTHORITY OF COMMISSION. Provides that this chapter does not affect or give the Health and Human Services Commission (HHSC) additional authority to affect any individual health care treatment decision for a

Medicaid recipient, replace or affect the process of determining Medicaid benefits, including the approval process for receiving benefits for durable medical equipment, or any applicable approval process required for reimbursement for services or other equipment under the Medicaid program, or implement a clinical initiative or associated rule or program policy that is otherwise prohibited under state or federal law.

Sec. 538.003. RULES. Requires the executive commissioner of HHSC (executive commissioner) to adopt rules necessary to implement this chapter.

#### SUBCHAPTER B. MEDICAID QUALITY IMPROVEMENT PROCESS TO ASSESS CERTAIN CLINICAL INITIATIVES

Sec. 538.051. MEDICAID QUALITY IMPROVEMENT PROCESS. Requires HHSC to, according to the provisions of this chapter, develop and implement a quality improvement process by which HHSC:

- (1) receives suggestions for clinical initiatives designed to improve the quality of care provided under the Medicaid program, and the cost-effectiveness of the Medicaid program;
- (2) conducts a preliminary review under Section 538.053(4) of each suggestion received under Section 538.052 to determine whether the suggestion warrants further consideration and analysis; and
- (3) conducts an analysis under Section 538.054 of clinical initiative suggestions that are selected for analysis under Subdivision (2) and of required clinical initiatives under Section 538.0521.

Sec. 538.052. SOLICITATION OF SUGGESTIONS FOR CLINICAL INITIATIVES.

(a) Requires HHSC, subject to Subsection (b), to solicit and accept suggestions for clinical initiatives, in either written or electronic form, from:

- (1) a member of the state legislature or a holder of an office of state government that is voted on statewide;
- (2) the executive commissioner;
- (3) the commissioner of the Department of Aging and Disability Services;
- (4) the commissioner of the Department of State Health Services;
- (5) the commissioner of the Department of Family and Protective Services;
- (6) the commissioner of the Department of Assistive and Rehabilitative Services;
- (7) the medical care advisory committee established under Section 32.022 (Medical and Hospital Care Advisory Committees), Human Resources Code;
- (8) the physician payment advisory committee created under Section 32.022(d) (authorizing HHSC or the governing body of an agency operating part of the medical assistance program, as appropriate, on the recommendation of HHSC or the commissioner or executive director of an agency operating part of the medical assistance program, as appropriate, to appoint regional and local medical care advisory committees and other advisory committees as considered necessary), Human Resources Code; and

(9) the Electronic Health Information Exchange System Advisory Committee established under Section 531.904 (Electronic Health Information Exchange System Advisory Committee).

(b) Prohibits HHSC from accepting suggestions under this section for an initiative that is undergoing clinical trials, and expands a health care provider's scope of practice beyond the law governing the provider's practice.

Sec. 538.0521. REQUIRED CLINICAL INITIATIVES. (a) Requires HHSC, in addition to the clinical initiatives suggested under Section 538.054, to conduct an analysis and issue a final report in accordance with the requirements of this chapter for an initiative that would require hospitals to implement evidence-based protocols, including early goal-directed therapy, in the treatment of severe sepsis and septicemia, and an initiative that would authorize the Medicaid program to provide blood-based allergy testing for patients with persistent asthma to develop an appropriate treatment strategy that would minimize exposure to allergy-induced asthma attacks.

(b) Provides that this section expires August 31, 2014.

Sec. 538.053. CLINICAL INITIATIVE EVALUATION PROCESS. Requires HHSC to establish and implement an evaluation process for the submission, preliminary review, analysis, and approval of a clinical initiative. Requires that the process:

(1) require that a suggestion for a clinical initiative be submitted to the state Medicaid director;

(2) require that a suggestion for a clinical initiative selected for analysis under Section 538.054 be published on the Internet website created under Section 538.056 not later than the 30th day after the date on which the state Medicaid director receives the suggestion;

(3) provide for a formal public comment period that lasts at least 30 days during which the public may submit comments and research relating to a suggested clinical initiative;

(4) allow HHSC to conduct with the assistance of appropriate advisory committees or similar groups as determined by HHSC a preliminary review of each suggested clinical initiative to determine whether the initiative warrants further consideration and analysis under Section 538.054;

(5) limit the number of suggestions that receive analysis under Section 538.054;

(6) require HHSC to publish the Internet website created under Section 538.056 the criteria HHSC uses in the preliminary review under Subdivision (4) to determine whether an initiative warrants analysis under Section 538.054;

(7) require HHSC employees to perform an analysis of each suggested clinical initiative selected for analysis in accordance with Section 538.054; and

(8) require the development and publication of a final report in accordance with Section 538.055 on each clinical initiative selected for analysis under Section 538.054 not later than the 180th day after the date on which the state Medicaid director receives the suggestion.

Sec. 538.054. ANALYSIS OF CLINICAL INITIATIVES. Requires HHSC to conduct an analysis of each clinical initiative selected by HHSC after having conducted HHSC's preliminary review under Section 538.053(4). Requires that the analysis required under this section include a review of:

(1) any public comments and submitted research relating to the initiative;

- (2) the available clinical research and historical utilization information relating to the initiative;
- (3) published medical literature relating to the initiative;
- (4) any adoption of the initiative by medical societies or other clinical groups;
- (5) whether the initiative has been implemented under the Medicare program, another state medical assistance program, or a state-operated health care program, including the child health plan program;
- (6) the results of reports, research, pilot programs, or clinical studies relating to the initiative conducted by institutions of higher education, including related medical schools, governmental entities and agencies, and private and nonprofit think tanks and research groups;
- (7) the impact that the initiative would have on the Medicaid program if implemented in this state, including an estimate of the number of recipients under the Medicaid program that would be impacted by implementation of the initiative, and a description of any potential cost savings to the state that would result from implementation of the initiative; and
- (8) any statutory barriers to implementation of the initiative.

Sec. 538.055. FINAL REPORT ON CLINICAL INITIATIVE. Requires HHSC to prepare a final report based on HHSC's analysis of a clinical initiative under Section 538.054. Requires that the final report include a final determination of the feasibility of implementing the initiative; the likely impact implementing the initiative would have on the quality of care provided under the Medicaid program; and the anticipated cost savings to the state that would result from implementing the initiative; a summary of the public comments, including a description of any opposition to the initiative; an identification of any statutory barriers to implementation of the initiative, and if the initiative is not implemented, an explanation of the decision not to implement the initiative.

Sec. 538.056. INTERNET WEBSITE. Requires HHSC to maintain an Internet website related to the quality improvement process required under this chapter. Requires that the website include an explanation of the process for submission, preliminary review, analysis, and approval of clinical initiatives under this chapter; an explanation of how members of the public may submit comments or research related to an initiative; a copy of each initiative selected for analysis under Section 538.054; the status of each initiative in the approval process; and a copy of each final report prepared under this chapter.

Sec. 538.057. ACTION ON CLINICAL INITIATIVE BY COMMISSION. Provides that after HHSC conducts an analysis of a clinical initiative under Section 538.054:

- (1) requires HHSC, if HHSC has determined that the initiative is cost-effective and will improve the quality of care under the Medicaid program, to:
  - (A) submit the initiative to the Legislative Budget Board (LBB) and the governor for review; and
  - (B) if HHSC does not receive a written objection from LBB or the governor to the initiative on or before the 30th day after the date HHSC submits the initiative: implement the initiative if implementation of the initiative is not otherwise prohibited by law; or if implementation requires a change in law, to submit a copy of the final report together with recommendations relating to the initiative's implementation to the standing committees of the senate and house of representatives having jurisdiction over the Medicaid program; and

(2) prohibits HHSC, if HHSC has determined that the initiative is not cost-effective or will not improve quality of care under the Medicaid program, from implementing the initiative.

SECTION 2. Requires HHSC, not later than January 1, 2014, to conduct an analysis and submit a final report on the clinical initiatives required under Section 538.0521, Government 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. Effective date: upon passage or September 1, 2013.