

BILL ANALYSIS

Senate Research Center
84R11489 JSL-F

S.B. 1385
By: Schwertner
Health & Human Services
3/21/2015
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Home and Community-based Services (HCS) and Texas Home Living (TxHmL) are Medicaid programs that help individuals with intellectual and developmental disabilities live in the community, rather than in an institution. As of February 4, 2015, there were 637 HCS providers with 1,496 contracts and 414 TxHmL providers with 965 contracts in Texas. Because of the services provided, these programs are in high demand and provide support to extremely vulnerable populations.

HCS and TxHmL providers contract with the Texas Department of Aging and Disability Services (DADS) to provide services in designated areas of the state. If DADS determines that a provider is not in compliance with the contract, DADS may impose certain sanctions; however, the available sanctions are limited and, in some cases, ineffective.

Currently in HCS and TxHmL, available sanctions for contract non-compliance include:

- Vendor hold: a temporary suspension of payments that are due to the provider under the contract. This sanction may have minimal impact, especially on larger providers, for whom a small interruption of cash flow is not adequate to effectively gain compliance.
- Termination: cancellation of the provider's contract. This action is usually reserved for an egregious violation of the contract or rules.

In many cases, a contract violation deserves a stronger remedial action than a vendor hold, but does not rise to the level of contract termination. In these cases, DADS is left with limited ability to appropriately enforce contract terms.

S.B. 1385 authorizes DADS to assess administrative penalties for violations of contract terms for HCS and TxHmL providers, giving DADS the ability to more appropriately sanction providers who are non-compliant.

As proposed, S.B. 1385 amends current law relating to the authorization of the imposition of administrative penalties on providers participating in certain Medicaid waiver programs.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 (Section 161.088, Human Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter D, Chapter 161, Human Resources Code, by adding Section 161.088, as follows:

Sec. 161.088. ADMINISTRATIVE PENALTIES. (a) Provides that this section applies to the following waiver programs established under Section 1915(c), Social Security Act (42 U.S.C. Section 1396n(c)), and administered by the Department of Aging and

Disability Services (DADS) to serve persons with an intellectual or developmental disability:

- (1) the home and community-based services (HCS) waiver program; and
- (2) the Texas home living (TxHmL) waiver program.

(b) Authorizes DADS to assess and collect an administrative penalty against a provider who participates in a program to which this section applies for a violation of a law, including a rule, or DADS policy relating to the program.

(c) Requires the executive commissioner of the Health and Human Services Commission, after consulting with DADS, to develop and adopt rules regarding the imposition of administrative penalties under this section. Requires that the rules:

- (1) include criteria that describe the types of violations that warrant imposition of an administrative penalty and the method by which DADS is authorized to assess an administrative penalty;
- (2) prescribe reasonable amounts to be imposed for each violation giving rise to an administrative penalty;
- (3) ensure standard and consistent application of administrative penalties throughout the state; and
- (4) provide for an administrative appeals process to adjudicate claims and appeals relating to the imposition of an administrative penalty under this section that is in accordance with Chapter 2001 (Administrative Procedure), Government Code.

(d) Authorizes rules adopted under this section to authorize the imposition of an administrative penalty, with interest, for a minimum penalty period or on a subsequent per diem basis.

SECTION 2. Authorizes DADS to impose an administrative penalty in accordance with Section 161.088, Human Resources Code, as added by this Act, only for conduct that occurs on or after the effective date of 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 delay of implementation until such a waiver or authorization is granted.

SECTION 4. Effective date: September 1, 2015.