

BILL ANALYSIS

Senate Research Center

S.B. 1519
By: Kolkhorst
Health & Human Services
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

According to the U.S. Census Bureau, in 2010, Texans age 60 and older comprised 15 percent of the total Texas population. By 2050, that percentage is expected to increase to 22 percent of the Texas population. Considering the expected growth in the number of aging Texans, high quality long-term care facilities that are fairly regulated will be needed to meet the needs of aging Texans.

In response, the legislature passed S.B. 914 (84R), which established the Long-Term Care Facility Survey and Informal Dispute Resolution Council (council) to study and make recommendations for improving the regulation of nursing facilities (NFs), assisted living facilities (ALFs), and intermediate care facilities for individuals with an intellectual disability or related condition (ICFs/IID). The council produced one report and was abolished on June 1, 2017.

S.B. 1519 would re-establish the council and seeks to build upon the council's prior work, by expanding the scope of the council to review and make recommendations on both long-term care facility regulations and quality-based Medicaid payments programs for such facilities. (Original Author's/Sponsor's Statement of Intent)

S.B. 1519 amends current law relating to establishing a council on long-term care facilities and to a dispute resolution process regarding those facilities.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 2 (Section 531.0581, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Reenacts Section 531.058(a-1), Government Code, as amended by Chapters 590 (S.B. 924) and 836 (H.B. 2025), Acts of the 85th Legislature, Regular Session, 2017, and amends it as follows:

(a-1) Requires the internal dispute resolution process for the statement of violations proposed by the Health and Human Services Commission (HHSC) in connection with a surety by HHSC as a certain licensed institution or facility to require:

(1) the surveyor who conducted the survey for which the statement was prepared to be available to clarify or answer questions related to the facility or the statement that are asked by the person reviewing the dispute or by the facility; and

(2) HHSC's review of the institution's or facility's informal dispute resolution request to be conducted by a registered nurse with long-term care experience for a standard of care violation.

SECTION 2. Amends Subchapter B, Chapter 531, Government Code, by adding Section 531.0581, as follows:

Sec. 531.0581. LONG-TERM CARE FACILITIES COUNCIL. (a) Defines "council" and "long-term care facility" for purposes of this section.

(b) Requires the executive commissioner of HHSC (executive commissioner) to establish a Long-Term Care Facilities Council (council) as a permanent advisory committee to HHSC. Provides that the council is composed of the following members appointed by the executive commissioner:

- (1) at least one member who is a for-profit nursing facility provider;
- (2) at least one member who is a nonprofit nursing facility provider;
- (3) at least one member who is an assisted living services provider;
- (4) at least one member responsible for survey enforcement within the state survey and certification agency;
- (5) at least one member responsible for survey inspection within the state survey and certification agency;
- (6) at least one member of the state agency responsible for informal dispute resolution;
- (7) at least one member with expertise in Medicaid quality-based payment systems for long-term care facilities;
- (8) at least one member who is a practicing medical director of a long-term care facility; and
- (9) at least one member who is a physician with expertise in infectious disease or public health.

(c) Requires the executive commissioner to designate a member of the council to serve as presiding officer. Requires the members of the council to elect any other necessary officers.

(d) Provides that a member of the council serves at the will of the executive commissioner.

(e) Requires the council to meet at the call of the executive commissioner.

(f) Provides that a member of the council is not entitled to reimbursement of expenses or to compensation for service on the council.

(g) Requires the council to study and make recommendations regarding a consistent survey and informal dispute resolution process for long-term care facilities, Medicaid quality-based payment systems for those facilities, and the allocation of Medicaid beds in those facilities. Requires the council to:

- (1) study and make recommendations regarding best practices and protocols to make survey, inspection, and informal dispute resolution processes more efficient and less burdensome on long-term care facilities;
- (2) recommend uniform standards for those processes;
- (3) study and make recommendations regarding Medicaid quality-based payment systems and a rate-setting methodology for long-term care facilities; and

(4) study and make recommendations relating to the allocation of and need for Medicaid beds in long-term care facilities, including studying and making recommendations relating to:

(A) the effectiveness of rules adopted by the executive commissioner relating to the procedures for certifying and decertifying Medicaid beds in long-term care facilities; and

(B) the need for modifications to those rules to better control the procedures for certifying and decertifying Medicaid beds in long-term care facilities.

(h) Requires the council, not later than January 1 of each odd-numbered year, to submit a report on the council's findings and recommendations to the executive commissioner, the governor, the lieutenant governor, the speaker of the house of representatives, and the chairs of the appropriate legislative committees.

(i) Provides that Chapter 2110 (State Agency Advisory Committees) does not apply to the council.

SECTION 3. Amends Section 242.0445, Health and Safety Code, by adding Subsection (a-1), as follows:

(a-1) Provides that, if HHSC or HHSC's representative conducting an inspection, survey, or investigation under Section 242.043 (Inspections) and 242.044 (Unannounced Inspections) identifies a violation that constitutes immediate jeopardy to the health or safety of a resident:

(1) HHSC is required to immediately notify the facility's management of the violation; and

(2) an HHSC representative is required to remain in or be accessible to the facility until HHSC receives the facility's plan of removal related to the violation.

SECTION 4. (a) Defines "commission," "Long-Term Care Facilities Council," and "long-term care facility" for purposes of this section.

(b) Requires the council, not later than September 1, 2021, to assess the impact the implementation of Section 2 (relating to requiring HHSC to provide benefits under Medicaid to recipients who reside in nursing facilities through the STAR+Plus Medicaid managed care program), Chapter 1117 (H.B. 3523), Acts of the 84th Legislature, Regular Session, 2015, which amended Section 533.00251(c), Government Code, effective September 1, 2021, would have on long-term care facilities and make a recommendation to HHSC regarding its implementation. Authorizes HHSC, notwithstanding that section, if the council advises that implementing that section would have a significant impact on long-term facilities, to delay the implementation of that section until September 1, 2023, provided that HHSC publishes notice of that delay in the Texas Register as soon as practicable.

(c) Provides that this section expires September 1, 2023.

SECTION 5. Requires the executive commissioner, not later than December 1, 2019, to establish the council and appoint the council members as required by Section 531.0581, Government Code, as added by this Act.

SECTION 6. Provides that HHSC is required to implement a provision of this Act only if the legislature appropriates money to HHSC specifically for that purpose. Authorizes, but does not require, HHSC, if the legislature does not appropriate money specifically for that purpose, to implement a provision of this Act using other appropriations that are available for that purpose.

SECTION 7. 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 the provision until the waiver or authorization is granted.

SECTION 8. Effective date: upon passage or September 1, 2019.