

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 3240
By: Klick (Kolkhorst)
Health & Human Services
5/20/2021
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Last session, the legislature established the Long-Term Care Facilities Council for purposes of studying and making recommendations regarding a more consistent survey and informal dispute resolution process for long-term care facilities, the Medicaid quality-based payment systems for these facilities, and the allocation of Medicaid beds in these facilities. However, the legislature inadvertently omitted representation of an ICF-IID long-term care facility provider on the council.

During that session, the legislature also enacted legislation that was intended to clarify intent and restore caps on the total amount of penalties that can be assessed for violations in various types of facilities. Application, however, has not been consistent with intent. While community-based ICF-IID facilities must be held accountable for their actions, the intent of penalties is not to financially impact a facility to such an extent that the facility is unable to continue serving its community while attempting to come into compliance with applicable rules and regulations.

Though state law requires that rules governing the imposition of administrative penalties on providers in the home and community-based services (HCS) and Texas home living (TxHmL) Medicaid waiver programs ensure standard and consistent application of penalties, the rules adopted remain subjective and open to interpretation by regulators.

H.B. 3240 seeks to address these issues.

(Original Author's/Sponsor's Statement of Intent)

C.S.H.B. 3240 amends current law relating to the composition of the Long-Term Care Facilities Council and rules related to and the imposition of administrative penalties against certain long-term care facilities.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the executive commissioner of the Health and Human Services Commission is modified in SECTION 3 (Section 161.089, Human Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 531.0581(b), Government Code, to include at least one member who is a community-based provider at an intermediate care facility for individuals with intellectual or developmental disabilities licensed under Chapter 252 (Intermediate Care Facilities for Individuals With an Intellectual Disability), Health and Safety Code, among the composition of the Long-Term Care Facilities Council.

SECTION 2. Amends Section 252.065(b), Health and Safety Code, as follows:

(b) Prohibits the total amount of penalties assessed under this subsection for an on-site regulatory visit or complaint investigation, regardless of the duration of any ongoing violations, rather than for each day a violation occurs or continues, from exceeding:

- (1) \$5,000 for a facility with fewer than 60 beds; and
- (2) \$25,000 for a facility with 60 beds or more.

Makes a nonsubstantive change.

SECTION 3. Amends Section 161.089, Human Resources Code, by amending Subsection (c) and adding Subsection (c-1), as follows:

(c) Requires the executive commissioner (executive commissioner) of the Health and Human Services Commission (HHSC), after consulting with appropriate stakeholders, to develop and adopt rules regarding the imposition of administrative penalties under Section 161.089 (Administrative Penalties). Requires that the rules:

- (1) - (5) makes no changes to these subdivisions;
- (6) and (7) makes nonsubstantive changes to these subdivisions;
- (8) ensure standard and consistent interpretation of service delivery rules and consistent application of administrative penalties throughout this state.

(c-1) Requires the executive commissioner, on adoption of the rules under Subsection (c), to develop interpretative guidelines for regulatory staff and providers regarding the imposition of administrative penalties under Section 161.089.

SECTION 4. Requires the executive commissioner, not later than December 1, 2021, to adopt the rules necessary to implement the changes in law made by this Act.

SECTION 5. Prohibits HHSC from assessing a penalty under Section 161.089, Human Resources Code, as amended by this Act, until the executive commissioner:

- (1) adopts the rules necessary to implement Sections 161.089(c)(8), Human Resources Code, as added by this Act; and
- (2) develops the interpretive guidelines required by Section 161.089(c-1), Human Resources Code, as added by this Act.

SECTION 6. Effective date: upon passage or September 1, 2021.