

Suspending limitations on conference committee
jurisdiction, H.B. No. 3720 (Frank/Kolkhorst)

By: Kolkhorst

S.R. No. 552

R E S O L U T I O N

1 BE IT RESOLVED by the Senate of the State of Texas, 87th
2 Legislature, Regular Session, 2021, That Senate Rule 12.03 be
3 suspended in part as provided by Senate Rule 12.08 to enable the
4 conference committee appointed to resolve the differences on House
5 Bill 3720 (long-term care facilities for and Medicaid waiver
6 programs available to certain individuals, including individuals
7 with intellectual and developmental disabilities) to consider and
8 take action on the following matters:

9 (1) Senate Rule 12.03(2) is suspended to permit the
10 committee to omit text not in disagreement by omitting proposed
11 Section 531.06035, Government Code, and the transition language
12 associated with that section. The omitted text imposes a duty on
13 the Health and Human Services Commission to conduct a medical
14 necessity assessment of a child who receives Supplemental Security
15 Income (SSI) before placing the child on the interest list for the
16 medically dependent children (MDCP) program.

17 Explanation: The omission of the text is necessary to remove
18 the duty imposed on the Health and Human Services Commission to
19 conduct certain medical necessity assessments of a child who
20 receives Supplemental Security Income (SSI) before placing the
21 child on the interest list for the medically dependent children
22 (MDCP) program.

23 (2) Senate Rule 12.03(4) is suspended to permit the
24 committee to add text on a matter not included in either the house

1 or senate version of the bill by adding the following new SECTION to
2 the bill:

3 SECTION 1. Section 531.0581(b), Government Code, is amended
4 to read as follows:

5 (b) The executive commissioner shall establish a Long-Term
6 Care Facilities Council as a permanent advisory committee to the
7 commission. The council is composed of the following members
8 appointed by the executive commissioner:

9 (1) at least one member who is a for-profit nursing
10 facility provider;

11 (2) at least one member who is a nonprofit nursing
12 facility provider;

13 (3) at least one member who is an assisted living
14 services provider;

15 (4) at least one member responsible for survey
16 enforcement within the state survey and certification agency;

17 (5) at least one member responsible for survey
18 inspection within the state survey and certification agency;

19 (6) at least one member of the state agency
20 responsible for informal dispute resolution;

21 (7) at least one member with expertise in Medicaid
22 quality-based payment systems for long-term care facilities;

23 (8) at least one member who is a practicing medical
24 director of a long-term care facility; ~~and~~

25 (9) at least one member who is a physician with
26 expertise in infectious disease or public health; and

27 (10) at least one member who is a community-based

1 provider at an intermediate care facility for individuals with
2 intellectual or developmental disabilities licensed under Chapter
3 252, Health and Safety Code.

4 Explanation: This addition is necessary to change the
5 composition of the Texas Long-Term Care Facilities Council to
6 include at least one member who is a community-based provider at
7 certain intermediate care facilities.

8 (3) Senate Rule 12.03(4) is suspended to permit the
9 committee to add text on a matter not included in either the house
10 or senate version of the bill by adding the following new SECTIONS
11 to the bill:

12 SECTION 3. Section 252.065(b), Health and Safety Code, is
13 amended to read as follows:

14 (b) The penalty for a facility with fewer than 60 beds shall
15 be not less than \$100 or more than \$1,000 for each violation. The
16 penalty for a facility with 60 beds or more shall be not less than
17 \$100 or more than \$5,000 for each violation. Each day a violation
18 occurs or continues is a separate violation for purposes of
19 imposing a penalty. The total amount of penalties [~~a penalty~~]
20 assessed under this subsection for an on-site regulatory visit or
21 complaint investigation, regardless of the duration of any ongoing
22 violations, [~~for each day a violation occurs or continues~~] may not
23 exceed:

- 24 (1) \$5,000 for a facility with fewer than 60 beds; and
25 (2) \$25,000 for a facility with 60 beds or more.

26 SECTION 4. Section 161.089, Human Resources Code, is
27 amended by amending Subsection (c) and adding Subsection (c-1) to

1 read as follows:

2 (c) After consulting with appropriate stakeholders, the
3 executive commissioner shall develop and adopt rules regarding the
4 imposition of administrative penalties under this section. The
5 rules must:

6 (1) specify the types of violations that warrant
7 imposition of an administrative penalty;

8 (2) establish a schedule of progressive
9 administrative penalties in accordance with the relative type,
10 frequency, and seriousness of a violation;

11 (3) prescribe reasonable amounts to be imposed for
12 each violation giving rise to an administrative penalty, subject to
13 Subdivision (4);

14 (4) authorize the imposition of an administrative
15 penalty in an amount not to exceed \$5,000 for each violation;

16 (5) provide that a provider commits a separate
17 violation each day the provider continues to violate the law or
18 rule;

19 (6) ensure standard and consistent application of
20 administrative penalties throughout the state; ~~and~~

21 (7) provide for an administrative appeals process to
22 adjudicate claims and appeals relating to the imposition of an
23 administrative penalty under this section that is in accordance
24 with Chapter [2001](#), Government Code; and

25 (8) ensure standard and consistent interpretation of
26 service delivery rules and consistent application of
27 administrative penalties throughout this state.

1 (c-1) On adoption of the rules under Subsection (c), the
2 executive commissioner shall develop interpretative guidelines for
3 regulatory staff and providers regarding the imposition of
4 administrative penalties under this section.

5 SECTION 6. Not later than December 1, 2021, the executive
6 commissioner of the Health and Human Services Commission shall
7 adopt the rules necessary to implement Section 252.065(b), Health
8 and Safety Code, as amended by this Act, and Section 161.089, Human
9 Resources Code, as amended by this Act.

10 SECTION 7. The Health and Human Services Commission may not
11 assess a penalty under Section 161.089, Human Resources Code, as
12 amended by this Act, until the executive commissioner of the Health
13 and Human Services Commission:

14 (1) adopts the rules necessary to implement Section
15 161.089(c)(8), Human Resources Code, as added by this Act; and

16 (2) develops the interpretive guidelines required by
17 Section 161.089(c-1), Human Resources Code, as added by this Act.

18 Explanation: The changes are necessary to implement certain
19 changes to law relating to the imposition of administrative
20 penalties against certain long-term care facilities, including a
21 change to the amount of an administrative penalty for certain
22 violations committed by intermediate care facilities for
23 individuals with an intellectual disability and a change to ensure
24 the executive commissioner of the Health and Human Services
25 Commission adopts standard and consistent rules relating to the
26 interpretation and consistent application of administrative
27 penalties against certain long-term care facilities.