

AN ACT

relating to imposing requirements on the employment of or contracts for certain individuals providing services to individuals with an intellectual or developmental disability, including requiring certain facilities and Medicaid providers to conduct criminal history record information and employee misconduct registry reviews and to suspend the employment or contracts of individuals who engage in reportable conduct; providing administrative penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter F, Chapter 411, Government Code, is amended by adding Section 411.11061 to read as follows:

Sec. 411.11061. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: CERTAIN MEDICAID PROVIDERS. (a) In this section, "residential caregiver" has the meaning assigned by Section 531.02485.

(b) A Medicaid provider that provides community-based residential care services to Medicaid recipients through a group home or other residential facility licensed by or operated under the authority of the Health and Human Services Commission is entitled to obtain from the department criminal history record information maintained by the department that relates to an individual who is an applicant for employment or seeking a contract position with the provider as a residential caregiver or who is

1 employed or contracted by the provider as a residential caregiver.

2 SECTION 2. Subchapter B, Chapter 531, Government Code, is
3 amended by adding Sections 531.02485 and 531.02486 to read as
4 follows:

5 Sec. 531.02485. REQUIRED REVIEW OF CRIMINAL HISTORY RECORD
6 INFORMATION FOR CERTAIN RESIDENTIAL CAREGIVERS. (a) In this
7 section, "residential caregiver" means an individual who provides,
8 through a group home or other residential facility licensed by or
9 operated under the authority of the commission, community-based
10 residential care services:

11 (1) to not more than four individuals with an
12 intellectual or developmental disability at any time; and

13 (2) at a residence other than the home of the
14 individual providing the services.

15 (b) A Medicaid provider, including a provider providing
16 services under a 1915(c) waiver program, that employs or contracts
17 with a residential caregiver to provide community-based
18 residential care services to Medicaid recipients shall review state
19 and federal criminal history record information and obtain
20 electronic updates from the Department of Public Safety of arrests
21 and convictions for each residential caregiver the provider employs
22 or contracts with to provide community-based residential care
23 services to Medicaid recipients.

24 (c) An individual who has been convicted of an offense
25 described by Section 250.006, Health and Safety Code, may not be
26 employed or contracted as a residential caregiver or otherwise
27 provide direct care to a Medicaid recipient with an intellectual or

1 developmental disability to the same extent and, if applicable, for
2 the same period of time prescribed by Section 250.006(a) or (b),
3 Health and Safety Code, as an individual similarly convicted under
4 those subsections. An individual who violates this subsection is
5 subject to disciplinary action by the commission.

6 (d) A Medicaid provider shall immediately discharge any
7 individual the provider employs or contracts with as a residential
8 caregiver who is convicted of an offense described by Section
9 250.006, Health and Safety Code.

10 (e) Notwithstanding any other law, the commission shall
11 take disciplinary action against a Medicaid provider that violates
12 this section, including imposing an administrative penalty or
13 vendor hold, terminating a contract or license, or any other
14 disciplinary action the commission determines appropriate. In
15 determining the appropriate disciplinary action to take against a
16 Medicaid provider under this subsection, the commission shall
17 consider:

- 18 (1) the nature and seriousness of the violation;
19 (2) the history of previous violations; and
20 (3) any other matter justice may require.

21 (f) The executive commissioner shall adopt rules necessary
22 to implement this section.

23 Sec. 531.02486. SUSPENDING EMPLOYMENT OF CERTAIN
24 RESIDENTIAL CAREGIVERS. (a) In this section:

25 (1) "Consumer-directed service option" has the
26 meaning assigned by Section 531.051.

27 (2) "Reportable conduct" includes:

1 (A) abuse or neglect that causes or may cause
2 death or harm to an individual using the consumer-directed service
3 option or a resident;

4 (B) sexual abuse of an individual using the
5 consumer-directed service option or a resident;

6 (C) financial exploitation of an individual
7 using the consumer-directed service option or a resident in an
8 amount of \$25 or more; and

9 (D) emotional, verbal, or psychological abuse
10 that causes harm to an individual using the consumer-directed
11 service option or a resident.

12 (3) "Resident" means an individual residing in a group
13 home or other residential facility who is receiving services from a
14 residential caregiver.

15 (4) "Residential caregiver" has the meaning assigned
16 by Section 531.02485.

17 (b) A Medicaid provider, including a provider providing
18 services under a Section 1915(c) waiver program, who employs or
19 contracts with a residential caregiver to provide community-based
20 residential care services through a group home or other residential
21 facility described by Subsection (a)(4), on receiving notice of the
22 reportable conduct finding, shall immediately suspend the
23 employment or contract of an individual the provider employs or
24 contracts with as a residential caregiver who the commission finds
25 has engaged in reportable conduct while the individual exhausts any
26 applicable appeals process, including informal and formal appeals,
27 pending a final decision by an administrative law judge. The

1 provider may not reinstate the individual's employment or contract
2 during the course of any appeals process.

3 (c) Notwithstanding any other law, the commission shall
4 take disciplinary action against a Medicaid provider that violates
5 Subsection (b), including imposing an administrative penalty or
6 vendor hold, terminating a contract or license, or any other
7 disciplinary action the commission determines appropriate. In
8 determining the appropriate disciplinary action to take against a
9 Medicaid provider under this subsection, the commission shall
10 consider:

- 11 (1) the nature and seriousness of the violation;
12 (2) the history of previous violations; and
13 (3) any other matter justice may require.

14 (d) The executive commissioner shall adopt rules necessary
15 to implement this section.

16 SECTION 3. The heading to Chapter 253, Health and Safety
17 Code, is amended to read as follows:

18 CHAPTER 253. EMPLOYEE MISCONDUCT; REGISTRY

19 SECTION 4. Section 253.001(4), Health and Safety Code, is
20 amended to read as follows:

- 21 (4) "Facility" means:
22 (A) a facility:
23 (i) licensed by the department; ~~or~~
24 (ii) licensed under Chapter 252; or
25 (iii) licensed under Chapter 555;
26 (B) an adult foster care provider that contracts
27 with the department;

1 (C) a home and community support services agency
2 licensed by the department under Chapter 142; or

3 (D) a prescribed pediatric extended care center
4 licensed under Chapter 248A.

5 SECTION 5. Chapter 253, Health and Safety Code, is amended
6 by adding Section 253.0025 to read as follows:

7 Sec. 253.0025. EMPLOYMENT SUSPENSION FOR FACILITY
8 EMPLOYEES ACCUSED OF COMMITTING REPORTABLE CONDUCT. A facility
9 shall suspend the employment of a facility employee who the Health
10 and Human Services Commission finds has engaged in reportable
11 conduct while the employee exhausts any applicable appeals process,
12 including informal and formal appeals and any hearing or judicial
13 review conducted in accordance with Section 253.004 or 253.005,
14 pending a final decision by an administrative law judge. The
15 facility may not reinstate the employee's position during the
16 course of any applicable appeals process.

17 SECTION 6. If before implementing any provision of this Act
18 a state agency determines that a waiver or authorization from a
19 federal agency is necessary for implementation of that provision,
20 the agency affected by the provision shall request the waiver or
21 authorization and may delay implementing that provision until the
22 waiver or authorization is granted.

23 SECTION 7. This Act takes effect September 1, 2023.

President of the Senate

Speaker of the House

I certify that H.B. No. 1009 was passed by the House on May 5, 2023, by the following vote: Yeas 141, Nays 0, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1009 on May 25, 2023, by the following vote: Yeas 140, Nays 0, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1009 was passed by the Senate, with amendments, on May 21, 2023, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor