

By: Kolkhorst, et al.  
(Frank)

S.B. No. 1629

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of certain nursing facilities, including  
licensing requirements and Medicaid participation requirements.

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

SECTION 1. Section 533.00251(c), Government Code, as  
effective September 1, 2023, is amended to read as follows:

(c) Subject to Section 533.0025 and notwithstanding any  
other law, the commission shall provide benefits under Medicaid to  
recipients who reside in nursing facilities through the STAR + PLUS  
Medicaid managed care program. In implementing this subsection,  
the commission shall ensure:

(1) that a nursing facility is paid not later than the  
10th day after the date the facility submits a clean claim;

(1-a) that a nursing facility complies with the direct  
care expense ratio adopted under Section 32.0286, Human Resources  
Code;

(2) the appropriate utilization of services  
consistent with criteria established by the commission;

(3) a reduction in the incidence of potentially  
preventable events and unnecessary institutionalizations;

(4) that a managed care organization providing  
services under the managed care program provides discharge  
planning, transitional care, and other education programs to  
physicians and hospitals regarding all available long-term care

1 settings;

2 (5) that a managed care organization providing  
3 services under the managed care program:

4 (A) assists in collecting applied income from  
5 recipients; and

6 (B) provides payment incentives to nursing  
7 facility providers that reward reductions in preventable acute care  
8 costs and encourage transformative efforts in the delivery of  
9 nursing facility services, including efforts to promote a  
10 resident-centered care culture through facility design and  
11 services provided;

12 (6) the establishment of a portal that is in  
13 compliance with state and federal regulations, including standard  
14 coding requirements, through which nursing facility providers  
15 participating in the STAR + PLUS Medicaid managed care program may  
16 submit claims to any participating managed care organization;

17 (7) that rules and procedures relating to the  
18 certification and decertification of nursing facility beds under  
19 Medicaid are not affected;

20 (8) that a managed care organization providing  
21 services under the managed care program, to the greatest extent  
22 possible, offers nursing facility providers access to:

23 (A) acute care professionals; and

24 (B) telemedicine, when feasible and in  
25 accordance with state law, including rules adopted by the Texas  
26 Medical Board; and

27 (9) that the commission approves the staff rate

1 enhancement methodology for the staff rate enhancement paid to a  
2 nursing facility that qualifies for the enhancement under the  
3 managed care program.

4 SECTION 2. Subchapter A, Chapter 533, Government Code, is  
5 amended by adding Section 533.00512 to read as follows:

6 Sec. 533.00512. NURSING FACILITY PROVIDER AGREEMENTS:  
7 COMPLIANCE WITH DIRECT CARE EXPENSE RATIO. (a) A contract between  
8 a managed care organization and the commission to provide health  
9 care services to recipients must require that each provider  
10 agreement between the organization and a nursing facility include a  
11 requirement that the facility comply with the direct care expense  
12 ratio adopted under Section 32.0286, Human Resources Code.

13 (b) This section does not apply to a state-owned facility.

14 SECTION 3. Section 242.032, Health and Safety Code, is  
15 amended by adding Subsection (b-1) to read as follows:

16 (b-1) The application must:

17 (1) include the name of each person with a direct or  
18 indirect ownership interest of five percent or more in:

19 (A) the nursing facility, including a subsidiary  
20 or parent company of the facility; and

21 (B) the real property on which the nursing  
22 facility is located, including any owner, common owner, tenant, or  
23 sublessee; and

24 (2) describe the exact ownership interest of each of  
25 those persons in relation to the facility or property.

26 SECTION 4. Subchapter B, Chapter 242, Health and Safety  
27 Code, is amended by adding Section 242.0333 to read as follows:

1       Sec. 242.0333. NOTIFICATION OF CHANGE TO OWNERSHIP INTEREST  
2 APPLICATION INFORMATION. A license holder shall notify the  
3 commission, in the form and manner the commission requires, of any  
4 change to the ownership interest application information provided  
5 under Section 242.032(b-1).

6       SECTION 5. Section 32.028, Human Resources Code, is amended  
7 by amending Subsection (i) and adding Subsection (i-1) to read as  
8 follows:

9       (i) The executive commissioner shall ensure that rules  
10 governing the incentives program described by Subsection (g)(1):

11           (1) provide that participation in the program by a  
12 nursing facility is voluntary;

13           (2) do not impose on a nursing facility not  
14 participating in the program a minimum spending requirement for  
15 direct care staff wages and benefits;

16           (3) do not set a base rate for a nursing facility  
17 participating in the program that is more than the base rate for a  
18 nursing facility not participating in the program; ~~and~~

19           (4) establish a funding process to provide incentives  
20 for increasing direct care staff and direct care wages and benefits  
21 in accordance with appropriations provided; and

22           (5) to the extent permitted by federal law, require  
23 the commission to recoup all or part of an incentive payment if the  
24 nursing facility fails to satisfy a program requirement.

25       (i-1) The commission shall prohibit a provider who is the  
26 subject of the recoupment of an incentive payment under Subsection  
27 (i)(5) from participating in the incentives program described by

1 Subsection (g)(1) for a period of not less than two consecutive  
2 years following the date on which the recoupment occurs. The  
3 commission shall publish and maintain on the commission's Internet  
4 website a list of each provider prohibited from participating in  
5 the incentives program under this subsection.

6 SECTION 6. Subchapter B, Chapter 32, Human Resources Code,  
7 is amended by adding Section 32.0286 to read as follows:

8 Sec. 32.0286. ANNUAL DIRECT CARE EXPENSE RATIO FOR  
9 REIMBURSEMENT OF CERTAIN NURSING FACILITY PROVIDERS. (a) In this  
10 section, "direct care expense":

11 (1) includes an expense for:

12 (A) non-revenue generating support services,  
13 such as laundry, housekeeping, dietary services, and nursing  
14 administration;

15 (B) ancillary services, such as laboratory tests  
16 and services, physical therapy services, occupational therapy  
17 services, speech-language pathology services, or audiological  
18 services; and

19 (C) program services, such as an adult day-care  
20 program; and

21 (2) does not include an expense for:

22 (A) administrative costs other than nursing  
23 administration;

24 (B) capital costs;

25 (C) debt service;

26 (D) taxes, other than sales and payroll taxes;

27 (E) capital depreciation;

1                   (F) rental or lease payments; or

2                   (G) financial services.

3           (b) Notwithstanding any other law, the executive  
4 commissioner by rule shall establish an annual direct care expense  
5 ratio, including a process for determining the ratio, applicable to  
6 the reimbursement of nursing facility providers for providing  
7 services to recipients under the medical assistance program. In  
8 establishing the ratio, the executive commissioner shall require  
9 that at least 80 percent of the portion of the medical assistance  
10 reimbursement amount paid to a nursing facility that is  
11 attributable to patient care expenses is spent on reasonable and  
12 necessary direct care expenses.

13           (c) The executive commissioner shall adopt rules necessary  
14 to ensure each nursing facility provider that participates in the  
15 medical assistance program complies with the direct care expense  
16 ratio adopted under this section.

17           (d) To the extent permitted by federal law, the commission  
18 may recoup all or part of the reimbursement amounts paid to a  
19 nursing facility that are subject to the direct care expense ratio  
20 under this section if the facility fails to spend the reimbursement  
21 amounts in accordance with the direct care expense ratio.

22           (e) The commission may not require a nursing facility to  
23 comply with the direct care expense ratio as a condition of  
24 participation in Medicaid.

25           (f) This section does not apply to a state-owned facility.

26           SECTION 7. (a) The Health and Human Services Commission  
27 shall, in a contract between the commission and a managed care

1 organization under Chapter 533, Government Code, that is entered  
2 into or renewed on or after the effective date of this Act, require  
3 the managed care organization to comply with Section 533.00512,  
4 Government Code, as added by this Act.

5 (b) The Health and Human Services Commission shall seek to  
6 amend contracts entered into with managed care organizations under  
7 Chapter 533, Government Code, before the effective date of this Act  
8 to require those managed care organizations to comply with Section  
9 533.00512, Government Code, as added by this Act. To the extent of  
10 a conflict between that section and a provision of a contract with a  
11 managed care organization entered into before the effective date of  
12 this Act, the contract provision prevails.

13 SECTION 8. If before implementing any provision of this Act  
14 a state agency determines that a waiver or authorization from a  
15 federal agency is necessary for implementation of that provision,  
16 the agency affected by the provision shall request the waiver or  
17 authorization and may delay implementing that provision until the  
18 waiver or authorization is granted.

19 SECTION 9. This Act takes effect September 1, 2023.