

By: Kolthorst

S.B. No. 1629

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the regulation of certain nursing facilities and other
3 long-term care facilities, including licensing requirements and
4 Medicaid participation requirements.

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

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

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

13 (1) that a nursing facility is paid not later than the
14 10th day after the date the facility submits a clean claim;

15 (1-a) that a nursing facility complies with the direct
16 care expense ratio adopted under Section 32.0286, Human Resources
17 Code;

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

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

22 (4) that a managed care organization providing
23 services under the managed care program provides discharge
24 planning, transitional care, and other education programs to

1 physicians and hospitals regarding all available long-term care
2 settings;

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

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

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

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

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

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

24 (A) acute care professionals; and

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

1 (9) that the commission approves the staff rate
2 enhancement methodology for the staff rate enhancement paid to a
3 nursing facility that qualifies for the enhancement under the
4 managed care program.

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

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

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

17 (b-1) The application must:

18 (1) include the name of each person with an ownership
19 interest in:

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

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

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

27 SECTION 4. Subchapter B, Chapter 242, Health and Safety

1 Code, is amended by adding Section 242.0333 to read as follows:

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

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

10 (g) Subject to Subsection (i), the executive commissioner
11 shall ensure that the rules governing the determination of rates
12 paid for nursing facility services improve the quality of care by:

13 (1) providing a program offering incentives for
14 increasing direct care staff and direct care wages and benefits[
15 ~~but only to the extent that appropriated funds are available after~~
16 ~~money is allocated to base rate reimbursements as determined by the~~
17 ~~commission's nursing facility rate setting methodologies]; and~~

18 (2) if appropriated funds are available after money is
19 allocated for payment of incentive-based rates under Subdivision
20 (1), providing incentives that incorporate the use of a quality of
21 care index, a customer satisfaction index, and a resolved
22 complaints index developed by the commission.

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

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

27 (2) do not impose on a nursing facility not

1 participating in the program a minimum spending requirement for
2 direct care staff wages and benefits;

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

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

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

12 (i-1) The commission shall use money the commission recoups
13 in accordance with rules adopted under Subsection (i)(5) to
14 continue funding the incentives program described by Subsection
15 (g)(1).

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

18 Sec. 32.0286. ANNUAL DIRECT CARE EXPENSE RATIO FOR
19 REIMBURSEMENT OF CERTAIN LONG-TERM CARE FACILITY PROVIDERS. (a)
20 In this section, "direct care expense":

21 (1) includes an expense for:

22 (A) non-revenue generating support services,
23 such as laundry, housekeeping, dietary services, and nursing
24 administration;

25 (B) ancillary services, such as laboratory tests
26 and services, physical therapy services, occupational therapy
27 services, speech-language pathology services, or audiological

1 services; and

2 (C) program services, such as an adult day-care
3 program; and

4 (2) does not include an expense for:

5 (A) administrative costs other than nursing
6 administration;

7 (B) capital costs;

8 (C) debt service;

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

10 (E) capital depreciation;

11 (F) rental or lease payments; or

12 (G) financial services.

13 (b) Notwithstanding any other law, the executive
14 commissioner by rule shall establish an annual direct care expense
15 ratio, including a process for determining the ratio, applicable to
16 the reimbursement of nursing facility and other long-term care
17 facility providers for providing services to recipients under the
18 medical assistance program. In establishing the ratio, the
19 executive commissioner shall require that at least 80 percent of
20 medical assistance reimbursement amounts paid to a nursing facility
21 or other long-term care facility is spent on direct care expenses.

22 (c) The executive commissioner shall adopt rules necessary
23 to ensure each nursing facility provider and other long-term care
24 facility that participates in the medical assistance program
25 complies with the direct care expense ratio adopted under this
26 section.

27 SECTION 7. (a) The Health and Human Services Commission

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

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

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

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