# BILL ANALYSIS

C.S.H.B. 2256
By: McReynolds
Human Services
Committee Report (Substituted)

## BACKGROUND AND PURPOSE

The Health and Human Services Commission (HHSC) administers the Medicaid and Medicare program for the state of Texas. States that participate in the Medicaid program must comply with all federal requirements governing the program. Federal regulations require the state Medicaid agency to provide an opportunity for a fair hearing to any beneficiary who requests one. The request may be because the beneficiary believes the agency has erroneously terminated, suspended, or reduced a Medicaid service. Federal regulations require the state Medicaid agency to provide an opportunity for a fair hearing to any beneficiary who makes such a request. Federal regulations require the agency to mail the beneficiary a notice at least 10 days before the date of the termination or a reduction of services. If the beneficiary requests a fair hearing before the date of the termination or reduction of services, federal regulations require that the services be maintained until a decision is rendered after the hearing. These federal due process protections apply to all Medicaid-funded services.

HHSC rules exempt services that involve prior authorization from these federal requirements. A good example is private duty nursing services. By way of example, suppose there is a young Medicaid beneficiary who had been receiving 25 hours per week of private duty nursing services for over three years, requesting and receiving prior authorization for the services every 60 days. Then one day, the doctor submits the request for the prior authorized nursing services and is denied. The denial of nursing services takes effect immediately because HHSC does not provide the 10-day notice for prior authorized services. Believing HHSC's denial of nursing services to be erroneous, the beneficiary may immediately request a fair hearing. Because nursing services are prior authorized, HHSC will not maintain the nursing services pending the outcome of the hearing. If, after the hearing, the hearing officer finds that HHSC's denial of services was erroneous, the beneficiary's nursing services will be restored but only for whatever days remain in the authorization period at issue, if any. If the hearing decision is rendered after the end of the 60-day authorization period at issue, the beneficiary's services will not be restored, even if the hearing officer finds HHSC's denial of the services was erroneous, because a new prior authorization period will have already begun. Thus under the current rules, the beneficiary must go without nursing services while waiting for a hearing and a decision, and, even if the hearing officer finds that HHSC's action was erroneous, the beneficiary will most likely never get the wrongfully-denied nursing services restored. The federal regulations requiring advance notice and maintaining services were enacted to protect against such an unfair result.

HHSC was sued in federal court, lost in 2006 and has attempted to rewrite the rules but it is unclear whether they would now be in compliance with the federal regulations. This bill simply requires the Health and Human Services Commission to eliminate the exemptions for prior authorized services from its fair hearing rules so that the rules comply with the federal regulations.

## RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

## ANALYSIS

C.S.H.B. 2256 requires the executive commissioner of the Health and Human Services Commission (HHSC) to: facilitate and enforce coordinated planning and delivery of health and human services; develop with the Department of Information Resources automation standards

for computer systems to enable health and human services agencies, including agencies operating at a local level, to share pertinent data; establish and enforce uniform regional boundaries for all health and human services agencies; carry out statewide health and human services needs surveys and forecasting; perform independent special-outcome evaluations of health and human services programs and activities; assist, at the request of a governmental entity, that entity in implementing a coordinated plan that may include co-location of services, integrated intake, and coordinated referral and case management and is tailored to the needs and priorities of that entity; and promulgate uniform fair hearing rules for all Medicaid-funded services.

The rules promulgated must provide due process to an applicant for Medicaid services and to a Medicaid recipient who seeks a Medicaid service, including a service that requires prior authorization. The rules must provide the protections for applicants and recipients required by 42 C.F.R. Part 431, Subpart E, including requiring that: the written notice to an individual of individual's rights to a hearing contain an explanation of the circumstances under which Medicaid is continued if a hearing is requested and be mailed at least 10 days before the date the individual's Medicaid eligibility or service is scheduled to be terminated, suspended, or reduced, except as provided by 42 C.F.R. Section 431.213 or 431.214; and if a hearing is requested before the date a Medicaid recipient's service, including a service that requires prior authorization, is scheduled to be terminated, suspended, or reduced, the agency may not take that proposed action before a decision is rendered after the hearing unless: it is determined that the sole issue is one of federal or state law or policy; and the agency promptly informs the recipient in writing that services are to be terminated, suspended, or reduced pending the hearing decision.

If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision is required to request the waiver or authorization and is authorized to delay implementing that provision until the waiver or authorization is granted.

**EFFECTIVE DATE**

September 1, 2007.

**COMPARISON OF ORIGINAL TO SUBSTITUTE**

C.S.H.B. 2256 modifies the original bill by making non-substantive, numbering changes, and by deleting subsection (C). The substitute adds new language to include a "service that requires prior authorization" in subsection (B) of the bill.