

BILL ANALYSIS

Senate Research Center
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H.B. 3778
By: Rose, Herrero (Ogden)
Finance
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Medicaid is currently the primary source of funding for the nursing home industry. A quality assurance fee to fund provider rates increases would allow the state to draw down millions of new federal Medicaid dollars for the citizens of Texas in nursing homes. Nursing homes in Texas claim to be under-funded, and the additional dollars are needed to provide quality care and improve their financial stability. At least 30 states currently assess quality assurance fees on nursing homes. States that have imposed nursing home provider taxes generally have done so to provide relief to the nursing homes industry.

H.B. 3778 requires the Health and Human Services Commission to establish quality assurance for certain nursing facility health care providers. The fee would be an allowable cost reimbursement under Medicaid and could not be charged directly to a patient or resident, since compensation for services in nursing homes pays for all operations of the home.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 (Section 242.706, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 242, Health and Safety Code, by adding Subchapter P, as follows:

SUBCHAPTER P. QUALITY ASSURANCE FEE

Sec. 242.701. DEFINITIONS. Defines "commission," "department," "executive commission," and "gross receipts."

Sec. 242.702. APPLICABILITY. Provides that this subchapter does not apply to a state-owned veteran's nursing facility, or certain entities.

Sec. 242.703. COMPUTING QUALITY ASSURANCE FEE. (a) Provides that a quality assurance fee is imposed on each institution subject to this subchapter for which a license fee is required to be paid under Section 242.034. Sets forth certain components of the quality assurance fee.

(b) Requires the Health and Human Services Commission (HHSC) to establish quality assurance fee for each patient day in an amount that will produce annual revenues of not more than 5.5 percent of the institution's total annual gross receipts in this state. Provides that the fee is subject to adjustment as necessary. Provides that the amount of the quality assurance fee may vary according to the number of patient days provided by an institution as necessary to obtain a waiver under federal regulations at 42 C.F.R. Section 433.68(e).

(c) Requires the amount of the quality assurance fee to be determined using patient days and certain gross receipts.

(d) Provides that the quality assurance fee is an allowable cost for reimbursement under the state Medicaid program.

(e) Prohibits a nursing facility from listing the quality assurance fee a separate charge on a patient's or resident's billing statement or otherwise directly or indirectly attempt to charge the quality assurance fee to a patient or resident.

Sec. 242.704. PATIENT DAYS. Requires an institution, for each calendar day, to determine the number of patient days by adding certain factors.

Sec. 242.705. REPORTING AND COLLECTION. (a) Requires HHSC or the Texas Department of Human Services as directed by the executive commissioner of HHSC (executive commissioner) to collect the quality assurance fee.

(b) Requires each institution, not later than the 25th day after the last day of the month, to file with HHSC a report stating the total patient days for the month; and pay the quality assurance fee.

Sec. 242.706. RULES; ADMINISTRATIVE PENALTY. (a) Requires the executive commissioner to adopt rules for the administration of this subchapter, including rules related to the imposition and collection of the quality assurance fee.

(b) Authorizes the executive commissioner to adopt rules granting exceptions from the quality assurance fee, including an exception for units of service reimbursed through Medicare Part A, if HHSC obtains all waivers necessary under federal law, including 42 C.F.R. Section 433.68(e).

(c) Prohibits an administrative penalty assessed under this subchapter in accordance with Section 242.066 from exceeding one-half of the amount of the outstanding quality assurance fee or \$20,000, whichever is greater.

Sec. 242.707. NURSING HOME QUALITY ASSURANCE FEE ACCOUNT. (a) Provides that the nursing home quality assurance fee account is a dedicated account in the general revenue fund. Requires that interest earned on money in the account be credited to the account.

(b) Requires the comptroller to deposit money collected under this subchapter to the credit of the account.

(c) Requires money in the account together with federal matching money to be used, subject to legislative appropriation and this subchapter, to support or maintain an increase in Medicaid reimbursement for institutions.

Sec. 242.708. REIMBURSEMENT OF INSTITUTIONS. (a) Authorizes HHSC, subject to legislative appropriation, to use money in the nursing home quality assurance fee account, together with any federal money available to match that money to offset the institution's allowable expenses under the state Medicaid program and increase reimbursement paid under the Medicaid program to institutions.

(b) Requires HHSC to devise the formula by which amounts received under this subchapter increase the reimbursement rates paid to institutions under the state Medicaid program.

Sec. 242.709. INVALIDITY; FEDERAL FUNDS. Requires the comptroller, provided certain conditions exist, to stop collection of the quality assurance fee and, not later than the 30th day after the date collection is stopped, to return to the institutions that paid the fees, in proportion to the total amount paid by those institutions, any money deposited to the total amount paid by those institutions, and any money deposited to the credit of the nursing home quality assurance fee account but not spent.

Sec. 242.710. REVISION IN CASE OF DISAPPROVAL. Requires HHSC, if the Centers for Medicare and Medicaid Services disapproves the quality assurance fee plan established under this subchapter, to revise the associated state plan amendments and waiver requests as necessary to comply with federal regulations provided by 42 C.F.R. Section 433.68(e). Requires the revisions to be completed as soon as practicable after the date HHSC receives notice of the disapproval.

Sec. 242.711. AUTHORITY TO ACCOMPLISH PURPOSES OF SUBCHAPTER. Authorizes the executive commissioner to adopt a definition, a method of computation, or a rate that differs from those expressly provided by or expressly authorized by this subchapter to the extent the difference is necessary to accomplish the purposes of this subchapter.

SECTION 2. (a) Requires the executive commissioner, notwithstanding Section 242.703, Health and Safety Code, as added by this Act, to establish the initial quality assurance fee imposed under Subchapter P, Chapter 242, Health and Safety Code, as added by this Act, based on available revenue and patient day information. Provides that the initial quality assurance fee established under this section remains in effect until HHSC obtains the information necessary to set the fee under Section 242.703, Health and Safety Code, as added by this Act.

(b) Requires the executive commissioner, as soon as practicable after the effective date of this Act, to adopt rules as necessary to implement subchapter P, Chapter 242, Health and Safety Code, as added by this Act.

(c) Authorizes a state agency to delay implementing a provision of this Act until a requested federal waiver or authorization necessary to implement that provision is obtained.

SECTION 3. Prohibits a quality assurance fee, notwithstanding any other provision of law, from being imposed under Section 242.703, Health and Safety Code, as added by this Act, or collected under Section 242.705, Health and Safety Code, as added by this Act, until the amendment to the state plan for Medicaid that increases the rates paid to the nursing facilities for providing services under the state Medicaid program is approved by the Centers for Medicare and Medicaid Services or another applicable federal government agency; and nursing facilities have been compensated retroactively at the increased rate for services provided under the state Medicaid program for the period beginning with the effective date of this Act.

SECTION 4. Effective date: September 1, 2007.