BILL ANALYSIS

C.S.H.B. 3778
By: Rose
Appropriations
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Medicaid is currently the primary source of funding for the nursing home industry. A quality assurance fee to fund provider rate 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.

Compensation for services in nursing homes pays for all operations of the home. The fee would be an allowable cost reimbursement under Medicaid and could not be charged directly to a patient or resident.

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.

CSHB 3778 would give the Health and Human Services Commission broad authority to establish quality assurance fees for any nursing facility health care provider, excluding state-owned veterans' nursing facilities and continuing care retirement communities.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTIONS 1 and 2 of this bill.

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 commissioner," and "gross receipts."

Sec. 242.702. APPLICABILITY. Provides that this subchapter does not apply to a state-owned veterans' nursing facility or an entity that provides on a single campus a combination of services, which may include independent living services, licensed assisted living services, or licensed nursing facility care services and that operates under a continuing care retirement community certificate of authority issued by the Texas Department of Insurance or in which, during the previous 12 months, the combined patient days of service provided to independent living and assisted living residents, excluding services provided to persons occupying facility beds in a licensed nursing facility, exceeded the patient days of service provided to nursing facility residents.

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 must be paid under Section 242.034. Sets forth the characteristics of the quality assurance fee payment.

(b) Requires the Health and Human Services Commission (commission) to establish a quality assurance fee for each patient day so that the fee does not produce annual revenues greater 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. Authorizes the amount of the quality assurance fee to 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) Provides that the amount of the quality assurance fee must be determined using patient days and gross receipts reported to the commission or to the Department of Aging and Disability Services (department) at the direction of the commission and covering a period of at least six months.

(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 as a separate charge on a patient's or resident's billing statement or otherwise directly or indirectly attempting 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 based on a formula involving the number of patients and beds.

Sec. 242.705. REPORTING AND COLLECTION. (a) Requires the commission or department as directed by the executive commissioner of the commission (executive commissioner) to collect the quality assurance fee.

(b) Requires each institution, not later than the 25th day after the last day of a month, to file 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 the commission 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 interest earned on money in the account to 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, subject to legislative appropriation and this subchapter, to be used to support or maintain an increase in Medicaid reimbursement for institutions.

Sec. 242.708. REIMBURSEMENT OF INSTITUTIONS. (a) Authorizes the commission, 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 rates paid under the Medicaid program to institutions.

(b) Requires the commission 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 commission, if any portion of this subchapter is held invalid by a final order of a court that is not subject to appeal, or if the commission determines that the imposition of the fee and the expenditure as prescribed by this subchapter of amounts collected will not entitle the state to receive additional federal funds under the Medicaid program, 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 credit of the nursing home quality assurance fee account but not spent.

Sec. 242.710. REVISION IN CASE OF DISAPPROVAL. Requires the commission, 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). Provides that the revisions be completed as soon as practicable after the date the commission receives notice of the disapproval.

Sec. 242.711. AUTHORITY TO ACCOMPLISH PURPOSES OF SUBCHAPTER. Authorizes the executive commissioner by rule, 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 the commission 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) Requires the agency affected by the provision, if before implementing any provision of this Act a state agency determines a waiver or authorization from a federal agency is necessary for implementation of that provision, to request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

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. States the effective date for this Act.

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

In the list of entities to which Subchapter P does not apply, the substitute removes the reference to "continuing care retirement community" and replaces it with "an entity that provides on a single campus a combination of services, which may include independent living services, licensed assisted living services, or licensed nursing facility care services and that operates under a continuing care retirement community certificate of authority issued by the Texas Department of Insurance or in which, during the previous 12 months, the combined patient days of service provided to independent living and assisted living residents, excluding services provided to persons occupying facility beds in a licensed nursing facility, exceeded the patient days of service provided to nursing facility residents."

The substitute requires the Health and Human Services Commission (commission) to establish a quality assurance fee for each patient day so that the fee does not produce annual revenues greater than 5.5 percent, rather than 6 percent, of the institution's total annual gross receipts in this state.

The substitute makes a technical correction to clarify that the use of money in the nursing home quality assurance fee account to offset allowable expenses applies to an institution's allowable expenses. The substitute provides that the use of money in the account may be used to offset expenses and, rather than or, increase reimbursement.

The substitute adds the provision prohibiting a quality assurance fee from being imposed until increased rates are approved and nursing facilities have been compensated retroactively at the increased rate.