

By: Pitts

H.B. No. 1508

A BILL TO BE ENTITLED

AN ACT

relating to the creation and administration of a quality assurance fee for nursing facilities.

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

SECTION 1. Chapter 242, Health and Safety Code, is amended by adding Subchapter P to read as follows:

SUBCHAPTER P. TEXAS INDEPENDENCE FUND

Sec. 242.701. DEFINITIONS. In this subchapter:

(1) "Account" means the Texas Independence Fund account.

(2) "Commission" means the Health and Human Services Commission.

(3) "Department" means the Department of Aging and Disability Services.

(4) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(5) "Gross receipts" means money paid as compensation for services provided to residents, including client participation. The term does not include charitable contributions to an institution.

Sec. 242.702. APPLICABILITY. This subchapter does not apply to:

(1) a state-owned veterans' nursing facility;

(2) an entity that provides on a single campus a

1 continuum of services, including independent living services,
2 licensed assisted living services, and licensed nursing facility
3 care services, and that is exempt from ad valorem taxation under
4 Chapter 11, Tax Code;

5 (3) a facility in its first year of licensed
6 operation; or

7 (4) a facility in which all of the residents are
8 Medicaid-eligible.

9 Sec. 242.703. COMPUTING QUALITY ASSURANCE FEE. (a) A
10 quality assurance fee is imposed on each facility subject to this
11 subchapter for which a license fee must be paid under Section
12 242.034. The quality assurance fee payment:

13 (1) is an amount established under Subsection (b)
14 multiplied by the number of patient days as determined in
15 accordance with Section 242.704;

16 (2) is payable monthly; and

17 (3) is in addition to other fees imposed under this
18 chapter.

19 (b) The commission shall establish a quality assurance fee
20 for each patient day so that the fee does not produce annual
21 revenues greater than six percent of the total annual gross
22 receipts in this state.

23 (c) The amount of the quality assurance fee must be
24 determined using patient days and gross receipts:

25 (1) reported to the commission or to the department at
26 the direction of the commission; and

27 (2) covering a period of at least six months.

1 (d) The quality assurance fee is an allowable cost for
2 reimbursement under the state Medicaid program.

3 (e) A facility may not list the quality assurance fee as a
4 separate charge on a resident's billing statement or otherwise
5 directly or indirectly attempt to charge the quality assurance fee
6 to a resident.

7 (f) The quality assurance fee is subject to adjustment by
8 the commission as necessary.

9 (g) The amount of the quality assurance fee may vary
10 according to the number of patient days provided by a facility as
11 necessary to obtain a waiver under federal regulations at 42 C.F.R.
12 Section 433.68(e).

13 (h) Not later than 30 days before the date on which the
14 commission's fiscal year ends, the executive commissioner shall
15 recommend to the commission a quality assurance fee rate for the
16 following three fiscal years.

17 Sec. 242.704. PATIENT DAYS. (a) For each calendar day, an
18 institution shall determine the number of patient days by adding
19 the number of residents occupying an institution bed immediately
20 before midnight of that day plus the number of beds that are on hold
21 that day and that have been placed on hold for a period of three or
22 more consecutive calendar days during which payment for the bed is
23 owed.

24 (b) For purposes of Subsection (a), the following are not
25 counted in calculating patient days:

26 (1) a resident discharged from the facility for any
27 reason on that calendar day; and

1 (2) a bed on hold for less than three consecutive
2 calendar days.

3 Sec. 242.705. REPORTING AND COLLECTION. (a) The
4 commission or the department as directed by the executive
5 commissioner shall collect the quality assurance fee.

6 (b) Each facility shall, not later than the 25th day after
7 the last day of a month:

8 (1) file with the commission a report stating the
9 total patient days for the month; and

10 (2) pay the quality assurance fee.

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

15 (b) The executive commissioner may adopt rules granting
16 exceptions from the quality assurance fee, including an exception
17 for units of service reimbursed through Medicare Part A, if the
18 commission obtains all waivers necessary under federal law,
19 including 42 C.F.R. Section 433.68(e).

20 (c) Notwithstanding Section 242.066(b), an administrative
21 penalty assessed for a violation of this subchapter in accordance
22 with Section 242.066 may not exceed one-half of the amount of the
23 outstanding quality assurance fee or \$20,000, whichever is greater.

24 Sec. 242.707. TEXAS INDEPENDENCE FUND ACCOUNT. (a) The
25 Texas Independence Fund account is a dedicated account in the
26 general revenue fund. Interest earned on money in the account shall
27 be credited to the account.

1 (b) The comptroller shall deposit money collected under
2 this subchapter to the credit of the account.

3 (c) Subject to legislative appropriation and this
4 subchapter, money in the account together with federal matching
5 money shall be used:

6 (1) to support or maintain an increase in Medicaid
7 reimbursement for licensed facilities; and

8 (2) for other purposes specified by this subchapter.

9 Sec. 242.708. TEXAS INDEPENDENCE FUND ACCOUNT
10 DISBURSEMENT. (a) Subject to legislative appropriation, the
11 commission shall use money in the Texas Independence Fund account
12 in accordance with this section.

13 (b) The commission shall use 85 percent of the money in the
14 account, together with any federal money available to match that
15 money, to:

16 (1) offset allowable expenses under the state Medicaid
17 program; or

18 (2) increase reimbursement rates paid under the
19 Medicaid program to institutions.

20 (c) The commission shall devise the formula by which amounts
21 received under this subchapter increase the reimbursement rates
22 paid to institutions under the state Medicaid program.

23 (d) The commission may use not more than seven percent of
24 the money in the account to fund the department's quality assurance
25 inspection process, including activities and programs conducted by
26 the department's quality assurance resource center.

27 (e) The commission may use not more than five percent of the

1 money in the account to improve and promote vocational careers for
2 facility staff that provide direct care or indirect care by
3 providing grants to promote:

4 (1) education in food service, environmental service,
5 housekeeping, maintenance, and nursing care in secondary schools,
6 vocational schools, and community colleges; and

7 (2) continuing education for a person in a career
8 track described by Subdivision (1).

9 (f) The commission may use not more than three percent of
10 the money in the account to fund the activities described by this
11 subsection. The commission may use:

12 (1) not more than 40 percent of the money subject to
13 this subsection to recommend grants for new best practices and
14 design a mechanism for promoting these practices;

15 (2) not more than 35 percent of the money subject to
16 this subsection to recommend demonstration project grants for
17 innovative care of the elderly and disabled in any setting;

18 (3) not more than 10 percent of the money subject to
19 this subsection for research grants to accredited educational
20 institutions to research quality of life issues; and

21 (4) not more than 15 percent of the money subject to
22 this subsection to make capital loans for upgrades to facilities
23 to:

24 (A) upgrade life safety code equipment to meet or
25 maintain code compliance; and

26 (B) implement or install technology upgrades
27 that allow for new resident care management techniques.

1 (g) A loan made by the commission under Subsection (f)(4):

2 (1) may not be for more than an amount of \$250,000 or
3 for a term longer than five years;

4 (2) must be at an interest rate fixed at the time of
5 the loan equal to the prime rate as published by the Board of
6 Governors of the Federal Reserve System, less two percent, unless
7 that calculation would result in a negative interest rate;

8 (3) may be extended once for a term of not more than
9 two years, with a corresponding adjustment for the prime rate on the
10 date which the loan is extended; and

11 (4) is subject to recovery for default from any earned
12 Medicaid reimbursement due and payable to the facility.

13 Sec. 242.709. QUALITY ASSURANCE RESOURCE CENTER. The
14 commission, together with the department and the executive
15 commissioner, may create a quality assurance resource center using
16 funds allocated under Section 242.708(d) to:

17 (1) identify and meet the ongoing training needs of
18 facility survey staff to promote better care;

19 (2) establish mechanisms to identify and share best
20 practices;

21 (3) seek to solve problems identified by surveyors;
22 and

23 (4) establish demonstration programs to improve
24 survey efficiency, outcomes, and staff training.

25 Sec. 242.710. TEXAS INDEPENDENCE FUND ACCOUNT ADVISORY
26 COMMITTEE. (a) The executive commissioner shall appoint a Texas
27 Independence Fund account advisory committee composed of seven

1 persons as follows:

2 (1) two administrators or executives of
3 not-for-profit facilities in this state;

4 (2) two administrators or executives of for-profit
5 facilities in this state;

6 (3) two advocates for facility residents, at least one
7 of whom is a physician licensed to practice in this state; and

8 (4) the commissioner of the Department of Aging and
9 Disability Services.

10 (b) The advisory committee shall make recommendations to
11 the executive commissioner, commission, and department concerning:

12 (1) the quality assurance fee rate;

13 (2) vocational education needs related to care
14 provided in facilities, including nursing, environmental,
15 housekeeping, food service, maintenance, and other staff involved
16 in resident care and facility maintenance;

17 (3) an aging services resource center to:

18 (A) serve as a problem-solving resource center, a
19 best practices data center, and a staffing practices and medical
20 care techniques resource center; and

21 (B) recommend additional training for nursing
22 facility surveyors, quality assurance nurses, and life safety code
23 surveyors; and

24 (4) demonstration projects that promote new,
25 innovative, or best care practices for the care of the aged and
26 disabled.

27 (c) At the direction of the executive commissioner, the

1 advisory committee may oversee a demonstration project recommended
2 by the committee under Subsection (b)(4) and shall quantify the
3 project results and report to the executive commissioner at the end
4 of each two-year period during which the project is continued.

5 (d) The advisory committee shall meet at least quarterly to:

6 (1) establish priorities for best practices;

7 (2) provide feedback to the executive commissioner
8 regarding the quality assurance fee;

9 (3) provide guidance to the department regarding
10 priorities for the quality assurance resource center; and

11 (4) review the accomplishments of the demonstration
12 projects and loans funded from the account.

13 (e) The advisory committee shall hold open hearings to
14 gather information and public comment regarding the quality
15 assurance fee rate, vocational education needs, and proposals for
16 demonstration projects.

17 (f) Chapter 2110, Government Code, does not apply to the
18 size, composition, or duration of the advisory committee.

19 (g) Meetings of the advisory committee under this section
20 are subject to Chapter 551, Government Code.

21 SECTION 2. (a) Notwithstanding Section 242.703, Health and
22 Safety Code, as added by this Act, the executive commissioner of the
23 Health and Human Services Commission shall establish the initial
24 quality assurance fee imposed under Subchapter P, Chapter 242,
25 Health and Safety Code, as added by this Act, based on available
26 revenue and patient day information. The initial quality assurance
27 fee established under this section remains in effect until the

1 Health and Human Services Commission obtains the information
2 necessary to set the fee under Section 242.703, Health and Safety
3 Code, as added by this Act.

4 (b) As soon as practicable after the effective date of this
5 Act, the executive commissioner of the Health and Human Services
6 Commission shall adopt rules as necessary to implement Subchapter
7 P, Chapter 242, Health and Safety Code, as added by this Act.

8 (c) If before implementing any provision of this Act a state
9 agency determines a waiver or authorization from a federal agency
10 is necessary for implementation of that provision, the agency
11 affected by the provision shall request the waiver or authorization
12 and may delay implementing that provision until the waiver or
13 authorization is granted.

14 SECTION 3. This Act takes effect September 1, 2007.