

BILL ANALYSIS

H.B. 4562
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Human Services
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The state administered Medicaid program allows certain recipients to receive medical assistance that is paid to a nursing home. In determining the amount of medical assistance paid by the state to a nursing home, an adjustment is made for the "applied income" that is earned and unearned by the recipient or, if applicable, the recipient and the recipient's spouse. Current law and administrative rules relating to Medicaid allow for guardian fees to be deducted from the amount of applied income. The amount of the deduction is currently determined by the court as a guardian/fiduciary fee. The deduction of such fees ordered by the court results in a lower applied income amount, ultimately increasing the amount of medical assistance paid by the Medicaid program to a nursing home.

Although many states limit this deduction from applied income, current Texas law does not place a limit on the amount of court-ordered guardian fees that are deductible when calculating applied income for a recipient of medical assistance. By capping the amount of guardianship fees that can be deducted from applied income, the loophole is closed that currently exists between federal law and state provisions regarding Medicaid. The bill caps the amount of monthly guardian compensation, costs in establishing the guardianship, and other administrative costs associated with a guardianship that can be deducted in calculating the amount of applied income. The \$175 cap on the monthly guardian compensation fee was determined after examining the laws in other states such as Washington and Pennsylvania.

H.B. 4562 allows a guardian to submit a claim to receive reimbursement from the Medicaid program once a guardian's fees and expenses are approved by a court. The bill requires the executive commissioner of the Health and Human Services Commission to adopt rules for the reimbursement procedure.

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 SECTION 1 of this bill.

ANALYSIS

H.B. 4562 amends the Human Resources Code to require the Health and Human Services Commission, to the extent allowed by federal law, to provide Medicaid reimbursement for compensation of certain guardianship costs in a guardianship established for a Medicaid recipient with applied income. The bill requires the executive commissioner of the Health and Human Services Commission to adopt rules to provide a procedure by which a person to whom amounts are ordered paid may submit a claim to and receive reimbursement from the Medicaid program.

H.B. 4562 amends the Texas Probate Code to authorize a court that appoints a guardian for a Medicaid recipient who has applied income to order to be paid under the Medicaid program compensation to the guardian in an amount not to exceed \$175 per month, costs directly related

to establishing or terminating the guardianship not to exceed \$1,000, and other administrative costs related to the guardianship not to exceed \$1,000 during any three-year period. The bill authorizes costs ordered to be paid for the establishment or termination of the guardianship to include compensation and expenses for an attorney ad litem or guardian ad litem and reasonable attorney's fees for an attorney representing the guardian and establishes that such costs may exceed \$1,000 if the costs in excess of that amount are supported by documentation acceptable to the court and the costs are approved by the court. The bill defines "applied income" to mean the portion of the earned and unearned income of a Medicaid recipient or, if applicable, the recipient and the recipient's spouse, that is paid under Medicaid to a nursing home in which the recipient resides. The bill defines "medical assistance."

H.B. 4562 provides that if before implementing any of these provisions 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. The bill makes its provisions applicable to a guardianship created before, on, or after the effective date of the bill.

EFFECTIVE DATE

September 1, 2009.