

By: Nelson

S.B. No. 805

A BILL TO BE ENTITLED

AN ACT

relating to incentive payments for certain nursing facilities providing services under the medical assistance program.

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

SECTION 1. Section 32.021(f), Human Resources Code, is amended to read as follows:

(f) To encourage nursing facilities to provide the best possible care, the department shall operate [~~develop~~] an incentive payment program as provided by Section 32.0283 to recognize facilities providing the highest quality care to Medicaid residents.

SECTION 2. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.0283 to read as follows:

Sec. 32.0283. PERFORMANCE-BASED INCENTIVES FOR CERTAIN NURSING FACILITIES. (a) In this section:

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

(2) "Nursing facility" means a convalescent or nursing home or related institution licensed under Chapter 242, Health and Safety Code, that provides long-term care services, as defined by Section 22.0011, to medical assistance recipients.

(b) The executive commissioner by rule shall establish an incentive payment program for nursing facilities that is designed to motivate continuing improvement in the quality of care provided

1 to medical assistance recipients. The program must:

2 (1) specify that participation in the program by
3 facilities is voluntary;

4 (2) provide incentive payments in accordance with this
5 section to the facilities that meet or exceed performance
6 thresholds established by the executive commissioner, as provided
7 by Subsection (f); and

8 (3) offer incentives that are distinct from those
9 offered under Section 32.028(g).

10 (c) In establishing an incentive payment program under this
11 section, the executive commissioner shall adopt independent and
12 objective performance measures on which to award incentive
13 payments. The performance measures must include measures of:

14 (1) quality of care;

15 (2) quality of life;

16 (3) direct-care staff stability;

17 (4) recipient and family satisfaction;

18 (5) employee satisfaction;

19 (6) regulatory compliance;

20 (7) level of person-centered care, which must be based
21 on recognized measures of the degree to which a nursing facility
22 respects the needs and desires of the facility's residents and
23 their families; and

24 (8) the number of occupied Medicaid beds in the
25 nursing facility and the facility's total occupancy.

26 (d) The executive commissioner shall:

27 (1) for each performance measure adopted under

1 Subsection (c), establish a performance threshold for purposes of
2 determining eligibility for an incentive payment under the program;

3 (2) allocate points or payment values to each
4 performance measure adopted under Subsection (c) as the executive
5 commissioner determines appropriate, and award incentive payments
6 based on those allocations; and

7 (3) on a quarterly basis, determine the facilities
8 eligible for an incentive payment under this section and the
9 amounts of those payments.

10 (e) The department shall evaluate participating nursing
11 facilities' performances with respect to the performance measures
12 adopted under Subsection (c) at least quarterly, except that the
13 department shall evaluate those facilities' performances with
14 respect to the performance measures adopted under Subsections
15 (c)(4), (5), (6), and (7) either semiannually or annually, as
16 determined by the department.

17 (f) To be eligible for an incentive payment under the
18 program, a nursing facility must meet or exceed applicable
19 performance thresholds in at least two of the performance measures
20 adopted under Subsection (c), at least one of which must be quality
21 of care or quality of life.

22 (g) To the extent the executive commissioner determines
23 that appropriated funds are available after accounting for funds
24 necessary to pay nursing facility base rate reimbursement payments
25 and incentive payments under Section 32.028(g)(1), an incentive
26 paid during a period under this section must be at least one percent
27 but not more than five percent of the average medical assistance

1 nursing facility base rate reimbursement for that period,
2 determined without regard to:

3 (1) previous incentive payments made under this
4 section; or

5 (2) payments made under Section 32.028(g)(1).

6 (h) If the executive commissioner determines that it is
7 cost-effective and feasible, the executive commissioner shall
8 enter into a contract with a person who meets the requirements
9 specified by Subsection (i) to provide the following services
10 related to the program:

11 (1) data collection;

12 (2) data analysis; and

13 (3) reporting of nursing facility performance with
14 respect to adopted performance measures and the amounts of
15 incentive payments paid to facilities under this section.

16 (i) A person with whom the executive commissioner contracts
17 under Subsection (h) must have:

18 (1) previous successful and cost-effective
19 experience, as determined by the executive commissioner,
20 supporting state Medicaid programs that offer performance
21 incentive payments in connection with providing nursing facility
22 services;

23 (2) demonstrated ability to collect from public and
24 private sources, analyze, and report the information required under
25 Subsection (h) through the efficient use of Internet-based
26 technology and dedicated electronic databases;

27 (3) experience providing statistically valid national

1 and regional comparative benchmarking of nursing facilities'
2 performance with respect to one or more of the performance measures
3 under Subsection (c);

4 (4) recognized experience in providing actionable
5 performance data to nursing facilities that enables the facilities
6 to engage in continuing evidence-based quality improvement;

7 (5) successful experience, as determined by the
8 executive commissioner, in creating or populating public Internet
9 websites that:

10 (A) inform consumers of the relative performance
11 of nursing facilities; and

12 (B) assist consumers in choosing a nursing
13 facility to provide services; and

14 (6) relevant research experience, as determined by the
15 executive commissioner, that would enable the person to assist
16 with:

17 (A) evaluations of the program under this
18 section; and

19 (B) evidence-based modifications of performance
20 measurements and reward strategies used in the program.

21 (j) The executive commissioner shall, through the
22 department's Internet website and other means, use the performance
23 data collected through the incentive payment program to inform
24 consumers of the actual and comparative performance of each nursing
25 facility participating in the program. The executive commissioner
26 shall develop, with the assistance of any contractor under
27 Subsection (h), a performance rating index or comparable

1 methodology to provide consumers with valid and understandable
2 information. That information must be updated at least quarterly.

3 (k) The executive commissioner shall consult with other
4 state agencies, nursing facilities, and consumer representatives
5 that the executive commissioner determines appropriate to assist in
6 developing the incentive payment program under this section.

7 SECTION 3. Section 32.060(a), Human Resources Code, as
8 added by Section 16.01, Chapter 204 (H.B. 4), Acts of the 78th
9 Legislature, Regular Session, 2003, is amended to read as follows:

10 (a) The following are not admissible as evidence in a civil
11 action:

12 (1) any finding by the department that an institution
13 licensed under Chapter 242, Health and Safety Code, has violated a
14 standard for participation in the medical assistance program under
15 this chapter; ~~or~~

16 (2) the fact of the assessment of a monetary penalty
17 against an institution under Section 32.021 or the payment of the
18 penalty by an institution; or

19 (3) any information obtained or used by the department
20 to determine the eligibility of a nursing facility for an incentive
21 payment, or to determine the facility's performance rating, under
22 Section 32.028(g) or 32.0283(f).

23 SECTION 4. (a) Not later than February 1, 2010, the
24 executive commissioner of the Health and Human Services Commission
25 shall establish the performance thresholds required under Section
26 32.0283(d)(1), Human Resources Code, as added by this Act.

27 (b) Not later than January 1, 2011, the executive

1 commissioner of the Health and Human Services Commission, if the
2 executive commissioner determines it cost-effective and feasible,
3 shall enter into the contract required by Section 32.0283(h), Human
4 Resources Code, as added by this Act.

5 (c) Not later than April 1, 2011, the Health and Human
6 Services Commission shall publish on the commission's Internet
7 website the information required under Section 32.0283(j), Human
8 Resources Code, as added by this Act.

9 SECTION 5. If before implementing any provision of this Act
10 a state agency determines that a waiver or authorization from a
11 federal agency is necessary for implementation of that provision,
12 the agency affected by the provision shall request the waiver or
13 authorization and may delay implementing that provision until the
14 waiver or authorization is granted.

15 SECTION 6. This Act takes effect September 1, 2009.