

BILL ANALYSIS

C.S.H.B. 1041
By: Collier
Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas Medicaid program provides medical coverage and health care services for certain Texas residents who meet the program's eligibility requirements. Interested parties assert that, while the state must ensure that payments made to providers under the program are consistent with efficiency, economy, and quality of care standards and are sufficient to enlist enough providers so that care and services are adequately available under the program, this does not always happen and certain due process measures are necessary to allow providers to dispute certain Medicaid reimbursement rates and to help ensure adequate provider participation in the program. C.S.H.B. 1041 seeks to improve the due process measures for Medicaid providers in Texas.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1041 amends the Government Code to prohibit a managed care organization from paying a confiscatory reimbursement rate to a provider under a Medicaid managed care model or arrangement implemented under statutory provisions relating to the Medicaid managed care program. The bill defines "confiscatory," with respect to the reimbursement rate paid by a managed care organization to a provider, as a rate that is below the rate necessary to recover the provider's reasonable operating expenses, realize a reasonable return on the provider's costs, and ensure confidence in the provider's continued financial integrity and participation in Medicaid. The bill establishes that a provider, including a pharmacy provider, has the right to a contested case hearing under the Administrative Procedure Act to dispute the amount of a reimbursement rate paid to the provider by a managed care organization or the organization's pharmacy benefit manager if the provider believes the rate is confiscatory in violation of the bill's provisions but exempts the decision of the hearing officer or the administrative law judge, as applicable, from judicial review under the act. The bill requires a managed care organization to be treated as a state agency under the act solely for the purposes of the contested case hearing.

C.S.H.B. 1041 requires the contested case hearing to be conducted by an administrative law judge, unless the Health and Human Services Commission (HHSC) appeals division employs at least one full-time hearing officer whose sole duty is to preside over contested cases, in which case the bill requires the officer to conduct the contested case hearing. The bill requires the parties to a contested case to include the provider and the managed care organization and any

appropriate agent of the organization, including a pharmacy benefit manager, and prohibits HHSC from being included as a party. The bill authorizes the provider, if the provider's contract with the managed care organization or the organization's agent contains a process for handling disputes relating to provider reimbursement, to request a contested case hearing only if the provider first submits the dispute for resolution through the contractual process and the managed care organization or the organization's agent, as appropriate, fails to resolve the dispute through the contractual process not later than the 45th day after the day the dispute is submitted or if the provider is dissatisfied with the resolution of the contractual process.

C.S.H.B. 1041 requires the hearing officer or administrative law judge, as applicable, to determine in a contested case whether the reimbursement rate is confiscatory and authorizes the hearing officer or administrative law judge to order the managed care organization or the organization's agent to pay a rate that is not confiscatory. The bill places certain limitations on the amount awarded by a hearing officer or administrative law judge, as applicable. The bill grants to the hearing officer or administrative law judge, as applicable, the discretion in a contested case to combine cases wholly or partly that involve the same type of provider and the same or substantially similar reimbursement issues or to impose part or all of the costs for the hearing against the party or parties that do not substantially prevail. The bill requires the hearing officer or administrative law judge, as applicable, in awarding costs in a contested case, to consider whether the position of the party was taken in good faith and had a reasonable basis in fact and law and prohibits the hearing officer or administrative law judge from awarding attorney's fees. The bill authorizes HHSC or the State Office of Administrative Hearings to impose a maximum fee of \$500 on each party to a contested case brought under the bill's provisions for the purpose of offsetting the costs of the hearing.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1041 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Subchapter B, Chapter 531, Government Code, is amended by adding Subsection 531.02116 to read as follows:

Sec. 531.02116. ADMINISTRATIVE AND JUDICIAL REVIEW OF REIMBURSEMENT DISPUTES UNDER MEDICAID PROGRAM. (a) A provider has the right to a contested case hearing to dispute the amount of a reimbursement rate paid to the provider under the fee-for-service Medicaid program or by a managed care organization under the managed care Medicaid program if the provider maintains that the rate is below the rate necessary to recover the provider's reasonable operating expenses and to realize a reasonable return on the provider's investments that is sufficient to ensure confidence in the

HOUSE COMMITTEE SUBSTITUTE

No equivalent provision.

(See Sections 533.0057 (a) and (c) below.)

provider's continued financial integrity.

(b) A contested case hearing under this section must be conducted by a hearing officer in the manner provided for contested case hearings under Subchapter C, Chapter 2001.

(c) Parties to a contested case hearing under this section must include:

(1) the commission; and

(2) in a dispute involving a payment made by a managed care organization, the managed care organization.

(d) Exhaustion of contractual remedies with a managed care organization or its agent is not a prerequisite to a contested case hearing under this section.

(e) In the absence of a timely appeal for judicial review under Subsection (f), the decision of a hearing officer under this section is final.

(f) Judicial review of a decision or order of a hearing officer is governed by Subchapter G, Chapter 2001, except that the party seeking judicial review must file suit not later than the 45th day after the date notice of the decision made by the hearing officer was mailed.

No equivalent provision.

(See Section 531.02116 (a) above.)

(See Section 531.02116 (a) above.)

SECTION 1. Subchapter A, Chapter 533, Government Code, is amended by adding Section 533.0057 to read as follows:

Sec. 533.0057. CONFISCATORY REIMBURSEMENT RATES PROHIBITED; ADMINISTRATIVE AND JUDICIAL REVIEW OF CERTAIN REIMBURSEMENT DISPUTES. (a) In this section, "confiscatory" means, with respect to the reimbursement rate paid by a managed care organization to a provider, a rate that is below the rate necessary to:

(1) recover the provider's reasonable operating expenses;

(2) realize a reasonable return on the provider's costs; and

(3) ensure confidence in the provider's continued:

(A) financial integrity; and

(B) participation in Medicaid.

(b) A managed care organization may not pay a confiscatory reimbursement rate to a provider under a Medicaid managed care model or arrangement implemented under this chapter.

(c) Notwithstanding any other law, a provider, including a pharmacy provider,

has the right to a contested case hearing under Chapter 2001 to dispute the amount of a reimbursement rate paid to the provider by a managed care organization or the organization's pharmacy benefit manager if, subject to Subsection (f), the provider believes the rate is confiscatory in violation of Subsection (b), except that the decision of the hearing officer or the administrative law judge, as applicable, is not subject to judicial review under Chapter 2001. Solely for purposes of this section, a managed care organization is to be treated as a state agency under Chapter 2001.

(d) A contested case hearing under Subsection (c) shall be conducted by an administrative law judge, unless the commission's appeals division employs at least one full-time hearing officer whose sole duty is to preside over contested cases. If the commission's appeals division employs a hearing officer described by this subsection, that officer shall conduct the contested case hearing under Subsection (c).

(e) Parties to a contested case brought under this section:

(1) must include:

(A) the provider; and

(B) the managed care organization and any appropriate agent of the organization, including a pharmacy benefit manager; and

(2) may not include the commission.

(f) If the provider's contract with the managed care organization or the organization's agent contains a process for handling disputes relating to provider reimbursement, the provider may request a contested case hearing under Subsection (c) only if:

(1) the provider first submits the dispute for resolution through the contractual process; and

(2) the managed care organization or the organization's agent, as appropriate, fails to resolve the dispute through the contractual process not later than the 45th day after the day the dispute is submitted, or if the provider is dissatisfied with the resolution of the contractual process.

(g) In a contested case brought under this section, the hearing officer or administrative law judge, as applicable, shall determine whether the reimbursement rate is confiscatory and may order the managed care organization or the organization's agent

to pay a rate that is not confiscatory. A hearing officer or administrative law judge, as applicable, may not award an amount:

(1) to any one provider that, as a percentage of the provider's average net income before taxes, exceeds the managed care organization's percentage of net income before taxes that is computed in accordance with the contract between the organization and the commission and is authorized to be retained by the organization under that contract, averaged over all financial statistical report reporting periods; or

(2) that in the aggregate exceeds the amount of resources maintained by the managed care organization to reasonably accommodate program changes at no additional cost to the commission in accordance with the contract between the organization and the commission.

(h) In a contested case brought under this section, the hearing officer or administrative law judge, as applicable, has the discretion:

(1) considering the interest of judicial economy and efficiency, to combine cases wholly or partly that involve the same type of provider and the same or substantially similar reimbursement issues; or

(2) to impose part or all of the costs for the hearing against the party or parties that do not substantially prevail.

(i) In awarding costs in a contested case brought under this section, the hearing officer or administrative law judge, as applicable:

(1) shall consider whether the position of the party was taken in good faith and had a reasonable basis in fact and law; and

(2) may not award attorney's fees.

(j) The commission or the State Office of Administrative Hearings may impose a fee in an amount not to exceed \$500 on each party to a contested case brought under this section for the purpose of offsetting the costs of the hearing.

SECTION 2. The change in law made by this Act applies only to a reimbursement paid to a Medicaid provider on or after the effective date of this Act.

SECTION 2. Same as introduced version.

SECTION 3. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for

SECTION 3. Same as introduced version.

implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.

SECTION 4. Same as introduced version.