

BILL ANALYSIS

C.S.S.B. 1385
By: Schwertner
Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The home and community-based services (HCS) waiver program and the Texas home living (TxHmL) waiver program are Medicaid programs that allow individuals with intellectual and developmental disabilities to live in the community, rather than in an institution. Recent data indicates that there are roughly 1,000 providers of these services in well over 2,000 contracts with the Department of Aging and Disability Services (DADS) to provide services in designated areas of the state. Because of the services provided, these programs are in high demand and provide support to extremely vulnerable populations. There is concern, however, that the current sanctions DADS may impose on a provider who is not in compliance with program requirements, such as suspension of payments or termination of contracts, are limited and, in some cases, ineffective. Interested parties assert the need for a broader spectrum of sanctions that address various degrees of violations. C.S.S.B. 1385 seeks to provide for more appropriate sanctions.

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 rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 of this bill.

ANALYSIS

C.S.S.B. 1385 amends the Human Resources Code to authorize the Department of Aging and Disability Services (DADS) to assess and collect an administrative penalty against a Medicaid provider who participates in the home and community-based services (HCS) waiver program or the Texas home living (TxHmL) waiver program for a violation of a law or rule relating to the program. The bill prohibits DADS, if DADS assesses an administrative penalty against such a provider, from imposing a payment hold against or otherwise withholding contract payments from the provider for the same violation of a law or rule. The bill requires the executive commissioner of the Health and Human Services Commission, after consulting with appropriate stakeholders, to develop and adopt rules regarding the imposition of the administrative penalties and requires the rules to do the following:

- specify the types of violations that warrant imposition of an administrative penalty;
- establish a schedule of progressive administrative penalties in accordance with the relative type, frequency, and seriousness of a violation;
- prescribe reasonable amounts to be imposed for each violation giving rise to an administrative penalty;

- authorize the imposition of an administrative penalty in an amount not to exceed \$5,000 for each violation;
- provide that a provider commits a separate violation each day the provider continues to violate the law or rule;
- ensure standard and consistent application of administrative penalties throughout the state; and
- provide for an administrative appeals process to adjudicate claims and appeals relating to the imposition of an administrative penalty that is in accordance with the Administrative Procedure Act.

The bill requires the executive commissioner, in specifying the types of violations that warrant imposition of an administrative penalty, to specify the types of minor violations that allow a provider an opportunity to take corrective action before a penalty is imposed. The bill prescribes the factors the executive commissioner must consider in establishing the schedule of progressive administrative penalties and penalty amounts. The bill requires DADS, in lieu of imposing an administrative penalty, to allow a provider found to have committed a minor violation specified by rule of the executive commissioner to have a reasonable period of time that is not less than 45 days after the date DADS sends notice to the provider of the violation to take corrective action regarding the violation. The bill prohibits DADS from allowing time for corrective action for any violation that is not a minor violation.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 1385 may differ from the engrossed in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

SECTION 1. Subchapter D, Chapter 161, Human Resources Code, is amended by adding Section 161.088 to read as follows:
Sec. 161.088. ADMINISTRATIVE PENALTIES. (a) This section applies to the following waiver programs established under Section 1915(c), Social Security Act (42 U.S.C. Section 1396n(c)), and administered by the department to serve persons with an intellectual or developmental disability:
(1) the home and community-based services (HCS) waiver program; and
(2) the Texas home living (TxHmL) waiver program.
(b) The department may assess and collect an administrative penalty against a provider who participates in a program to which this section applies for a violation of a law, including a rule, or department policy relating to the program.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subchapter D, Chapter 161, Human Resources Code, is amended by adding Section 161.088 to read as follows:
Sec. 161.088. ADMINISTRATIVE PENALTIES. (a) This section applies to the following waiver programs established under Section 1915(c), Social Security Act (42 U.S.C. Section 1396n(c)), and administered by the department to serve persons with an intellectual or developmental disability:
(1) the home and community-based services (HCS) waiver program; and
(2) the Texas home living (TxHmL) waiver program.
(b) The department may assess and collect an administrative penalty against a provider who participates in a program to which this section applies for a violation of a law or rule relating to the program. If the department assesses an administrative

(c) After consulting with the department, the executive commissioner shall develop and adopt rules regarding the imposition of administrative penalties under this section. The rules must:

(1) include criteria that describe:

(A) the types of violations that warrant imposition of an administrative penalty; and

(B) the method by which the department may assess an administrative penalty;

(2) prescribe reasonable amounts to be imposed for each violation giving rise to an administrative penalty;

(3) ensure standard and consistent application of administrative penalties throughout the state; and

(4) provide for an administrative appeals process to adjudicate claims and appeals relating to the imposition of an administrative penalty under this section that is in accordance with Chapter 2001, Government Code.

(d) Rules adopted under this section may authorize the imposition of an administrative penalty, with interest, for a minimum penalty period or on a subsequent per diem basis.

penalty against a provider for a violation of a law or rule, the department may not impose a payment hold against or otherwise withhold contract payments from the provider for the same violation of a law or rule.

(c) After consulting with appropriate stakeholders, the executive commissioner shall develop and adopt rules regarding the imposition of administrative penalties under this section. The rules must:

(1) specify the types of violations that warrant imposition of an administrative penalty;

(2) establish a schedule of progressive administrative penalties in accordance with the relative type, frequency, and seriousness of a violation;

(3) prescribe reasonable amounts to be imposed for each violation giving rise to an administrative penalty, subject to Subdivision (4);

(4) authorize the imposition of an administrative penalty in an amount not to exceed \$5,000 for each violation;

(5) provide that a provider commits a separate violation each day the provider continues to violate the law or rule;

(6) ensure standard and consistent application of administrative penalties throughout the state; and

(7) provide for an administrative appeals process to adjudicate claims and appeals relating to the imposition of an administrative penalty under this section that is in accordance with Chapter 2001, Government Code.

(d) In specifying the types of violations that warrant imposition of an administrative penalty under Subsection (c), the executive commissioner shall specify the types of minor violations that allow a provider an opportunity to take corrective action before a penalty is imposed.

(e) In establishing the schedule of progressive administrative penalties and penalty amounts under Subsection (c), the executive commissioner must consider:

(1) the seriousness of a violation, including:

(A) the nature, circumstances, extent, and gravity of the violation; and
(B) the hazard to the health or safety of recipients resulting from the violation;
(2) the provider's history of previous violations;
(3) whether the provider:
(A) had prior knowledge of the violation, including whether the provider identified the violation through the provider's internal quality assurance process; and
(B) made any efforts to mitigate or correct the identified violation;
(4) the penalty amount necessary to deter future violations; and
(5) any other matter justice may require.
(f) In lieu of imposing an administrative penalty under this section, the department shall allow a provider found to have committed a minor violation specified by rule in accordance with Subsection (d) to have a reasonable period of time that is not less than 45 days after the date the department sends notice to the provider of the violation to take corrective action regarding the violation. The department may not allow time for corrective action for any violation that is not a minor violation.

SECTION 2. The Department of Aging and Disability Services may impose an administrative penalty in accordance with Section 161.088, Human Resources Code, as added by this Act, only for conduct that occurs on or after the effective date of this Act.

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 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 September 1, 2015.

SECTION 2. Same as engrossed version.

SECTION 3. Same as engrossed version.

SECTION 4. Same as engrossed version.