

By: Raymond

H.B. No. 2590

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the amelioration and informal dispute resolution  
3 processes for providers participating in certain Medicaid waiver  
4 programs.

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

6 SECTION 1. Subchapter D, Chapter 161, Human Resources Code,  
7 is amended by adding Sections 161.0891 and 161.0892 to read as  
8 follows:

9 Sec. 161.0891. AMELIORATION PROCESS. (a) In lieu of  
10 demanding payment of an administrative penalty assessed under  
11 Section 161.089, the commission may, in accordance with this  
12 section, allow the provider subject to the penalty to use, under the  
13 supervision of the commission, any portion of the amount of the  
14 penalty to ameliorate the violation or to improve services in the  
15 waiver program in which the provider participates.

16 (b) The commission shall offer amelioration to a provider  
17 under this section not later than the 10th day after the date the  
18 provider receives from the commission a final notification of the  
19 assessment of an administrative penalty that is sent to the  
20 provider after an informal dispute resolution process but before an  
21 administrative hearing.

22 (c) A provider to whom amelioration has been offered must  
23 file a plan for amelioration not later than the 45th day after the  
24 date the provider receives the offer of amelioration from the

1 commission. In submitting the plan, the provider must agree to  
2 waive the provider's right to an administrative hearing if the  
3 commission approves the plan.

4 (d) At a minimum, a plan for amelioration must:

5 (1) propose changes to the management or operation of  
6 the waiver program in which the provider participates that will  
7 improve services to or quality of care for clients in the program;

8 (2) identify, through measurable outcomes, the ways in  
9 which and the extent to which the proposed changes will improve  
10 services to or quality of care for clients in the waiver program;

11 (3) establish clear goals to be achieved through the  
12 proposed changes;

13 (4) establish a timeline for implementing the proposed  
14 changes; and

15 (5) identify specific actions necessary to implement  
16 the proposed changes.

17 (e) The commission may require that an amelioration plan  
18 propose changes that would result in conditions that exceed the  
19 requirements of a law or rule relating to the waiver program in  
20 which the provider participates.

21 (f) The commission shall approve or deny an amelioration  
22 plan not later than the 45th day after the date the commission  
23 receives the plan. On approval of a provider's plan, the commission  
24 or the State Office of Administrative Hearings, as appropriate,  
25 shall deny a pending request for a hearing submitted by the  
26 provider.

27 (g) The commission may not offer amelioration to a provider:

1           (1) more than three times in a two-year period; or

2           (2) more than one time in a two-year period for the  
3 same or similar violation.

4           Sec. 161.0892. INFORMAL DISPUTE RESOLUTION. (a) The  
5 executive commissioner by rule shall establish an informal dispute  
6 resolution process in accordance with this section. The process  
7 must provide for adjudication by an appropriate disinterested  
8 person of disputes relating to a proposed enforcement action or  
9 related proceeding of the commission against a provider  
10 participating in a waiver program described by Section 161.089.

11 The informal dispute resolution process must require:

12           (1) a provider participating in a waiver program  
13 described by Section 161.089 to request informal dispute resolution  
14 not later than the 10th calendar day after the date of notification  
15 by the commission of the violation of a law or rule relating to the  
16 program; and

17           (2) the commission to complete the process not later  
18 than the 30th calendar day after the date of receipt of a request  
19 from a provider for informal dispute resolution.

20           (b) As part of the informal dispute resolution process  
21 established under this section, the commission shall contract with  
22 an appropriate disinterested person who is a nonprofit organization  
23 to adjudicate disputes between a provider participating in a  
24 program described by Section 161.089 and the commission concerning  
25 a statement of violations prepared by the commission. Section  
26 2009.053, Government Code, does not apply to the selection of an  
27 appropriate disinterested person under this subsection. The person

1 with whom the commission contracts shall adjudicate all disputes  
2 described by this subsection.

3 (c) The executive commissioner shall adopt rules to  
4 adjudicate claims in contested cases.

5 (d) The commission may not delegate its responsibility to  
6 administer the informal dispute resolution process established by  
7 this section to another state agency.

8 SECTION 2. Subchapter D, Chapter 161, Human Resources Code,  
9 is amended by adding Sections 161.0881 and 161.0882 to read as  
10 follows:

11 Sec. 161.0881. AMELIORATION PROCESS. (a) In lieu of  
12 demanding payment of an administrative penalty assessed under  
13 Section 161.088, the commission may, in accordance with this  
14 section, allow the provider subject to the penalty to use, under the  
15 supervision of the commission, any portion of the amount of the  
16 penalty to ameliorate the violation or to improve services in the  
17 waiver program in which the provider participates.

18 (b) The commission shall offer amelioration to a provider  
19 under this section not later than the 10th day after the date the  
20 provider receives from the commission a final notification of the  
21 assessment of an administrative penalty that is sent to the  
22 provider after an informal dispute resolution process but before an  
23 administrative hearing.

24 (c) A provider to whom amelioration has been offered must  
25 file a plan for amelioration not later than the 45th day after the  
26 date the provider receives the offer of amelioration from the  
27 commission. In submitting the plan, the provider must agree to

1 waive the provider's right to an administrative hearing if the  
2 commission approves the plan.

3 (d) At a minimum, a plan for amelioration must:

4 (1) propose changes to the management or operation of  
5 the waiver program in which the provider participates that will  
6 improve services to or quality of care for clients in the program;

7 (2) identify, through measurable outcomes, the ways in  
8 which and the extent to which the proposed changes will improve  
9 services to or quality of care for clients in the waiver program;

10 (3) establish clear goals to be achieved through the  
11 proposed changes;

12 (4) establish a timeline for implementing the proposed  
13 changes; and

14 (5) identify specific actions necessary to implement  
15 the proposed changes.

16 (e) The commission may require that an amelioration plan  
17 propose changes that would result in conditions that exceed the  
18 requirements of a law or rule relating to the waiver program in  
19 which the provider participates.

20 (f) The commission shall approve or deny an amelioration  
21 plan not later than the 45th day after the date the commission  
22 receives the plan. On approval of a provider's plan, the commission  
23 or the State Office of Administrative Hearings, as appropriate,  
24 shall deny a pending request for a hearing submitted by the  
25 provider.

26 (g) The commission may not offer amelioration to a provider:

27 (1) more than three times in a two-year period; or

1           (2) more than one time in a two-year period for the  
2 same or similar violation.

3           Sec. 161.0882. INFORMAL DISPUTE RESOLUTION. (a) The  
4 executive commissioner by rule shall establish an informal dispute  
5 resolution process in accordance with this section. The process  
6 must provide for adjudication by an appropriate disinterested  
7 person of disputes relating to a proposed enforcement action or  
8 related proceeding of the commission against a provider  
9 participating in a waiver program described by Section 161.088.  
10 The informal dispute resolution process must require:

11           (1) a provider participating in a waiver program  
12 described by Section 161.088 to request informal dispute resolution  
13 not later than the 10th calendar day after the date of notification  
14 by the commission of the violation of a law or rule relating to the  
15 program; and

16           (2) the commission to complete the process not later  
17 than the 30th calendar day after the date of receipt of a request  
18 from a provider for informal dispute resolution.

19           (b) As part of the informal dispute resolution process  
20 established under this section, the commission shall contract with  
21 an appropriate disinterested person who is a nonprofit organization  
22 to adjudicate disputes between a provider participating in a  
23 program described by Section 161.088 and the commission concerning  
24 a statement of violations prepared by the commission. Section  
25 2009.053, Government Code, does not apply to the selection of an  
26 appropriate disinterested person under this subsection. The person  
27 with whom the commission contracts shall adjudicate all disputes

1 described by this subsection.

2 (c) The executive commissioner shall adopt rules to  
3 adjudicate claims in contested cases.

4 (d) The commission may not delegate its responsibility to  
5 administer the informal dispute resolution process established by  
6 this section to another state agency.

7 SECTION 3. (a) Section 1 of this Act takes effect only if  
8 the Act of the 85th Legislature, Regular Session, 2017, relating to  
9 nonsubstantive additions to and corrections in enacted codes  
10 becomes law.

11 (b) Section 2 of this Act takes effect only if the Act of the  
12 85th Legislature, Regular Session, 2017, relating to  
13 nonsubstantive additions to and corrections in enacted codes does  
14 not become law.

15 SECTION 4. As soon as practicable after the effective date  
16 of this Act, the executive commissioner of the Health and Human  
17 Services Commission shall adopt the rules necessary to implement  
18 the changes in law made by this Act.

19 SECTION 5. This Act takes effect September 1, 2017.