

By: Sheffield, Zerwas, Miller, White, et al.

H.B. No. 2766

Substitute the following for H.B. No. 2766:

By: Rose

C.S.H.B. No. 2766

A BILL TO BE ENTITLED

AN ACT

relating to the creation and administration of a reinvestment allowance for certain long-term care facilities.

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

SECTION 1. Chapter 242, Health and Safety Code, is amended by adding Subchapter P to read as follows:

SUBCHAPTER P. REINVESTMENT ALLOWANCE

Sec. 242.701. DEFINITIONS. In this subchapter:

(1) "Gross receipts" means the gross inpatient revenue received by a facility from services provided to facility residents. Gross receipts exclude revenue from nonresident care, including beauty and barber services, vending facilities, interest, charitable contributions, the sale of meals, and outpatient services.

(2) "Non-Medicare patient day" means a day on which the primary payer for a facility resident is not Medicare Part A or a Medicare Advantage or special needs plan.

Sec. 242.702. APPLICABILITY. This subchapter does not apply to a state-owned veterans nursing facility.

Sec. 242.703. REINVESTMENT ALLOWANCE; COMPUTATION. (a) The commission shall impose a reinvestment allowance on each facility licensed under this chapter. The reinvestment allowance is:

(1) the product of the amount established under

1 Subsection (b) multiplied by the number of a facility's
2 non-Medicare patient days calculated under Section 242.704;

3 (2) payable monthly; and

4 (3) in addition to other amounts imposed under this
5 chapter.

6 (b) The executive commissioner shall establish for each
7 non-Medicare patient day an amount for use in calculating the
8 reinvestment allowance sufficient to produce annual revenues from
9 all facilities not to exceed the maximum amount that may be assessed
10 within the indirect guarantee threshold provided under 42 C.F.R.
11 Section 433.68(f)(3)(i).

12 (c) The commission shall determine the amount described by
13 Subsection (b) using non-Medicare patient days and gross receipts:

14 (1) reported to the commission; and

15 (2) covering a period of at least six months.

16 (d) A facility may not list the reinvestment allowance as a
17 separate charge on a resident's billing statement or otherwise
18 directly or indirectly attempt to charge the reinvestment allowance
19 to a resident.

20 Sec. 242.704. PATIENT DAYS. For each calendar day, a
21 facility shall determine the number of non-Medicare patient days by
22 adding:

23 (1) the number of non-Medicare residents occupying a
24 bed in the facility immediately before midnight of that day plus the
25 number of residents admitted that day, less the number of residents
26 discharged that day, except a resident is included in the count
27 under this subdivision if:

1 (A) the resident is admitted and discharged on
2 the same day; or

3 (B) the resident is discharged that day because
4 of the resident's death; and

5 (2) the number of beds that are on hold that day and
6 that have been placed on hold for a period not to exceed three
7 consecutive calendar days during which a resident is:

8 (A) in the hospital; or

9 (B) on therapeutic home leave.

10 Sec. 242.705. COLLECTION AND REPORTING. (a) The
11 commission shall collect the reinvestment allowance.

12 (b) Not later than the 25th day after the last day of a
13 month, each facility shall:

14 (1) file with the commission a report stating the
15 total non-Medicare patient days for the month; and

16 (2) pay the reinvestment allowance.

17 Sec. 242.706. RULES; ADMINISTRATIVE PENALTY. (a) The
18 executive commissioner shall adopt rules to administer this
19 subchapter, including rules related to imposing and collecting the
20 reinvestment allowance.

21 (b) Notwithstanding Section 242.066, an administrative
22 penalty assessed under that section for a violation of this
23 subchapter may not exceed the greater of:

24 (1) one-half of the amount of the facility's
25 outstanding reinvestment allowance; or

26 (2) \$20,000.

27 (c) An administrative penalty assessed for a violation of

1 this subchapter is in addition to the facility's outstanding
2 reinvestment allowance.

3 Sec. 242.707. NURSING FACILITY REINVESTMENT ALLOWANCE
4 TRUST FUND. (a) The nursing facility reinvestment allowance trust
5 fund is established as a trust fund to be held by the comptroller
6 outside of the state treasury and administered by the commission as
7 trustee. Interest and income from the assets of the trust fund
8 shall be credited to and deposited in the trust fund. The commission
9 may use money in the fund only as provided by Section 242.708.

10 (b) The commission shall remit the reinvestment allowance
11 collected under this subchapter and federal matching funds received
12 by this state to the comptroller for deposit in the trust fund.

13 Sec. 242.708. REIMBURSEMENT OF FACILITIES. (a) The
14 commission may use money in the nursing facility reinvestment
15 allowance trust fund, including any federal matching funds, only
16 for the following purposes:

17 (1) paying any commission cost to develop and
18 administer systems for managing the reinvestment allowance;

19 (2) reimbursing the Medicaid share of the reinvestment
20 allowance as an allowable cost in the Medicaid daily rate; and

21 (3) increasing reimbursement rates paid under the
22 state Medicaid program to facilities.

23 (b) The commission shall allocate 50 percent of the money
24 described by Subsection (a)(3) for increased reimbursement rate
25 payments based on the total rating of the Centers for Medicare and
26 Medicaid Services five-star quality rating system.

27 (c) The commission shall devise a formula by which amounts

1 received under this subchapter increase the reimbursement rates
2 paid to facilities under the state Medicaid program, including a
3 phase-in of the program described by Subsection (b) beginning on
4 September 1, 2018. The commission must include in the formula
5 consideration of the total rating described by Subsection (b).

6 (d) Money in the nursing facility reinvestment allowance
7 trust fund may not be used to expand Medicaid eligibility under the
8 Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as
9 amended by the Health Care and Education Reconciliation Act of 2010
10 (Pub. L. No. 111-152).

11 Sec. 242.709. INVALIDITY; FEDERAL FUNDS. If any provision
12 of or procedure under this subchapter is held invalid by a final
13 court order that is not subject to appeal, or if the commission
14 determines that the imposition of the reinvestment allowance and
15 the expenditure of amounts collected as prescribed by this
16 subchapter will not entitle the state to receive federal matching
17 funds under the Medicaid program, the commission shall:

- 18 (1) stop collection of the reinvestment allowance; and
19 (2) not later than the 30th day after the date
20 collection is stopped, return to each facility, in proportion to
21 the total amount paid by the facility, any money deposited to the
22 credit of the nursing facility reinvestment allowance trust fund
23 but not spent.

24 Sec. 242.710. AUTHORITY TO ACCOMPLISH PURPOSES OF
25 SUBCHAPTER. The executive commissioner by rule may adopt a
26 definition, a method of computation, or a rate that differs from
27 those expressly provided by or expressly authorized by this

1 subchapter to the extent the difference is necessary to accomplish
2 the purposes of this subchapter.

3 Sec. 242.711. ANNUAL REPORT. Not later than January 1 of
4 each year, the commission shall prepare and deliver to the
5 governor, the lieutenant governor, and the speaker of the house of
6 representatives a report relating to the status of the nursing
7 facility reinvestment allowance program, including fees collected,
8 federal funding applied for and received, quality-based payments
9 made, information on the overall quality of care in the Texas
10 nursing home system, whether quality-based payments are
11 contributing to quality improvements, and any other relevant
12 information necessary for assessing the effectiveness of the
13 nursing facility reinvestment allowance program. The report should
14 include any information associated with the role of the comptroller
15 and the Medicaid managed care participating plans. The report must
16 be posted on the commission's Internet website.

17 Sec. 242.712. PROGRAM EVALUATION. Not later than November
18 1, 2020, the commission shall prepare and deliver to the governor,
19 the lieutenant governor, and the speaker of the house of
20 representatives a report that assesses whether and to what degree
21 payments associated with quality-based care are resulting in
22 improvements to overall nursing home quality.

23 Sec. 242.713. EXPIRATION. This subchapter expires August
24 31, 2021.

25 SECTION 2. (a) As soon as practicable after the effective
26 date of this Act, the executive commissioner of the Health and Human
27 Services Commission shall:

1 (1) adopt the rules necessary to implement Subchapter
2 P, Chapter 242, Health and Safety Code, as added by this Act; and

3 (2) notwithstanding Section 242.703, Health and
4 Safety Code, as added by this Act, establish the amount of the
5 initial reinvestment allowance imposed under Subchapter P, Chapter
6 242, Health and Safety Code, as added by this Act, based on
7 available revenue and patient day information.

8 (b) The amount of the initial reinvestment allowance
9 established under Subsection (a) of this section remains in effect
10 until the Health and Human Services Commission obtains the
11 information necessary to set the amount of the reinvestment
12 allowance under Section 242.703, Health and Safety Code, as added
13 by this Act.

14 SECTION 3. If before implementing any provision of this Act
15 a state agency determines that a waiver or authorization from a
16 federal agency is necessary for implementation of that provision,
17 the agency affected by the provision shall request the waiver or
18 authorization and may delay implementing that provision until the
19 waiver or authorization is granted.

20 SECTION 4. Notwithstanding any other law, a reinvestment
21 allowance may not be imposed under Section 242.703, Health and
22 Safety Code, as added by this Act, or collected under Section
23 242.705, Health and Safety Code, as added by this Act, until:

24 (1) an amendment to the state Medicaid plan that
25 increases the rates paid to long-term care facilities licensed
26 under Chapter 242, Health and Safety Code, for providing services
27 under the state Medicaid program is approved by the Centers for

1 Medicare and Medicaid Services or another applicable federal
2 government agency; and

3 (2) long-term care facilities licensed under Chapter
4 242, Health and Safety Code, have been compensated retroactively at
5 the increased rate for services provided under the state Medicaid
6 program for the period beginning with the effective date of this
7 Act.

8 SECTION 5. The Health and Human Services Commission shall
9 discontinue the reinvestment allowance imposed under Subchapter P,
10 Chapter 242, Health and Safety Code, as added by this Act, if the
11 commission reduces Medicaid reimbursement rates, including rates
12 that increased due to funds from the nursing facility reinvestment
13 allowance trust fund or federal matching funds, below the rates in
14 effect on September 1, 2017.

15 SECTION 6. This Act takes effect immediately if it receives
16 a vote of two-thirds of all the members elected to each house, as
17 provided by Section 39, Article III, Texas Constitution. If this
18 Act does not receive the vote necessary for immediate effect, this
19 Act takes effect September 1, 2017.