

By: Sheffield

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. DEFINITION. In this subchapter, "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.

Sec. 242.702. 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 Subsection (b) multiplied by the number of a facility's non-Medicare patient days calculated under Section 242.703;

(2) payable monthly; and

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

(b) The executive commissioner shall establish for each

1 non-Medicare patient day an amount for use in calculating the
2 reinvestment allowance sufficient to produce annual revenues from
3 all facilities not to exceed the maximum amount that may be assessed
4 within the indirect guarantee threshold provided under 42 C.F.R.
5 Section 433.68(f)(3)(i).

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

8 (1) reported to the commission; and

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

10 (d) A facility may not list the reinvestment allowance as a
11 separate charge on a resident's billing statement or otherwise
12 directly or indirectly attempt to charge the reinvestment allowance
13 to a resident.

14 Sec. 242.703. PATIENT DAYS. For each calendar day, a
15 facility shall determine the number of non-Medicare patient days by
16 adding:

17 (1) the number of non-Medicare residents occupying a
18 bed in the facility immediately before midnight of that day plus the
19 number of residents admitted that day, less the number of residents
20 discharged that day, except a resident is included in the count
21 under this subdivision if:

22 (A) the resident is admitted and discharged on
23 the same day; or

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

26 (2) the number of beds that are on hold that day and
27 that have been placed on hold for a period not to exceed three

1 consecutive calendar days during which a resident is:

2 (A) in the hospital; or

3 (B) on therapeutic home leave.

4 Sec. 242.704. COLLECTION AND REPORTING. (a) The
5 commission shall collect the reinvestment allowance.

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

8 (1) file with the commission a report stating the
9 total non-Medicare resident days for the month; and

10 (2) pay the reinvestment allowance.

11 Sec. 242.705. RULES; ADMINISTRATIVE PENALTY. (a) The
12 executive commissioner shall adopt rules to administer this
13 subchapter, including rules related to imposing and collecting the
14 reinvestment allowance.

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

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

20 (2) \$20,000.

21 Sec. 242.706. NURSING FACILITY REINVESTMENT ALLOWANCE
22 TRUST FUND. (a) The nursing facility reinvestment allowance trust
23 fund is established as a trust fund to be held by the comptroller
24 outside of the state treasury and administered by the commission as
25 trustee. Interest and income from the assets of the trust fund
26 shall be credited to and deposited in the trust fund. The commission
27 may use money in the fund only as provided by Section 242.707.

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

4 Sec. 242.707. REIMBURSEMENT OF FACILITIES. (a) The
5 commission may use money in the nursing facility reinvestment
6 allowance trust fund, including any federal matching funds, only
7 for the following purposes:

8 (1) reimbursing the federal share of the reinvestment
9 allowance as a pass-through in the rate;

10 (2) increasing reimbursement rates paid under the
11 state Medicaid program to facilities; and

12 (3) with any money remaining after funding
13 Subdivisions (1) and (2), providing direct care staff programs
14 related to quality incentives and quality metrics.

15 (b) The commission shall devise a formula by which amounts
16 received under this subchapter increase the reimbursement rates
17 paid to facilities under the state Medicaid program.

18 (c) Money in the nursing facility reinvestment allowance
19 trust fund may not be used to expand Medicaid eligibility under the
20 Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as
21 amended by the Health Care and Education Reconciliation Act of 2010
22 (Pub. L. No. 111-152).

23 Sec. 242.708. INVALIDITY; FEDERAL FUNDS. If any provision
24 of or procedure under this subchapter is held invalid by a final
25 court order that is not subject to appeal, or if the commission
26 determines that the imposition of the reinvestment allowance and
27 the expenditure of amounts collected as prescribed by this

1 subchapter will not entitle the state to receive federal matching
2 funds under the Medicaid program, the commission shall:

3 (1) stop collection of the reinvestment allowance; and

4 (2) not later than the 30th day after the date
5 collection is stopped, return to each facility, in proportion to
6 the total amount paid by the facility, any money deposited to the
7 credit of the nursing facility reinvestment allowance trust fund
8 but not spent.

9 Sec. 242.709. AUTHORITY TO ACCOMPLISH PURPOSES OF
10 SUBCHAPTER. The executive commissioner by rule may adopt a
11 definition, a method of computation, or a rate that differs from
12 those expressly provided by or expressly authorized by this
13 subchapter to the extent the difference is necessary to accomplish
14 the purposes of this subchapter.

15 Sec. 242.710. EXPIRATION. This subchapter expires August
16 31, 2021.

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

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

22 (2) notwithstanding Section 242.702, Health and
23 Safety Code, as added by this Act, establish the amount of the
24 initial reinvestment allowance imposed under Subchapter P, Chapter
25 242, Health and Safety Code, as added by this Act, based on
26 available revenue and patient day information.

27 (b) The amount of the initial reinvestment allowance

1 established under Subsection (a) of this section remains in effect
2 until the Health and Human Services Commission obtains the
3 information necessary to set the amount of the reinvestment
4 allowance under Section 242.702, Health and Safety Code, as added
5 by this Act.

6 SECTION 3. If before implementing any provision of this Act
7 a state agency determines that a waiver or authorization from a
8 federal agency is necessary for implementation of that provision,
9 the agency affected by the provision shall request the waiver or
10 authorization and may delay implementing that provision until the
11 waiver or authorization is granted.

12 SECTION 4. Notwithstanding any other law, a reinvestment
13 allowance may not be imposed under Section 242.702, Health and
14 Safety Code, as added by this Act, or collected under Section
15 242.704, Health and Safety Code, as added by this Act, until:

16 (1) an amendment to the state Medicaid plan that
17 increases the rates paid to long-term care facilities licensed
18 under Chapter 242, Health and Safety Code, for providing services
19 under the state Medicaid program is approved by the Centers for
20 Medicare and Medicaid Services or another applicable federal
21 government agency; and

22 (2) long-term care facilities licensed under Chapter
23 242, Health and Safety Code, have been compensated retroactively at
24 the increased rate for services provided under the state Medicaid
25 program for the period beginning with the effective date of this
26 Act.

27 SECTION 5. The Health and Human Services Commission shall

1 discontinue the reinvestment allowance imposed under Subchapter P,
2 Chapter 242, Health and Safety Code, as added by this Act, if the
3 commission reduces Medicaid reimbursement rates, including rates
4 that increased due to funds from the nursing facility reinvestment
5 allowance trust fund or federal matching funds, below the rates in
6 effect on September 1, 2017.

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