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By:  Hughes S.B. No. 1050

A BILL TO BE ENTITLED

AN ACT

relating to the creation and operation of a health care quality provider participation program; authorizing an administrative penalty.

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. QUALITY PROVIDER PARTICIPATION PROGRAM

Sec. 242.701.  PURPOSE. The purpose of this subchapter is to authorize the commission to administer a long-term care quality provider participation program that provides additional compensation to nursing facilities that meet quality requirements and to increase Medicaid reimbursement rates by collecting payments from certain nursing facilities. The payments must be used to pay the nonfederal share of the quality provider participation program and for other purposes authorized by this subchapter.

Sec. 242.702.  DEFINITION. In this subchapter, "non-Medicare resident day" means a day on which the primary payer for a nursing facility resident is not Medicare Part A or a Medicare Advantage or special needs plan.

Sec. 242.703.  APPLICABILITY. This subchapter does not apply to:

(1)  a state-owned veterans nursing facility;

(2)  a facility that provides on a single campus a combination of services, which may include independent living services, licensed assisted living services, or licensed nursing facility care services, and that either:

(A)  holds a certificate of authority to operate a continuing care retirement community under Chapter 246; or

(B)  had during the previous 12 months:

(i)  a combined number of non-Medicare resident days of service provided to independent living and assisted living residents, excluding services provided to persons occupying facility beds in a licensed nursing facility, that exceeded the number of non-Medicare resident days of service provided to nursing facility residents; and

(ii)  on a contiguous campus of a facility, a minimum ratio of two licensed independent or assisted living beds for each one nursing facility bed; or

(3)  a nonprofit corporation governed by Chapter 22, Business Organizations Code.

Sec. 242.704.  CALCULATION OF PAYMENTS. (a) Each nursing facility to which this subchapter applies shall pay a quality provider participation payment. The amount of the payment may not be uniform to satisfy the redistributive requirements of 42 C.F.R. Section 433.68(e)(2)(i).

(b)  The commission annually shall calculate the quality provider participation payment. The payment must be set in accordance with the maximum rate allowed under 42 C.F.R. Section 433.68(f)(3)(i).

(c)  If, during the course of the state fiscal year, the commission determines that the total amount of quality provider participation payment revenue differs significantly from the amount previously estimated, the commission may recalculate and prospectively modify the payment amount to reflect the recalculation.

(d)  A nursing facility may not list the quality provider participation payment as a separate charge on a resident's billing statement or otherwise directly or indirectly attempt to charge the payment to a resident.

Sec. 242.705.  RESIDENT DAYS. For each calendar day, a nursing facility shall determine the number of non-Medicare resident days by adding the number of non-Medicare residents occupying a bed in the nursing facility immediately before midnight of that day plus the number of residents admitted that day, less the number of residents discharged that day, except a resident is included in the count under this section if:

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

(2)  the resident is discharged that day because of the resident's death.

Sec. 242.706.  COLLECTION AND REPORTING. (a) The commission shall impose and collect the quality provider participation payment.

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

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

(2)  pay the quality provider participation payment.

Sec. 242.707.  RULES; ADMINISTRATIVE PENALTY. (a) The executive commissioner shall adopt rules to administer this subchapter, including rules related to imposing and collecting the quality provider participation payment.

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

(1)  one-half of the amount of the nursing facility's outstanding quality provider participation payment; or

(2)  $20,000.

(c)  An administrative penalty assessed for a violation of this subchapter is in addition to the nursing facility's outstanding quality provider participation payment.

(d)  A facility described by Section 242.703 is not subject to an administrative penalty under this subchapter.

Sec. 242.708.  QUALITY PROVIDER PARTICIPATION PROGRAM TRUST FUND. (a) The quality provider participation program trust fund is established as a trust fund to be held by the comptroller outside of the state treasury and administered by the commission as trustee. Interest and income from the assets of the trust fund shall be credited to and deposited in the trust fund. The commission may use money in the fund only as provided by Section 242.709.

(b)  The commission shall remit the quality provider participation payment collected under this subchapter to the comptroller for deposit in the trust fund.

Sec. 242.709.  REIMBURSEMENT OF FACILITIES. (a) The commission shall use money in the quality provider participation program trust fund, along with any corresponding federal matching funds, only for the following purposes:

(1)  paying any reasonable and necessary commission cost to develop and administer systems for managing the quality provider participation payment;

(2)  reimbursing the Medicaid share of the payment as an allowable cost in the Medicaid daily rate; and

(3)  allocating the remainder to improve resident care and quality of life and to be distributed as follows:

(A)  50 percent of the remainder must be distributed through increased reimbursement rates to nursing facilities that participate in the state Medicaid program and demonstrate historical expenditures for capital improvements, renovations, or other enhancements designed to create a more home-like environment, wages and benefits, or other direct care services; and

(B)  50 percent of the remainder must be distributed to nursing facilities based on the following in order of importance:

(i)  performance under the Centers for Medicare and Medicaid Services five-star quality rating system;

(ii)  increases in direct care staffing and revenue enhancements program funding for participating facilities under Sections 32.028(g) and (i), Human Resources Code, to the maximum level achieved and allowed for those facilities on September 1, 2019; and

(iii)  development and funding of additional quality payments for unique, long-term care needs that are not funded separately, including Alzheimer's disease, dementia, obesity, and other conditions or initiatives identified by the commission.

(a-1)  Notwithstanding Subsection (a)(3), before September 1, 2020, the commission shall allocate 100 percent of the remainder of the money described by that subsection for distribution to nursing facilities that participate in the state Medicaid program.

(a-2)  The programs described by Subsection (a)(3) may not begin earlier than September 1, 2020. This subsection and Subsection (a-1) expire September 1, 2023.

(b)  In consultation with the advisory committee established under Section 242.712, the commission shall devise a formula by which amounts received under this subchapter increase the reimbursement rates paid to nursing facilities under the state Medicaid program consistent with Subsection (a)(3) and with the goal of improving resident care and quality. The commission, in consultation with the advisory committee, shall develop a weighted formula for distributing the money described by Subsection (a)(3)(B).

(c)  The commission shall distribute unearned money for the programs described by Subsection (a)(3) to all nursing facilities that qualify for a distribution in proportion to the amount of the total earned money each qualifying nursing facility receives.

(d)  Money in the quality provider participation program trust fund may not be used to expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

Sec. 242.710.  INVALIDITY; FEDERAL FUNDS. If any provision of or procedure under this subchapter is held invalid by a final court order that is not subject to appeal, or if the commission determines that the imposition of the quality provider participation payment and the expenditure of amounts collected as prescribed by this subchapter will not entitle the state to receive federal matching funds under the Medicaid program or will be inconsistent with the objectives described by Section 537.002(b)(7), Government Code, the commission shall:

(1)  stop collection of the payment; and

(2)  not later than the 30th day after the date collection is stopped, return to each nursing facility, in proportion to the total amount paid by each facility compared to the total amount paid by all facilities, any unspent money deposited to the credit of the quality provider participation program trust fund.

Sec. 242.711.  AUTHORITY TO ACCOMPLISH PURPOSES OF SUBCHAPTER. (a) Subject to Subsection (b), the executive commissioner by rule may adopt a definition, a method of computation, or a rate that differs from those expressly provided by or expressly authorized by this subchapter to the extent the difference is necessary to accomplish the purposes of this subchapter.

(b)  The executive commissioner may not modify the applicability of this subchapter under Section 242.703.

Sec. 242.712.  ADVISORY COMMITTEE. (a) The commission shall establish an advisory committee of interested persons to make recommendations to the commission before the adoption of a rule, policy, or procedure affecting persons regulated under this subchapter. The advisory committee has the purposes, powers, and duties prescribed by the commission.

(b)  Chapter 2110, Government Code, does not apply to the advisory committee.

(c)  The commission shall appoint to the advisory committee individuals who:

(1)  are selected from a list provided by the executive commissioner;

(2)  have knowledge about and interests in the work of the advisory committee; and

(3)  represent a broad range of viewpoints on the work of the advisory committee.

(d)  The advisory committee must include a member of the public if the commission determines that is appropriate and beneficial.

(e)  A member of the advisory committee may not receive compensation for serving on the committee and may not be reimbursed for travel expenses incurred while conducting the business of the committee.

(f)  Meetings of the committee are subject to Chapter 551, Government Code.

Sec. 242.713.  EXPIRATION. This subchapter expires August 31, 2029.

SECTION 2.  (a) Not later than January 1, 2020, the executive commissioner of the Health and Human Services Commission shall establish the advisory committee as required by Section 242.712, Health and Safety Code, as added by this Act.

(b)  As soon as practicable after the effective date of this Act, the executive commissioner of the Health and Human Services Commission shall:

(1)  in consultation with the advisory committee established by Section 242.712, Health and Safety Code, as added by this Act, adopt the rules necessary to implement Subchapter P, Chapter 242, Health and Safety Code, as added by this Act; and

(2)  notwithstanding Section 242.704, Health and Safety Code, as added by this Act, establish the amount of the initial payment imposed under Subchapter P, Chapter 242, Health and Safety Code, as added by this Act, based on available revenue and resident day information.

(c)  The amount of the initial payment established under Subsection (b) of this section remains in effect until the Health and Human Services Commission obtains the information necessary to set the amount of the payment under Section 242.704, Health and Safety Code, as added by 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 shall delay implementing that provision until the waiver or authorization is granted. The agency shall begin implementing the provision on the date the waiver or authorization is granted.

SECTION 4.  Notwithstanding any other law, a payment may not be imposed under Section 242.704, Health and Safety Code, as added by this Act, or collected under Section 242.706, Health and Safety Code, as added by this Act, until an amendment to the state Medicaid plan that increases the rates paid to long-term care facilities licensed under Chapter 242, Health and Safety Code, for providing services under the state Medicaid program is approved by the Centers for Medicare and Medicaid Services or another applicable federal government agency.

SECTION 5.  The Health and Human Services Commission shall retroactively compensate long-term care facilities licensed under Chapter 242, Health and Safety Code, at the increased rate for services provided under the state Medicaid program:

(1)  beginning on the date the state Medicaid plan amendment is approved by the Centers for Medicare and Medicaid Services or another applicable federal government agency; and

(2)  only for the period for which the payment has been imposed and collected.

SECTION 6.  The Health and Human Services Commission shall discontinue the payment imposed under Subchapter P, Chapter 242, Health and Safety Code, as added by this Act, if the commission reduces Medicaid reimbursement rates below the sum of:

(1)  the rates in effect on September 1, 2019; and

(2)  the rates that increased due to funds from the quality provider participation program trust fund and federal matching funds.

SECTION 7.  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, 2019.