

## BILL ANALYSIS

Senate Research Center  
87R12498 CJM-F

H.C.R. 54  
By: Meza (Johnson)  
Health & Human Services  
5/20/2021  
Engrossed

### AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2015, the federal Department of Justice (DOJ) began an investigation of the Health and Human Services Commission (HHSC) quality control (QC) of the Supplemental Nutrition Assistance Program (SNAP) from 2007 to the present, requesting documents from HHSC in April 2017 and deposing HHSC staff in March 2019.

DOJ's investigation focused on whether HHSC properly and accurately calculated, determined, and reported Texas' error rates in compliance with FNS requirements regarding SNAP QC. Specifically, DOJ focused on HHSC's relationship with Julie Osnes Consulting (Osnes), a contractor who assisted HHSC in determining SNAP error rates and QC review of SNAP cases from September 2009 to June 2015.

DOJ was concerned that, by following certain recommendations by Osnes, HHSC failed to maintain the integrity of the QC system by introducing bias into its processes.

Osnes reached a settlement with DOJ in June 2019 of \$751,571, and to date three other states have settled DOJ's claims related to their implementation of Osnes's recommendations:

- (a) April 2017--Virginia settled for \$7,150,436;
- (b) April 2017--Wisconsin settled for \$6,991,905;
- (c) September 2017--Alaska settled for \$2,489,999.

DOJ claimed that HHSC's SNAP management violated the Federal False Claims Act (31 U.S.C. 3729, et seq.) and the Program Fraud Civil Remedies Act (31 U.S.C. 3801, et seq.), in addition to asserting various claims under common law.

The Covered Conduct alleged by DOJ included:

- (a) Changing QC findings or dropping cases from review to reduce or eliminate errors;
- (b) Adding to or removing information from case files as necessary to support the new findings and submitting the revised findings and information to the United States Food and Nutrition Service;
- (c) Finding ways to induce client responses to justify dropping error cases from the review and asking leading questions of clients to obtain desired answers to eliminate error potential;
- (d) Selectively applying requirements and policies to overturn and reduce errors;
- (e) Retaliating against SNAP employees who questioned using Osnes's methods by removing the employees from the QC review team.

DOJ sought recovery of two years of accuracy performance bonuses paid to HHSC, as well as certain other costs associated with the QC process and the relationship with Osnes. DOJ engaged HHSC in settlement negotiations, with the Office of the Attorney General representing HHSC in both the investigation and settlement discussions.

In December 2019, the parties reached agreement on the following terms:

- (a) A total settlement amount of \$15,294,360:

- (1) Of that amount, DOJ characterizes \$13,396,343 as restitution for the performance bonuses paid to the State;
- (2) The remaining \$1,898,017 represents repayment of the federally funded portion of HHSC's QC costs and the amounts paid to Osnes, plus a "multiplier" required by DOJ;
- (b) Waiver by HHSC of any claim to the 2014 performance bonus that was awarded but never paid to the State;
- (c) No admission of liability by HHSC.

Section 111.003(b) of the Texas Civil Practice and Remedies Code prohibits HHSC from entering a settlement agreement that requires the payment of damages of more than \$10,000,000 within a fiscal biennium; therefore, the settlement agreement is expressly conditioned upon the legislature approving and appropriating the agreed upon settlement amount.

Since the findings resulting in the settlement, the United States Department of Agriculture has reviewed HHSC's QC SNAP section processes twice and did not identify any adverse finding.

**RESOLVED**

That the 87th Legislature of the State of Texas hereby approve the proposed Settlement Agreement.