H.B. No. 3720

AN ACT

relating to long-term care facilities for and Medicaid waiver programs available to certain individuals, including individuals with intellectual and developmental disabilities.

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

SECTION 1.  Section 531.0581(b), Government Code, is amended to read as follows:

(b)  The executive commissioner shall establish a Long-Term Care Facilities Council as a permanent advisory committee to the commission. The council is composed of the following members appointed by the executive commissioner:

(1)  at least one member who is a for-profit nursing facility provider;

(2)  at least one member who is a nonprofit nursing facility provider;

(3)  at least one member who is an assisted living services provider;

(4)  at least one member responsible for survey enforcement within the state survey and certification agency;

(5)  at least one member responsible for survey inspection within the state survey and certification agency;

(6)  at least one member of the state agency responsible for informal dispute resolution;

(7)  at least one member with expertise in Medicaid quality-based payment systems for long-term care facilities;

(8)  at least one member who is a practicing medical director of a long-term care facility; [~~and~~]

(9)  at least one member who is a physician with expertise in infectious disease or public health; and

(10)  at least one member who is a community-based provider at an intermediate care facility for individuals with intellectual or developmental disabilities licensed under Chapter 252, Health and Safety Code.

SECTION 2.  Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.06011 to read as follows:

Sec. 531.06011.  CERTAIN MEDICAID WAIVER PROGRAMS: INTEREST LIST MANAGEMENT. (a) This section applies only with respect to the following waiver programs:

(1)  the community living assistance and support services (CLASS) waiver program;

(2)  the home and community-based services (HCS) waiver program;

(3)  the deaf-blind with multiple disabilities (DBMD) waiver program;

(4)  the Texas home living (TxHmL) waiver program;

(5)  the medically dependent children (MDCP) waiver program; and

(6)  the STAR+PLUS home and community-based services (HCBS) program.

(b)  The commission, in consultation with the Intellectual and Developmental Disability System Redesign Advisory Committee established under Section 534.053, the state Medicaid managed care advisory committee, and interested stakeholders, shall develop a questionnaire to be completed by or on behalf of an individual who requests to be placed on or is currently on an interest list for a waiver program.

(c)  The questionnaire developed under Subsection (b) must, at a minimum, request the following information about an individual seeking or receiving services under a waiver program:

(1)  contact information for the individual or the individual's parent or other legally authorized representative;

(2)  the individual's general demographic information;

(3)  the individual's living arrangement;

(4)  the types of assistance the individual requires;

(5)  the individual's current caregiver supports and circumstances that may cause the individual to lose those supports; and

(6)  when the delivery of services under a waiver program should begin to ensure the individual's health and welfare and that the individual receives services and supports in the least restrictive setting possible.

(d)  If an individual is on a waiver program's interest list and the individual or the individual's parent or other legally authorized representative does not respond to a written or verbal request made by the commission to update information concerning the individual or otherwise fails to maintain contact with the commission, the commission:

(1)  shall designate the individual's status on the interest list as inactive until the individual or the individual's parent or other legally authorized representative notifies the commission that the individual is still interested in receiving services under the waiver program; and

(2)  at the time the individual or the individual's parent or other legally authorized representative provides notice to the commission under Subdivision (1), shall designate the individual's status on the interest list as active and restore the individual to the position on the list that corresponds with the date the individual was initially placed on the list.

(e)  The commission's designation of an individual's status on an interest list as inactive under Subsection (d) may not result in the removal of the individual from that list or any other waiver program interest list.

(f)  Not later than September 1 of each year, the commission shall provide to the Intellectual and Developmental Disability System Redesign Advisory Committee established under Section 534.053, or, if that advisory committee is abolished, an appropriate stakeholder advisory committee, as determined by the executive commissioner, the number of individuals, including individuals whose status is designated as inactive by the commission, who are on an interest list to receive services under a waiver program.

SECTION 3.  Section 252.065(b), Health and Safety Code, is amended to read as follows:

(b)  The penalty for a facility with fewer than 60 beds shall be not less than $100 or more than $1,000 for each violation. The penalty for a facility with 60 beds or more shall be not less than $100 or more than $5,000 for each violation. Each day a violation occurs or continues is a separate violation for purposes of imposing a penalty. The total amount of penalties [~~a penalty~~] assessed under this subsection for an on-site regulatory visit or complaint investigation, regardless of the duration of any ongoing violations, [~~for each day a violation occurs or continues~~] may not exceed:

(1)  $5,000 for a facility with fewer than 60 beds; and

(2)  $25,000 for a facility with 60 beds or more.

SECTION 4.  Section 161.089, Human Resources Code, is amended by amending Subsection (c) and adding Subsection (c-1) to read as follows:

(c)  After consulting with appropriate stakeholders, the executive commissioner shall develop and adopt rules regarding the imposition of administrative penalties under this section. The rules must:

(1)  specify the types of violations that warrant imposition of an administrative penalty;

(2)  establish a schedule of progressive administrative penalties in accordance with the relative type, frequency, and seriousness of a violation;

(3)  prescribe reasonable amounts to be imposed for each violation giving rise to an administrative penalty, subject to Subdivision (4);

(4)  authorize the imposition of an administrative penalty in an amount not to exceed $5,000 for each violation;

(5)  provide that a provider commits a separate violation each day the provider continues to violate the law or rule;

(6)  ensure standard and consistent application of administrative penalties throughout the state; [~~and~~]

(7)  provide for an administrative appeals process to adjudicate claims and appeals relating to the imposition of an administrative penalty under this section that is in accordance with Chapter 2001, Government Code; and

(8)  ensure standard and consistent interpretation of service delivery rules and consistent application of administrative penalties throughout this state.

(c-1)  On adoption of the rules under Subsection (c), the executive commissioner shall develop interpretative guidelines for regulatory staff and providers regarding the imposition of administrative penalties under this section.

SECTION 5.  As soon as practicable after the effective date of this Act, the Health and Human Services Commission shall develop the questionnaire required by Section 531.06011(b), Government Code, as added by this Act.

SECTION 6.  Not later than December 1, 2021, the executive commissioner of the Health and Human Services Commission shall adopt the rules necessary to implement Section 252.065(b), Health and Safety Code, as amended by this Act, and Section 161.089, Human Resources Code, as amended by this Act.

SECTION 7.  The Health and Human Services Commission may not assess a penalty under Section 161.089, Human Resources Code, as amended by this Act, until the executive commissioner of the Health and Human Services Commission:

(1)  adopts the rules necessary to implement Section 161.089(c)(8), Human Resources Code, as added by this Act; and

(2)  develops the interpretive guidelines required by Section 161.089(c-1), Human Resources Code, as added by this Act.

SECTION 8.  The Health and Human Services Commission is required to implement a provision of this Act only if the legislature appropriates money to the commission specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the commission may, but is not required to, implement a provision of this Act using other appropriations that are available for that purpose.

SECTION 9.  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 may delay implementing that provision until the waiver or authorization is granted.

SECTION 10.  This Act takes effect September 1, 2021.

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  President of the Senate Speaker of the House

I certify that H.B. No. 3720 was passed by the House on May 14, 2021, by the following vote:  Yeas 141, Nays 1, 3 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 3720 on May 28, 2021, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 3720 on May 30, 2021, by the following vote:  Yeas 140, Nays 1, 2 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 3720 was passed by the Senate, with amendments, on May 24, 2021, by the following vote:  Yeas 30, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 3720 on May 30, 2021, by the following vote:  Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

                 Date

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               Governor