

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

1 quality-based payment systems for long-term care facilities;

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

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

6 (10) at least one member who is a community-based  
7 provider at an intermediate care facility for individuals with  
8 intellectual or developmental disabilities licensed under Chapter  
9 252, Health and Safety Code.

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

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

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

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

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

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

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

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

26 (b) The commission, in consultation with the Intellectual  
27 and Developmental Disability System Redesign Advisory Committee

1 established under Section 534.053, the state Medicaid managed care  
2 advisory committee, and interested stakeholders, shall develop a  
3 questionnaire to be completed by or on behalf of an individual who  
4 requests to be placed on or is currently on an interest list for a  
5 waiver program.

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

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

11 (2) the individual's general demographic information;

12 (3) the individual's living arrangement;

13 (4) the types of assistance the individual requires;

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

16 and

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

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

27 (1) shall designate the individual's status on the

1 interest list as inactive until the individual or the individual's  
2 parent or other legally authorized representative notifies the  
3 commission that the individual is still interested in receiving  
4 services under the waiver program; and

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

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

15 (f) Not later than September 1 of each year, the commission  
16 shall provide to the Intellectual and Developmental Disability  
17 System Redesign Advisory Committee established under Section  
18 534.053, or, if that advisory committee is abolished, an  
19 appropriate stakeholder advisory committee, as determined by the  
20 executive commissioner, the number of individuals, including  
21 individuals whose status is designated as inactive by the  
22 commission, who are on an interest list to receive services under a  
23 waiver program.

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

26 (b) The penalty for a facility with fewer than 60 beds shall  
27 be not less than \$100 or more than \$1,000 for each violation. The

1 penalty for a facility with 60 beds or more shall be not less than  
2 \$100 or more than \$5,000 for each violation. Each day a violation  
3 occurs or continues is a separate violation for purposes of  
4 imposing a penalty. The total amount of penalties [~~a penalty~~]  
5 assessed under this subsection for an on-site regulatory visit or  
6 complaint investigation, regardless of the duration of any ongoing  
7 violations, [~~for each day a violation occurs or continues~~] may not  
8 exceed:

- 9 (1) \$5,000 for a facility with fewer than 60 beds; and
- 10 (2) \$25,000 for a facility with 60 beds or more.

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

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

- 18 (1) specify the types of violations that warrant  
19 imposition of an administrative penalty;
- 20 (2) establish a schedule of progressive  
21 administrative penalties in accordance with the relative type,  
22 frequency, and seriousness of a violation;
- 23 (3) prescribe reasonable amounts to be imposed for  
24 each violation giving rise to an administrative penalty, subject to  
25 Subdivision (4);
- 26 (4) authorize the imposition of an administrative  
27 penalty in an amount not to exceed \$5,000 for each violation;

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

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

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

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

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

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

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

26           SECTION 7. The Health and Human Services Commission may not  
27 assess a penalty under Section [161.089](#), Human Resources Code, as

1 amended by this Act, until the executive commissioner of the Health  
2 and Human Services Commission:

3 (1) adopts the rules necessary to implement Section  
4 161.089(c)(8), Human Resources Code, as added by this Act; and

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

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

14 SECTION 9. 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 10. This Act takes effect September 1, 2021.

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President of the Senate

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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



H.B. No. 3720

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