

Suspending limitations on conference committee
jurisdiction, H.B. No. 3720 (Frank/Kolkhorst)

By: Kolkhorst

S.R. No. 552

SENATE RESOLUTION

BE IT RESOLVED by the Senate of the State of Texas, 87th Legislature, Regular Session, 2021, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on House Bill 3720 (long-term care facilities for and Medicaid waiver programs available to certain individuals, including individuals with intellectual and developmental disabilities) to consider and take action on the following matters:

(1) Senate Rule 12.03(2) is suspended to permit the committee to omit text not in disagreement by omitting proposed Section 531.06035, Government Code, and the transition language associated with that section. The omitted text imposes a duty on the Health and Human Services Commission to conduct a medical necessity assessment of a child who receives Supplemental Security Income (SSI) before placing the child on the interest list for the medically dependent children (MDCP) program.

Explanation: The omission of the text is necessary to remove the duty imposed on the Health and Human Services Commission to conduct certain medical necessity assessments of a child who receives Supplemental Security Income (SSI) before placing the child on the interest list for the medically dependent children (MDCP) program.

(2) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter not included in either the house

or senate version of the bill by adding the following new SECTION to the bill:

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.

Explanation: This addition is necessary to change the composition of the Texas Long-Term Care Facilities Council to include at least one member who is a community-based provider at certain intermediate care facilities.

(3) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter not included in either the house or senate version of the bill by adding the following new SECTIONS to the bill:

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 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.

Explanation: The changes are necessary to implement certain changes to law relating to the imposition of administrative penalties against certain long-term care facilities, including a change to the amount of an administrative penalty for certain violations committed by intermediate care facilities for individuals with an intellectual disability and a change to ensure the executive commissioner of the Health and Human Services Commission adopts standard and consistent rules

S.R. No. 552

relating to the interpretation and consistent application of administrative penalties against certain long-term care facilities.

President of the Senate

I hereby certify that the above Resolution was adopted by the Senate on May 30, 2021, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate