

BILL ANALYSIS

C.S.H.B. 1008
By: Turner
Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Joshua Moore was a 27-year-old man with autism who was receiving care and living in a small group home setting. Because Joshua's autism made him prone to physical and verbal outbursts, his behavior plan specified that he should not have access to anything sharp and made note of words that were known to trigger an outburst. Unfortunately, Joshua became upset one evening and he was able to find a knife that was left in the kitchen sink. He threatened his caregiver with the knife, who in response called 9-1-1, retrieved a gun, and fatally shot Joshua. The caregiver was found guilty of neglect for leaving a sharp object unsecured in the home but was legally allowed to continue caring for individuals with disabilities as he appealed his case.

Currently, a caregiver who is found guilty of misconduct is barred from caring for individuals. However, this does not take effect until the investigation and appeals process, which can extend beyond a year, has been exhausted and a decision is final. This delay allows a caregiver who has been credibly accused of misconduct to continue serving vulnerable populations. C.S.H.B. 1008 seeks to address this issue by prohibiting certain residential caregivers who are found to have engaged in certain reportable conduct from providing care to an individual with an intellectual or developmental disability during any applicable appeals process and provides for the disenrollment from Medicaid of a provider that does not suspend such a caregiver during that period.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 1008 amends the Government Code to require a Medicaid provider who employs or contracts with a residential caregiver to provide community-based residential care services through a group home or other residential facility licensed by or operated under the authority of the Health and Human Services Commission (HHSC) to suspend the employment or contract of an individual the provider employs or contracts with as a residential caregiver who meets the following criteria:

- provides community-based residential care services to up to four individuals with an intellectual or developmental disability at any time at a residence other than the home of the individual providing the service; and
- has engaged in reportable conduct, as found by HHSC, against a resident or an individual using the consumer-directed service option, including abuse or neglect that causes or

may cause death or harm, sexual abuse, financial exploitation in an amount of \$25 or more, and emotional, verbal, or psychological abuse that causes harm.

The bill requires the provider to suspend the employment or contract of such an individual while the individual exhausts any applicable appeals process, including informal and formal appeals, pending a final decision by an administrative law judge and prohibits the provider from reinstating the individual's employment or contract during the course of any appeals process. The bill requires HHSC to disenroll from participation in Medicaid a provider who violates those suspension and reinstatement provisions and requires the executive commissioner of HHSC to adopt rules necessary to implement these provisions.

C.S.H.B. 1008 amends the Health and Safety Code to require a facility licensed by HHSC to suspend the employment of a facility employee who HHSC finds has engaged in reportable conduct while the employee exhausts any applicable appeals process, including informal and formal appeals and a hearing or judicial review, pending a final decision by an administrative law judge. The bill prohibits the facility from reinstating the employee's position during that period pending a final decision by an administrative law judge. The bill clarifies that a state supported living center is considered a facility for purposes of statutory provisions relating to HHSC's employee misconduct registry.

C.S.H.B. 1008 provides for the delayed implementation of any provision for which an applicable state agency determines a federal waiver or authorization is necessary for implementation until the waiver or authorization is requested and granted.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 1008 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute changes and incorporates provisions from the introduced regarding the suspension of certain residential caregivers in the following manner:

- whereas the introduced required a group home or other residential facility to suspend the employment of a caregiver who is the subject of an investigation conducted by HHSC or a law enforcement agency for certain misconduct, the substitute requires a Medicaid provider who employs or contracts with a residential caregiver through such a home or facility to suspend the employment or contract of an individual the provider employs or contracts with and HHSC finds has engaged in certain reportable conduct while the individual exhausts any applicable appeals process;
- whereas the introduced required HHSC to disenroll from participation in Medicaid a residential caregiver who is the subject of the investigation during the course of the investigation and any appeals process, the substitute requires HHSC to disenroll from participation in Medicaid a provider that violates the bill's suspension and reinstatement provisions; and
- whereas the introduced provided for a suspension based on misconduct involving abuse, neglect, or exploitation of an individual receiving services from the caregiver, the substitute provides for a suspension based on reportable conduct and specifies what type of conduct is included in that term.