

BILL ANALYSIS

C.S.H.B. 1009
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Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Raul Olguin was a 24-year-old man with autism. He was receiving care in a Northeast Dallas group home when he died due to malnutrition at a weight of 85 pounds. While under investigation for the death, his caregiver was found to have a federal criminal conviction that was not flagged during a statewide background check. Currently, caregivers for individuals with intellectual or developmental disabilities are only subject to a Department of Public Safety background check, which only identifies convictions in Texas courts. These background checks do not flag crimes committed in other states, meaning a caregiver who committed a crime in a different state could pass a background check and be approved to care for this vulnerable population. C.S.H.B. 1009 seeks to address this issue by requiring Medicaid providers to review both state and federal criminal history records for certain caregivers who provide services to individuals with intellectual or developmental disabilities through a group home or other residential facility licensed by or operated under the authority of the Health and Human Services Commission.

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 2 of this bill.

ANALYSIS

C.S.H.B. 1009 amends the Government Code to entitle a Medicaid provider that provides community-based residential care services to Medicaid recipients through a group home or other residential facility licensed by or operated under the authority of the Health and Human Services Commission (HHSC) to obtain from the Department of Public Safety (DPS) criminal history record information maintained by DPS that relates to an individual who is an applicant for employment or seeking a contract position with the provider as a residential caregiver or who is employed or contracted by the provider as a residential caregiver.

C.S.H.B. 1009 requires a Medicaid provider, including a provider providing services under a federal Section 1915(c) waiver program, that employs or contracts with a residential caregiver to provide community-based residential care services to Medicaid recipients to review state and federal criminal history record information and obtain electronic updates from DPS of arrests and convictions for each residential caregiver the provider employs or contracts with to provide those services to Medicaid recipients. The bill defines "residential caregiver" as an individual who provides, through a group home or other residential facility licensed by or operated under HHSC authority, community-based residential care services as follows:

- to not more than four individuals with an intellectual or developmental disability at any time; and
- at a residence other than the home of the individual providing the services.

C.S.H.B. 1009 prohibits an individual who has been convicted of an offense that bars a person from employment serving the elderly, persons with disabilities, or persons with terminal illnesses from being employed or contracted as a residential caregiver or otherwise providing direct care to a Medicaid recipient with an intellectual or developmental disability. The bill subjects an individual who violates this prohibition to disciplinary action by HHSC. The bill requires a Medicaid provider to immediately discharge any individual the provider employs or contracts with as a residential caregiver who is convicted of such an offense and requires HHSC to disenroll a Medicaid provider who violates that requirement from participation in Medicaid.

C.S.H.B. 1009 requires the executive commissioner of HHSC to adopt rules necessary to implement the bill's provisions relating to the required review of criminal history record information for certain residential caregivers, including the provisions about individuals convicted of certain offenses.

C.S.H.B. 1009 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 after the waiver or authorization is requested and granted.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 1009 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 includes a provision that was not in the introduced that entitles an applicable Medicaid provider to obtain from DPS criminal history record information that relates to an individual who is an applicant for employment or seeking a contract position with the provider as a residential caregiver or who is employed or contracted by the provider as a residential caregiver.

Both the introduced and substitute require the review of criminal history record information for certain residential caregivers, but their provisions on this matter differ as follows:

- whereas the introduced required HHSC to review state and federal criminal history record information and obtain related electronic updates from DPS for each residential caregiver who holds a license or other operational authorization issued by HHSC, the substitute requires a Medicaid provider that employs or contracts with a residential caregiver to provide community-based residential care services to Medicaid recipients to review such information and obtain DPS updates for each residential caregiver the provider employs or contracts with to provide those services to Medicaid recipients;
- the substitute does not include the introduced version's specification that the term "residential caregiver" includes an individual who provides applicable services through a group home or facility licensed or operated under a federal Section 1915(c) waiver program but does include language specifying that the Medicaid providers subject to the review requirement include providers providing services under such a waiver program; and
- whereas the introduced conditioned an individual's classification as a "residential caregiver" on the individual providing the applicable services at a residence other than the home of an individual to whom the services are provided, the substitute conditions

such classification on the individual providing the services at a residence other than their own home.

Both the introduced and the substitute include provisions regarding an individual who has been convicted of an offense that bars a person from employment serving the elderly, persons with disabilities, or persons with terminal illnesses, but these provisions differ as follows:

- the substitute replaces the provision of the introduced that prohibits a residential caregiver who has been convicted of an applicable offense from providing direct care to an individual with an intellectual or developmental disability with a provision prohibiting any individual who has been convicted of an applicable offense from being employed or contracted as a residential caregiver or otherwise providing direct care to a Medicaid recipient with an intellectual or developmental disability;
- the substitute includes a requirement not in the introduced for a Medicaid provider to immediately discharge any individual the provider employs or contracts with as a residential caregiver who is convicted of an applicable offense; and
- while the introduced required HHSC to disenroll a residential caregiver convicted of an applicable offense from participation in Medicaid, the substitute requires HHSC to disenroll a Medicaid provider who violates the bill's requirement to discharge individuals convicted of such an offense.

The substitute includes a provision that was not in the introduced providing for the delayed implementation of any provision for which an applicable state agency determines a federal waiver or authorization is necessary.