

BILL ANALYSIS

C.S.H.B. 1238
By: VanDeaver
Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas School Health and Related Services (SHARS) Program is at the intersection of the federal Individuals with Disabilities Education Act (IDEA) and Medicaid. SHARS is a Medicaid program designed to allow schools to seek federal Medicaid reimbursement for special education students. Parents and educators have expressed that management of the program needs more cooperation between the Texas Education Agency (TEA) and the Health and Human Services Commission (HHSC), which oversee the program. C.S.H.B. 1238 seeks to enhance the relationship between these agencies and to provide parents with greater involvement in the program's administration by creating the school health and related services program advisory council. The bill additionally ensures that parental consent is obtained for the exchange of a student's personally identifiable information between school districts and TEA or HHSC for a program-related purpose.

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 SECTIONS 2 and 3 of this bill.

ANALYSIS

C.S.H.B. 1238 amends the Health and Safety Code to establish the school health and related services program advisory council to advise the Texas Education Agency (TEA) and the Health and Human Services Commission (HHSC) regarding the following:

- implementing and administering the school health and related services program under which certain health-related services provided under a student's individualized education program are eligible for Medicaid reimbursement;
- incorporating changes to federal law governing the program;
- publishing the school health and related services (SHARS) handbook portion of the Texas Medicaid provider procedures manual, including the adoption of potential amendments to the handbook; and
- any other issue involving the administration of the program or the publication of the handbook.

C.S.H.B. 1238 establishes the advisory council's membership, including one TEA employee with administrative duties involving the program as appointed by the commissioner of education. The executive commissioner of HHSC or the executive commissioner's designee appoints the following remaining members:

- two HHSC employees with administrative duties involving the program;

- one superintendent or chief financial officer of a public school district with a student enrollment of at least 5,000 students and one special education director employed by such a district;
- one superintendent or chief financial officer of a district that offers a kindergarten through grade 12 program and has less than 5,000 students in average daily attendance (ADA) and one special education director employed by such a district;
- one superintendent or chief financial officer of a district with less than 1,600 students in ADA, or that has fewer than 300 students in ADA and is the only district located in and operating in a county entitled to a certain allotment, and one special education director employed by such a district;
- two persons who are each a parent of a student eligible for reimbursement under the program;
- one member of an advocacy group for children with special needs; and
- one provider of special education services.

The bill provides for the appointment of the advisory council's chair, the process for filling vacancies, and members' terms. Members serve without compensation but are entitled to reimbursement for travel expenses. The bill requires the commissioner of education and executive commissioner of HHSC, as soon as practicable and not later than October 1, 2023, to appoint the advisory council members. A member is eligible for reappointment and the bill provides for staggered terms.

C.S.H.B. 1238 requires HHSC to provide administrative support for the advisory council and requires funding for the advisory council's administrative and operational expenses to be provided by legislative appropriation to HHSC for that purpose. The bill establishes that statutory provisions governing state agency advisory committees do not apply to the advisory council and authorizes the executive commissioner of HHSC to adopt rules as necessary to implement the bill's Health and Safety Code provisions.

C.S.H.B. 1238 amends the Government Code to require HHSC to publish, as soon as practicable and not later than October 1, 2023, an update to the SHARS handbook portion of the Texas Medicaid provider procedures manual for providers of services to Medicaid recipients. The bill requires HHSC to update the manual again not later than July 1, 2024, and July 1 of each subsequent year. For at least 60 days before publishing an update to the handbook, the executive commissioner of HHSC by rule must establish a procedure allowing the public to inspect and comment on proposed changes to the handbook in the same manner that public inspection and comment is provided in the Administrative Procedure Act. The bill also requires HHSC to consult the school health and related services program advisory council regarding any proposed handbook changes.

C.S.H.B. 1238 amends the Education Code to require a public school district or open-enrollment charter school to obtain, for each student for whom the district or charter school may request reimbursement under the school health and related services program during a school year, written parental consent for disclosure of the student's personally identifiable information to the district or charter school, TEA, or HHSC as necessary to administer the program. The consent must be in a form that satisfies federal law, and the district or charter school must provide a copy of the consent to TEA and HHSC for them to maintain records as necessary to administer the program. The bill establishes that such parental consent obtained for a school year is sufficient for all program-related purposes involving the use of a student's personally identifiable information for the remainder of that year and prohibits the district or charter school, TEA, or HHSC from requiring any additional parental consent for a program-related purpose that does not involve the sharing of a student's personally identifiable information.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 1238 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.

Whereas the introduced required HHSC to publish an update to the Texas Medicaid provider procedures manual, the substitute requires HHSC to publish an update to the SHARS handbook portion of the manual.

Whereas the introduced prohibited a district or charter school, TEA, or HHSC from requiring additional parental consent under the school health and related services program for any program-related purpose, the substitute prohibits such entities from requiring additional parental consent under the program for a program-related purpose that does not involve sharing of a student's personally identifiable information.

The substitute omits the provision from the introduced specifying that preparing cost reports under the program is a program-related purpose for which parental consent obtained in compliance with the bill is sufficient.