

BILL ANALYSIS

S.B. 1629
By: Kolkhorst
Human Services
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Texas Medicaid provides residential long-term care services for eligible Texans who are 65 years of age or older. Historically, Texas has operated several programs to ensure that Medicaid dollars administered to these facilities incentivize the highest levels of care, including the Quality Incentive Payment Program and the Nursing Facility Direct Care Staff Rate Enhancement Program. However, not all nursing homes leverage these voluntary programs to provide consistent, high-quality care. Ownership models in nursing care have also been found to correlate to the quality of care a resident receives. According to Americans for Financial Reform Education Fund, nursing facilities owned by private equity and real estate investment correlate to lower staffing levels, which can influence timeliness in serving residents. As nursing facility funds increase through Medicaid, Texas must ensure these taxpayer funds are directed to better care and outcomes for residents. S.B. 1629 seeks to improve nursing care by increasing transparency and accountability for nursing facilities participating in Medicaid by requiring disclosure of the ownership structure of a nursing facility in Texas and by requiring the executive commissioner of the Health and Human Services Commission to establish an annual direct care expense ratio for reimbursement of nursing facility providers for services provided to Medicaid recipients.

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 6 of this bill.

ANALYSIS

S.B. 1629 amends the Human Resources Code to require the executive commissioner of the Health and Human Services Commission (HHSC) to ensure that rules governing the incentives program for increasing direct care staff and direct care wages and benefits with respect to Medicaid reimbursement rates for nursing facility services, to the extent permitted by federal law, require HHSC to recoup all or part of an incentive payment if the nursing facility fails to satisfy a program requirement. The bill requires HHSC to prohibit a provider who is the subject of such an incentive payment recoupment from participating in the incentives program for a period of not less than two consecutive years following the date on which the recoupment occurs. The bill requires HHSC to publish and maintain on HHSC's website a list of each provider prohibited from participating in this incentives program.

S.B. 1629 requires the executive commissioner to establish by rule an annual direct care expense ratio, including a process for determining the ratio, applicable to the reimbursement of nursing

facility providers for providing services to Medicaid recipients. The bill requires the executive commissioner, in establishing the ratio, to require that at least 80 percent of the portion of the Medicaid reimbursement amount paid to a nursing facility that is attributable to patient care expenses is spent on reasonable and necessary direct care expenses. The bill establishes that a "direct care expense" includes and excludes the following expenses:

- includes an expense for:
 - non-revenue generating support services, such as laundry, housekeeping, dietary services, and nursing administration;
 - ancillary services, such as laboratory tests and services, physical therapy services, occupational therapy services, speech-language pathology services, or audiological services; and
 - program services, such as an adult day-care program; and
- does not include an expense for:
 - administrative costs other than nursing administration;
 - capital costs;
 - debt service;
 - taxes, other than sales and payroll taxes;
 - capital depreciation;
 - rental or lease payments; or
 - financial services.

S.B. 1629 requires the executive commissioner to adopt rules necessary to ensure each nursing facility provider that participates in Medicaid complies with the direct care expense ratio adopted under the bill. The bill authorizes HHSC, to the extent permitted by federal law, to recoup all or part of the reimbursement amounts paid to a nursing facility that are subject to the direct care expense ratio if the facility fails to spend the reimbursement amounts in accordance with the direct care expense ratio. The bill prohibits HHSC from requiring a nursing facility to comply with the direct care expense ratio as a condition of participation in Medicaid and establishes that the bill's provisions relating to the direct care expense ratio do not apply to a state-owned facility.

S.B. 1629, effective September 1, 2023, amends the Government Code to require HHSC to ensure that a nursing facility complies with the direct care expense ratio adopted under the bill's provisions in implementing provisions requiring HHSC to provide benefits to Medicaid recipients who reside in nursing facilities through the STAR + PLUS Medicaid managed care program. The bill additionally requires a contract between a managed care organization (MCO) and HHSC to provide health care services to Medicaid recipients to require that each provider agreement between the MCO and a nursing facility, other than a state-owned facility, include a requirement that the facility comply with the direct care expense ratio. The bill requires HHSC, in a contract between HHSC and a Medicaid MCO that is entered into or renewed on or after the bill's effective date, to require the MCO to comply with that requirement and requires HHSC to seek to amend contracts entered into with Medicaid MCOs before the bill's effective date to require those MCOs to comply with that requirement. To the extent of a conflict between that requirement and a contract provision with a Medicaid MCO entered into before the bill's effective date, the contract provision prevails.

S.B. 1629 amends the Health and Safety Code to require that an application for a license or renewal of a license under provisions relating to convalescent and nursing facilities and related institutions include the following:

- the name of each person with a direct or indirect ownership interest of five percent or more in the nursing facility, including a subsidiary or parent company of the facility, and in the real property on which the nursing facility is located, including any owner, common owner, tenant, or sublessee; and
- a description of the exact ownership interest of each of those persons in relation to the facility or property.

The bill requires such a license holder to notify HHSC, in the form and manner HHSC requires, of any change to that ownership interest application information provided on the license or renewal application.

S.B. 1629 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.