

## **BILL ANALYSIS**

Senate Research Center  
88R21852 JG-D

C.S.S.B. 1629  
By: Kolkhorst  
Health & Human Services  
4/13/2023  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Texas Medicaid provides residential long-term care services for elderly Texans over 65 who qualify, covering approximately 390,000 individuals statewide, with an average daily census of roughly 73,000. In 2021, nursing facilities cost the state \$2.6 billion, covering 62 percent of all Texans in these homes.

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 (QIPP) 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. Recent studies have found that nursing facilities owned by private equity and real estate investment correlate to lower staffing levels, which can influence timeliness in serving residents.

Nursing facility funds are increasing 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 homes participating in the Medicaid program. The bill requires disclosure of the ownership structure of a Texas nursing facility that is reimbursed through Medicaid. Finally, the bill also would establish a "direct care expense ratio" for Medicaid patient care reimbursements to ensure that 80 percent of these Medicaid dollars are spent on the care of nursing home residents.

#### Committee Substitute Changes

Clarifies that the Nursing Facility Direct Care Staff Rate Enhancement Program is not funded for cost.

The filed bill re-directed the recouped funds back to the program. There were some concerns raised over the ability for budget adjustments.

To address the issue of providing additional rate enhancement opportunities, C.S.S.B. 26 makes a change to the eligibility for the funding pool.

It authorizes the removal of nursing homes that have had two consecutive years of funds clawed back for improper payment in order to free up more funding in the program for nursing facilities that have complied with the program requirements.

Revises ownership disclosure by changing the disclosure requirement to include all owners with a five percent or more direct and indirect ownership stake. This change is similar to the proposed Centers for Medicare and Medicaid Services (CMS) standard in which owners that have an interest of five percent or more must be disclosed.

Clarifies that the "direct care expense ratio" allows for the current Medicaid payment portion that CMS grants for capital expenditures.

Those expenses would not be counted against the direct care ratio of 80 percent.

C.S.S.B. 1629 amends current law relating to the regulation of certain nursing facilities, including licensing requirements and Medicaid participation requirements.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the executive commissioner of the Health and Human Services Commission is modified in SECTION 5 (Section 32.028, Human Resources Code) of this bill.

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 6 (Section 32.0286, Human Resources) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 533.00251(c), Government Code, as effective September 1, 2023, as follows:

(c) Requires the Health and Human Services Commission (HHSC), in implementing this subsection, to ensure certain requirements are met, including that a nursing facility complies with the direct care expense ratio adopted under Section 32.0286, Human Resources Code.

SECTION 2. Amends Subchapter A, Chapter 533, Government Code, by adding Section 533.00512, as follows:

Sec. 533.00512. NURSING FACILITY PROVIDER AGREEMENTS: COMPLIANCE WITH DIRECT CARE EXPENSE RATIO. (a) Requires that a contract between a managed care organization and HHSC to provide health care services to recipients require that each provider agreement between the organization and a nursing facility include a requirement that the facility comply with the direct care expense ratio adopted under Section 32.0286, Human Resources Code.

(b) Provides that this section does not apply to a state-owned facility.

SECTION 3. Amends Section 242.032, Health and Safety Code, by adding Subsection (b-1), as follows:

(b-1) Requires that the application:

(1) include 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

(2) describe the exact ownership interest of each of those persons in relation to the facility or property.

SECTION 4. Amends Subchapter B, Chapter 242, Health and Safety Code, by adding Section 242.0333, as follows:

Sec. 242.0333. NOTIFICATION OF CHANGE TO OWNERSHIP INTEREST APPLICATION INFORMATION. Requires a license holder to notify HHSC, in the form and manner HHSC requires, of any change to the ownership interest application information provided under Section 242.032(b-1).

SECTION 5. Amends Section 32.028, Human Resources Code, by amending Subsection (i) and adding Subsection (i-1), as follows:

(i) Requires the executive commissioner to ensure that rules governing the incentives program described by Subsection (g)(1):

(1)-(2) makes no changes to these subdivisions;

(3)-(4) makes nonsubstantive changes to these subdivisions;

(5) 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.

(i-1) Requires HHSC to prohibit a provider who is the subject of the recoupment of an incentive payment under Subsection (i)(5) from participating in the incentives program described by Subsection (g)(1) for a period of not less than two consecutive years following the date on which the recoupment occurs. Requires HHSC to publish and maintain on HHSC's Internet website a list of each provider prohibited from participating in the incentives program under this subsection.

SECTION 6. Amends Subchapter B, Chapter 32, Human Resources Code, by adding Section 32.0286, as follows:

Sec. 32.0286. ANNUAL DIRECT CARE EXPENSE RATIO FOR REIMBURSEMENT OF CERTAIN NURSING FACILITY PROVIDERS. (a) Defines "direct care expense."

(b) Requires the executive commissioner, notwithstanding any other law, by rule to establish an annual direct care expense ratio, including a process for determining the ratio, applicable to the reimbursement of nursing facility and other long-term care facility providers for providing services to recipients under the medical assistance program. Requires the executive commissioner, in establishing the ratio, to require that at least 80 percent of the portion of the medical assistance reimbursement amount paid to a nursing facility that is attributable to patient care expenses is spent on reasonable and necessary direct care expenses.

(c) Requires the executive commissioner to adopt rules necessary to ensure each nursing facility provider that participates in the medical assistance program complies with the direct care expense ratio adopted under this section.

(d) 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 under this section if the facility fails to spend the reimbursement amounts in accordance with the direct care expense ratio.

(e) Prohibits HHSC from requiring a nursing facility to comply with the direct care expense ratio as a condition of participation in Medicaid.

(f) Provides that this section does not apply to a state-owned facility.

SECTION 7. (a) Requires HHSC, in a contract between HHSC and a managed care organization under Chapter 533 (Medicaid Managed Care Program), Government Code, that is entered into or renewed on or after the effective date of this Act, to require the managed care organization to comply with Section 533.00512, Government Code, as added by this Act.

(b) Requires HHSC to seek to amend contracts entered into with managed care organizations under Chapter 533, Government Code, before the effective date of this Act to require those managed care organizations to comply with Section 533.00512, Government Code, as added by this Act. Provides that a provision of a contract with a

managed care organization entered into before the effective date of this Act prevails, to the extent of a conflict between that section and the contract provision.

SECTION 8. Requires a state agency, if necessary for implementation of a provision of this Act, to request a waiver or authorization from a federal agency, and authorizes a delay of implementation until such a waiver or authorization is granted.

SECTION 9. Effective date: September 1, 2023.