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S.B. No. 1629

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of certain nursing facilities, including
licensing requirements and Medicaid participation requirements.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 533.00251(c), Government Code, as
effective September 1, 2023, is amended to read as follows:

(c) Subject to Section 533.0025 and notwithstanding any
other law, the commission shall provide benefits under Medicaid to
recipients who reside in nursing facilities through the STAR + PLUS
Medicaid managed care program. In implementing this subsection,
the commission shall ensure:

(1) that a nursing facility is paid not later than the
10th day after the date the facility submits a clean claim;

(1-a) that a nursing facility complies with the direct
care expense ratio adopted under Section 32.0286, Human Resources
Code;

(2) the appropriate utilization of services
consistent with criteria established by the commission;

(3) a reduction in the incidence of potentially
preventable events and unnecessary institutionalizations;

(4) that a managed care organization providing
services under the managed care program provides discharge
planning, transitional care, and other education programs to

1 physicians and hospitals regarding all available long-term care
2 settings;

3 (5) that a managed care organization providing
4 services under the managed care program:

5 (A) assists in collecting applied income from
6 recipients; and

7 (B) provides payment incentives to nursing
8 facility providers that reward reductions in preventable acute care
9 costs and encourage transformative efforts in the delivery of
10 nursing facility services, including efforts to promote a
11 resident-centered care culture through facility design and
12 services provided;

13 (6) the establishment of a portal that is in
14 compliance with state and federal regulations, including standard
15 coding requirements, through which nursing facility providers
16 participating in the STAR + PLUS Medicaid managed care program may
17 submit claims to any participating managed care organization;

18 (7) that rules and procedures relating to the
19 certification and decertification of nursing facility beds under
20 Medicaid are not affected;

21 (8) that a managed care organization providing
22 services under the managed care program, to the greatest extent
23 possible, offers nursing facility providers access to:

24 (A) acute care professionals; and

25 (B) telemedicine, when feasible and in
26 accordance with state law, including rules adopted by the Texas
27 Medical Board; and

(9) that the commission approves the staff rate enhancement methodology for the staff rate enhancement paid to a nursing facility that qualifies for the enhancement under the managed care program.

SECTION 2. Subchapter A, Chapter 533, Government Code, is amended by adding Section 533.00512 to read as follows:

Sec. 533.00512. NURSING FACILITY PROVIDER AGREEMENTS: COMPLIANCE WITH DIRECT CARE EXPENSE RATIO. (a) A contract between a managed care organization and the commission to provide health care services to recipients must 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) This section does not apply to a state-owned facility.

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

(b-1) The application must:

(1) include the name of each person with a direct or indirect ownership interest of five percent or more in:

(A) the nursing facility, including a subsidiary or parent company of the facility; and

(B) 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. Subchapter B, Chapter 242, Health and Safety

Code, is amended by adding Section 242.0333 to read as follows:

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

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

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

(1) provide that participation in the program by a nursing facility is voluntary;

(2) do not impose on a nursing facility not participating in the program a minimum spending requirement for direct care staff wages and benefits;

(3) do not set a base rate for a nursing facility participating in the program that is more than the base rate for a nursing facility not participating in the program; ~~and~~

(4) establish a funding process to provide incentives for increasing direct care staff and direct care wages and benefits in accordance with appropriations provided; and

(5) to the extent permitted by federal law, require the commission to recoup all or part of an incentive payment if the nursing facility fails to satisfy a program requirement.

(i-1) The commission shall prohibit a provider who is the subject of the recoupment of an incentive payment under Subsection

1 (i)(5) from participating in the incentives program described by
2 Subsection (g)(1) for a period of not less than two consecutive
3 years following the date on which the recoupment occurs. The
4 commission shall publish and maintain on the commission's Internet
5 website a list of each provider prohibited from participating in
6 the incentives program under this subsection.

7 SECTION 6. Subchapter B, Chapter 32, Human Resources Code,
8 is amended by adding Section 32.0286 to read as follows:

9 Sec. 32.0286. ANNUAL DIRECT CARE EXPENSE RATIO FOR
10 REIMBURSEMENT OF CERTAIN NURSING FACILITY PROVIDERS. (a) In this
11 section, "direct care expense":

12 (1) includes an expense for:

13 (A) non-revenue generating support services,
14 such as laundry, housekeeping, dietary services, and nursing
15 administration;

16 (B) ancillary services, such as laboratory tests
17 and services, physical therapy services, occupational therapy
18 services, speech-language pathology services, or audiological
19 services; and

20 (C) program services, such as an adult day-care
21 program; and

22 (2) does not include an expense for:

23 (A) administrative costs other than nursing
24 administration;

25 (B) capital costs;

26 (C) debt service;

27 (D) taxes, other than sales and payroll taxes;

1 (E) capital depreciation;

2 (F) rental or lease payments; or

3 (G) financial services.

4 (b) Notwithstanding any other law, the executive
5 commissioner by rule shall establish an annual direct care expense
6 ratio, including a process for determining the ratio, applicable to
7 the reimbursement of nursing facility providers for providing
8 services to recipients under the medical assistance program. In
9 establishing the ratio, the executive commissioner shall require
10 that at least 80 percent of the portion of the medical assistance
11 reimbursement amount paid to a nursing facility that is
12 attributable to patient care expenses is spent on reasonable and
13 necessary direct care expenses.

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

18 (d) To the extent permitted by federal law, the commission
19 may recoup all or part of the reimbursement amounts paid to a
20 nursing facility that are subject to the direct care expense ratio
21 under this section if the facility fails to spend the reimbursement
22 amounts in accordance with the direct care expense ratio.

23 (e) The commission may not require a nursing facility to
24 comply with the direct care expense ratio as a condition of
25 participation in Medicaid.

26 (f) This section does not apply to a state-owned facility.

27 SECTION 7. (a) The Health and Human Services Commission

1 shall, in a contract between the commission and a managed care
2 organization under Chapter 533, Government Code, that is entered
3 into or renewed on or after the effective date of this Act, require
4 the managed care organization to comply with Section 533.00512,
5 Government Code, as added by this Act.

6 (b) The Health and Human Services Commission shall seek to
7 amend contracts entered into with managed care organizations under
8 Chapter 533, Government Code, before the effective date of this Act
9 to require those managed care organizations to comply with Section
10 533.00512, Government Code, as added by this Act. To the extent of
11 a conflict between that section and a provision of a contract with a
12 managed care organization entered into before the effective date of
13 this Act, the contract provision prevails.

14 SECTION 8. If before implementing any provision of this Act
15 a state agency determines that a waiver or authorization from a
16 federal agency is necessary for implementation of that provision,
17 the agency affected by the provision shall request the waiver or
18 authorization and may delay implementing that provision until the
19 waiver or authorization is granted.

20 SECTION 9. This Act takes effect September 1, 2023.