

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Turner

H.B. No. 1009

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to criminal history record information reviews of certain  
3 individuals providing services to individuals with an intellectual  
4 or developmental disability under Medicaid; providing an  
5 administrative penalty.

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

7 SECTION 1. Subchapter F, Chapter 411, Government Code, is  
8 amended by adding Section 411.11061 to read as follows:

9 Sec. 411.11061. ACCESS TO CRIMINAL HISTORY RECORD  
10 INFORMATION: CERTAIN MEDICAID PROVIDERS. (a) In this section,  
11 "residential caregiver" has the meaning assigned by Section  
12 531.02485.

13 (b) A Medicaid provider that provides community-based  
14 residential care services to Medicaid recipients through a group  
15 home or other residential facility licensed by or operated under  
16 the authority of the Health and Human Services Commission is  
17 entitled to obtain from the department criminal history record  
18 information maintained by the department that relates to an  
19 individual who is an applicant for employment or seeking a contract  
20 position with the provider as a residential caregiver or who is  
21 employed or contracted by the provider as a residential caregiver.

22 SECTION 2. Subchapter B, Chapter 531, Government Code, is  
23 amended by adding Section 531.02485 to read as follows:

24 Sec. 531.02485. REQUIRED REVIEW OF CRIMINAL HISTORY RECORD

1 INFORMATION FOR CERTAIN RESIDENTIAL CAREGIVERS. (a) In this  
2 section, "residential caregiver" means an individual who provides,  
3 through a group home or other residential facility licensed by or  
4 operated under the authority of the commission, community-based  
5 residential care services:

6 (1) to not more than four individuals with an  
7 intellectual or developmental disability at any time; and

8 (2) at a residence other than the home of the  
9 individual providing the services.

10 (b) A Medicaid provider, including a provider providing  
11 services under a 1915(c) waiver program, that employs or contracts  
12 with a residential caregiver to provide community-based  
13 residential care services to Medicaid recipients shall review state  
14 and federal criminal history record information and obtain  
15 electronic updates from the Department of Public Safety of arrests  
16 and convictions for each residential caregiver the provider employs  
17 or contracts with to provide community-based residential care  
18 services to Medicaid recipients.

19 (c) An individual who has been convicted of an offense  
20 described by Section 250.006, Health and Safety Code, may not be  
21 employed or contracted as a residential caregiver or otherwise  
22 provide direct care to a Medicaid recipient with an intellectual or  
23 developmental disability to the same extent and, if applicable, for  
24 the same period of time prescribed by Section 250.006(a) or (b),  
25 Health and Safety Code, as an individual similarly convicted under  
26 those subsections. An individual who violates this subsection is  
27 subject to disciplinary action by the commission.

1       (d) A Medicaid provider shall immediately discharge any  
2 individual the provider employs or contracts with as a residential  
3 caregiver who is convicted of an offense described by Section  
4 250.006, Health and Safety Code.

5       (e) Notwithstanding any other law, the commission shall  
6 take disciplinary action against a Medicaid provider that violates  
7 this section, including imposing an administrative penalty or  
8 vendor hold, terminating a contract or license, or any other  
9 disciplinary action the commission determines appropriate. In  
10 determining the appropriate disciplinary action to take against a  
11 Medicaid provider under this subsection, the commission shall  
12 consider:

- 13               (1) the nature and seriousness of the violation;  
14               (2) the history of previous violations; and  
15               (3) any other matter justice may require.

16       (f) The executive commissioner shall adopt rules necessary  
17 to implement this section.

18       SECTION 3. If before implementing any provision of this Act  
19 a state agency determines that a waiver or authorization from a  
20 federal agency is necessary for implementation of that provision,  
21 the agency affected by the provision shall request the waiver or  
22 authorization and may delay implementing that provision until the  
23 waiver or authorization is granted.

24       SECTION 4. This Act takes effect September 1, 2023.

ADOPTED

MAY 21 2023

*Lacey Spaw*  
Secretary of the Senate

*B. W. Kelley*

FLOOR AMENDMENT NO. 1

BY: \_\_\_\_\_

1 Amend H.B. No. 1009 (senate committee report) as follows:

2 (1) In the recital to SECTION 2 of the bill (page 1, line  
3 40), strike "Section 531.02485" and substitute "Sections 531.02485  
4 and 531.02486".

5 (2) In SECTION 2 of the bill, immediately following added  
6 Section 531.02485(f), Government Code (page 2, between lines 24 and  
7 25), insert the following:

8 Sec. 531.02486. SUSPENDING EMPLOYMENT OF CERTAIN  
9 RESIDENTIAL CAREGIVERS. (a) In this section:

10 (1) "Consumer-directed service option" has the  
11 meaning assigned by Section 531.051.

12 (2) "Reportable conduct" includes:

13 (A) abuse or neglect that causes or may cause  
14 death or harm to an individual using the consumer-directed service  
15 option or a resident;

16 (B) sexual abuse of an individual using the  
17 consumer-directed service option or a resident;

18 (C) financial exploitation of an individual  
19 using the consumer-directed service option or a resident in an  
20 amount of \$25 or more; and

21 (D) emotional, verbal, or psychological abuse  
22 that causes harm to an individual using the consumer-directed  
23 service option or a resident.

24 (3) "Resident" means an individual residing in a group  
25 home or other residential facility who is receiving services from a  
26 residential caregiver.

27 (4) "Residential caregiver" has the meaning assigned  
28 by Section 531.02485.

29 (b) A Medicaid provider, including a provider providing

1 services under a Section 1915(c) waiver program, who employs or  
2 contracts with a residential caregiver to provide community-based  
3 residential care services through a group home or other residential  
4 facility described by Subsection (a)(4), on receiving notice of the  
5 reportable conduct finding, shall immediately suspend the  
6 employment or contract of an individual the provider employs or  
7 contracts with as a residential caregiver who the commission finds  
8 has engaged in reportable conduct while the individual exhausts any  
9 applicable appeals process, including informal and formal appeals,  
10 pending a final decision by an administrative law judge. The  
11 provider may not reinstate the individual's employment or contract  
12 during the course of any appeals process.

13 (c) Notwithstanding any other law, the commission shall  
14 take disciplinary action against a Medicaid provider that violates  
15 Subsection (b), including imposing an administrative penalty or  
16 vendor hold, terminating a contract or license, or any other  
17 disciplinary action the commission determines appropriate. In  
18 determining the appropriate disciplinary action to take against a  
19 Medicaid provider under this subsection, the commission shall  
20 consider:

- 21 (1) the nature and seriousness of the violation;  
22 (2) the history of previous violations; and  
23 (3) any other matter justice may require.

24 (d) The executive commissioner shall adopt rules necessary  
25 to implement this section.

26 (3) Add the following appropriately numbered SECTIONS to  
27 the bill and renumber SECTIONS of the bill accordingly:

28 SECTION \_\_\_\_\_. The heading to Chapter 253, Health and Safety  
29 Code, is amended to read as follows:

30 CHAPTER 253. EMPLOYEE MISCONDUCT; REGISTRY

31 SECTION \_\_\_\_\_. Section 253.001(4), Health and Safety Code,

1 is amended to read as follows:

2 (4) "Facility" means:

3 (A) a facility:

4 (i) licensed by the department; [~~or~~]

5 (ii) licensed under Chapter 252; or

6 (iii) licensed under Chapter 555;

7 (B) an adult foster care provider that contracts  
8 with the department;

9 (C) a home and community support services agency  
10 licensed by the department under Chapter 142; or

11 (D) a prescribed pediatric extended care center  
12 licensed under Chapter 248A.

13 SECTION \_\_\_\_\_. Chapter 253, Health and Safety Code, is  
14 amended by adding Section 253.0025 to read as follows:

15 Sec. 253.0025. EMPLOYMENT SUSPENSION FOR FACILITY  
16 EMPLOYEES ACCUSED OF COMMITTING REPORTABLE CONDUCT. A facility  
17 shall suspend the employment of a facility employee who the Health  
18 and Human Services Commission finds has engaged in reportable  
19 conduct while the employee exhausts any applicable appeals process,  
20 including informal and formal appeals and any hearing or judicial  
21 review conducted in accordance with Section 253.004 or 253.005,  
22 pending a final decision by an administrative law judge. The  
23 facility may not reinstate the employee's position during the  
24 course of any applicable appeals process.

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION**

**May 23, 2023**

**TO:** Honorable Dade Phelan, Speaker of the House, House of Representatives

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB1009** by Turner (Relating to criminal history record information reviews of certain individuals providing services to individuals with an intellectual or developmental disability under Medicaid; providing an administrative penalty.), **As Passed 2nd House**

**No significant fiscal implication to the State is anticipated.**

It is assumed that any costs associated with the bill could be absorbed using existing resources. The number of violations that would result in administrative penalty revenue is unknown.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 304 Comptroller of Public Accounts, 529 Health and Human Services Commission

**LBB Staff:** JMc, NPe, ER, SB

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION**

**May 15, 2023**

**TO:** Honorable Lois W. Kolkhorst, Chair, Senate Committee on Health & Human Services

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB1009** by Turner (Relating to criminal history record information reviews of certain individuals providing services to individuals with an intellectual or developmental disability under Medicaid; providing an administrative penalty.), **As Engrossed**

**No significant fiscal implication to the State is anticipated.**

It is assumed that any costs associated with the bill could be absorbed using existing resources. The number of violations that would result in administrative penalty revenue is unknown.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 304 Comptroller of Public Accounts, 529 Health and Human Services Commission

**LBB Staff:** JMc, NPe, ER, SB



**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION**

**March 30, 2023**

**TO:** Honorable James B. Frank, Chair, House Committee on Human Services

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB1009** by Turner (relating to criminal history record information reviews of certain individuals providing services to individuals with an intellectual or developmental disability under Medicaid.),  
**Committee Report 1st House, Substituted**

**No significant fiscal implication to the State is anticipated.**

It is assumed that any costs associated with the bill could be absorbed using existing resources.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 529 Health and Human Services Commission

**LBB Staff:** JMc, NPe, ER, SB

**LEGISLATIVE BUDGET BOARD**

Austin, Texas

**FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION**

**March 13, 2023**

**TO:** Honorable James B. Frank, Chair, House Committee on Human Services

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB1009** by Turner (Relating to criminal history record information reviews of certain individuals providing services to individuals with an intellectual or developmental disability.), **As Introduced**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB1009, As Introduced : a negative impact of (\$5,264,253) through the biennium ending August 31, 2025.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five- Year Impact:**

<i>Fiscal Year</i>	<b>Probable Net Positive/(Negative) Impact to General Revenue Related Funds</b>
2024	(\$2,728,599)
2025	(\$2,535,654)
2026	(\$2,535,654)
2027	(\$2,535,654)
2028	(\$2,535,654)

**All Funds, Five-Year Impact:**

<i>Fiscal Year</i>	<b>Probable Savings/(Cost) from General Revenue Fund 1</b>	<b>Probable Savings/(Cost) from GR Match For Medicaid 758</b>	<b>Probable Savings/(Cost) from Federal Funds 555</b>	<b>Change in Number of State Employees from FY 2023</b>
2024	(\$161,133)	(\$2,567,466)	(\$2,773,058)	47.0
2025	(\$154,900)	(\$2,380,754)	(\$2,572,233)	47.0
2026	(\$154,900)	(\$2,380,754)	(\$2,572,233)	47.0
2027	(\$154,900)	(\$2,380,754)	(\$2,572,233)	47.0
2028	(\$154,900)	(\$2,380,754)	(\$2,572,233)	47.0

**Fiscal Analysis**

The bill would require the Health and Human Services Commission (HHSC) to review state and federal criminal history and obtain electronic updates from the Department of Public Safety on arrests and convictions for each residential caregiver who holds a license or other operational authorization issued by HHSC. A residential caregiver who is convicted of an offense may not provide direct care to individuals and may be subject to disciplinary action by HHSC under certain circumstances. The bill would require HHSC to disenroll a residential caregiver who has been convicted of an offense from participation in Medicaid. The bill would take effect September 1, 2023.

## **Methodology**

According to HHSC, the bill's requirements to require the agency to review criminal history and obtain electronic updates is anticipated to cause increases in workload to Medicaid and CHIP services. HHSC anticipates it will need an additional 47.0 full-time-equivalents (FTEs) to hire a team to conduct criminal history reviews and updates for what is assumed to be a large workforce of residential caregivers. Based on information provide by the agency, analysis assumes HHSC would need additional staff as follows to implement the bill: 30.0 Contract Specialist IV and 10.0 Contract Specialist III to provide oversight and monitoring of criminal history; 5.0 Manager V to lead the team in criminal history reviews; and 2.0 Indirect Program Specialist V for indirect agency functions. Analysis assumes a total of 47.0 FTEs are needed in each fiscal year to implement the provisions of the bill. Personnel related costs, including salaries, are estimated to total \$5,501,658 in All Funds in fiscal year 2024 and \$5,107,887 in All Funds in fiscal year 2025.

It is assumed the Department of Family and Protective Services and Department of Public Safety can perform the functions of the bill with existing resources.

## **Technology**

According to information from HHSC, the total technology cost is estimated to be \$257,857 in fiscal year 2024 and \$149,832 in fiscal year 2025 and is primarily associated with technology for the new FTEs.

## **Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 405 Department of Public Safety, 529 Health and Human Services Commission, 530 Family and Protective Services, Department of

**LBB Staff:** JMc, NPe, ER, SB, NV