

House Bill 1009
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Subchapter F, Chapter 411, Government Code, is amended by adding Section 411.11061 to read as follows:
Sec. 411.11061. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: CERTAIN MEDICAID PROVIDERS. (a) In this section, "residential caregiver" has the meaning assigned by Section 531.02485.

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

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

Sec. 531.02485. REQUIRED REVIEW OF CRIMINAL HISTORY RECORD INFORMATION FOR CERTAIN RESIDENTIAL CAREGIVERS. (a) In this section, "residential caregiver" means an individual who provides, through a group home or other residential facility licensed by or operated under the authority of the commission, community-based residential care services:
(1) to not more than four individuals with an intellectual or developmental disability at any time; and

SENATE VERSION (IE)

SECTION 1. Same as House version.

SECTION 2. Subchapter B, Chapter 531, Government Code, is amended by adding Sections 531.02485 and 531.02486 to read as follows: [FA1(1)]

Sec. 531.02485. REQUIRED REVIEW OF CRIMINAL HISTORY RECORD INFORMATION FOR CERTAIN RESIDENTIAL CAREGIVERS. (a) In this section, "residential caregiver" means an individual who provides, through a group home or other residential facility licensed by or operated under the authority of the commission, community-based residential care services:
(1) to not more than four individuals with an intellectual or developmental disability at any time; and
(2) at a residence other than the home of the individual providing the services.

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

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

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

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

(e) Notwithstanding any other law, the commission shall take disciplinary action against a Medicaid provider that violates this section, including imposing an administrative penalty or vendor hold, terminating a contract or license, or any other disciplinary action the commission determines appropriate. In determining the appropriate disciplinary

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

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

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

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

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action to take against a Medicaid provider under this subsection, the commission shall consider:

- (1) the nature and seriousness of the violation;
- (2) the history of previous violations; and
- (3) any other matter justice may require.
- (f) The executive commissioner shall adopt rules necessary to implement this section.

No equivalent provision.

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- (1) the nature and seriousness of the violation;
- (2) the history of previous violations; and
- (3) any other matter justice may require.
- (f) The executive commissioner shall adopt rules necessary to implement this section.

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

- (1) "Consumer-directed service option" has the meaning assigned by Section 531.051.
- (2) "Reportable conduct" includes:
 - (A) abuse or neglect that causes or may cause death or harm to an individual using the consumer-directed service option or a resident;
 - (B) sexual abuse of an individual using the consumer-directed service option or a resident;
 - (C) financial exploitation of an individual using the consumer-directed service option or a resident in an amount of \$25 or more; and
 - (D) emotional, verbal, or psychological abuse that causes harm to an individual using the consumer-directed service option or a resident.
- (3) "Resident" means an individual residing in a group home or other residential facility who is receiving services from a residential caregiver.
- (4) "Residential caregiver" has the meaning assigned by Section 531.02485.

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

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

(1) the nature and seriousness of the violation;

(2) the history of previous violations; and

(3) any other matter justice may require.

(d) The executive commissioner shall adopt rules necessary to implement this section. [FA1(2)]

SECTION __. The heading to Chapter 253, Health and Safety Code, is amended to read as follows:

No equivalent provision.

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CHAPTER 253. EMPLOYEE MISCONDUCT;
REGISTRY [FA1(3)]

No equivalent provision.

SECTION __. Section 253.001(4), Health and Safety Code, is amended to read as follows:

(4) "Facility" means:

(A) a facility:

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

(ii) licensed under Chapter 252; or

(iii) licensed under Chapter 555;

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

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

(D) a prescribed pediatric extended care center licensed under Chapter 248A. [FA1(3)]

No equivalent provision.

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

Sec. 253.0025. EMPLOYMENT SUSPENSION FOR FACILITY EMPLOYEES ACCUSED OF COMMITTING REPORTABLE CONDUCT. A facility shall suspend the employment of a facility employee who the Health and Human Services Commission finds has engaged in reportable conduct while the employee exhausts any applicable appeals process, including informal and formal appeals and any hearing or judicial review conducted in accordance with Section 253.004 or 253.005, pending a final decision by an administrative law judge. The facility may

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not reinstate the employee's position during the course of any applicable appeals process. [FA1(3)]

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

SECTION 3. Same as House version.

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

SECTION 4. Same as House version.