

BILL ANALYSIS

C.S.S.B. 457
By: Kolkhorst
Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The bill sponsor has informed the committee that Texas spends billions of dollars annually on nursing facilities, covering over half of all Texans in nursing facilities, and that while Texas has programs to ensure Medicaid dollars given to nursing facilities incentivize the facilities to offer high-quality care, not all nursing facilities participate in these programs. The bill sponsor has informed the committee that, according to a study published in the *Journal of Health Economics*, the type of ownership of nursing facilities has been found to correlate to the quality of care a resident receives. C.S.S.B. 457 seeks to ensure Medicaid dollars are incentivizing high-quality care by establishing a patient care expense ratio for reimbursements of nursing facility providers providing services to Medicaid recipients, requiring at least 80 percent of such reimbursements be spent on reasonable and necessary patient care expenses. The bill also, among other provisions, seeks to ensure consumers can make informed decisions in selecting a nursing facility by requiring Texas nursing facilities to disclose certain information related to the ownership interests in the facility or the property on which the facility is located.

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 5 of this bill.

ANALYSIS

C.S.S.B. 457 amends the Human Resources Code to require the executive commissioner of the Health and Human Services Commission (HHSC) to do the following:

- by rule, establish an annual patient care expense ratio, including a process for determining the ratio, applicable to the reimbursement of nursing facility providers for providing services to Medicaid recipients;
- in establishing the ratio, 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 patient care expenses; and
- adopt rules necessary to ensure each nursing facility provider that participates in Medicaid complies with the adopted patient care expense ratio.

The bill authorizes HHSC, except as provided by the bill and to the extent permitted by federal law, to recoup all or part of the Medicaid reimbursement amount paid to a nursing facility that is subject to the patient care expense ratio if the facility fails to spend the reimbursement amount in accordance with the patient care expense ratio.

C.S.S.B. 457 prohibits HHSC from recouping the Medicaid reimbursement amount if, during the period patient care expenses attributable to the reimbursement amount are calculated, the facility:

- held at least a four-star rating under the Centers for Medicare and Medicaid Services (CMS) five-star quality rating system for nursing facilities in three or more of the following categories:
 - overall;
 - health inspections;
 - staffing; and
 - long-stay quality measures;
- held at least a four-star rating under the CMS five-star quality rating system for nursing facilities in the category of long-stay quality measures and the category of short-stay quality measures;
- both maintained an average daily occupancy rate of 75 percent or less and spent at least 70 percent of the portion of the reimbursement amount paid to the facility that was attributable to patient care expenses on reasonable and necessary patient care expenses; or
- incurred expenses related to a disaster for which the governor issued a disaster declaration under the Texas Disaster Act of 1975.

The bill requires HHSC to publish and maintain on HHSC's website a list of all nursing facilities from which HHSC recouped the Medicaid reimbursement amounts under the bill's provisions. The bill also prohibits HHSC from requiring a nursing facility to comply with the patient care expense ratio as a condition of participation in Medicaid.

C.S.S.B. 457 establishes that its provisions relating to an annual patient care expense ratio for reimbursement of certain nursing facility providers do not apply to a state-owned facility. For purposes of those provisions, the bill specifies that "patient care expense" includes expenses incurred by a nursing facility for the following:

- providing compensation and benefits to:
 - direct care staff of a facility, whether the staff are employees of or contract labor for the facility, including:
 - licensed registered nurses and licensed vocational nurses, including directors of nursing and assistant directors of nursing;
 - medication aides;
 - restorative aides;
 - nurse aides who provide nursing-related care to residents occupying Medicaid beds;
 - licensed social workers; and
 - social services assistants;
 - additional staff associated with providing care to facility residents with a severe cognitive impairment;
 - nonprofessional administrative staff, including medical records staff and accounting or bookkeeping staff;
 - central supply staff and ancillary facility staff;
 - laundry staff; and
 - food service staff;
- central supply costs and ancillary costs for facility services and supplies, including:
 - diagnostic laboratory and radiology costs;
 - durable medical equipment costs, including costs to purchase, rent, or lease the equipment;
 - costs for oxygen used to provide oxygen treatment;
 - prescription and nonprescription drug costs; and
 - therapy consultant costs; and
- costs for dietary and nutrition services, including costs for food service and related supplies and nutritionist services.

The term "patient care expense" expressly does not include an expense for administrative or operational costs, other than such administrative or operational costs described by the bill, or fixed capital asset costs.

C.S.S.B. 457 requires HHSC, not later than November 1, 2027, to prepare and submit to the legislature a written report that includes an assessment of the impact of the patient care expense ratio established under the bill on nursing facility care provided to Medicaid recipients during the preceding state fiscal biennium, including the impact on the cost and quality of care and any other information HHSC determines appropriate. Subject to the bill's provisions regarding contracts entered into or renewed between HHSC and a Medicaid MCO on or after the bill's effective date and contracts entered into with Medicaid MCOs before the bill's effective date, the bill requires HHSC to require compliance with the initial annual patient care expense ratio adopted under the bill's provisions beginning on September 1, 2025.

C.S.S.B. 457 repeals provisions that do the following:

- requires the executive commissioner to ensure that the rules governing the determination of rates paid under the Medicaid program for nursing facility services improve the quality of care by doing the following:
 - providing a program offering incentives for increasing direct care staff and direct care wages and benefits, but only to the extent that appropriated funds are available after money is allocated to base rate reimbursements as determined by the commission's nursing facility rate setting methodologies; and
 - if appropriated funds are available after money is allocated for payment of such incentive-based rates, providing incentives that incorporate the use of a quality of care index, a customer satisfaction index, and a resolved complaints index developed by HHSC;
- requires the executive commissioner to ensure that rules governing the incentives program do the following:
 - provide that participation in the program by a nursing facility is voluntary;
 - do not impose on a nursing facility not participating in the program a minimum spending requirement for direct care staff wages and benefits;
 - 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
 - establish a funding process to provide incentives for increasing direct care staff and direct care wages and benefits in accordance with appropriations provided; and
- prohibit HHSC from funding such an incentive program using money appropriated for base rate reimbursements for nursing facilities.

C.S.S.B. 457 amends the Government Code to do the following with respect to the implementation of provisions relating to the delivery of Medicaid benefits through the STAR+PLUS Medicaid managed care program to nursing facility residents:

- require HHSC to ensure that a nursing facility complies with the patient care expense ratio adopted under the bill's provisions; and
- remove the requirement that HHSC ensure that HHSC approves the staff rate enhancement methodology for the staff rate enhancement paid to a nursing facility that qualifies for the enhancement under the program.

The bill requires a contract between a Medicaid managed care organization (MCO) and HHSC for purposes of providing health care services to Medicaid recipients to require that each provider agreement between the contracting MCO and a nursing facility include a requirement that the facility comply with the patient care expense ratio. This requirement expressly does not apply to a state-owned facility.

C.S.S.B. 457 amends the Health and Safety Code to require the license or renewal application for a license under provisions relating to convalescent and nursing facilities and related institutions to do the following:

- 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
 - the real property on which the nursing facility is located, including any owner, common owner, tenant, or sublessee; and
- describe 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 the ownership interest application information as provided on an applicable application.

C.S.S.B. 457 requires HHSC to do the following:

- in a contract between HHSC and a Medicaid MCO that is entered into or renewed on or after the bill's effective date, require the MCO to comply with the bill's provisions relating to nursing facility provider agreements and compliance with the patient care expense ratio; and
- seek to amend contracts entered into with Medicaid MCOs before the bill's effective date to require such MCOs to comply with those bill provisions.

To the extent of a conflict between those bill provisions and a provision of a contract with an MCO entered into before the bill's effective date, the contract provision prevails.

If before implementing any provision of the bill 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 must request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

C.S.S.B. 457 repeals Sections 32.028(g), (i), and (m), Human Resources Code.

EFFECTIVE DATE

September 1, 2025.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 457 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

Whereas the engrossed required the executive commissioner to require that at least 85 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 patient care expenses, the substitute requires the executive commissioner to require that at least 80 percent of that portion of the Medicaid reimbursement amount is spent on such expenses.

Both the engrossed and the substitute prohibit HHSC from recouping a Medicaid reimbursement amount if the facility meets certain criteria during the period patient care expenses attributable to the reimbursement amount are calculated. However, those provisions differ as follows:

- whereas the engrossed included in the criteria a facility that held at least a four-star rating under the CMS five-star quality rating system for nursing facilities in two or more of the rating categories, the substitute includes in the criteria a facility that held at least a four-star rating under that system in three or more of those categories; and
- the substitute includes among the criteria a facility that held at least a four-star rating under the CMS five-star quality rating system for nursing facilities in the category of

long-stay quality measures and the category of short-stay quality measures, whereas the engrossed did not.