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H.B. No. 2766

A BILL TO BE ENTITLED

AN ACT

relating to the creation and administration of a reinvestment allowance for certain long-term care facilities.

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

SECTION 1. Chapter 242, Health and Safety Code, is amended by adding Subchapter P to read as follows:

SUBCHAPTER P. REINVESTMENT ALLOWANCE

Sec. 242.701. DEFINITIONS. In this subchapter:

(1) "Gross receipts" means the gross inpatient revenue received by a facility from services provided to facility residents. Gross receipts exclude revenue from nonresident care, including beauty and barber services, vending facilities, interest, charitable contributions, the sale of meals, and outpatient services.

(2) "Non-Medicare patient day" means a day on which the primary payer for a facility resident is not Medicare Part A or a Medicare Advantage or special needs plan.

Sec. 242.702. APPLICABILITY. This subchapter does not apply to:

(1) a state-owned veterans nursing facility; or

(2) a facility that provides on a single campus a combination of services, which may include independent living services, licensed assisted living services, or licensed nursing facility care services, and that either:

1 (A) holds a certificate of authority to operate a
2 continuing care retirement community under Chapter 246; or

3 (B) had during the previous 12 months a combined
4 number of patient days of service provided to independent living
5 and assisted living residents, excluding services provided to
6 persons occupying facility beds in a licensed nursing facility,
7 that exceeded the number of patient days of service provided to
8 nursing facility residents.

9 Sec. 242.703. REINVESTMENT ALLOWANCE; COMPUTATION. (a)
10 The commission shall impose a reinvestment allowance on each
11 facility licensed under this chapter. The reinvestment allowance
12 is:

13 (1) the product of the amount established under
14 Subsection (b) multiplied by the number of a facility's
15 non-Medicare patient days calculated under Section 242.704;

16 (2) payable monthly; and

17 (3) in addition to other amounts imposed under this
18 chapter.

19 (b) The executive commissioner shall establish for each
20 non-Medicare patient day an amount for use in calculating the
21 reinvestment allowance sufficient to produce annual revenues from
22 all facilities not to exceed the maximum amount that may be assessed
23 within the indirect guarantee threshold provided under 42 C.F.R.
24 Section 433.68(f)(3)(i).

25 (c) The commission shall determine the amount described by
26 Subsection (b) using non-Medicare patient days and gross receipts:

27 (1) reported to the commission; and

1 (2) covering a period of at least six months.

2 (d) A facility may not list the reinvestment allowance as a
3 separate charge on a resident's billing statement or otherwise
4 directly or indirectly attempt to charge the reinvestment allowance
5 to a resident.

6 Sec. 242.704. PATIENT DAYS. For each calendar day, a
7 facility shall determine the number of non-Medicare patient days by
8 adding:

9 (1) the number of non-Medicare residents occupying a
10 bed in the facility immediately before midnight of that day plus the
11 number of residents admitted that day, less the number of residents
12 discharged that day, except a resident is included in the count
13 under this subdivision if:

14 (A) the resident is admitted and discharged on
15 the same day; or

16 (B) the resident is discharged that day because
17 of the resident's death; and

18 (2) the number of beds that are on hold that day and
19 that have been placed on hold for a period not to exceed three
20 consecutive calendar days during which a resident is:

21 (A) in the hospital; or

22 (B) on therapeutic home leave.

23 Sec. 242.705. COLLECTION AND REPORTING. (a) The
24 commission shall collect the reinvestment allowance.

25 (b) Not later than the 25th day after the last day of a
26 month, each facility shall:

27 (1) file with the commission a report stating the

1 total non-Medicare patient days for the month; and

2 (2) pay the reinvestment allowance.

3 Sec. 242.706. RULES; ADMINISTRATIVE PENALTY. (a) The
4 executive commissioner shall adopt rules to administer this
5 subchapter, including rules related to imposing and collecting the
6 reinvestment allowance.

7 (b) Notwithstanding Section 242.066, an administrative
8 penalty assessed under that section for a violation of this
9 subchapter may not exceed the greater of:

10 (1) one-half of the amount of the facility's
11 outstanding reinvestment allowance; or

12 (2) \$20,000.

13 (c) An administrative penalty assessed for a violation of
14 this subchapter is in addition to the facility's outstanding
15 reinvestment allowance.

16 Sec. 242.707. NURSING FACILITY REINVESTMENT ALLOWANCE
17 TRUST FUND. (a) The nursing facility reinvestment allowance trust
18 fund is established as a trust fund to be held by the comptroller
19 outside of the state treasury and administered by the commission as
20 trustee. Interest and income from the assets of the trust fund
21 shall be credited to and deposited in the trust fund. The commission
22 may use money in the fund only as provided by Section 242.708.

23 (b) The commission shall remit the reinvestment allowance
24 collected under this subchapter and federal matching funds received
25 by this state to the comptroller for deposit in the trust fund.

26 Sec. 242.708. REIMBURSEMENT OF FACILITIES. (a) The
27 commission may use money in the nursing facility reinvestment

allowance trust fund, including any federal matching funds, only for the following purposes:

(1) paying any commission cost to develop and administer systems for managing the reinvestment allowance;

(2) reimbursing the Medicaid share of the reinvestment allowance as an allowable cost in the Medicaid daily rate; and

(3) increasing reimbursement rates paid under the state Medicaid program to facilities.

(b) The commission shall allocate 50 percent of the money described by Subsection (a)(3) for increased reimbursement rate payments based on the total rating of the Centers for Medicare and Medicaid Services five-star quality rating system.

(c) The commission shall devise a formula by which amounts received under this subchapter increase the reimbursement rates paid to facilities under the state Medicaid program, including a phase-in of the program described by Subsection (b) beginning on September 1, 2018. The commission must include in the formula consideration of the total rating described by Subsection (b).

(d) Money in the nursing facility reinvestment allowance trust fund may not be used to expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

Sec. 242.709. INVALIDITY; FEDERAL FUNDS. If any provision of or procedure under this subchapter is held invalid by a final court order that is not subject to appeal, or if the commission determines that the imposition of the reinvestment allowance and

1 the expenditure of amounts collected as prescribed by this
2 subchapter will not entitle the state to receive federal matching
3 funds under the Medicaid program or will be inconsistent with the
4 objectives described by Section 537.002(b)(7), Government Code,
5 the commission shall:

6 (1) stop collection of the reinvestment allowance; and
7 (2) not later than the 30th day after the date
8 collection is stopped, return to each facility, in proportion to
9 the total amount paid by the facility, any money deposited to the
10 credit of the nursing facility reinvestment allowance trust fund
11 but not spent.

12 Sec. 242.710. AUTHORITY TO ACCOMPLISH PURPOSES OF
13 SUBCHAPTER. The executive commissioner by rule may adopt a
14 definition, a method of computation, or a rate that differs from
15 those expressly provided by or expressly authorized by this
16 subchapter to the extent the difference is necessary to accomplish
17 the purposes of this subchapter.

18 Sec. 242.711. ANNUAL REPORT. Not later than January 1 of
19 each year, the commission shall prepare and deliver to the
20 governor, the lieutenant governor, and the speaker of the house of
21 representatives a report relating to the status of the nursing
22 facility reinvestment allowance program, including fees collected,
23 federal funding applied for and received, quality-based payments
24 made, information on the overall quality of care in the Texas
25 nursing home system, whether quality-based payments are
26 contributing to quality improvements, and any other relevant
27 information necessary for assessing the effectiveness of the

1 nursing facility reinvestment allowance program. The report should
2 include any information associated with the role of the comptroller
3 and the Medicaid managed care participating plans. The report must
4 be posted on the commission's Internet website.

5 Sec. 242.712. PROGRAM EVALUATION. Not later than November
6 1, 2020, the commission shall prepare and deliver to the governor,
7 the lieutenant governor, and the speaker of the house of
8 representatives a report that assesses whether and to what degree
9 payments associated with quality-based care are resulting in
10 improvements to overall nursing home quality.

11 Sec. 242.713. EXPIRATION. This subchapter expires August
12 31, 2021.

13 SECTION 2. (a) As soon as practicable after the effective
14 date of this Act, the executive commissioner of the Health and Human
15 Services Commission shall:

16 (1) adopt the rules necessary to implement Subchapter
17 P, Chapter 242, Health and Safety Code, as added by this Act; and

18 (2) notwithstanding Section 242.703, Health and
19 Safety Code, as added by this Act, establish the amount of the
20 initial reinvestment allowance imposed under Subchapter P, Chapter
21 242, Health and Safety Code, as added by this Act, based on
22 available revenue and patient day information.

23 (b) The amount of the initial reinvestment allowance
24 established under Subsection (a) of this section remains in effect
25 until the Health and Human Services Commission obtains the
26 information necessary to set the amount of the reinvestment
27 allowance under Section 242.703, Health and Safety Code, as added

1 by this Act.

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

8 SECTION 4. Notwithstanding any other law, a reinvestment
9 allowance may not be imposed under Section 242.703, Health and
10 Safety Code, as added by this Act, or collected under Section
11 242.705, Health and Safety Code, as added by this Act, until an
12 amendment to the state Medicaid plan that increases the rates paid
13 to long-term care facilities licensed under Chapter 242, Health and
14 Safety Code, for providing services under the state Medicaid
15 program is approved by the Centers for Medicare and Medicaid
16 Services or another applicable federal government agency.

17 SECTION 5. The Health and Human Services Commission shall
18 retroactively compensate long-term care facilities licensed under
19 Chapter 242, Health and Safety Code, at the increased rate for
20 services provided under the state Medicaid program:

21 (1) beginning on the date the state Medicaid plan
22 amendment is approved by the Centers for Medicare and Medicaid
23 Services or another applicable federal government agency; and

24 (2) only for the period for which the reinvestment
25 allowance has been imposed and collected pursuant to the approval
26 described by Subdivision (1).

27 SECTION 6. The Health and Human Services Commission shall

1 discontinue the reinvestment allowance imposed under Subchapter P,
2 Chapter [242](#), Health and Safety Code, as added by this Act, if the
3 commission reduces Medicaid reimbursement rates, including rates
4 that increased due to funds from the nursing facility reinvestment
5 allowance trust fund or federal matching funds, below the rates in
6 effect on September 1, 2017.

7 SECTION 7. This Act takes effect immediately if it receives
8 a vote of two-thirds of all the members elected to each house, as
9 provided by Section [39](#), Article III, Texas Constitution. If this
10 Act does not receive the vote necessary for immediate effect, this
11 Act takes effect September 1, 2017.