

By: Sheffield

H.B. No. 3342

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the creation and operation of a health care quality  
3 provider participation program; authorizing an administrative  
4 penalty.

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

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

8 SUBCHAPTER P. QUALITY PROVIDER PARTICIPATION PROGRAM

9 Sec. 242.701. PURPOSE. The purpose of this subchapter is to  
10 authorize the commission to administer a long-term care quality  
11 provider participation program that provides additional  
12 compensation to nursing facilities that meet quality requirements  
13 and to increase Medicaid reimbursement rates by collecting payments  
14 from certain nursing facilities. The payments must be used to pay  
15 the nonfederal share of the quality provider participation program  
16 and for other purposes authorized by this subchapter.

17 Sec. 242.702. DEFINITION. In this subchapter,  
18 "non-Medicare resident day" means a day on which the primary payer  
19 for a nursing facility resident is not Medicare Part A or a Medicare  
20 Advantage or special needs plan.

21 Sec. 242.703. APPLICABILITY. This subchapter does not  
22 apply to:

- 23 (1) a state-owned veterans nursing facility;  
24 (2) a facility that provides on a single campus a

1 combination of services, which may include independent living  
2 services, licensed assisted living services, or licensed nursing  
3 facility care services, and that either:

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

6 (B) had during the previous 12 months:

7 (i) a combined number of non-Medicare  
8 resident days of service provided to independent living and  
9 assisted living residents, excluding services provided to persons  
10 occupying facility beds in a licensed nursing facility, that  
11 exceeded the number of non-Medicare resident days of service  
12 provided to nursing facility residents; and

13 (ii) on a contiguous campus of a facility, a  
14 minimum ratio of two licensed independent or assisted living beds  
15 for each one nursing facility bed; or

16 (3) a nonprofit corporation governed by Chapter 22,  
17 Business Organizations Code.

18 Sec. 242.704. CALCULATION OF PAYMENTS. (a) Each nursing  
19 facility to which this subchapter applies shall pay a quality  
20 provider participation payment. The amount of the payment may not  
21 be uniform to satisfy the redistributive requirements of 42 C.F.R.  
22 Section 433.68(e)(2)(i).

23 (b) The commission annually shall calculate the quality  
24 provider participation payment. The payment must be set in  
25 accordance with the maximum rate allowed under 42 C.F.R. Section  
26 433.68(f)(3)(i).

27 (c) If, during the course of the state fiscal year, the

1 commission determines that the total amount of quality provider  
2 participation payment revenue differs significantly from the  
3 amount previously estimated, the commission may recalculate and  
4 prospectively modify the payment amount to reflect the  
5 recalculation.

6 (d) A nursing facility may not list the quality provider  
7 participation payment as a separate charge on a resident's billing  
8 statement or otherwise directly or indirectly attempt to charge the  
9 payment to a resident.

10 Sec. 242.705. RESIDENT DAYS. For each calendar day, a  
11 nursing facility shall determine the number of non-Medicare  
12 resident days by adding the number of non-Medicare residents  
13 occupying a bed in the nursing facility immediately before midnight  
14 of that day plus the number of residents admitted that day, less the  
15 number of residents discharged that day, except a resident is  
16 included in the count under this section if:

17 (1) the resident is admitted and discharged on the  
18 same day; or

19 (2) the resident is discharged that day because of the  
20 resident's death.

21 Sec. 242.706. COLLECTION AND REPORTING. (a) The  
22 commission shall impose and collect the quality provider  
23 participation payment.

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

26 (1) file with the commission a report stating the  
27 total non-Medicare resident days for the month; and

1           (2) pay the quality provider participation payment.

2           Sec. 242.707. RULES; ADMINISTRATIVE PENALTY. (a) The  
3 executive commissioner shall adopt rules to administer this  
4 subchapter, including rules related to imposing and collecting the  
5 quality provider participation payment.

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

9           (1) one-half of the amount of the nursing facility's  
10 outstanding quality provider participation payment; or

11           (2) \$20,000.

12           (c) An administrative penalty assessed for a violation of  
13 this subchapter is in addition to the nursing facility's  
14 outstanding quality provider participation payment.

15           (d) A facility described by Section 242.703 is not subject  
16 to an administrative penalty under this subchapter.

17           Sec. 242.708. QUALITY PROVIDER PARTICIPATION PROGRAM TRUST  
18 FUND. (a) The quality provider participation program trust fund is  
19 established as a trust fund to be held by the comptroller outside of  
20 the state treasury and administered by the commission as trustee.  
21 Interest and income from the assets of the trust fund shall be  
22 credited to and deposited in the trust fund. The commission may use  
23 money in the fund only as provided by Section 242.709.

24           (b) The commission shall remit the quality provider  
25 participation payment collected under this subchapter to the  
26 comptroller for deposit in the trust fund.

27           Sec. 242.709. REIMBURSEMENT OF FACILITIES. (a) The

1 commission shall use money in the quality provider participation  
2 program trust fund, along with any corresponding federal matching  
3 funds, only for the following purposes:

4 (1) paying any reasonable and necessary commission  
5 cost to develop and administer systems for managing the quality  
6 provider participation payment;

7 (2) reimbursing the Medicaid share of the payment as  
8 an allowable cost in the Medicaid daily rate; and

9 (3) allocating the remainder to improve resident care  
10 and quality of life and to be distributed as follows:

11 (A) 50 percent of the remainder must be  
12 distributed through increased reimbursement rates to nursing  
13 facilities that participate in the state Medicaid program and  
14 demonstrate historical expenditures for capital improvements,  
15 renovations, or other enhancements designed to create a more  
16 home-like environment, wages and benefits, or other direct care  
17 services; and

18 (B) 50 percent of the remainder must be  
19 distributed to nursing facilities based on the following in order  
20 of importance:

21 (i) performance under the Centers for  
22 Medicare and Medicaid Services five-star quality rating system;

23 (ii) increases in direct care staffing and  
24 revenue enhancements program funding for participating facilities  
25 under Sections 32.028(g) and (i), Human Resources Code, to the  
26 maximum level achieved and allowed for those facilities on  
27 September 1, 2019; and

1                   (iii) development and funding of additional  
2 quality payments for unique, long-term care needs that are not  
3 funded separately, including Alzheimer's disease, dementia,  
4 obesity, and other conditions or initiatives identified by the  
5 commission.

6           (a-1) Notwithstanding Subsection (a)(3), before September  
7 1, 2020, the commission shall allocate 100 percent of the remainder  
8 of the money described by that subsection for distribution to  
9 nursing facilities that participate in the state Medicaid program.

10           (a-2) The programs described by Subsection (a)(3) may not  
11 begin earlier than September 1, 2020. This subsection and  
12 Subsection (a-1) expire September 1, 2023.

13           (b) In consultation with the advisory committee established  
14 under Section 242.712, the commission shall devise a formula by  
15 which amounts received under this subchapter increase the  
16 reimbursement rates paid to nursing facilities under the state  
17 Medicaid program consistent with Subsection (a)(3) and with the  
18 goal of improving resident care and quality. The commission, in  
19 consultation with the advisory committee, shall develop a weighted  
20 formula for distributing the money described by Subsection  
21 (a)(3)(B).

22           (c) The commission shall distribute unearned money for the  
23 programs described by Subsection (a)(3) to all nursing facilities  
24 that qualify for a distribution in proportion to the amount of the  
25 total earned money each qualifying nursing facility receives.

26           (d) Money in the quality provider participation program  
27 trust fund may not be used to expand Medicaid eligibility under the

1 Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as  
2 amended by the Health Care and Education Reconciliation Act of 2010  
3 (Pub. L. No. 111-152).

4 Sec. 242.710. INVALIDITY; FEDERAL FUNDS. If any provision  
5 of or procedure under this subchapter is held invalid by a final  
6 court order that is not subject to appeal, or if the commission  
7 determines that the imposition of the quality provider  
8 participation payment and the expenditure of amounts collected as  
9 prescribed by this subchapter will not entitle the state to receive  
10 federal matching funds under the Medicaid program or will be  
11 inconsistent with the objectives described by Section  
12 537.002(b)(7), Government Code, the commission shall:

- 13 (1) stop collection of the payment; and  
14 (2) not later than the 30th day after the date  
15 collection is stopped, return to each nursing facility, in  
16 proportion to the total amount paid by each facility compared to the  
17 total amount paid by all facilities, any unspent money deposited to  
18 the credit of the quality provider participation program trust  
19 fund.

20 Sec. 242.711. AUTHORITY TO ACCOMPLISH PURPOSES OF  
21 SUBCHAPTER. (a) Subject to Subsection (b), the executive  
22 commissioner by rule may adopt a definition, a method of  
23 computation, or a rate that differs from those expressly provided  
24 by or expressly authorized by this subchapter to the extent the  
25 difference is necessary to accomplish the purposes of this  
26 subchapter.

27 (b) The executive commissioner may not modify the

1 applicability of this subchapter under Section 242.703.

2 Sec. 242.712. ADVISORY COMMITTEE. (a) The commission  
3 shall establish an advisory committee of interested persons to make  
4 recommendations to the commission before the adoption of a rule,  
5 policy, or procedure affecting persons regulated under this  
6 subchapter. The advisory committee has the purposes, powers, and  
7 duties prescribed by the commission.

8 (b) Chapter 2110, Government Code, does not apply to the  
9 advisory committee.

10 (c) The commission shall appoint to the advisory committee  
11 individuals who:

12 (1) are selected from a list provided by the executive  
13 commissioner;

14 (2) have knowledge about and interests in the work of  
15 the advisory committee; and

16 (3) represent a broad range of viewpoints on the work  
17 of the advisory committee.

18 (d) The advisory committee must include a member of the  
19 public if the commission determines that is appropriate and  
20 beneficial.

21 (e) A member of the advisory committee may not receive  
22 compensation for serving on the committee and may not be reimbursed  
23 for travel expenses incurred while conducting the business of the  
24 committee.

25 (f) Meetings of the committee are subject to Chapter 551,  
26 Government Code.

27 Sec. 242.713. EXPIRATION. This subchapter expires August

1 31, 2029.

2 SECTION 2. (a) Not later than January 1, 2020, the  
3 executive commissioner of the Health and Human Services Commission  
4 shall establish the advisory committee as required by Section  
5 242.712, Health and Safety Code, as added by this Act.

6 (b) As soon as practicable after the effective date of this  
7 Act, the executive commissioner of the Health and Human Services  
8 Commission shall:

9 (1) in consultation with the advisory committee  
10 established by Section 242.712, Health and Safety Code, as added by  
11 this Act, adopt the rules necessary to implement Subchapter P,  
12 Chapter 242, Health and Safety Code, as added by this Act; and

13 (2) notwithstanding Section 242.704, Health and  
14 Safety Code, as added by this Act, establish the amount of the  
15 initial payment imposed under Subchapter P, Chapter 242, Health and  
16 Safety Code, as added by this Act, based on available revenue and  
17 resident day information.

18 (c) The amount of the initial payment established under  
19 Subsection (b) of this section remains in effect until the Health  
20 and Human Services Commission obtains the information necessary to  
21 set the amount of the payment under Section 242.704, Health and  
22 Safety Code, as added by this Act.

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

1 waiver or authorization is granted. The agency shall begin  
2 implementing the provision on the date the waiver or authorization  
3 is granted.

4 SECTION 4. Notwithstanding any other law, a payment may not  
5 be imposed under Section 242.704, Health and Safety Code, as added  
6 by this Act, or collected under Section 242.706, Health and Safety  
7 Code, as added by this Act, until an amendment to the state Medicaid  
8 plan that increases the rates paid to long-term care facilities  
9 licensed under Chapter 242, Health and Safety Code, for providing  
10 services under the state Medicaid program is approved by the  
11 Centers for Medicare and Medicaid Services or another applicable  
12 federal government agency.

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

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

20 (2) only for the period for which the payment has been  
21 imposed and collected.

22 SECTION 6. The Health and Human Services Commission shall  
23 discontinue the payment imposed under Subchapter P, Chapter 242,  
24 Health and Safety Code, as added by this Act, if the commission  
25 reduces Medicaid reimbursement rates below the sum of:

26 (1) the rates in effect on September 1, 2019; and

27 (2) the rates that increased due to funds from the

1 quality provider participation program trust fund and federal  
2 matching funds.

3         SECTION 7. This Act takes effect immediately if it receives  
4 a vote of two-thirds of all the members elected to each house, as  
5 provided by Section 39, Article III, Texas Constitution. If this  
6 Act does not receive the vote necessary for immediate effect, this  
7 Act takes effect September 1, 2019.