

## **BILL ANALYSIS**

Senate Research Center

S.B. 1385  
By: Schwertner; Zaffirini  
Health & Human Services  
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Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Home and Community-based Services (HCS) and Texas Home Living (TxHmL) are Medicaid programs that help individuals with intellectual and developmental disabilities live in the community, rather than in an institution. As of February 4, 2015, there were 637 HCS providers with 1,496 contracts and 414 TxHmL providers with 965 contracts in Texas. Because of the services provided, these programs are in high demand and provide support to extremely vulnerable populations.

HCS and TxHmL providers contract with the Texas Department of Aging and Disability Services (DADS) to provide services in designated areas of the state. If DADS determines that a provider is not in compliance with the contract, DADS may impose certain sanctions; however, the available sanctions are limited and, in some cases, ineffective.

Currently in HCS and TxHmL, available sanctions for contract non-compliance include:

- Vendor hold: a temporary suspension of payments that are due to the provider under the contract. This sanction may have minimal impact, especially on larger providers, for whom a small interruption of cash flow is not adequate to effectively gain compliance.
- Termination: cancellation of the provider's contract. This action is usually reserved for an egregious violation of the contract or rules.

In many cases, a contract violation deserves a stronger remedial action than a vendor hold, but does not rise to the level of contract termination. In these cases, DADS is left with limited ability to appropriately enforce contract terms.

S.B. 1385 authorizes DADS to assess administrative penalties for violations of contract terms for HCS and TxHmL providers, giving DADS the ability to more appropriately sanction providers who are non-compliant.

S.B. 1385 amends current law relating to the authorization of the imposition of administrative penalties on providers participating in certain Medicaid waiver programs.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 (Section 161.088, Human Resources Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter D, Chapter 161, Human Resources Code, by adding Section 161.088, as follows:

Sec. 161.088. ADMINISTRATIVE PENALTIES. (a) Provides that this section applies to the following waiver programs established under Section 1915(c), Social Security Act (42 U.S.C. Section 1396n(c)), and administered by the Department of Aging and

Disability Services (DADS) to serve persons with an intellectual or developmental disability:

- (1) the home and community-based services (HCS) waiver program; and
- (2) the Texas home living (TxHmL) waiver program.

(b) Authorizes DADS to assess and collect an administrative penalty against a provider who participates in a program to which this section applies for a violation of a law or rule relating to the program. Prohibits DADS, if the department assesses an administrative penalty against a provider for a violation of a law or rule, from imposing a payment hold against or otherwise withholding contract payments from the provider for the same violation of a law or rule

(c) Requires the executive commissioner of the Health and Human Services Commission (executive commissioner), after consulting with appropriate stakeholders, to develop and adopt rules regarding the imposition of administrative penalties under this section. Requires that the rules:

- (1) specify the types of violations that warrant imposition of an administrative penalty;
- (2) establish a schedule of progressive administrative penalties in accordance with the relative type, frequency, and seriousness of a violation;
- (3) prescribe reasonable amounts to be imposed for each violation giving rise to an administrative penalty, subject to Subdivision (4);
- (4) authorize the imposition of an administrative penalty in an amount not to exceed \$5,000 for each violation;
- (5) provide that a provider commits a separate violation each day the provider continues to violate the law or rule;
- (6) ensure standard and consistent application of administrative penalties throughout the state; and
- (7) provide for an administrative appeals process to adjudicate claims and appeals relating to the imposition of an administrative penalty under this section that is in accordance with Chapter 2001 (Administrative Procedures), Government Code.

(d) Requires the executive commissioner, in specifying the types of violations that warrant imposition of an administrative penalty under Subsection (c), to specify the types of minor violations that allow a provider an opportunity to take corrective action before a penalty is imposed.

(e) Requires the executive commissioner, in establishing the schedule of progressive administrative penalties and penalty amounts under Subsection (c), to consider:

- (1) the seriousness of a violation, including:
  - (A) the nature, circumstances, extent, and gravity of the violation; and
  - (B) the hazard to the health or safety of recipients resulting from the violation;

(2) the provider's history of previous violations;

(3) whether the provider:

(A) had prior knowledge of the violation, including whether the provider identified the violation through the provider's internal quality assurance process; and

(B) made any efforts to mitigate or correct the identified violation;

(4) the penalty amount necessary to deter future violations; and

(5) any other matter justice may require.

(f) Requires DADS, in lieu of imposing an administrative penalty under this section, to allow a provider found to have committed a minor violation specified by rule in accordance with Subsection (d) to have a reasonable period of time that is not less than 45 days after the date DADS sends notice to the provider of the violation to take corrective action regarding the violation. Prohibits DADS from allowing time for corrective action for any violation that is not a minor violation.

SECTION 2. Authorizes DADS to impose an administrative penalty in accordance with Section 161.088, Human Resources Code, as added by this Act, only for conduct that occurs on or after the effective date of this Act.

SECTION 3. Requires a state agency, if necessary for implementation of a provision of this Act, to request a waiver or authorization from a federal agency, and authorizes delay of implementation until such a waiver or authorization is granted.

SECTION 4. Effective date: September 1, 2015.