



**Texas Health Care Association  
82<sup>nd</sup> Legislative Session and  
82<sup>nd</sup> Special Session  
Final Report**

## **Overview**

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The estimated \$15-27 Billion budget shortfall haunted this session as lawmakers grappled with how to write a budget within available revenue. Many of the new 37 legislators were elected under a pledge of no new taxes and the strenuous task of writing a two year budget dominated the session.

When the filed budgets were made public, it was an astounding 33% Medicaid rate cut on nursing home providers that got the attention of not only our membership, but the press, the public, legislators and state leadership.

The THCA membership, staff, communications and lobby team worked tirelessly\* throughout the session on the behalf of all long term care providers to reverse the proposed budget in both the House and Senate versions.

THCA members remained committed to our capitol visits and in-district meetings program and faithfully traveled to Austin to advocate on behalf of the residents they serve. In a first for THCA, we had many residents and their families organize visits and let their voice be heard in the offices and hallways of the capitol.

THCA business members organized as the Long Term Care Business Coalition and held a press conference to discuss the importance of the Medicaid dollar in the private sector. They joined us in the fight at the capitol.

In addition to the funding battle, during the 82<sup>nd</sup> Regular and Special Session, over 6200 bills were filed. THCA tracked 152 bills through the legislative process. This report is a compilation of bills that passed and were signed by Governor Perry. They include bills impacting long term care funding, nursing facilities, assisted living facilities, workforce, civil justice, and Medicaid.

Together, as residents, staff, providers, families, businesses spoke with a collective voice against the proposed cuts. It was a tremendous fight, thank you for your service.

\*We got tired. Sometimes.

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# Funding

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## **HB 1: General Appropriations Act**

**Author: Pitts**

**Sponsor: Ogden**

**Effective Date: September 1, 2011**

## **ARTICLE II**

The legislature appropriated \$2 Billion for 2012 and \$604 Million for 2013 for a biennial total of \$2.6 Billion. While this amount is decidedly short of the necessary revenue for Texas Medicaid nursing homes, the budget bill (SB 1), contains a rider directing DADS to pay nursing homes at current levels. There was a 3% decrease in 2011, enacted before the session began. For the 2012-2013, 0% rate reduction, as per the rider.

### **Relevant Long Term Care Riders**

#### **DEPARTMENT OF AGING AND DISABILITY SERVICES**

##### **4. Nursing Home Program Provisions.**

a. Nursing Home Income Eligibility Cap. It is the intent of the Legislature that the income eligibility cap for nursing home care shall be maintained at the federal maximum level of 300 percent of Supplemental Security Income (SSI).

*\*This is consistent with the cap of the previous biennium and reflects no change in the eligibility cap.*

b. Establishment of a Swing-bed Program. Out of the funds appropriated above for nursing home vendor payments, the department shall maintain a "swing-bed" program, in accordance with federal regulations, to provide reimbursement for skilled nursing patients who are served in hospital settings in counties with a population of 100,000 or less. If the swing beds are used for more than one 30-day length of stay per year per patient, the hospital must comply with the regulations and standards required for nursing home facilities.

c. Nursing Home Bed Capacity Planning. It is the intent of the Legislature that the department shall establish by rule procedures for controlling the number of Medicaid beds and for the decertification of unused Medicaid beds and for reallocating some or all of the decertified Medicaid beds. The procedures shall take into account a facility's occupancy rate.

d. Nursing Facility Competition. It is the intent of the Legislature that the department encourage competition among contracted nursing facilities.

**8. Pediatric Care in Nursing Facilities.** When using funds appropriated above in addition to consideration of expense in determining the appropriate placement for children who currently receive care in nursing facilities, the department shall, within the requirements of federal law, consider the requests of parents concerning either a continued stay in a nursing facility providing skilled pediatric care or an alternate placement.

**13. Survey of Nursing Facility Residents.**

Out of funds appropriated DADS is allocated the following:

- a. up to \$360,000 in All Funds, of which up to \$180,000 is General Revenue Funds, in fiscal year 2012 to conduct surveys of nursing facility residents and individuals receiving other long term services and supports. The surveys shall assess how satisfied individuals are with their quality of care and quality of life. Not later than January 15, 2013, the department shall submit a written report on the survey to the Legislature, Governor, and Health and Human Services Commissioner.
- b. Up to \$1,000,000 in All Funds, of which 500,000 is General Revenue Funds to perform on-site case reviews of the care of nursing home residents and individuals receiving other long-term care services and supports. These reviews will identify preventable occurrences of adverse outcomes. The result of these reviews will be included in the report to the Legislature, Governor and Health and Human Services Commissioner described in (a) above.

**14. Nursing Facility Beds for Medicaid Eligible Veterans.** Contingent upon a request from the Texas Veterans Land Board, it is the intent of the Legislature that the Department of Aging and Disability Services maintain a program for Medicaid-eligible veterans that will enable those individuals to be placed in State Veterans Homes. It is further the intent of the Legislature that the department amend its nursing facility bed allocation rules to create sufficient certified beds to accommodate the requirements of such a program.

**32. Services Under a 1915c Waiver.** It is the intent of the Legislature that, from the funds appropriated above, the Department of Aging and Disability Services shall provide services under a Section 1915(c) waiver program, other than a nursing facility waiver program to an individual, 21 years and younger, leaving a nursing facility if the individual:

- a. meets the eligibility requirements for that Section 1915(c) waiver program;  
and

- b. in order to leave the nursing facility, requires services that are available only under that Section 1915(c) waiver program

**Special Provisions relating to all HHS Agencies:**

16. **Provider Rates.** Appropriations made elsewhere in this Act reflect reductions to provider rates for the 2012-13 biennium as identified below. All identified reductions for fiscal years 2012 and 2013 are intended to be calculated based on the rates in effect on August 31, 2010 and are in addition to cumulative rate reductions made during fiscal year 2011, also identified below. Reductions are intended to be applied to all delivery models, including managed care, and are not a net overall reduction to the specified provider class. No additional reductions shall be made unless requested and approved according to the process required by Article II Special Provisions, Section 15 (b) for rate increases.

<u>a. DADS</u>	<u>FY 2011</u>	<u>FY 12-13 Biennium</u>
(5) Nursing facilities	-3%	0%
(6) Medicare Copay Skilled Nursing	0%	0%
(7) Nursing Facility-related hospice	-1%	-2%

17. **Additional Cost Containment Initiatives.** Included in appropriations above to the health and human services agencies in Article II of this Act are reductions for anticipated savings for the following cost containment initiatives:

<u>a. Department of Aging and Disability Services</u>	<u>GR</u>	<u>AF</u>
(1) Nursing Facility Cost Change	\$58,000,000	\$138,095,238

This amount reflects an estimated 3% reduction in DADS monthly nursing facility costs. DADS budget experts explained this reduction (or cost savings) is due to nursing facility providers better assessment of residents using the RUGS process as reflected during the UR process.

**56. Waiver Program Cost Limits.**

a. **Individual Cost Limits for Waiver Programs.** It is the intent of the Legislature that the Department of Aging and Disability Services comply with the cost-effectiveness requirements of the Centers for Medicare and Medicaid Services and set the individual cost limit for each waiver program as follows:

- (1) Community-Based Alternatives Program: 200 percent of the reimbursement rate that would have been paid for that same individual to receive services in a nursing facility;

- (2) Medically Dependent Children Program: 50 percent of the reimbursement rate that would have been paid for that same individual to receive services in a nursing facility;
- (3) Consolidated Waiver Program: 200 percent of the reimbursement rate that would have been paid for that same individual to receive services in a nursing facility, or 200 percent of the estimated annualized per capita cost of providing services in an Intermediate Care Facility/Mental Retardation (ICF/MR), as applicable;
- (4) Community Living Assistance and Support Services Program: 200 percent of the estimated annualized per capita cost of providing services in an ICF/MR to an individual qualifying for an ICF/MR Level of Care VIII;
- (5) Deaf-Blind with Multiple Disabilities Program: 200 percent of the estimated annualized per capita cost of providing services in an ICF/MR to an individual qualifying for an ICF/MR Level of Care VIII;
- (6) Home and Community-based Services Program: 200 percent of the reimbursement rate that would have been paid for that same individual to receive services in an ICF/MR or 200 percent of the estimated annualized per capita cost for ICF/MR services, whichever is greater.
- (7) Star+Plus Community-Based Alternatives: 200 percent of the reimbursement rate that would have been paid for that same individual to receive services in a nursing facility.

**HB 4: Relating to making supplemental appropriations and giving direction and adjustment authority regarding appropriations.**

**Author: Pitts**

**Sponsor: Ogden**

**Effective Date: June 16, 2011**

H.B. 4 makes adjustments to appropriations to various agencies over various time periods to address revised revenue estimates and supplemental needs. H.B. 4 spends an estimated \$3.2 Billion for State fiscal year ending August 31, 2011 from the Economic Stabilization Fund (Rainy Day Fund).

**HB 275: Relating to making an appropriation of money from the economic stabilization fund for expenditure during the current state fiscal biennium.**

HB 275 specifically spends \$3.2 Billion from the Economic Stabilization Fund, (Rainy Day Fund) for the state fiscal year ending August 31, 2011.

**HB 2722 Relating to the state Medicaid program as the payor of last resort.**

**Author: Perry**

**Sponsor: Duncan**

**Effective: September 1, 2011**

Under federal law, the Medicaid program is intended to be the payor of last resort. This means that all available third party resources must meet their legal obligation to pay claims before the Medicaid program pays for the care of an eligible individual. Some nursing homes are prorating all non-Medicaid sources, so that Medicaid is paying a portion of the patient's care from day one. If the patient leaves the nursing home before the end of the month and without exhausting other pay sources, Medicaid has funded a disproportionate part of the care. H.B. 2722 seeks to reinforce federal law through Health and Human Services Commission rules to ensure that the Medicaid program is the payor of last resort. H.B. 2722 amends current law relating to the state Medicaid program as the payor of last resort.

**SB 7: Relating to the administration, quality, efficiency, and funding of health care, health and human services, and health benefits programs in this state. (1<sup>st</sup> called session)**

**Author: Nelson**

**Sponsor: Zerwas**

**Effective Date: September 1, 2011**

*Nursing Home Licenses*

SB 7 amends Health and Safety Code 242.033 by:

- making nursing home licenses renewable every three years, instead of every two years;
- requiring the Executive Commissioner of The Health and Human Services Commission (“HHSC”), as soon as practicable after the

Conference Committee Report's effective date but not later than December 1, 2012, to adopt by rule a system under which an appropriate number of licenses issued by DADS expire on staggered dates occurring in each three-year period.

- requires The Texas Department of Aging and Disability Services (“DADS”), if the expiration date of a license changes as a result of the new system, to prorate the licensing fee relating to that license as appropriate.

### ***Automated External Defibrillators Requirement***

- SB 7 amends Health and Safety Code § 242.159 by postponing from September 1, 2012, to September 1, 2014, the date on which nursing facility providers must comply with certain automated external defibrillator requirements and by postponing the expiration date of the defibrillator requirements from January 1, 2013, to January 1, 2015.

Authorizes HHSC, absent an allegation of fraud, waste, or abuse, to conduct an annual review of claims for reimbursement under Medicaid only after HHSC has completed the prior year's annual review of claims.

### ***Streamlining Waivers***

SB 7 amends Human Resources Code 161.081 to expand the list of streamlining initiatives that HHSC and DADS could implement to restructure the delivery of services through Section 1915(c) waiver programs. It also would require DADS to perform a utilization review of services in all Section 1915(c) waiver programs that included evaluating the levels and plans of care for recipients who exceeded waiver program guidelines.

### ***Assisted Living and Care Coordination***

SB 7 amends Health and Safety Code § 247.002 to permit an assisted living facility to provide skilled nursing services for the following limited purposes: coordination of resident care with outside home and community support services agencies and other health care professionals; provision or delegation of personal care services and medication administration; assessment of residents to determine the care required; and delivery of temporary skilled nursing treatment for a minor illness, injury, or emergency for periods as established by DADS rule. SB 7 allows:

- Health and Safety Code § 247.004 to exempt from the Assisted Living Facility Licensing Act a facility that provides personal care services only to

persons enrolled in a program that is funded in whole or in part by the Department of State Health Services (“DSHS”) and that is monitored by DSHS or by its designated local mental health authority in accordance with standards set by DADS;

- Health and Safety Code § 247.002 to authorize the employment of a health care professional by an assisted living facility to provide at the facility to the facility's residents services that are authorized by the Assisted Living Facility Licensing Act and that are within the professional's scope of practice, unless otherwise prohibited by law, and removes language authorizing a health care professional to provide services within the professional's scope of practice to a resident of an assisted living facility at the facility.

### *Pay for Performance*

SB 7 amends the Government Code to authorize the executive commissioner of HHSC, if feasible, to establish by rule an incentive payment program for nursing facilities that choose to participate, rather than requiring the executive commissioner to establish by rule a quality of care health information exchange with such nursing facilities.

SB 7 also:

- **(1)** Requires the executive commissioner, in establishing the incentive program, to adopt common performance measures to be used in evaluating nursing facilities that are related to structure, process, and outcomes that positively correlate to nursing facility quality and improvement;
- **(2)** Removes a requirement that the executive commissioner, in establishing the quality of care health information exchange program, exchange information with participating nursing facilities regarding performance measures and makes a conforming change;
- **(3)** Authorizes the common performance measures to include, among other measures, measures of quality of care, as determined by clinical performance ratings published by the federal Centers for Medicare and Medicaid Services, the Agency for Healthcare Research and Quality, or another federal agency, and measure of direct-care training, including a facility's utilization of independent distance learning programs for the continuous training of direct care staff;
- **(4)** Includes in the measures of recipient satisfaction the satisfaction of recipients who are short-term and long-term residents of facilities, and family satisfaction, as determined by the Nursing Home Consumer

Assessment of Health Providers and Systems survey relied upon by the federal Centers for Medicare and Medicaid Services;

- (5) Removes from the list of measures authorized for inclusion among the common performance measures of quality of life and level of occupancy or of facility utilization;
- (6) maintain the condition that money be appropriated for incentive payments in order for HHSC to be authorized to make an incentive payment under the incentive payment program;
- (7) Requires DADS to conduct a study to evaluate the feasibility of expanding any incentive payment program established for nursing facilities for purposes of the incentive payment program, as amended by the Conference Committee Report's provisions, by providing incentive payments for licensed intermediate care facilities for persons with mental retardation and licensed or otherwise authorized providers of certain home and community-based services that provide long-term care services under the medical assistance program;
- (8) Requires DADS, not later than September 1, 2012, to submit to the legislature a written report containing the findings of the study and the department's recommendations.

### *Immunization for employees*

Requires health care facilities (which include nursing homes and assisted living facilities) to enact mandatory immunization policies for workers who are exposed to patients. The policy requires certain health care workers to receive vaccines for any vaccine-preventable diseases as specified by the Center for Disease Control and Prevention ("CDC"). The policy could grant exemptions for religious reasons and would have to allow exemptions for certain medical conditions identified by the CDC as contraindications.

If an individual was granted an exemption, the health care facility would have to enact other protective policies, such as requiring masks or gloves, to protect patients. The health care facility also would have to enact antidiscrimination policies to protect exempt persons and take certain disciplinary action against anyone who failed to comply with the policies.

If a public health disaster occurred, a health care facility could prohibit exempt individuals from having any contact with patients. A facility that failed to enact and enforce these policies would be subject to certain penalties. The policies would have to be in place by September 1, 2012.

### *Abuse, Neglect and Exploitation*

SB 7 amends the Health and Safety Code as it relates to the abuse, neglect, and exploitation of residents in a nursing home, convalescent home, or an assisted living facility (collectively referred to as “facility”) by adding Chapter 260.

In particular, this new provision requires:

- **(1)** DADS to establish and operate a telephone hotline to receive reports of abuse, neglect, or exploitation and dispatch investigators;
- **(2)** any person, including an owner or employee of a facility, who has cause to believe that the physical or mental health or welfare of a resident has been or may be adversely affected by abuse, neglect, or exploitation caused by another person to make a report to DADS' telephone hotline and/or to a local or state law enforcement agency;
- **(3)** each employee of a facility, as a condition of employment, to sign a statement that the employee realizes that the employee may be criminally liable for failure to report such abuses;
- **(4)** each facility to prominently and conspicuously post a sign containing certain specified information for display in a public area of the facility that is readily available to residents, employees, and visitors and requires a facility to provide the telephone hotline number to an immediate family member of a resident of the facility upon the resident's admission into the facility;
- **(5)** each facility to submit a report to DADS concerning deaths of residents of the facility. The report must be submitted within 10 working days after the last day of each month in which a resident of the facility dies. The report must also include the death of a resident occurring within 24 hours after the resident is transferred from the facility to a hospital;
- **(6)** DADS and/or a local or state law enforcement agency, upon receipt of a report of abuse, neglect, or exploitation to investigate the report as required by Section 260.017 of the Health and Safety Code.

## **NURSES/LABOR**

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### **HB 625: Relating to notice of staff leasing services company workers/ compensation claim and payment information.**

**Author: Solomons**

**Sponsor: Carona**

**Effective Date: September 1, 2011**

H.B. 625 requires a licensed staff leasing services company to request claims data from a workers' compensation insurance carrier at a client employer's request and to provide individualized claims data to the client employer within a specified time frame and makes a company's failure to do so an administrative violation.

H.B. 625 amends current law relating to notice of staff leasing services company workers' compensation claim and payment information, and provides an administrative violation.

### **HB 2609 Relating to employment at or by certain facilities serving the elderly or persons with disabilities.**

**Author: Guillen**

**Sponsor: Uresti**

**Effective Date: September 1, 2011**

H.B. 2609 amends current law relating to convictions barring employment at or by certain facilities serving the elderly or persons with disabilities. The list now includes an offense under Section 36.06 (Obstruction or Retaliation), Penal Code, or an offense under Section 42.09 (Cruelty to Livestock Animals), Penal Code, or under Section 42.092 (Cruelty to Nonlivestock Animals), Penal Code.

### **SB 192 Relating to the patient advocacy activities by nurses and certain other persons; providing administrative penalty**

**Author: Nelson**

**Sponsor: Howard**

**Effective Date: September 1, 2011**

S.B. 192 expands the immunities from liability extended to a person who, in good faith, makes a report required or authorized under provisions of the Nursing Practice Act relating to reporting violations and patient care concerns to include immunity from criminal liability. SB 192 also specifies that the civil and criminal

liability is the liability that, in the absence of the immunity, might result from making the report. The bill extends the same immunities to a person who advises a nurse of the nurse's right or obligation to report under those same provisions.

S.B. 192 prohibits a nurse from being subjected to retaliatory action, in addition to other actions, as a result of refusing to engage in a certain act or omission relating to patient care, making a good faith report under provisions of the Nursing Practice Act relating to reporting violations and patient care concerns, and requesting a peer review committee determination of whether certain conduct violates a nurse's duty to a patient and makes conforming changes. The bill prohibits a person who advises a nurse of the nurse's right or obligation, as appropriate, to report, to request a nursing peer review committee determination, or to refuse to engage in a certain act or omission relating to patient care from being suspended, terminated, or otherwise disciplined, discriminated against, or retaliated against and makes conforming changes.

S.B. 192 redefines "peer review" to add to the activities included in that term the provision of information, advice, and assistance to nurses and other persons relating to the rights and obligations of and protections for nurses who raise care concerns or report under the Nursing Practice Act or other state or federal law, the rights and obligations of and protections for nurses who request nursing peer review, nursing practice and patient care concerns, and the resolution of workplace and practice questions relating to nursing and patient care.

### **SB 193 Relating to the regulation of the practice of nursing.**

**Author: Nelson**

**Sponsor: King**

**Effective Date: September 2, 2011**

Interested parties assert that certain clarifying changes and updates to provisions of law relating to the Texas Board of Nursing's regulation of nurses are necessary to improve the practice of nursing and patient safety. S.B. 193 seeks to address this issue by amending current law relating to the regulation of the practice of nursing.

#### ***Confidentiality***

S.B. 193 amends the Occupations Code to extend the protection of confidentiality given to certain information that a person submits to the Texas Board of Nursing for a petition for a declaratory order of eligibility for a nursing license or for an application for an initial license or a license renewal.

Confidential information, includes:

- diagnosis and treatment, regarding a person's intemperate use of drugs or alcohol;
- information regarding a person's criminal history;
- and any other information in the petition for declaratory order of eligibility.

### *Inactive Status-Retired*

Requires the BON to permit a person whose license is on inactive status and who was in good standing with the board on the date the license became inactive to use, as applicable, a specific title indicating the person's status as a retired nurse (Ex: RN-R Registered Nurse Retired) or another appropriate title approved by the board. The bill removes a requirement for the board to permit the use of a title by such a person who is 65 years or older.

### *Standardized Error Classification*

S.B. 193 clarifies a provision establishing that an act by a person does not constitute a violation of provisions of law prohibiting retaliation against a nurse who refuses to engage in certain conduct if a nursing peer review committee determines that the act or omission the nurse refused to engage in was not conduct reportable to the board, a minor incident, or a violation of existing protection laws or a board rule.

S.B. 193 authorizes the disclosure of the results of a physical and psychological evaluation of a nurse that was conducted to determine a person's fitness to practice nursing to a peer assistance program approved by the board to which the board has referred the nurse.

The bill extends the deadline by which the State Office of Administrative Hearings is required to hold a preliminary hearing on the suspension or restriction of a nurse's license to determine whether there is probable cause that a continuing and imminent threat to the public welfare exists from not later than the 14th day to not later than the 17th day after the date the license was temporarily suspended or restricted. The bill provides that proof of the elements required for the board to temporarily suspend a license for drug or alcohol use by a nurse who is under a board order prohibiting such use or requiring the nurse to participate in a peer assistance program is proof that probable cause of a continuing and imminent threat to the public welfare exists.

S.B. 193 authorizes the board to develop a standardized error classification system for use by a nursing peer review committee in evaluating the conduct of a nurse and requires the board to make the system available to the committee at no cost. The bill provides that information collected as part of an error classification system is a record of the nursing peer review committee and is confidential. The

bill authorizes a nursing peer review committee to report the information collected using the error classification system to the board but prohibits the committee from reporting to the board information that includes the identity of an individual nurse or patient. The bill provides that information the board receives that identifies a specific patient, nurse, or health care facility; the committee; or the sponsoring organization of the committee is confidential and not subject to disclosure under the state's open records law. S.B. 193 repeals Section 301.355, Occupations Code, relating to employee group benefits, leave, and longevity pay applicable to nurses employed by medical and dental units.

**SB 795 Relating to regulation of nurse aides.**

**Author: Nelson**

**Sponsor: Naishtat**

**Effective: September 1, 2011**

S.B. 795 amends the Health and Safety Code to require an applicant for listing on the nurse aid registry maintained by the Department of Aging and Disability Services (DADS) to complete a training program approved by DADS that includes not less than 100 hours of course work as specified by rule and a competency evaluation on completion of the training program. The bill specifies that a listing on the nurse aide registry expires on the second anniversary of the date of the listing. The bill requires a nurse aide, in order to renew the nurse aide's listing on the registry, to complete at least 24 hours of in-service education every two years, including training in geriatrics and, if applicable, in the care of patients with Alzheimer's disease. The bill requires the executive commissioner of the Health and Human Services Commission, not later than May 1, 2013, to adopt rules as necessary to implement the bill's provisions.

S.B. 795 makes its provisions applicable only to an application for initial listing on the nurse aide registry or for renewal of a listing on the registry that is filed on or after September 1, 2013. The bill entitles a person listed as a nurse aide on the registry before September 1, 2013, to continue to be included on the registry without fulfilling any additional educational training or evaluation requirements established by the executive commissioner under the bill's provisions, if the person satisfies the other qualifications required by the executive commissioner and by provisions of law relating to the registry.

**SB 1714 Relating to certain actions against an employer by an employee who is not covered by workers compensation.**

**Author: Duncan**

**Sponsor: Chisum**

**Effective: September 1, 2011**

Interested parties report that a recent federal judicial decision permits an employee covered by a non-workers' compensation occupational plan to provide a pre-injury waiver of an employee's work-related injury cause of action against the employer, so long as the employer has workers' compensation insurance in addition to an occupational plan. Interested parties believe that state law should address this decision. S.B. 1714 seeks to amend current law relating to certain actions against an employer by an employee who is not covered by workers' compensation insurance to focus on the actions of the employee rather than the employer.

### **Hurricane-Emergency**

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#### **SB 937 Relating to priorities for restoration of electric service following an extended power outage**

**Author: Lucio**

**Sponsor: Naishtat**

S.B. 937 requires an electric utility to give a nursing home, an assisted living facility, and a hospice care center the same priority status that it gives to a hospital in the utility's emergency operations plan for restoring power after an extended power outage.

### **Assisted Living**

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#### **HB 2109: Relating to authorizing certain actions against an assisted living facility for the inappropriate placement of a resident and prohibiting retaliation against facility.**

**Author: Truitt**

**Sponsor: Uresti**

**Effective Date: September 1, 2011**

H.B. 2109 emphasizes and clarifies for DADS that the assisted living resident placement process is properly utilized without fear of penalty or retaliation. It provides that DADS may assess a penalty, if a provider repeatedly or intentionally violates the process; or if a final finding by DADS, after exhausting any appeals or other due process, determines the process has been followed, and

the placement is inappropriate, but the facility still refuses to discharge the resident.

H.B. 2109 amends current law relating to agency action concerning assisted living facilities, including regulation of inappropriate placement of residents at facilities and provides a penalty.

## **Community Based Services-Long Term Care**

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**HB 1481: Relating to the use of person first respectful language in reference to individuals with disabilities.**

**Author: Truitt**

**Sponsor: Zaffirini**

**Effective Date: September 1, 2011**

H.B. 1481 establishes the definition of "intellectual disability" in the Health and Safety Code, requires the Sunset Advisory Commission to consider respectful language in their 2013 session bill recommendations, requires health and human services agencies to use respectful language in all reference materials, publications, and electronic materials, publications, and electronic media, and requires that the new language be used when referencing persons with mental retardation in general and wherever the term "retarded" is used in statute.

H.B. 1481 amends current law relating to the use of person first respectful language in reference to individuals with disabilities.

**HB 2610 Relating to the establishment of a community-based navigator program to assist individuals applying or seeking to apply through the Internet for certain public assistance benefits programs.**

**Author: Guillen**

**Sponsor: Deuell**

**Effective Date: September 1, 2011**

H.B. 2610 seeks to improve the efficiency and maximize the effectiveness of TIERS by establishing a statewide community-based navigator program to assist individuals applying for certain public assistance benefits online through TIERS or any other electronic eligibility system.

H.B. 2610 amends current law relating to facilitating access to certain public assistance benefits programs and health care providers and services through a

community-based navigator program and through promotoras and community health workers.

**HB 2903 Relating to the program of all-inclusive care for the elderly.**

**Author: Zerwas**

**Sponsor: Deuell**

**Effective Date: September 1, 2011**

H.B. 2903 seeks to increase participation in PACE by, among other provisions, making the program available as an alternative to enrollment in a Medicaid managed care plan, ensuring that certain managed care organizations consider the availability of PACE when considering whether to refer a recipient to a nursing home or other long-term care facility, and requiring the program to be considered a community-based service option under the "Money Follows the Person" demonstration project or any other initiative that is designed to eliminate barriers that prevent flexible use of funds.

H.B. 2903 amends current law relating to the program of all-inclusive care for the elderly.

**SB 37 Relating to the duration of the interagency task force on ensuring appropriate care settings for persons with disabilities.**

**Author: Zaffirini**

**Sponsor: Naishtat**

The Promoting Independence Advisory Committee (PIAC) was established to make recommendations to health and human services agencies on the most appropriate care settings for persons with disabilities. This interagency task force is set to expire this year, which would result in the discontinuation of critical assistance to the health and human services agencies concerned with this issue. S.B. 37 provides for the continuation of the PIAC until 2017.

**SB 78 Relating to adverse licensing, listing, or registration decisions by certain health and human services agencies.**

**Author: Nelson**

**Sponsor: Laubenberg**

**Effective Date: September 1, 2011**

S.B. 78 establishes provisions relating to adverse licensing, listing, or registration decisions by certain health and human services agencies. S.B. 78 bill's provisions

apply only to final adverse licensing, listing, or registration decisions of a health and human services agency with respect to a person under the law authorizing the agency to regulate the following types of persons:

- a youth camp;
- a home and community support services agency;
- a hospital;
- a convalescent home, nursing home, or related institution;
- an assisted living facility;
- a special care facility;
- an intermediate care facility for the mentally retarded;
- a chemical dependency treatment facility;
- a mental hospital or mental health facility;
- a child-care facility, child-placing agency, or family home;
- or an adult day-care facility.

S.B. 78 requires each health and human services agency that regulates such a person, in accordance with the bill's provisions and rules of the executive commissioner of the Health and Human Services Commission, to maintain a record of each application for a license. This includes a renewal license or license that does not expire, a listing, or a registration that is denied by the agency under the law authorizing the agency to regulate the person. This record maintains in place until the 10th anniversary of the date the application is denied and to maintain a record of each license, listing, or registration that is revoked, suspended, or terminated by the agency.

S.B. 78 authorizes a health and human services agency that regulates an applicable person to deny an application for a license, including a renewal license or a license that does not expire, a listing, or a registration if the applicant, a person listed on the application, or a person determined by the applicable regulating agency to be a controlling person of an entity for which the license, listing, or registration is sought is listed in a record maintained under the bill's provisions and if the agency's action that resulted in the person being listed in a record is based on an act or omission that resulted:

- in physical or mental harm to an individual in the care of the applicant or person;
- a threat to the health, safety, or well-being of an individual in the care of the applicant or person;
- the physical, mental, or financial exploitation of an individual in the care of the applicant or person;
- or a determination by the agency that the applicant or person has committed an act or omission that renders the applicant unqualified or unfit to fulfill the obligations of the license, listing, or registration.

S.B. 78 requires the executive commissioner, not later than March 1, 2012, to adopt the rules necessary to implement the bill's provisions. The bill provides that a health and human services agency is not required to maintain records of adverse licensing, listing, or registration decisions until March 1, 2012.

**SB 220 Relating to guardianships, including the assessment of prospective wards for, and the provision of, guardianship services by the Department of Aging and Disability Services.**

**Author: Nelson**

**Sponsor: Naishtat**

**Effective Date: September 1, 2011**

S.B. 220 requires the Health and Human Services Commission (HHSC), in computing the applied income of a Medicaid recipient to deduct an additional personal needs allowance from the earned and unearned income of the recipient or, the recipient and the recipient's spouse, for compensation and costs ordered to be deducted.

S.B. 220 requires HHSC to compute the applied income of a Medicaid recipient as follows:

- HHSC is required to deduct from the earned and unearned income the personal needs allowance for residents of certain long-term care facilities before making any other deduction;
- if after that deduction the recipient has remaining income, HHSC is required to deduct the lesser of the amount of the remaining income or the amount of the additional personal needs allowance for compensation and costs ordered to be deducted under Texas Probate Code provisions relating to compensation of certain guardians and certain other guardianship costs;
- and if after those deductions the recipient has remaining income, HHSC is required to deduct any other authorized allowances. The bill establishes that the amount of income remaining, if any, after HHSC makes the deductions previously described is the amount of the applied income of the Medicaid recipient.

S.B. 220 requires HHSC to adopt rules providing a procedure by which a Medicaid recipient for whom amounts are ordered deducted under Texas Probate Code provisions relating to compensation of certain guardians and certain other guardianship costs. The bill provides for the meaning of "applied

income," for purposes of provisions relating to such an additional personal needs allowance, " by reference to the Texas Probate Code.

S.B. 220 includes an individual to whom guardianship services are provided among the individuals for whom DADS is required to have access to all records and documents concerning the individual that are necessary to the performance of the department's duties, including financial information. The bill includes a financial record among the records for which DADS is exempt from the payment of a fee otherwise required or authorized by law to obtain such a record. The bill specifies that DADS is exempt from the payment of a fee for certain specified records from any source, rather than from a hospital or health care provider, and includes among the conditions for such an exemption that the request for a record be related to the provision of guardianship services by DADS.

S.B. 220 authorizes DADS, to the extent consistent with department policies and procedures and on request, to release confidential information in the record of an individual who is assessed by DADS or is a former ward of DADS to the individual, the individual's guardian, or an executor or administrator of the individual's estate.

S.B. 220 requires DADS to encourage the involvement of volunteers in guardianships. The bill requires DADS, in order to encourage that involvement, to identify issues and tasks with which a volunteer could assist DADS in a guardianship. The bill authorizes a volunteer to provide life enrichment activities, companionship, transportation services, and other services to or for the ward in a guardianship. The bill prohibits the volunteer from providing services that would require the volunteer to hold a guardianship certification. The bill provides for the meaning of "volunteer," for purposes of these provisions, by reference.

S.B. 220 amends the Texas Probate Code to require the citation required to be issued by a court clerk when an application for guardianship is filed.

S.B. 220 requires an applicant for guardianship to mail a copy of certain documents relating to the application for guardianship to each person named as another relative within the third degree by consanguinity in the application, rather than to each person named as next of kin in the application, and adds as a condition of that requirement that the proposed ward's spouse and each of the proposed ward's parents, adult siblings, and adult children are deceased or that there is no spouse, parent, adult sibling, or adult child.

S.B. 220 specifies that an individual volunteering with DADS, in addition to an individual volunteering with a guardianship program, is not required to hold a guardianship certification to provide guardianship services.

S.B. 220 requires DADS and the adult protective services division of DFPS to identify and implement modifications to investigations of abuse, neglect, and exploitation conducted under provisions of law relating to investigations and protective services for elderly and disabled persons and the provision of protective and guardianship services under those provisions of law and provisions of law relating to DADS, to ensure that the agencies prevent any unnecessary duplication of efforts in performing their respective responsibilities. S.B. 220 establishes that its provisions apply to a guardianship created before, on, or after the bill's effective date.

**SB 221 Relating to the Department of Family and Protective Services, including protective services and investigations of alleged abuse, neglect, or exploitation for certain adults who are elderly or disabled.**

**Author: Nelson**

**Sponsor: Naomi Gonzalez**

S.B. 221 amends the Finance Code to include a record request from or report to a government agency arising out of the investigation of alleged abuse, neglect, or exploitation of an elderly or disabled person in the information to which provisions regarding discovery of customer records do not apply and of which a financial institution is not required or authorized to give a customer notice.

S.B. 221 clarifies that the Department of Family and Protective Services (DFPS) is required to obtain from the Department of Public Safety (DPS) criminal history record information maintained by DPS that relates to a person who is an alleged perpetrator in, a report DFPS receives alleging that a person has abused, neglected, or exploited a child, an elderly person, or a person with a disability and makes conforming changes.

S.B. 221 entitles DFPS to obtain from DPS criminal history record information maintained by DPS that relates to a person who is an employee of, an applicant for employment with, or a volunteer or an applicant volunteer with an entity or person that contracts with DFPS and has access to confidential information in DPS's records, if the employee, applicant, volunteer, or applicant volunteer has or will have access to that confidential information.

S.B. 221 authorizes the executive commissioner of HHSC by rule to adopt definitions of "abuse," "neglect," and "exploitation," as an alternative to the

existing definitions of those terms for purposes of conducting an investigation of a report of an allegation of abuse, neglect, or exploitation of elderly or disabled persons.

S.B. 221 amends the Health and Safety Code to specify, for purposes of provisions relating to reports of abuse, exploitation, and neglect relating to a home and community support services license, that "abuse," "exploitation," and "neglect" have the meanings applicable through executive commissioner rule and requires the statutory definitions of those terms under provisions of law relating to investigations and protective services for elderly and disabled persons to be used if the executive commissioner has not adopted applicable rules.

**SB 222 Relating to access to certain long-term care services and supports under the medical assistance program.**

**Author: Nelson**

**Sponsor: Raymond**

**Effective Date: September 1, 2011**

S.B. 222 requires the Health and Human Services Commission (HHSC) to consider developing risk management criteria under home and community-based services waiver programs designed to allow individuals eligible to receive services under the programs to assume greater choice and responsibility over the services and supports the individuals receive. The bill requires HHSC to ensure that any risk management criteria developed under the bill's provisions include a requirement that if an individual to whom services and supports are to be provided has a legally authorized representative, the representative be involved in determining which services and supports the individual will receive and a requirement that if services or supports are declined, the decision to decline is clearly documented. The bill provides for the meaning of "legally authorized representative" by reference.

S.B. 222 amends the Health and Safety Code to require the Department of Aging and Disability Services (DADS) to ensure that local mental retardation authorities are informing and counseling individuals and their legally authorized representatives, if applicable, about all program and service options for which the individuals are eligible in accordance with provisions of law.

S.B. 222 amends the Human Resources Code to require DADS, in cooperation with HHSC, to educate the public on the availability of home and community-based services under a Medicaid state plan program, including the primary home care and community attendant services programs, and under a Section

1915(c) waiver program, and on the various service delivery options available under the Medicaid program.

*Report on Nursing Facility Residents and Long Term Care Services*

S.B. 222 requires HHSC, in cooperation with DADS, to prepare a written report regarding individuals who receive long-term care services in nursing facilities under Medicaid. The bill provides that the report should use existing data and information to identify the reasons Medicaid recipients of long-term care services are placed in nursing facilities as opposed to being provided long-term care services in home or community-based settings; the types of Medicaid services recipients residing in nursing facilities typically receive and where and from whom those services are typically provided; community-based services and supports available under a Medicaid state plan program, including the primary home care and community attendant services programs, or under a Medicaid waiver granted in accordance with Section 1915(c) of the federal Social Security Act for which recipients residing in nursing facilities may be eligible; and ways to expedite recipients' access to available community-based services and supports for which interest lists or other waiting lists exist.

The bill requires HHSC, not later than September 1, 2012, to submit the report together with the commission's recommendations to the governor, the Legislative Budget Board, the Senate Committee on Finance, the Senate Committee on Health and Human Services, the House Appropriations Committee, and the House Human Services Committee. The bill requires the recommendations to address options for expediting access to community-based services and supports by recipients residing in nursing facilities. The bill defines "medical assistance program" and "nursing facility" and provides for the meaning of "long-term care services" by reference to the Human Resources Code.

S.B. 222 requires the executive commissioner of HHSC, as soon as practicable after the bill's effective date, to apply for and actively pursue amendments from the federal Centers for Medicare and Medicaid Services, or any other appropriate federal agency, to the community living assistance and support services waiver and the home and community-based services program waiver granted under Section 1915(c) of the federal Social Security Act to authorize the provision of personal attendant services through the programs operated under those waivers.

S.B. 222 requires a state agency that is affected by a provision of the bill to request a federal waiver or authorization if the agency determines that a waiver or authorization is necessary for the implementation of the provision and authorizes the agency to delay implementation until the federal waiver or authorization is obtained.

**SB 223 Relating to the licensing and regulation of home and community support services agencies and the administrators of those agencies; providing penalties**

**Author: Nelson**

**Sponsor: Gonzalez, Naomi**

*Home and Community Services License*

S.B. 223 amends the Health and Safety Code to require a home and community support services license applicant or license holder to provide the Department of Aging and Disability Services (DADS) representative conducting a survey of the premises of the license applicant or license holder with a reasonable and safe workspace at the premises. The bill requires DADS to provide certain specified information, after a survey of a home and community support services agency by DADS, to the home and community support services agency administrator, rather than to the chief executive officer of the agency. The bill specifies, in a provision including information relating to the DADS representative conducting the survey in the information that DADS is required to provide to the home and community support services agency administrator, that DADS is required to include information on the identity, including the name, of each DADS representative conducting or reviewing the results of the survey, rather than requiring the inclusion of the signature of each such representative conducting, reviewing, or approving the results. The bill prohibits DADS from renewing an initial home and community support services agency license unless DADS has conducted an initial on-site survey of the agency.

*Home and Community Services Joint Training*

S.B. 223 requires DADS at least semiannually to provide joint training for home and community support services agencies and surveyors on subjects that address at least one of the 10 most common violations of federal or state law by such agencies. The bill authorizes DADS to charge a home and community support services agency a fee, not to exceed \$50 per person, for the training.

*Home and Community Services Administrators*

S.B. 223 authorizes the executive commissioner to adopt rules governing the duties and responsibilities of home and community support services agency administrators, including rules regarding an administrator's management of daily operations of the home and community support services agency, an administrator's responsibility for supervising the provision of quality care to agency clients, an administrator's implementation of agency policy and procedures, and an administrator's responsibility to be available to the agency at all times in person or by telephone.

S.B. 223 requires the executive commissioner of HHSC, as soon as practicable after the bill's effective date but not later than July 1, 2012, to adopt the rules necessary to implement the changes in law made by the bill regarding home and community support services.

*Nursing facilities license compliance*

S.B. 223 authorizes DADS to consider and evaluate the compliance history of an applicant for a convalescent or nursing home license and other specified persons for any period during which the applicant or other person operated an institution in Texas or in another state or jurisdiction and makes conforming changes. The bill, in a provision of law requiring the exclusion of licensing eligibility for a person who has substantially failed to comply with provisions of law relating to convalescent and nursing homes or rules adopted under those provisions to extend for a period of least two years, authorizes that period to extend throughout the person's lifetime or existence, rather than prohibiting the period from exceeding a period of 10 years.

*Financial Management and Consumer Directed Services*

S.B. 223, in certain provisions of law relating to criminal history checks of employees and applicants for employment in certain facilities serving the elderly, persons with disabilities, terminal illnesses, including provisions relating to criminal history record information obtained by certain entities, verification of employability and discharge of certain employees listed in the nurse aide registry or employee misconduct registry, criminal history records of employees, notification requirements concerning criminal history record information, certain convictions barring employment, privileged records, and civil liability, includes a financial management services agency serving as a fiscal and employer agent for an individual employer participating in the consumer-directed service option and an individual employer participating in the consumer-directed service option and responsible for hiring service providers to deliver program services among the entities to which those provisions of law apply and makes related conforming changes.

The bill includes an applicant for employment by or an employee of an individual employer among the persons for whom a facility, a regulatory agency, a financial management services agency on behalf of an individual employer, or a private agency on behalf of a facility is entitled to obtain from the Department of Public Safety (DPS) criminal history record information maintained by DPS.

The bill requires a financial management services agency to forward criminal history record information received from DPS to the individual employer requesting the information. The bill requires an individual employer to

immediately discharge any employee whose criminal history check reveals conviction of a crime that bars employment or that the individual employer determines is a contraindication to employment.

The bill prohibits a person from being employed by an individual employer before the fifth anniversary of the date the person is convicted of certain specified offenses.

The bill defines "financial management services agency" and "individual employer" and makes a nonsubstantive change to the definition of "nurse aide registry."

### ***Office of Inspector General***

The bill includes the office of inspector general among the entities entitled to obtain from DPS the criminal history record information maintained by DPS that relates to a provider under Medicaid or a person applying to enroll as a Medicaid provider. The bill establishes that the criminal history record information an agency or the office of inspector general is authorized to obtain from DPS includes criminal history record information relating to a person with a direct or indirect ownership or control interest, as defined by federal law, in a provider of five percent or more and a person whose information is required to be disclosed in accordance with federal law relating to the integrity of the Medicare and state health care programs.

S.B. 223 requires the office of inspector general to impose without prior notice a hold on payment of claims for reimbursement on receipt of reliable evidence that the circumstances giving rise to the hold on payment involve fraud or willful misrepresentation under the state Medicaid program in accordance with federal law. The bill requires the office of inspector general to notify the provider of the hold on payment in accordance with federal law relating to the suspension of certain Medicaid payments in case of fraud, rather than requiring such notification not later than the fifth working day after the date the payment hold is imposed.

### ***Agency Information Exchange and Medicaid Provider Fraud***

S.B. 223 makes provisions of law relating to the duty of participating agencies to exchange certain information regarding allegations of Medicaid fraud or abuse applicable to criminal history record information held by a participating agency that relates to a health care professional and makes conforming changes. The bill authorizes a participating agency to enter into a memorandum of understanding or agreement with another participating agency for the purpose of exchanging

criminal history record information relating to a health care professional that both participating agencies are authorized to access.

S.B. 223 authorizes HHSC's office of inspector general, in addition to HHSC, to obtain from any law enforcement or criminal justice agency the criminal history record information that relates to a Medicaid provider or a person applying to enroll as a Medicaid provider.

*Condition of Eligibility as a Medicaid Provider*

S.B. 223, in a provision of law requiring the executive commissioner by rule to establish criteria for revoking a Medicaid provider's enrollment or denying a person's application to enroll as a Medicaid provider, requires the executive commissioner by rule to also establish such criteria for HHSC's office of inspector general and requires the executive commissioner by rule to establish such criteria for the suspension of a provider's billing privileges under Medicaid.

The bill includes in the conditions on which such action by HHSC or the office is based any exclusion or debarment of the provider from participation in a state or federally funded health care program, the provider's failure to bill for Medicaid or refer clients for Medicaid within a 12-month period, or any of the provider screening or enrollment provisions contained in federal law.

S.B. 223 requires the executive commissioner, as a condition of eligibility to participate as a Medicaid provider, by rule to require a provider or a person applying to enroll as a provider to disclose all persons with a direct or indirect ownership or control interest in a provider of five percent or more, any managing employees of the provider, and an agent or subcontractor of the provider if the provider or other specified person has a direct or indirect ownership interest of at least five percent in the agent or subcontractor or if the provider engages in a business transaction with the agent or subcontractor that meets the criteria specified by a provision of federal law relating to the disclosure of certain information by providers.

The bill requires the executive commissioner, as a condition of eligibility to participate as a Medicaid provider, by rule to require disclosure by persons applying for enrollment as providers and provide for screening of applicants for enrollment in conformity and compliance with the requirements of federal law. The bill requires the executive commissioner, in adopting the required rules, to adopt rules as authorized by and in conformity with federal law for the imposition of a temporary moratorium on enrollment of new providers, or to impose numerical caps or other limits on the enrollment of providers, that HHSC or the office of inspector general, in consultation with HHSC, determines to have a significant potential for fraud, waste, or abuse.

### *Medicaid Payment Documentation*

S.B. 223 includes a person who fails to maintain documentation to support a claim for payment in accordance with the requirements specified by DADS rule or Medicaid program policy or engages in any other conduct that an HHSC rule has defined as a violation of the Medicaid program among the persons considered to have committed a violation of provisions relating to Medicaid. The bill makes such a person liable to HHSC for either the amount paid in response to the claim for payment or the payment of an administrative penalty in an amount not to exceed \$500 for each violation, as determined by HHSC.

### *Adult Day Care*

S.B. 223 authorizes DADS to assess an administrative penalty against a person who violates the Adult Day Care Act, a rule, standard, or order adopted under that act, or a term of a license issued under that act; makes a false statement of material fact that the person knows is false or should know is false on certain applications or with respect to a matter under investigation by DADS; refuses to allow a representative of DADS to inspect a book, record, or file required to be maintained by an adult day-care facility or any portion of the premises of an adult day-care facility; willfully interferes with a representative of DADS under certain circumstances; fails to pay a penalty within a certain time frame; or fails to notify DADS of a change of ownership before the effective date of the change of ownership. The bill prohibits the penalty from exceeding \$500 for each violation and provides that each day of a continuing violation constitutes a separate violation. The bill requires DADS to establish gradations of penalties in accordance with the relative seriousness of the violation.

### *Training for surveyors and LTC providers*

S.B. 223 prohibits DADS from collecting an administrative penalty from an adult day-care facility if, not later than the 45th day after the date the facility receives a notice of the violation, the facility corrects the violation and sets out violations for which such a prohibition does not apply. The bill requires an adult day-care facility that corrects a violation to maintain the correction. The bill authorizes DADS to assess and collect an administrative penalty for a subsequent violation if the facility fails to maintain the correction until at least the first anniversary after the date the correction was made.

S.B. 223 requires DADS to issue a preliminary report stating the facts on which DADS concludes that a violation of the Adult Day Care Act, a rule, standard, or order adopted under that act, or a term of a license issued under that act has

occurred if DADS has examined the possible violation and facts surrounding the possible violation and concluded that a violation has occurred.

S.B. 223 requires an administrative law judge to order a hearing and give notice of the hearing if a person assessed a penalty requests a hearing and requires the hearing to be held before an administrative law judge. The bill requires the judge to make findings of fact and conclusions of law regarding the occurrence of a violation. The bill requires the commissioner of DADS or the commissioner's designee, based on the findings of fact and conclusions of law and the recommendation of the administrative law judge, by order to find a violation has occurred and assess an administrative penalty or find a violation has not occurred. The bill establishes that such proceedings are subject to the Administrative Procedure Act.

S.B. 223 requires the semiannual training provided by DADS for surveyors and providers of certain long-term care facilities to cover subjects that address the 10 most common violations by long-term care facilities of federal or state law, rather than at least one of the 10 most common violations. The bill authorizes DADS to charge providers a fee not to exceed \$50 per person for the training. The bill requires the executive commissioner to adopt rules necessary to implement the requirements for such training as soon as practicable after the bill's effective date but not later than July 1, 2012.

S.B. 223 requires a state agency that is affected by a provision of the bill to request a federal waiver or authorization if the agency determines that a waiver or authorization is necessary for the implementation of the provision, and it authorizes the agency to delay implementation until the federal waiver or authorization is obtained.

**SB 293 Relating to telemedicine medical services , telehealth services, and home telemonitoring services provided to certain Medicaid recipients**

**Author: Watson**

**Sponsor: Davis**

**Effective: September 1, 2011**

S.B. 293 seeks to provide telemedicine medical services, telehealth services, and home telemonitoring services to certain Medicaid recipients by requiring the Health and Human Services Commission (HHSC), if cost-effective and feasible, to establish a statewide program that permits reimbursement under the state Medicaid program for home telemonitoring services. The bill intends to allow HHSC to discontinue the program and stop providing such reimbursements if HHSC determines that the program is not cost-effective and to require HHSC to

take certain actions if HHSC determines that the provision of home telemonitoring services achieves cost savings for the Medicare program.

**SB 1857 Relating to the administration of medications for persons with intellectual and developmental disabilities**

**Author: Zaffirini**

**Sponsor: Truitt**

**Effective: September 1, 2011**

S.B. 1857 authorizes an unlicensed person to provide administration of medication to a client with intellectual and developmental disabilities who is served in a small licensed or certified intermediate care facility for the mentally retarded (ICF-MR) with not less than one and not more than eight beds; in a medium licensed or certified ICF-MR with not less than nine and not more than 13 beds; or by certain specified Section 1915(c) waiver programs administered by the Department of Aging and Disability Services (DADS) without the requirement that a registered nurse delegate or oversee each administration.

The bill authorizes such administration of medication if the medication is an oral medication, a topical medication, or a metered dose inhaler; the medication is administered to the client for a stable or predictable condition; the client has been personally assessed by a registered nurse initially and in response to significant changes in the client's health status.

S.B. 1857 requires DADS, in developing any policies, processes, or training curriculum required by the bill, to convene an advisory committee of affected stakeholders, including public and private providers and registered and licensed vocational nurses employed by the applicable facilities or providers of applicable services and other persons or entities DADS considers appropriate. The bill defines "administration of medication," "client," and "unlicensed person."

**Medicaid Fraud**

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**SB 544 Relating to unlawful acts against and criminal offenses involving the Medicaid program.**

**Author: Seliger**

**Sponsor: Shelton**

**Effective: September 1, 2011**

S.B. 544 amends the Human Resources Code to include among the persons who are considered to have committed an unlawful act for purposes of provisions relating to Medicaid fraud prevention and Medicaid fraud a person who knowingly causes a claim to be made under the Medicaid program for a service or product that has not been approved or acquiesced in by a treating physician or health care practitioner, a service or product that is substantially inadequate or inappropriate when compared to generally recognized standards within the particular discipline or within the health care industry, or a product that has been adulterated, debased, or mislabeled, or that is otherwise inappropriate.

S.B. 544 increases the civil penalty for a person who commits an unlawful act relating to Medicaid fraud from not less than \$5,000 or more than \$15,000 to not less than \$5,500 or the minimum amount imposed as provided by certain provisions of federal law governing false claims, if that amount exceeds \$5,500, and not more than \$15,000 or the maximum amount as provided by those federal provisions, if that amount exceeds \$15,000, for each unlawful act committed by the person that results in injury to an elderly person, a disabled person, or a person younger than 18 years of age.

**SB 688 Relating to the investigation, prosecution, and punishment of criminal Medicaid fraud and certain other offenses related to Medicaid fraud.**

**Author: Nichols**

**Sponsor: Creighton**

**Effective: September 1, 2011**

S.B. 688 implements several tools to help MFCU effectively investigate and prosecute criminal and civil Medicaid fraud, including changing the statute of limitations on Medicaid fraud from three to seven years; authorizing MFCU commissioned peace officers to locate and track offenders in the scope of a criminal investigation; enhancing opportunities for recovery of state assets; defining "exploitation" as an offense of fraud; including electronic records as evidence in prosecution; creating a new definition of "high managerial agent," who may be prosecuted instead of solely an owner of a healthcare provider; enhancing penalties; and allowing Medicaid fraud to be prosecuted as an organized crime.

S.B. 688 amends current law relating to the investigation, prosecution, and punishment of criminal Medicaid fraud and certain other offenses related to Medicaid fraud, and provides penalties.

**SB 1680 Relating to certain evidence in a prosecution of fraud or theft involving Medicaid or Medicare benefits.**

**Author: Ellis**

**Sponsor: Murphy**

**Effective: September 1, 2011**

S.B. 1680 allows individuals in Medicare and Medicaid fraud cases whose information was stolen and used to make fraudulent claims to provide testimony by deposition, shortening testimony by days or weeks. Videotaping depositions of these witnesses before trial allows the court to obtain the evidence in an efficient manner without compromising the defendant's rights to confrontation and cross-examination.

S.B. 1680 amends current law relating to certain evidence in a prosecution of fraud or theft involving Medicaid or Medicare benefits and to certain criminal procedures involving offenses in general.