



House Committee on Human Services, March 9th, 2021

Committee Make-Up: [here](#).

Committee Handouts: [here](#).

The Committee on Human Services met to consider the following:

[HB 135](#) - Minjarez

Relating to notifying an alleged perpetrator of child abuse or neglect of the person's right to record an investigative interview.

[HB 484](#) - Shaheen

Relating to a direct primary care model pilot program for Medicaid.

[HB 542](#) - White

Relating to foster care placement in and the licensing of certain residential child-care facilities.

[HB 682](#) - Minjarez

Relating to notifying an alleged perpetrator of child abuse or neglect of the person's right to request an administrative review of the department's findings after an investigation by the Department of Family and Protective Services.

[HB 892](#) - Frank | et al.

Relating to the right of certain facility residents to designate an essential caregiver for in-person visitation.

[HJR 46](#) - Frank

Proposing a constitutional amendment establishing a right for residents of certain facilities to designate an essential caregiver for in-person visitation.

[HB 135](#), Relating to notifying an alleged perpetrator of child abuse or neglect of the person's right to record an investigative interview. The bill would amend Family Code to require the Department of Family and Protective Services (DFPS) to inform the alleged perpetrator that they may record the interview and the recording may be subject to subpoena. In addition, the bill would require DFPS to document the notice.

It is assumed that the provisions of the bill relating to notifying an alleged perpetrator of child abuse or neglect of the person's right to record an investigative interview could be absorbed using existing resources. The bill would take effect September 1, 2021.

The LBB fiscal note stated that there was no fiscal impact to the state.

Representative Minjarez explained the bill. The bill will promote foster care prevention and family preservation, allowing the recording of engagement by families with CPS. The bill does not address noncompliance but there are avenues for filing complaints.

Testimony.

Testifying for the bill:

- Bright, Melissa (Self)
- Brown, Andrew (Self; Texas Public Policy Foundation)
- Maldonado, Matthew (Self)

Comments in support of the bill

- The removal process is fairly simple and is based solely on the investigator's report
- Reports can be biased
- The recordings will provide a check-and-balance approach
- CPS investigations coincide with criminal investigations and those are recorded
- The bill also requires advising parents that they have other rights, including the right to legal counsel (in the committee substitute being drafted)
- This has to happen at first contact
- Families often do not know they can record the interaction and removal
- A recording becomes a firsthand account

Testifying against the bill:

- McIntire, Krista (Self)
- Powell, Judy (Parent Guidance Center)

Comments against the bill

- Parents can already record since we are a "one party state"
- The policy now says if you record then CPS must record, thus parents are losing a right
- The power of subpoena is included in the law
- This bill could cause parents to incriminate themselves

Testifying on the bill:

- Karimjee, Sophia (Department of Family and Protective Services -Resource Witness). The HHSC put up signs outside the building that recordings are not allowed but DFPS stated that parents already have the right to record. DFPS acknowledged that this has confused the issue. Currently investigators do not record interviews unless the parent is recording. If DFPS is going to record, they notify the parents of the intent to record ahead of time.

The Bill was left pending.

HB 484 Relating to a direct primary care model pilot program for Medicaid.

The bill would require the Health and Human Services Commission (HHSC) to implement a statewide direct primary care pilot program in Medicaid in which a Medicaid recipient enters into a medical service agreement with a physician for the provision of primary medical care services in exchange for a direct fee that is paid on a monthly basis. Medicaid recipients



younger than age 65 would be able to participate in the pilot program. Providers practicing under a direct primary care model and who do not seek reimbursement for primary care services from a third-party insurer or managed care organization would be able to participate. HHSC would be required to pay the lesser of the amount of the direct fee required under the medical service agreement with the provider or \$40 per month for recipients age 18 and under and \$70 per month for recipients ages 19 to 64. The bill would require HHSC to submit a report regarding the pilot program no later than December 31, 2024. The pilot program would be terminated on September 1, 2025.

It is unknown how many direct primary care providers and Medicaid recipients would participate in the pilot program. However, according to HHSC, carving these services out of managed care will shift costs from the managed care organizations to the providers and likely at an increase.

In order to implement the pilot program, significant changes would need to be made to HHSC information technology (IT) systems, including changes to determine eligibility for the pilot program, determine and pay fee amounts, and interface between the pilot programs and managed care organizations. Additional IT changes would be required if HHSC chose to issue an electronic benefits transfer card to participating recipients for the recipients to use to pay the direct fee required by the medical service agreement.

Additional full-time-equivalents (FTEs) may also be necessary in order to administer the program.

The pilot program may conflict with federal rules and regulations, including those regarding cost sharing and provider enrollment. For this reason, the state may not be able to receive federal financial participation for the pilot program.

It is assumed that costs associated with rulemaking, and development of any state plan amendments or waivers could be adsorbed within existing agency resources.

The bill would take effect September 1, 2021.

The LBB Fiscal Note stated that the fiscal implications of the bill cannot be determined at this time due to the inability to anticipate how many direct primary care providers and Medicaid recipients would participate in the pilot program proposed by the bill, but a significant cost would be anticipated.

Representative Shaheen explained the bill. The bill proposes a pilot using the direct primary care model. This pilot would seek a different avenue to ensure physician participation in the Medicaid model. It would be similar to the food stamp program and use a debit card for services.

Testimony

Testifying for the bill

- Balat, David (Self; Texas Public Policy Foundation)
- Lazzopina, Peter (Self)
- Porter, Clifford (Self)

Comments for the Bill

- The pilot program would be contingent on approval of the federal government
- There would be more access under the pilot
- This is designed to be a compliment to the Medicaid program
- Personal stories by physicians were shared

Testifying against the bill:

- Ghahremani, Kay (Texas Association of Community Health Plans)
- Vanhoose, Laurie (Texas Association of Health Plans)

Comments against the Bill

- The bill will disrupt the progress made in Medicaid managed care
- Utilization and cost cannot be managed under the proposed pilot
- This is not an acceptable model under Medicaid
- The pilot would allow providers to not enroll in Medicaid; that would not be allowed either by CMS

Testifying on the bill:

- Zalkovsky, Emily (Texas Health and Human Services Commission)

Comments on the Bill

The group would not be billing Medicaid for the services they are providing. CMS has limits on cost-sharing and the types of services allowed.

The Bill was left pending.

HB 542 Relating to foster care placement in and the licensing of certain residential child-care facilities. The bill would amend the Family Code to require the Department of Family and Protective Services (DFPS) to establish guidelines for the placement of a child in a residential child-care facility at which a preventable death of a child in the managing conservatorship of the department occurred. Additionally, the bill would amend the Human Resources Code to require the Health and Human Services Commission (HHSC) to deny an application for a license to operate a child-care facility if the applicant operated a residential child-care facility at which a preventable death of a child in the managing conservatorship of

DFPS occurred and HHSC terminated a contract with the residential child-care facility as the result of the preventable death.

It is assumed any cost to implement provisions of the bill would be minimal and can be absorbed within available resources.

The LBB Fiscal Note stated no significant fiscal implication to the State is anticipated.

Representative White explained the bill. He stated that it is a simple bill addressing valid concerns about placements for foster youth. Many children have been placed in unsafe facilities. Closed facilities have been able to re-open using new names. DFPS will have to create guidelines for placement in a facility that had a previous death in it.

The Bill was left pending.

[HB 682](#) Relating to notifying an alleged perpetrator of child abuse or neglect of the person's right to request an administrative review of the department's findings after an investigation by the Department of Family and Protective Services. The bill would amend Family Code to require the Department of Family and Protective Services (DFPS) to verbally notify the alleged perpetrator that they may request an administrative review of DFPS's findings and require DFPS to document the notice.

It is assumed that the provisions of the bill relating to notifying an alleged perpetrator of child abuse or neglect of the person's right to request an administrative review of the department's findings after an investigation by DFPS could be absorbed using existing resources.

The bill would take effect September 1, 2021.

The LBB Fiscal Note stated that no significant fiscal implication to the State is anticipated.

Representative Minjarez explained the bill. She stated that the findings of a CPS investigation can be lasting. State law should provide a path to dispute and alleged perpetrators should be notified of their right to dispute the CPS decision. Notice currently is provided through the US Mail. Some families are transient and as such do not receive the notifications.

Public Testimony

Testifying for the bill:

- Powell, Judy (Parent Guidance Center)
- Wilcoxson, Carrie (Self)

Comments in support of the bill:

- It is important that families understand their rights to an appeal
- Most of the cases are related to families with low-income status
- Families are frequently unknowledgeable of their rights for an administrative review
- Administrative reviews are under-requested

Testifying on the bill:

- Hatcher, Julia (Self; Texas Association of Family Defense Attorneys). The speaker stated she would like to see a form for parents to sign that confirms that they were notified of their rights. She stated that the 45-day deadline should be waived under certain circumstances.

The Bill was left pending.

HB 892 Relating to the right of certain facility residents to designate an essential caregiver for in-person visitation. The bill would add Chapter 260B to the Health and Safety Code and amend Chapter 555 of the Health and Safety Code to allow for residents of nursing facilities, assisted living facilities, and state supported living centers to designate at least one essential caregiver that the facility or center may not prohibit in-person visitation with. The bill would require the executive commissioner of the Health and Human Services Commission (HHSC) to develop guidelines to assist nursing facilities, assisted living facilities, and state supported living centers in establishing essential caregiver visitation policies and procedures. The bill would require the executive commissioner of HHSC to establish the guidelines as soon as practicable after the effective date of the bill. The bill would take effect September 1, 2021.

Based on the Legislative Budget Board's analysis of HHSC, it is assumed that the provisions of the bill could be absorbed within current resources.

The LBB Fiscal Note stated that no significant fiscal implication to the State is anticipated.

Chair Frank explained the bill. He stated that COVID restrictions were very difficult for people in congregate living facilities. He stated he had more contact with constituents over the issues of isolation of residents. He stated that it is easier to not allow visitors and for bad actors it is easier to not allow family members. The bill provides for the designation of one essential caregiver that will always have access to their loved one. This bill would provide a guardian or caregiver to fill the role of essential caregiver. Other provisions are being explored that will be included in a committee substitute. He stated that the median stay for a resident is less than one year. This has the effect of denying a visitor to some people this past year who have now passed.

Testimony

Testifying for the bill:

- King, Kendra (Nexion Health for the Independent coalition of nursing home providers)
- Peter, Christopher (Self)

Comments in Support of the Bill

- Providers felt it was a reasonable step to ensure quality of life for the residents
- We have to be sure that the bill aligns with state and federal guidelines
- Residents experienced depression and other issues during isolation, but at one facility they had no cases of COVID

Testifying on the bill:

- Ducayet, Patricia (Office of the State Long-Term Care Ombudsman)
- Ford, Victoria (Texas Health and Human Services Commission)
- Fredriksen, Amanda (AARP)
- Henderson, Hattie (Texas Medical Association)
- Kirby, Stephanie (Self)
- Linial, George (LeadingAge Texas)
- Lutz, Genny (Self)
- Martinez, Diana (Texas Assisted Living Association)
- NICHOLS, MARY (Self; Texas Caregivers for Compromise)
- Polk, Melinda (Self; Caregivers for Compromise)
- Warren, Kevin (Thca)

Comments on the Bill

- Resident rights to visitation should be 24/7
- The bill should not be too prescriptive regarding rulemaking
- The provider community was supportive of the isolation policies initially, but they notice declines in mental and physical health
- Providers face challenges in meeting visitation rules
- Facilities should be allowed to suspend visitation during a public health emergency
- Designation removal should be provided for those who break rules or become predatory
- 90% of residents are private pay
- Spacing of visits should be allowed
- Fear of retaliation against visitors exists
- Language should not be adopted that allows agencies to be selective
- HHSC stated it is not a requirement that the number of denials of a caregiver are maintained
- HHSC stated you do not want unfettered access during a major outbreak. They have freedom once inside the resident's room PPE can be an issue (use and disposal).

- HHSC stated that essential caregivers will be part of their policy even if this bill does not pass
- Consider “at-will visitation” for essential caregivers
- There are other infections on the horizon that will be challenges for providers
- Staffing shortages often result in the necessity for restricting visitors
- Facilities should not have to provide PPE for visitors especially when there are shortages
- There was often inconsistency between federal, state, and local guidance for facilities
- Younger populations are impacted the same way that the elderly are but that is often not discussed
- At state-supported living centers, the use of escorts is inconsistent
- HHSC stated that there were 190 days when the state and federal government disallowed visitation to congregate living facilities. There was a 10 percent positivity rate restriction that had to be implemented. The SSLCs decide how they will provide escorts. We have to thread the needle between safety and freedom. Visitation guidance will begin to ease with vaccinations occurring. HHSC has flexibility through the emergency rulemaking process to address changes in the regulatory effort. There is a section in the patient’s bill of rights that allows for restrictions on visits if it puts health and safety of the resident at risk. The LTC ombudsman is a good resource for families. We have an historical staffing shortage in nursing facilities and that impacts this entire discussion.
- We should consider a visitation plan for residents
- The bill should mention the federal oversight role so confusion is avoided

The Bill was left pending.

HJR 46 Proposing a constitutional amendment establishing a right for residents of certain facilities to designate an essential caregiver for in-person visitation. The joint resolution proposes a constitutional amendment to Article I of the Texas Constitution that would establish the right for a resident of a nursing facility, assisted living facility, or state supported living center, to designate at least one essential caregiver with whom the facility or center may not prohibit in-person visitation. The cost to the state for publication of the resolution is \$178,333 in fiscal year 2022.

The proposed amendment would be submitted to voters at an election to be held November 2, 2021.

The LBB Fiscal Note stated no fiscal implication to the State is anticipated, other than the **cost of publication. The cost to the state for publication of the resolution is \$178,333.**

The Chair laid out the resolution. The resolution tracks the issues discussed in the previous legislation. Placing the language in the constitution would ensure this fundamental right could not be changed.

Testimony

Testifying for the resolution:

- King, Kendra (Nexion Health for the Independent coalition of nursing home providers)
- Nichols, Mary (self)

Comments for the resolution

- Comments were the same as for the preceding bill
- The Constitutional amendment will make sure that the focus stays on the rights of the individual this resolution provides

Testifying on the resolution

- Kirby, Stephanie (Self)
- Linial, George (LeadingAge Texas)
- Martinez, Diana (Texas Assisted Living Association)

Comments on the Resolution

- The language being a constitutional right raises some issues in curtailing this right in the future
- Perhaps have a trigger for a public health emergency
- The resolution must align with legislation and federal rules

The resolution was left pending.

This summary contains supplemental information from third-party sources where that information provides clarity to the issues being discussed. Not every comment or statement from the speakers in these summaries is an exact transcription. For the purpose of brevity, their statements are often paraphrased. These documents should not be viewed as a word-for-word account of every meeting or hearing, but a summary. Every effort has been made to ensure the accuracy of these summaries. The information contained in this publication is the property of Texas Insight and is considered confidential and may contain proprietary information. It is meant solely for the intended recipient. Access to this published information by anyone else is unauthorized unless Texas Insight grants permission. If you are not the intended recipient, any disclosure, copying, distribution or any action taken or omitted in reliance on this is prohibited. The views expressed in this publication are, unless otherwise stated, those of the author and not those of Texas Insight or its management.
