

## **BILL ANALYSIS**

C.S.H.B. 2449  
By: Naishtat  
Human Services  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

In the 1999 U.S. Supreme Court decision, Olmstead vs. L.C. and E.W., the court ruled that states must provide community-based services for persons with disabilities who would otherwise be entitled to institutional services when treatment professionals determine such placement is appropriate, the individual does not object to such placement, and the placement can be reasonably accommodated.

Texas responded to the Olmstead decision by developing a plan of how it would comply with the ruling, and later with the implementation of a Promoting Independence Initiative. Despite the progress made, there continue to be barriers to persons with disabilities moving from an institution and into the setting of their choice. One of the barriers to achieving the transition from institutional care to community-based services is that the funds budgeted to serve a person with a disability do not follow the person into the community. In addition, there are barriers that make it difficult for a provider of a large ICF-MR facility to downsize if the provider desires to serve persons in a community-waiver program.

C.S.H.B. 2449 would establish a pilot program to be implemented by the Texas Department of Aging and Disability Services (DADS) that would require the transfer of funds from an ICF-MR facility to a community-waiver program when a person leaves an ICF-MR facility to receive community-based services through a community waiver program. The pilot would provide for the opportunity to identify and address barriers to persons leaving an ICF-MR facility to live in a less restrictive community setting and to receive necessary community-based services. The bill would require a report to appropriate oversight authorities on the effectiveness of the pilot program by December 1, 2006, with recommendations regarding the feasibility of expanding the program.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the HHSC executive commissioner in SECTION 1 of this bill.

### **ANALYSIS**

The bill requires the Health and Human Services Commission (HHSC) to direct DADS to develop and implement a pilot program relating to persons who leave ICF-MR facilities to live in the community with the assistance of community-based services. HHSC is to direct DADS to quantify the amount of money that would have been spent during the remainder of a state fiscal biennium to care for a person who lives in a participating ICF-MR facility, but who is leaving the facility before the end of the biennium to live in the community with the assistance of community-based services provided through a medical assistance waiver program and, to the extent permitted by federal law, transfer funds within the DADS budget or among HHSC and the health and human services agencies as necessary to implement the program. The transferred funds are to be redirected to community-based programs to provide community-based services.

HHSC and DADS are required to jointly determine criteria for selecting providers of ICF-MR services to participate in the pilot program, and to jointly select at least one, but not more than five, providers for participation. The bill sets forth certain relevant factors that may be used in determining the selection criteria.

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The HHSC executive commissioner is authorized to adopt rules to decertify an appropriate Medicaid bed for each person who leaves an ICF-MR facility under the pilot program.

The bill requires HHSC and DADS to submit a joint report on the effectiveness of the pilot program to the governor and appropriate legislative committees by December 1, 2006, and sets forth certain required elements of the report.

The bill directs DADS to implement the pilot program not later than December 1, 2005, but authorizes a delay in implementation in order to obtain any necessary waiver or authorization from a federal agency.

#### **EFFECTIVE DATE**

September 1, 2005

#### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

In the committee's opinion, there are the following significant differences between the original and the substitute.

The substitute clarifies that the transfer of funds for a person who moves from an ICF-MR facility applies to a provider of ICF-MR services that is selected to participate in the pilot program.

The substitute bill requires HHSC and DADS to jointly select at least one, but not more than five, providers for participation. The original does include an analogous provision.

The original bill provides that funds are to be transferred for at least five percent, but no more than 10 percent, of the total number of persons residing in an ICF-MR facility included in the pilot program. The substitute does not include an analogous provision.

The substitute bill includes significantly more detail concerning the content of the joint report on the effectiveness of the pilot program.