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H.B. No. 2572

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the functions of local mental health and mental
3 retardation authorities.

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

5 SECTION 1. Section 533.031, Health and Safety Code, is
6 amended by adding Subdivisions (4), (5), (6), and (7) to read as
7 follows:

8 (4) "Commission" means the Health and Human Services
9 Commission.

10 (5) "Executive commissioner" means the executive
11 commissioner of the Health and Human Services Commission.

12 (6) "ICF-MR and related waiver programs" includes
13 ICF-MR programs, home and community-based services, Texas home
14 living waiver services or another Medicaid program serving persons
15 with mental retardation.

16 (7) "Qualified service provider" means an entity that
17 meets requirements for service providers established by the
18 executive commissioner.

19 SECTION 2. Section 533.035, Health and Safety Code, is
20 amended by amending Subsections (a), (c), and (e) and adding
21 Subsections (b-1) and (e-1) to read as follows:

22 (a) The executive commissioner shall designate a local
23 mental health authority and a local mental retardation authority in
24 one or more local service areas. The executive commissioner

1 ~~[board]~~ may delegate to the local authorities the ~~[board's]~~
2 authority and responsibility of the executive commissioner, the
3 commission, or a department of the commission related to ~~[for the]~~
4 planning, policy development, coordination, including coordination
5 with criminal justice entities, resource allocation, and resource
6 development for and oversight of mental health and mental
7 retardation services in the most appropriate and available setting
8 to meet individual needs in that service area. The executive
9 commissioner may designate a single entity as the local mental
10 health authority and the local mental retardation authority for a
11 service area. In designating local authorities, the executive
12 commissioner may not decrease the number of local mental health
13 authorities or local mental retardation authorities from the number
14 that existed on January 1, 2005.

15 (b-1) This subsection expires September 1, 2007. Before the
16 department institutes a change in payment methodology, the
17 department shall:

18 (1) evaluate various forms of payment for services
19 including fee-for-service, case rate, capitation, and other
20 appropriate payment methods to determine the most cost-effective
21 and efficient form of payment for services;

22 (2) evaluate the effect of each proposed payment
23 methodology on:

24 (A) the availability of services in urban and
25 rural service areas;

26 (B) the availability of services for persons who
27 are indigent; and

1 (C) the cost certainty of the delivery of
2 Medicaid rehabilitation services;

3 (3) develop an implementation plan for the new payment
4 methodology that integrates the department's findings under
5 Subdivisions (1) and (2); and

6 (4) report the department's findings and the
7 implementation plan for a new payment methodology to the
8 legislature not later than January 1, 2007.

9 (c) A local mental health and mental retardation authority,
10 with the department's approval, shall use the funds received under
11 Subsection (b) to ensure mental health, mental retardation, and
12 chemical dependency services are provided in the local service
13 area. The local authority shall consider public input, ultimate
14 cost-benefit, and client care issues to ensure consumer choice and
15 the best use of public money in:

16 (1) assembling a network of service providers; ~~and~~

17 (2) making recommendations relating to the most
18 appropriate and available treatment alternatives for individuals
19 in need of mental health or mental retardation services; and

20 (3) determining whether the authority will provide the
21 service or contract with another organization to provide the
22 service.

23 (e) In assembling a network of service providers, a local
24 mental health ~~[and mental retardation]~~ authority may serve as a
25 qualified service provider only in accordance with Subsection (c)
26 ~~[of services only as a provider of last resort and only if the~~
27 ~~authority demonstrates to the department that:~~

1 ~~[(1) the authority has made every reasonable attempt~~
2 ~~to solicit the development of an available and appropriate provider~~
3 ~~base that is sufficient to meet the needs of consumers in its~~
4 ~~service area; and~~

5 ~~[(2) there is not a willing provider of the relevant~~
6 ~~services in the authority's service area or in the county where the~~
7 ~~provision of the services is needed].~~

8 (e-1) A local mental retardation authority may serve as a
9 provider of ICF-MR and related waiver services only if:

10 (1) the authority complies with the limitations
11 prescribed by Section 533.0355(c); or

12 (2) the ICF-MR and related waiver services are
13 necessary to ensure the availability of services and the authority
14 demonstrates to the commission that there is not a willing ICF-MR
15 and related waiver service qualified service provider in the
16 authority's service area where the service is needed.

17 SECTION 3. Section 533.0355, Health and Safety Code, is
18 amended to read as follows:

19 Sec. 533.0355. LOCAL MENTAL RETARDATION AUTHORITY
20 RESPONSIBILITIES [ALLOCATION OF DUTIES] UNDER CERTAIN MEDICAID
21 [WAIVER] PROGRAMS. (a) The executive commissioner shall adopt
22 rules establishing the roles and responsibilities of local mental
23 retardation authorities [In this section, "waiver program" means
24 the local mental retardation authority waiver program established
25 under the state Medicaid program].

26 (b) In adopting rules under this section, the executive
27 commissioner must include rules regarding:

- 1 (1) access;
2 (2) intake;
3 (3) eligibility functions;
4 (4) enrollment, initial assessment, and service
5 authorization;
6 (5) utilization management;
7 (6) safety net functions, including crisis management
8 services and assistance in accessing facility-based care;
9 (7) service coordination functions;
10 (8) provision and oversight of state general revenue
11 services;
12 (9) local planning functions, including stakeholder
13 involvement, technical assistance and training, and provider
14 complaint and resolution processes; and
15 (10) processes to assure accountability in
16 performance, compliance, and monitoring. [A provider of services
17 under the waiver program shall:
18 ~~[(1) develop a person-directed plan and an individual~~
19 ~~program plan for each person who receives services from the~~
20 ~~provider under the waiver program;~~
21 ~~[(2) perform justification and implementation~~
22 ~~functions for the plans described by Subdivision (1);~~
23 ~~[(3) conduct case management under the waiver program,~~
24 ~~other than case management under Subsection (c)(3), in accordance~~
25 ~~with applicable state and federal laws; and~~
26 ~~[(4) plan, coordinate, and review the provision of~~
27 ~~services to all persons who receive services from the service~~

1 ~~provider under the waiver program.]~~

2 (c) In determining eligibility under Subsection (b)(3), an
3 authority must offer a state school as an option among the
4 residential services available to an individual who is eligible for
5 those services and who meets the department's criteria for state
6 school admission, regardless of whether other residential services
7 are available to the individual. The community mental health and
8 mental retardation centers must document the number of individuals
9 who are eligible for state school services under the department's
10 criteria, the number of individuals who meet eligibility who are
11 requesting state school admissions, and the number of individuals
12 who meet eligibility criteria who are referred for state school
13 services. The Health and Human Services Commission will adopt
14 rules related to the performance criteria required of the community
15 mental health and mental retardation centers regarding the
16 provision of information related to services and referral for
17 services.

18 (d) In establishing a local mental retardation authority's
19 role as a qualified service provider of ICF-MR and related waiver
20 programs under Section 533.035(e-1), the executive commissioner by
21 rule shall require the local mental retardation authority to:

22 (1) base the authority's provider capacity on the
23 authority's August 2004 enrollment levels for the waiver programs
24 the authority operates and, if the authority's enrollment levels
25 exceed those levels, to reduce the levels by voluntary attrition;
26 and

27 (2) base any increase in the authority's provider

1 capacity on:

2 (A) the authority's state-mandated conversion
3 from one Medicaid program to another Medicaid program allowing for
4 a permanent increase in the authority's provider capacity in
5 accordance with the number of persons who choose the authority as
6 their provider;

7 (B) the authority's voluntary conversion from
8 one Medicaid program to another Medicaid program allowing for a
9 temporary increase in the authority's provider capacity in
10 accordance with the number of persons who choose the authority as
11 their provider; or

12 (C) other extenuating circumstances that:

13 (i) are clearly defined in rules adopted by
14 the executive commissioner;

15 (ii) are monitored and approved by the
16 department; and

17 (iii) do not include increases resulting
18 from refinancing and do not include increases that unnecessarily
19 promote the authority's provider role over its role as a local
20 mental retardation authority [~~A local mental retardation authority~~
21 ~~shall:~~

22 [~~(1) manage any waiting lists for services under the~~
23 ~~waiver program;~~

24 [~~(2) perform functions relating to consumer choice and~~
25 ~~enrollment for persons who receive services under the waiver~~
26 ~~program; and~~

27 [~~(3) conduct case management under the waiver program~~

1 ~~relating to funding disputes between a service provider and the~~
2 ~~local mental retardation authority].~~

3 (e) In adopting a rule under this section, the executive
4 commissioner shall seek the participation of and comments from
5 local mental retardation authorities, providers, advocates, and
6 other interested stakeholders [~~(d) The department shall perform~~
7 ~~all administrative functions under the waiver program that are not~~
8 ~~assigned to a service provider under Subsection (b) or to a local~~
9 ~~mental retardation authority under Subsection (c). Administrative~~
10 ~~functions performed by the department include:~~

11 ~~[(1) any surveying, certification, and utilization~~
12 ~~review functions required under the waiver program; and~~

13 ~~[(2) managing an appeals process relating to decisions~~
14 ~~that affect a person receiving services under the waiver program]].~~

15 (f) Any increase based on extenuating circumstances under
16 Subsection (d)(2)(C) is considered a temporary increase in the
17 local mental retardation authority's provider capacity [~~(e) The~~
18 ~~department shall review:~~

19 ~~[(1) screening and assessment of levels of care;~~

20 ~~[(2) case management fees paid under the waiver~~
21 ~~program to a community center; and~~

22 ~~[(3) administrative fees paid under the waiver program~~
23 ~~to a service provider]].~~

24 (g) At least biennially, the department shall review and
25 determine the local mental retardation authority's status as a
26 qualified service provider in accordance with criteria that
27 includes the consideration of the authority's ability to assure the

1 availability of services in its area, including:

2 (1) program stability and viability;

3 (2) the number of other qualified service providers in
4 the area; and

5 (3) the geographical area in which the authority is
6 located [~~(f) The department shall perform any function relating~~
7 ~~to inventory for persons who receive services under the waiver~~
8 ~~program and agency planning assessments].~~

9 (h) The Department of Aging and Disability Services shall
10 ensure that local services delivered further the following goals:

11 (1) to provide individuals with the information,
12 skills, opportunities, and support to make informed decisions
13 regarding the services for which the individual is eligible;

14 (2) to respect the rights, needs, and preferences of
15 an individual receiving services; and

16 (3) to integrate individuals with mental retardation
17 and developmental disabilities into the community in accordance
18 with relevant independence promotion plans and permanency planning
19 laws.

20 [~~(g) The review required under Subsection (e) must include a~~
21 ~~comparison of fees paid before the implementation of this section~~
22 ~~with fees paid after the implementation of this section. The~~
23 ~~department may adjust fees paid based on that review.~~

24 [~~(h) The department shall allocate the portion of the gross~~
25 ~~reimbursement funds paid to a local authority and a service~~
26 ~~provider for client services for the case management function in~~
27 ~~accordance with this section and to the extent allowed by law.~~

1 ~~[(i) The department may adopt rules governing the functions~~
2 ~~of a local mental retardation authority or service provider under~~
3 ~~this section.]~~

4 SECTION 4. Section 535.002(b), Health and Safety Code, is
5 amended to read as follows:

6 (b) If feasible and economical, the commission shall
7 ~~[department may]~~ use local mental health and mental retardation
8 authorities to implement this chapter. ~~[However, the department~~
9 ~~may not designate those local mental health and mental retardation~~
10 ~~authorities as the sole providers of services if other providers~~
11 ~~are available.]~~

12 SECTION 5. (a) Sections 533.035(f) and (g), Health and
13 Safety Code, are repealed.

14 (b) Section 2.82A, Chapter 198, Acts of the 78th
15 Legislature, Regular Session, 2003, is repealed.

16 SECTION 6. Not later than January 1, 2007, the Health and
17 Human Services Commission shall submit a report to the governor,
18 lieutenant governor, and speaker of the house of representatives
19 that includes any information the commission finds relevant
20 regarding the implementation of Sections 535.035 and 535.0355,
21 Health and Safety Code, as amended by this Act, by local mental
22 retardation authorities.

23 SECTION 7. (a) The executive commissioner of the Health and
24 Human Services Commission shall establish a local mental
25 retardation authority task group to develop recommendations for the
26 legislature regarding innovative financing, fund management, and
27 local service delivery options for mental retardation services.

1 (b) The executive commissioner shall appoint:

2 (1) three representatives of each of the following
3 groups:

4 (A) consumer and advocacy organizations for
5 mental retardation services;

6 (B) private providers of mental retardation
7 services; and

8 (C) local mental retardation authorities;

9 (2) two county judges or their designees to represent
10 the Texas Association of Counties; and

11 (3) one county judge or the county judge's designee to
12 represent the Conference of Urban Counties.

13 (c) In developing recommendations, the task group shall
14 consider:

15 (1) consumer and family involvement in local service
16 delivery design and evaluation;

17 (2) the level of flexibility needed to meet unique
18 community needs;

19 (3) local mental retardation authority coordination
20 with state-operated inpatient resources, including state hospitals
21 and state schools;

22 (4) the anticipated effect of any proposed financing
23 or payment methodology on local control of funds, on local fund
24 contributions, the availability of services in urban and rural
25 service areas, and the availability of services for people who are
26 medically indigent;

27 (5) the assurance of budget certainty for the state;

1 and

2 (6) the role of a community center as a designated
3 provider of public safety net services for jail diversion services,
4 crisis services, certain community-oriented services, community
5 hospital services, and other services necessary to ensure the
6 statewide availability of community services.

7 (d) The task group shall submit a report regarding the task
8 group's recommendations to the governor, lieutenant governor,
9 speaker of the house of representatives, and legislature not later
10 than January 1, 2007.

11 (e) This section expires September 1, 2007.

12 SECTION 8. (a) The executive commissioner of the Health and
13 Human Services Commission shall establish a local mental health
14 authority task group to develop recommendations for the legislature
15 regarding innovative financing, fund management, and local service
16 delivery options for mental health services.

17 (b) The executive commissioner shall appoint:

18 (1) three representatives of each of the following
19 groups:

20 (A) consumer and advocacy organizations for
21 behavioral health services;

22 (B) private providers of behavioral health
23 services; and

24 (C) local mental health authorities;

25 (2) two county judges or their designees to represent
26 the Texas Association of Counties; and

27 (3) one county judge or the county judge's designee to

1 represent the Conference of Urban Counties.

2 (c) In developing recommendations, the task group shall
3 consider:

4 (1) consumer and family involvement in service
5 delivery design and evaluation;

6 (2) the level of flexibility needed to meet unique
7 community needs;

8 (3) local mental health authority coordination with
9 state-operated inpatient resources, including state hospitals and
10 state schools;

11 (4) the anticipated effect of any proposed financing
12 or payment methodology on local control of funds, on local fund
13 contributions, the availability of services in urban and rural
14 service areas, and the availability of services for people who are
15 medically indigent;

16 (5) the assurance of budget certainty for the state;

17 (6) the role of a community center as a designated
18 provider of public safety net services for jail diversion services,
19 crisis services, certain community-oriented services, community
20 hospital services, and other services necessary to ensure the
21 statewide availability of community services; and

22 (7) the findings and recommendations of the mental
23 health services task force as reported to the Senate Health and
24 Human Services interim committee of the 77th Legislature in March
25 2002 and the House Bill 1734 committee report from the 75th
26 Legislature, Regular Session, 1997.

27 (d) The task group shall submit a report regarding the task

1 group's recommendations to the governor, lieutenant governor,
2 speaker of the house of representatives, and legislature not later
3 than January 1, 2007.

4 (e) This section expires September 1, 2007.

5 SECTION 9. This Act takes effect September 1, 2005.