

By: Nelson

S.B. No. 1187

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 Subsection (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.

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

- 19 (1) assembling a network of service providers; ~~and~~  
20 (2) making recommendations relating to the most  
21 appropriate and available treatment alternatives for individuals  
22 in need of mental health or mental retardation services; and  
23 (3) determining whether the authority will provide the  
24 service or contract with another organization to provide the  
25 service.

26 (e) In assembling a network of service providers, a local  
27 mental health ~~[and mental retardation]~~ authority may serve as a

1 provider of services only as a provider of last resort and only if  
2 the authority demonstrates to the department that:

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

7 (2) there is not a willing provider of the relevant  
8 services in the authority's service area or in the county where the  
9 provision of the services is needed.

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

12 (1) the authority complies with the limitations  
13 prescribed by Section 533.0355(c); or

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

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

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

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

3 (1) access;

4 (2) intake;

5 (3) eligibility functions;

6 (4) enrollment, initial assessment, and service  
7 authorization;

8 (5) utilization management;

9 (6) safety net functions, including crisis management  
10 services and assistance in accessing facility-based care;

11 (7) service coordination functions;

12 (8) provision and oversight of state general revenue  
13 services;

14 (9) local planning functions, including stakeholder  
15 involvement, technical assistance and training, and provider  
16 complaint and resolution processes; and

17 (10) processes to assure accountability in  
18 performance, compliance, and monitoring. [A provider of services  
19 under the waiver program shall:

20 [~~(1) develop a person-directed plan and an individual~~  
21 ~~program plan for each person who receives services from the~~  
22 ~~provider under the waiver program;~~

23 [~~(2) perform justification and implementation~~  
24 ~~functions for the plans described by Subdivision (1);~~

25 [~~(3) conduct case management under the waiver program,~~  
26 ~~other than case management under Subsection (c)(3), in accordance~~  
27 ~~with applicable state and federal laws; and~~

1           ~~[(4) plan, coordinate, and review the provision of~~  
2 ~~services to all persons who receive services from the service~~  
3 ~~provider under the waiver program.]~~

4           (c) In establishing a local mental retardation authority's  
5 role as a qualified service provider of ICF-MR and related waiver  
6 programs under Section 533.035(e-1), the executive commissioner by  
7 rule shall require the local mental retardation authority to:

8                 (1) base the authority's provider capacity on the  
9 authority's August 2004 enrollment levels for the waiver programs  
10 the authority operates and, if the authority's enrollment levels  
11 exceed those levels, to reduce the levels by voluntary attrition;  
12 and

13                 (2) base any increase in the authority's provider  
14 capacity on:

15                         (A) the authority's state-mandated conversion  
16 from one Medicaid program to another Medicaid program allowing for  
17 a permanent increase in the authority's provider capacity in  
18 accordance with the number of persons who choose the authority as  
19 their provider;

20                         (B) the authority's voluntary conversion from  
21 one Medicaid program to another Medicaid program allowing for a  
22 temporary increase in the authority's provider capacity in  
23 accordance with the number of persons who choose the authority as  
24 their provider; or

25                         (C) other extenuating circumstances that:  
26                                 (i) are clearly defined in rules adopted by  
27 the executive commissioner;

1                    (ii) are monitored and approved by the  
2 department; and

3                    (iii) do not include increases resulting  
4 from refinancing and do not include increases that unnecessarily  
5 promote the authority's provider role over its role as a local  
6 mental retardation authority. [A local mental retardation  
7 authority shall:

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

10                    [~~(2) perform functions relating to consumer choice and~~  
11 ~~enrollment for persons who receive services under the waiver~~  
12 ~~program; and~~

13                    [~~(3) conduct case management under the waiver program~~  
14 ~~relating to funding disputes between a service provider and the~~  
15 ~~local mental retardation authority.]~~

16                    (d) In adopting a rule under this section, the executive  
17 commissioner shall seek the participation of and comments from  
18 local mental health and mental retardation authorities, providers,  
19 advocates, and other interested stakeholders. [The department  
20 shall perform all administrative functions under the waiver program  
21 that are not assigned to a service provider under Subsection (b) or  
22 to a local mental retardation authority under Subsection (c).  
23 Administrative functions performed by the department include:

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

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

1           (e) Any increase based on extenuating circumstances under  
2 Subsection (c)(2)(C) is considered a temporary increase in the  
3 local mental retardation authority's provider capacity. [~~The~~  
4 ~~department shall review:~~

- 5                   ~~[(1) screening and assessment of levels of care;~~  
6                   ~~[(2) case management fees paid under the waiver~~  
7 ~~program to a community center; and~~  
8                   ~~[(3) administrative fees paid under the waiver program~~  
9 ~~to a service provider.]~~

10           (f) At least biennially, the department shall review and  
11 determine the local mental retardation authority's status as a  
12 qualified service provider in accordance with criteria that  
13 includes the consideration of the authority's ability to assure the  
14 availability of services in its area, including:

- 15                   (1) program stability and viability;  
16                   (2) the number of other qualified service providers in  
17 the area; and  
18                   (3) the geographical area in which the authority is  
19 located. [~~The department shall perform any function relating to~~  
20 ~~inventory for persons who receive services under the waiver program~~  
21 ~~and agency planning assessments.~~

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

26           ~~[(h) The department shall allocate the portion of the gross~~  
27 ~~reimbursement funds paid to a local authority and a service~~

1 ~~provider for client services for the case management function in~~  
2 ~~accordance with this section and to the extent allowed by law.~~

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

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

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

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

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

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

25 SECTION 7. This Act takes effect September 1, 2005.