

BILL ANALYSIS

C.S.H.B. 3766
By: O'Day
Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The hallmark of self determination, to people with disabilities, is the assurance of direct public funding allocated on their behalf, which results in services and supports that enables them to live productive, full lives in the community. The current Medicaid waivers are burdened with archaic, burdensome rules and difficult billing codes that work against the person with the disability to obtain services they want and need. Using tools such as person centered planning and individualized budgets, a person using the home and community-based services program Medicaid wavier can use a fixed amount of resources to implement their plan, rather than the current pre-determined set of categories, hours and billing codes.

The individual controls the use of the resources in their budget, determining, with the assistance of chosen allies, which services and supports they will purchase, from whom, and under what circumstances. This process allows them to make meaningful choices in how they live their life.

C.S.H.B. 3766 uses funds allocated on the behalf of the person with a disability and is crafted into an individualized budget that supports the person-directed plan. The program will allow an eligible individual to exercise control and authority over; the funding for and provision of services to the individual; the identity and type of service provider used to provide the services; and the individual's living arrangements.

The substitute directs the Department of Aging and Disability Services to establish a self determination pilot program with certain conditions. This pilot project limits the number of people participating, the geographic area, funds to be used, process for rulemaking, implementation timelines, review and reporting.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 of this bill.

ANALYSIS

The substitute amends Subchapter B, Chapter 32, Human Resources Code, by adding Section 32.0661. It defines "Home and community-based services program" to mean the medial assistance waiver program for persons with mental retardation and related conditions implemented in accordance with Section 1915 (c) the federal Social Security Act and that is administered by the Department of Aging and Disability Services (Department).

The substitute requires that the department establish a pilot program that allows an eligible individual to use existing appropriated funds in a flexible, self-determined manner to fulfill the individual's needs for home and community services, as identified in a person-directed plan and their individual budget.

The substitute requires the executive commissioner of the Health and Human Services Commission (HHSC) to adopt rules regarding the pilot program that consider the advice and assistance of individuals with disabilities and their family, local mental retardation authorities, representatives from advocacy organizations, consumer directed services work groups, and home and community based services (HCS) program providers. The substitute provides that the rules provide for at least the following pilot program elements: allowing the individual to have

decision-making authority; providing for a consultant that provides support to the individual by planning and developing a service plan to meet the individual's needs, negotiating with the system of services and service providers on behalf of the individual, and advocating for and connecting the individual with community resources; and ensuring the pilot program includes a financial management services entity to ensure that funds for the individual's budget are used in a legally and fiscally accountable manner.

The substitute states that an individual is eligible to participate in the pilot program if the individual: is eligible for the HCS program and is enrolled in or is in the process of enrolling in the HCS program.

The substitute requires the department to coordinate with the HHSC and the Center for Medicare and Medicaid Services to determine the best strategy for receiving approval for the use of the funds in the pilot program.

In implementing the pilot program, the substitute requires the department to: ensure 50 people or less are enrolled in the pilot program at a time and for individuals not enrolled in the HCS program require the local mental retardation authority and the individual's case management service provider in the HCS program to provide initial service coordination for those enrolling in the pilot program such as the development of the initial plan of services for the individual, evaluation of the individual to determine their need for services and supports, and planning for support services including identification of consultants and financial management services providers.

The substitute requires the department to ensure: the local mental retardation authority staff or the individual's case management service provider in the HCS program, receive information and training regarding the concept of self-determination and strategies for successful implementation of a pilot program; that each financial management services provider has an orientation for and is supportive of self-determination, able to work with a range of consumers and compliant with the department and HHSC requirements for provision of financial management services. In addition, the department is required to ensure a person serving as a consultant is familiar with community and other resources for disabled individuals, understands the pilot program requirements, and is independent of the people providing services and supports to the individual; and a service provider is qualified and complies with department requirements for the provision of those services.

The substitute requires the department to ensure that an individual enrolled in the pilot program may transfer to receiving services through the HCS program at any time.

The department is required to implement the pilot program in Brazoria and Galveston counties not later than January 1, 2009.

The substitute requires the department to submit a report, not later than June 1, 2010 to the governor, the lieutenant governor, the speaker of the house of representatives, and the presiding officer of each standing committee of the senate and the house of representatives with jurisdiction over human services regarding implementation of the pilot program. The report must contain: a review of quality of life and outcomes of those enrolled in the pilot program; a review of whether the pilot program is cost-effective; recommendations regarding expansion; relevant information provided by the consumer directed services work group; and any other relevant information as determined by the department.

This Section expires September 1, 2011.

The substitute requires that if before implementing any provision of this Act, a state agency determines that a waiver or authorization from a federal agency is necessary, the agency affected by the provision request the needed waiver or authorization and may delay implanting that provision until it is granted.

EFFECTIVE DATE

September 1, 2007

C.S.H.B. 3766 80(R)

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute differs from the original in that it adds in line 5 that "Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.0661," and subsequently all lines are renumbered. Sec. 32.0661 is identified as a "Self -Determination Pilot Program."

The substitute modifies the original by adding new language in section (a) that defines the "department" as the Department of Aging and Disability Services, and "Home and community-based services program" means the medial assistance waiver program for persons with mental retardation and related conditions implemented in accordance with Section 1915 (c) the federal Social Security Act and that is administered by the Department of Aging and Disability Services (department).

In the original (b) stated that the program must allow an eligible individual to exercise control and authority over: the funding for and provision of services to the individual, the identity and type of services provider used, and the individual's living arrangements. The substitute differs by the original in that (b) requires the department to establish a pilot program that allows an eligible individual to use existing appropriated funds in a flexible, self-determined manner to fulfill the individual's needs for home and community services, as identified in a person- directed plan and their individual budget.

In (c) the substitute modifies the original and grants the executive commissioner of the HHSC rulemaking authority regarding the pilot program that consider the advice and assistance of individuals with disabilities and their family, local mental retardation authorities, representatives from advocacy organizations, consumer directed services work groups, and home and community based services (HCS) program providers. The substitute provides that the rules provide for at least the following pilot program elements: allowing the individual to have decision-making authority; providing for a consultant that provides support to the individual by planning and developing a service plan to meet the individual's needs, negotiating with the system of services and service providers on behalf of the individual, and advocating and connective the individual with community resources; and ensuring the pilot program provides a financial management services entity to ensure that funds for the individual's budget are used in a legally and fiscally accountable manner.

In the original, (c), required the department to submit a report, before January 1, 2009, to the governor, the lieutenant governor, and the speaker of the House of Representatives regarding the implementation of the pilot program, recommendations regarding expansion, and any other relevant information as determined by the department . The substitute modifies the original in that section (i) now requires the department to submit a report before January 1, 2010, to the above entities and the presiding officer of each standing committee of the senate and the house of representatives with jurisdiction over human services regarding implementation of the pilot program. In addition, the substitute now requires the report to contain a review of quality of life and outcomes of those enrolled in the pilot program; a review of whether the pilot program is cost-effective; recommendations regarding expansion; relevant information provided by the consumer directed services work group; and any other relevant information as determined by the department.

The substitute adds language by adding that an individual is eligible to participate in the pilot program if the individual: is eligible for the HCS program and is enrolled in or is in the process of enrolling in the HCS program.

The substitute modifies the original by requiring the department to coordinate with the HHSC and the Center for Medicare and Medicaid Services to determine the best strategy for receiving approval for the use of the funds in the pilot program.

The substitute adds new language to require, in implementing the pilot program, that the department: ensure 50 people or less are enrolled in the pilot program at a time and for individuals not enrolled in the HCS program require the local mental retardation authority and the individual's case management service provider in the HCS program to provide initial service coordination for those enrolling in the pilot program such as the development of the initial plan

of services for the individual, evaluation of the individual to determine their need for services and supports, and planning for support services including identification of consultants and financial management services providers.

The substitute adds language that requires the department to ensure: the local mental retardation authority staff or the individual's case management service provider in the HCS program, receive information and training regarding the concept of self-determination and strategies for successful implementation of a pilot program; that each financial management services provider has an orientation for and is supportive of self-determination, able to work with a range of consumers and compliant with department and HHSC requirements for provision of financial management services. In addition, the department is required to ensure a person serving as a consultant is familiar with community and other resources for disabled individuals, understands the pilot program requirements, and is independent of the people providing services and supports to the individual; and a service provider is qualified and complies with department requirements for the provision of those services.

The substitute adds language that requires the department to ensure that an individual enrolled in the pilot program may transfer to receiving services through the HCS program at any time.

The substitute modifies the original by requiring the department to implement the pilot program in Brazoria and Galveston counties not later than January 1, 2009.

The bill as filed expires the section on September 1, 2009, the substitute expires the section on September 1, 2011.