

## **BILL ANALYSIS**

S.B. 1866  
By: Zaffirini  
Human Services  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Currently, the Department of Aging and Disability Services is authorized to grant an exemption to the individual cost limits specified in the Medicaid 1915(c) waivers operated by the department. However, this authority does not apply to the Home and Community-Based Services (HCS) waiver. Additionally, while the authority to grant exemptions currently exists, the criteria for granting such exemptions does not exist in statute.

S.B. 1866 provides the commissioner of the department with guidance to individualize services to persons whose level of medical need cannot be accommodated within the funding structure of the applicable Medicaid waiver program. The legislation would add the HCS waiver to the list of waivers for which the department is authorized to grant an exemption to the individual cost limit specified in the Medicaid waiver; and describe the specific circumstances under which the department commissioner may exempt an individual from the individual cost specified in a 1915(c) Medicaid waiver administered by the department. Such an exemption would be available only to individuals already receiving waiver services and would provide consistency across the waiver programs.

### **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 bill amends Section 32.058, Human Resources Code.

The bill redefines "medical assistance waiver program," and deletes existing text defining "institution."

The bill prohibits the Health and Human Services Commission (HHSC) or an agency operating as part of the medical assistance program as appropriate (department) from providing services under a medical assistance waiver program if the projected cost of providing those services over a 12-month period exceeds the individual cost limit specified in the medical assistance waiver program. Deletes existing text prohibiting the department from providing services under a medical assistance waiver program to a person receiving medical assistance if the cost of providing those services exceeds the individual cost limit specified in the medical assistance waiver program. The bill makes conforming changes.

The bill requires the department to continue to provide services under a medical assistance waiver program to a person who was receiving those services on September 1, 2005, at a cost that exceeded the individual cost limit specified in the medical assistance waiver program, if continuation of those services: is necessary for the person to live in the most integrated setting appropriate to the needs of the person; and does not affect the department's compliance with the federal average per capita expenditure requirement of the program under 42 U.S.C. Section 1396n(c) (2) (D), and not Section 1396n (b). Makes conforming and nonsubstantive changes.

The bill authorizes the department to continue to provide services under a medical assistance waiver program, other than the home and community-based services program, to a person who is

ineligible to receive those services under Subsection (b) and to whom Subsection (c) does not apply if: the projected cost of providing those services to the person under the medical assistance waiver program over a 12-month period does not exceed 133.3 percent of the individual cost limit specified in the medical assistance waiver program; and continuation of those services does not affect the department's compliance with the federal average per capita expenditure requirement of the program under 42 U.S.C. Section 1396n(c) (2) (D), and not Section 1396n (b). Makes conforming changes.

The bill authorizes the department to exempt a person from the cost limit for a medical assistance waiver program if the department determines that: the person's health and safety cannot be protected by the services provided within the cost limit established for the program under that subdivision; and there is no available living arrangement, other than one provided through the program or another medical assistance waiver program, in which the person's health and safety can be protected, as evidence by: an assessment conducted by clinical staff of the department; and supporting documentation, including the person's medical and service records.

The bill authorizes the department to continue to provide services under the home and community-based services program to a person who is ineligible to receive those services under Subsection (b) and to whom Subsection (c) does not apply if the department makes, with regard to the person's receipt of services under the home and community-based services program, the same determinations required by Subsections (e)(1) and (2) in the same manner provided by Subsection (e) and determines that continuation of those services does not affect: the department's compliance with the federal average per capita expenditure requirement of the home and community-based services program under 42 U.S.C. Section 1396n (c) (2) (D); and any cost-effectiveness requirements provided by the General Appropriations Act that limit expenditure for the home and community-based services program.

The bill authorizes the executive commissioner of HHSC to adopt rules to implement Subsections (d), (e), and (f). It deletes text which authorizes the department to exempt a person from the cost limit established under Subsection (d) (1).

The bill authorizes, but does not require, a state agency to implement a provision if a federal agency determines that compliance with any provision in this section would make this state ineligible to receive federal funds to administer a program to which this section applies.

The bill makes application of this Act prospective.

#### **EFFECTIVE DATE**

September 1, 2007