

By: Naishtat

H.B. No. 3760

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to expansion of the use of consumer direction for delivery  
3 of certain services to persons with disabilities and elderly  
4 persons.

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

6 SECTION 1. The heading to Section 531.051, Government Code,  
7 is amended to read as follows:

8 Sec. 531.051. CONSUMER DIRECTION [~~VOUCHER PROGRAM FOR~~  
9 ~~PAYMENT~~] OF CERTAIN SERVICES FOR PERSONS WITH DISABILITIES AND  
10 ELDERLY PERSONS.

11 SECTION 2. Sections 531.051(a), (b), (c), and (d),  
12 Government Code, are amended to read as follows:

13 (a) In this section:

14 (1) "Consumer" means a person who receives services  
15 through a consumer direction model [~~under the program~~] established  
16 by the commission under this section.

17 (2) "Consumer direction" or "consumer direction  
18 model" means a service delivery model under which a consumer or the  
19 consumer's legally authorized representative exercises control  
20 over the development and implementation of the consumer's  
21 individual service plan or over the persons delivering the services  
22 directly to the consumer. The term includes the consumer-directed  
23 service option, the service responsibility option, and other types  
24 of service delivery models developed by the commission under this

1 section.

2 (3) "Consumer-directed service option" means a type of  
3 consumer direction model in which:

4 (A) a consumer or the consumer's legally  
5 authorized representative, as the employer, exercises control  
6 over:

7 (i) the recruitment, hiring, management, or  
8 dismissal of persons providing services directly to the consumer;  
9 and

10 (ii) the retention of contractors or  
11 vendors for other authorized program services; and

12 (B) the provider agency serves as fiscal agent  
13 and performs employer-related administrative functions for the  
14 consumer or the consumer's legally authorized representative,  
15 including payroll and the filing of tax and related reports.

16 (4) "Legally authorized representative" means:

17 (A) a parent or legal guardian if the person is a  
18 minor;

19 (B) a legal guardian if the person has been  
20 adjudicated as incapacitated to manage the person's personal  
21 affairs; or

22 (C) any other person authorized or required by  
23 law to act on behalf of the person with regard to the person's care.

24 (5) "Service responsibility option" means a type of  
25 consumer direction model in which:

26 (A) a consumer or the consumer's legally  
27 authorized representative participates in the selection of,

1 trains, and manages persons providing services directly to the  
2 consumer; and

3 (B) the provider agency, as the employer,  
4 performs employer-related administrative functions for the  
5 consumer or the consumer's legally authorized representative,  
6 including the hiring and dismissal of persons providing services  
7 directly to the consumer [~~"Personal assistance services" and~~  
8 ~~"respite services" have the meanings assigned by Section 142.001,~~  
9 ~~Health and Safety Code].~~

10 (b) The commission shall develop and oversee the  
11 implementation of consumer direction models under which a person  
12 with a disability or an elderly person who is receiving certain  
13 state-funded or Medicaid-funded services, or the person's legally  
14 authorized representative, exercises control over the development  
15 and implementation of the person's individual service plan or over  
16 the persons who directly deliver the services [~~a program in which~~  
17 ~~the use of vouchers is established as a payment option for the~~  
18 ~~delivery of certain state-funded and Medicaid-funded services to~~  
19 ~~persons with disabilities].~~

20 (c) In adopting rules for the consumer direction models  
21 [~~voucher payment program], the commission shall:~~

22 (1) with assistance from the work group established  
23 under Section 531.052, determine which services are appropriate and  
24 suitable for delivery through consumer direction [~~ensure that the~~  
25 ~~program includes the:~~

26 [~~(A) delivery to persons with disabilities of~~  
27 ~~personal assistance services, respite services, supported~~

1 ~~employment services, and other services that the commission with~~  
2 ~~assistance from the work group established under Section 531.052,~~  
3 ~~determines are appropriate and applicable and may be provided with~~  
4 ~~available funding; and~~

5 ~~[(B) provision of durable medical equipment and~~  
6 ~~assistive technology to persons with disabilities to the extent~~  
7 ~~funds are available for that purpose];~~

8 (2) ~~[work in conjunction with the comptroller and~~  
9 ~~appropriate health and human services agencies to develop the~~  
10 ~~program;~~

11 ~~[(3) design the program in a manner in which, for~~  
12 ~~certain programs considered appropriate by the commission, with~~  
13 ~~assistance from the work group established under Section 531.052, a~~  
14 ~~private entity or local governmental entity applies with and is~~  
15 ~~approved by the Internal Revenue Service to act as the agent for a~~  
16 ~~consumer for the limited purpose of:~~

17 ~~[(A) computing federal and state employment~~  
18 ~~taxes;~~

19 ~~[(B) preparing and filing income tax forms and~~  
20 ~~reports; and~~

21 ~~[(C) distributing money to a service provider~~  
22 ~~after a deduction for employment taxes;~~

23 ~~[(4)] ensure that each consumer direction model [~~the~~~~

24 ~~program]~~ is designed to comply with applicable federal and state  
25 ~~[tax]~~ laws;

26 (3) maintain procedures ~~[(5) ensure that a consumer~~  
27 ~~is the employer of and retains control over the selection,~~

1 ~~management, and dismissal of an individual providing health care~~  
2 ~~services covered by the program;~~

3 ~~[(6) establish a system]~~ to ensure that a potential  
4 consumer or the consumer's legally authorized representative has  
5 adequate and appropriate information, including the  
6 responsibilities of a consumer or representative under each service  
7 delivery [payment] option, to make an informed choice among the  
8 types of consumer direction models [payment options];

9 (4) [(7)] require each consumer or the consumer's  
10 legally authorized representative to acknowledge [sign a statement  
11 acknowledging] receipt of the information required by Subdivision  
12 (3) [(6)];

13 (5) maintain procedures [(8) develop a system] to  
14 monitor delivery of services through consumer direction [the  
15 program] to ensure:

16 (A) adherence to existing applicable program  
17 standards;

18 (B) appropriate use of funds; and

19 (C) consumer satisfaction with the delivery of  
20 services;

21 (6) [(9)] ensure that authorized program services  
22 that are not being delivered to a consumer through consumer  
23 direction are provided by a service provider chosen by the consumer  
24 or the consumer's legally authorized representative [a consumer may  
25 contract with a service provider acting as the consumer's agent  
26 under Subdivision (3) to obtain any necessary services, including  
27 services not being provided to the consumer under the program]; and

1           (7) [~~10~~] work in conjunction with the work group  
2 established under Section 531.052 to set a timetable to [~~implement~~  
3 ~~and~~] complete the implementation of the consumer direction models  
4 [~~program~~].

5           (d) The consumer direction models established [~~voucher~~  
6 ~~payment program developed~~] under this section may be implemented  
7 [~~only~~] in appropriate and suitable programs of the commission or a  
8 health and human services agency [~~Texas Department of Human~~  
9 ~~Services, the Texas Department of Mental Health and Mental~~  
10 ~~Retardation, the Texas Rehabilitation Commission, and the Texas~~  
11 ~~Department of Health~~].

12           SECTION 3. The heading to Section 531.052, Government Code,  
13 is amended to read as follows:

14           Sec. 531.052. CONSUMER DIRECTION [~~DIRECTED SERVICES~~] WORK  
15 GROUP.

16           SECTION 4. Section 531.052, Government Code, is amended by  
17 amending Subsections (a), (b), (c), (e), and (g), and adding  
18 Subsection (c-1) to read as follows:

19           (a) A work group is created to:

20               (1) advise the commission concerning the delivery of  
21 services through consumer direction in all programs offering  
22 long-term services and supports to ensure that consumers have  
23 access to a service delivery model that enhances a consumer's  
24 ability to have freedom and exercise control and authority over the  
25 consumer's choices, regardless of age or disability; and

26               (2) assist the commission in developing and  
27 implementing consumer direction models and expanding the delivery

1 of services through consumer direction [~~the voucher payment~~  
2 ~~program~~] under Section 531.051.

3 (b) The work group is composed of:

4 (1) representatives of the commission, appointed by  
5 the executive commissioner;

6 (2) representatives of the Department of Aging and  
7 Disability Services [~~Texas Department of Human Services~~],  
8 appointed by the commissioner of that agency;

9 (3) [~~representatives of the Texas Department of Mental~~  
10 ~~Health and Mental Retardation, appointed by the commissioner of~~  
11 ~~that agency,~~

12 [~~(4)~~] representatives of the Department of State  
13 Health Services [~~Texas Department of Health~~], appointed by the  
14 commissioner of that agency;

15 (4) [~~(5)~~] representatives of the Department of  
16 Assistive and Rehabilitative Services [~~Texas Rehabilitation~~  
17 ~~Commission~~], appointed by the commissioner of that agency;

18 (5) [~~(6)~~] consumers or potential consumers of the  
19 array of services provided through consumer direction under Section  
20 531.051 [~~under the voucher payment pilot project under former~~  
21 ~~Section 22.0325, Human Resources Code~~], jointly appointed by the  
22 executive commissioner and the commissioner of the health and human  
23 services agency that administers the program providing the service  
24 [~~Texas Department of Human Services~~];

25 (6) advocates for elderly persons who are consumers of  
26 the array of services provided to elderly persons through consumer  
27 direction [~~(7) persons with disabilities, including persons with~~

1 ~~mental illness and persons with mental retardation, who are~~  
2 ~~consumers or potential consumers of services provided under the~~  
3 ~~voucher payment program],~~ appointed by the executive commissioner;

4 (7) [(8)] advocates for persons with disabilities who  
5 are consumers of the array of services provided to persons with  
6 disabilities through consumer direction [~~including persons with~~  
7 ~~mental illness and persons with mental retardation)], appointed by  
8 the executive commissioner;~~

9 (8) [(9)] providers of services to be provided through  
10 consumer direction [~~under the voucher payment program],~~ appointed  
11 by the executive commissioner;

12 (9) [(10)] representatives of the Texas Workforce  
13 Commission, appointed by the executive director of that commission;  
14 [~~and~~]

15 (10) [(11)] representatives of any other state agency  
16 as considered necessary by the executive commissioner, appointed by  
17 the governing body of their respective agency;

18 (11) representatives of any other state agency as  
19 recommended by the work group and approved by the executive  
20 commissioner, appointed by the governing body of the respective  
21 agency; and

22 (12) any other public representative appointed by the  
23 executive commissioner.

24 (c) A majority of the members of the work group must be  
25 composed of consumers and [~~7~~] advocates [~~7 or providers~~]  
26 by Subsection (b).

27 (c-1) Duties of the work group created under this section



1 include:

2 (1) developing recommendations to:

3 (A) expand the delivery of services through  
4 consumer direction to other programs serving persons with  
5 disabilities and elderly persons;

6 (B) expand the array of services delivered  
7 through consumer direction;

8 (C) increase the use of consumer direction models  
9 by consumers;

10 (D) optimize the provider base for consumer  
11 direction; and

12 (E) expand access to support advisors for those  
13 consumers receiving long-term services and supports through  
14 consumer direction;

15 (2) monitoring national research for best practices in  
16 self-determination and consumer direction; and

17 (3) developing recommendations and providing  
18 assistance regarding consumer outreach efforts to increase  
19 informed choices, skills, opportunities, and supports as a means to  
20 lead self-determined lives through the use of consumer direction  
21 models.

22 (e) The executive commissioner shall appoint a member of the  
23 work group to serve as presiding officer, and members of the work  
24 group shall elect any other necessary officers. The presiding  
25 officer may not be a representative of a state agency or provider  
26 organization or be a provider. The work group shall meet at the  
27 call of the presiding officer.

1           (g) Not later than September 1 of each even-numbered year,  
2 the work group shall report to the legislature regarding the  
3 activities of the work group [~~This section expires September 1,~~  
4 ~~2007~~].

5           SECTION 5. Sections 531.051(e), (f), (g), and (h),  
6 Government Code, are repealed.

7           SECTION 6. The executive commissioner of the Health and  
8 Human Services Commission shall ensure that not later than January  
9 1, 2008, the membership of the work group established under Section  
10 531.052, Government Code, complies with the requirements of that  
11 section as amended by this Act.

12           SECTION 7. This Act takes effect September 1, 2007.