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S.B. No. 1766

A BILL TO BE ENTITLED

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AN ACT

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

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

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

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

SECTION 2. Subsections (a) through (d), Section 531.051, Government Code, are amended to read as follows:

(a) In this section:

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

(2) "Consumer direction" or "consumer direction model" means a service delivery model under which a consumer or the consumer's legally authorized representative exercises control over the development and implementation of the consumer's individual service plan or over the persons delivering the services directly to the consumer. The term includes the consumer-directed service option, the service responsibility option, and other types 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 or

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

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

17 (4) "Designated representative" means an adult  
18 volunteer appointed by a consumer or the consumer's legally  
19 authorized representative, as an employer, to perform all or part  
20 of the consumer's or the representative's duties as employer as  
21 approved by the consumer or the representative.

22 (5) "Legally authorized representative":

23 (A) means:

24 (i) a parent or legal guardian if the person  
25 is a minor;

26 (ii) a legal guardian if the person has been  
27 adjudicated as incapacitated to manage the person's personal

1 affairs; or

2 (iii) any other person authorized or  
3 required by law to act on behalf of the person with regard to the  
4 person's care; and

5 (B) does not include a designated  
6 representative.

7 (6) "Service responsibility option" means a type of  
8 consumer direction model in which:

9 (A) a consumer or the consumer's legally  
10 authorized representative participates in the selection of,  
11 trains, and manages persons providing services directly to the  
12 consumer; and

13 (B) the provider agency, as the employer,  
14 performs employer-related administrative functions for the  
15 consumer or the consumer's legally authorized representative,  
16 including the hiring and dismissal of persons providing services  
17 directly to the consumer [~~"Personal assistance services" and~~  
18 ~~"respite services" have the meanings assigned by Section 142.001,~~  
19 ~~Health and Safety Code].~~

20 (b) The commission shall develop and oversee the  
21 implementation of consumer direction models under which a person  
22 with a disability or an elderly person who is receiving certain  
23 state-funded or Medicaid-funded services, or the person's legally  
24 authorized representative, exercises control over the development  
25 and implementation of the person's individual service plan or over  
26 the persons who directly deliver the services [~~a program in which~~  
27 ~~the use of vouchers is established as a payment option for the~~

1 ~~delivery of certain state-funded and Medicaid-funded services to~~  
2 ~~persons with disabilities].~~

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

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

9 ~~[(A) delivery to persons with disabilities of~~  
10 ~~personal assistance services, respite services, supported~~  
11 ~~employment services, and other services that the commission with~~  
12 ~~assistance from the work group established under Section 531.052,~~  
13 ~~determines are appropriate and applicable and may be provided with~~  
14 ~~available funding; and~~

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

18 (2) ~~[work in conjunction with the comptroller and~~  
19 ~~appropriate health and human services agencies to develop the~~  
20 ~~program;~~

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

27 ~~[(A) computing federal and state employment~~

1 ~~taxes;~~

2 [~~(B) preparing and filing income tax forms and~~  
3 ~~reports; and~~

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

6 [~~(4)~~] ensure that each consumer direction model [~~the~~  
7 ~~program~~] is designed to comply with applicable federal and state  
8 [~~tax~~] laws;

9 (3) maintain procedures [~~(5) ensure that a consumer~~  
10 ~~is the employer of and retains control over the selection,~~  
11 ~~management, and dismissal of an individual providing health care~~  
12 ~~services covered by the program;~~

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

19 (4) [~~(7)~~] require each consumer or the consumer's  
20 legally authorized representative to sign a statement  
21 acknowledging receipt of the information required by Subdivision  
22 (3) [~~(6)~~];

23 (5) maintain procedures [~~(8) develop a system~~] to  
24 monitor delivery of services through consumer direction [~~the~~  
25 ~~program~~] to ensure:

26 (A) adherence to existing applicable program  
27 standards;

1 (B) appropriate use of funds; and

2 (C) consumer satisfaction with the delivery of  
3 services;

4 (6) [~~(9)~~] ensure that authorized program services  
5 that are not being delivered to a consumer through consumer  
6 direction are provided by a provider agency chosen by the consumer  
7 or the consumer's legally authorized representative [~~a consumer may~~  
8 ~~contract with a service provider acting as the consumer's agent~~  
9 ~~under Subdivision (3) to obtain any necessary services, including~~  
10 ~~services not being provided to the consumer under the program]~~; and

11 (7) [~~(10)~~] work in conjunction with the work group  
12 established under Section 531.052 to set a timetable to [~~implement~~  
13 ~~and~~] complete the implementation of the consumer direction models  
14 [~~program~~].

15 (d) The consumer direction models established [~~voucher~~  
16 ~~payment program developed~~] under this section may be implemented  
17 [~~only~~] in appropriate and suitable programs of the commission or a  
18 health and human services agency [~~Texas Department of Human~~  
19 ~~Services, the Texas Department of Mental Health and Mental~~  
20 ~~Retardation, the Texas Rehabilitation Commission, and the Texas~~  
21 ~~Department of Health~~].

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

24 Sec. 531.052. CONSUMER DIRECTION [~~DIRECTED SERVICES~~] WORK  
25 GROUP.

26 SECTION 4. Section 531.052, Government Code, is amended by  
27 amending Subsections (a), (b), (c), (e), and (g), and adding

1 Subsection (c-1) to read as follows:

2 (a) A work group is created to:

3 (1) advise the commission concerning the delivery of  
4 services through consumer direction in all programs offering  
5 long-term services and supports to ensure that consumers have  
6 access to a service delivery model that enhances a consumer's  
7 ability to have freedom and exercise control and authority over the  
8 consumer's choices, regardless of age or disability; and

9 (2) assist the commission in developing and  
10 implementing consumer direction models and expanding the delivery  
11 of services through consumer direction [~~the voucher payment~~  
12 ~~program~~] under Section 531.051.

13 (b) The work group is composed of:

14 (1) representatives of the commission, appointed by  
15 the executive commissioner;

16 (2) representatives of the [~~Texas~~] Department of Aging  
17 and Disability [~~Human~~] Services, appointed by the commissioner of  
18 that agency;

19 [~~representatives of the Texas Department of Mental~~  
20 ~~Health and Mental Retardation, appointed by the commissioner of~~  
21 ~~that agency,~~

22 [~~(4)~~] representatives of the [~~Texas~~] Department of  
23 State Health Services, appointed by the commissioner of that  
24 agency;

25 (4) [~~(5)~~] representatives of the Department of  
26 Assistive and Rehabilitative Services [~~Texas Rehabilitation~~  
27 ~~Commission~~], appointed by the commissioner of that agency;

1           (5) [~~(6)~~] consumers or potential consumers of the  
2 array of services provided through consumer direction under Section  
3 531.051 [~~under the voucher payment pilot project under former~~  
4 ~~Section 22.0325, Human Resources Code~~], jointly appointed by the  
5 executive commissioner and the commissioner of the health and human  
6 services agency that administers the program providing the service  
7 [~~Texas Department of Human Services~~];

8           (6) advocates for elderly persons who are consumers of  
9 the array of services provided to elderly persons through consumer  
10 direction [~~(7) persons with disabilities, including persons with~~  
11 ~~mental illness and persons with mental retardation, who are~~  
12 ~~consumers or potential consumers of services provided under the~~  
13 ~~voucher payment program~~], appointed by the executive commissioner;

14           (7) [~~(8)~~] advocates for persons with disabilities who  
15 are consumers of the array of services provided to persons with  
16 disabilities through consumer direction[~~, including persons with~~  
17 ~~mental illness and persons with mental retardation~~], appointed by  
18 the executive commissioner;

19           (8) [~~(9)~~] providers of services to be provided through  
20 consumer direction [~~under the voucher payment program~~], appointed  
21 by the executive commissioner;

22           (9) [~~(10)~~] representatives of the Texas Workforce  
23 Commission, appointed by the executive director of that commission;  
24 [~~and~~]

25           (10) [~~(11)~~] representatives of any other state agency  
26 as considered necessary by the executive commissioner, appointed by  
27 the governing body of their respective agency;



1           (11) representatives of any other state agency as  
2 recommended by the work group and approved by the executive  
3 commissioner, appointed by the governing body of the respective  
4 agency; and

5           (12) any other public representative appointed by the  
6 executive commissioner.

7           (c) A majority of the members of the work group must be  
8 composed of consumers and~~[7]~~ advocates~~[7, or providers]~~ described by  
9 Subsection (b).

10          (c-1) Duties of the work group created under this section  
11 include:

12           (1) developing recommendations to:

13                   (A) expand the delivery of services through  
14 consumer direction to other programs serving persons with  
15 disabilities and elderly persons;

16                   (B) expand the array of services delivered  
17 through consumer direction;

18                   (C) increase the use of consumer direction models  
19 by consumers;

20                   (D) optimize the provider base for consumer  
21 direction; and

22                   (E) expand access to support advisors for those  
23 consumers receiving long-term services and supports through  
24 consumer direction;

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

27           (3) developing recommendations and providing

1 assistance regarding consumer outreach efforts to increase  
2 informed choices, skills, opportunities, and supports as a means to  
3 lead self-determined lives through the use of consumer direction  
4 models.

5 (e) The executive commissioner shall appoint a member of the  
6 work group to serve as presiding officer, and members of the work  
7 group shall elect any other necessary officers. The work group  
8 shall meet at the call of the presiding officer.

9 (g) Not later than September 1 of each even-numbered year,  
10 the work group shall report to the legislature regarding the  
11 activities of the work group [~~This section expires September 1,~~  
12 ~~2007~~].

13 SECTION 5. Subsections (e) through (h), Section 531.051,  
14 Government Code, are repealed.

15 SECTION 6. The executive commissioner of the Health and  
16 Human Services Commission shall ensure that not later than January  
17 1, 2008, the membership of the work group established under Section  
18 531.052, Government Code, complies with the requirements of that  
19 section as amended by this Act.

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