

1-1 By: Watson, Nelson S.B. No. 1766
1-2 (In the Senate - Filed March 9, 2007; March 21, 2007, read
1-3 first time and referred to Committee on Health and Human Services;
1-4 April 18, 2007, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 9, Nays 0; April 18, 2007,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1766 By: Deuell

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to expansion of the use of consumer direction for delivery
1-11 of certain services to persons with disabilities and elderly
1-12 persons.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. The heading to Section 531.051, Government Code,
1-15 is amended to read as follows:

1-16 Sec. 531.051. CONSUMER DIRECTION [~~VOUCHER PROGRAM FOR~~
1-17 ~~PAYMENT~~] OF CERTAIN SERVICES FOR PERSONS WITH DISABILITIES AND
1-18 ELDERLY PERSONS.

1-19 SECTION 2. Subsections (a) through (d), Section 531.051,
1-20 Government Code, are amended to read as follows:

1-21 (a) In this section:

1-22 (1) "Consumer" means a person who receives services
1-23 through a consumer direction model [~~under the program~~] established
1-24 by the commission under this section.

1-25 (2) "Consumer direction" or "consumer direction
1-26 model" means a service delivery model under which a consumer or the
1-27 consumer's legally authorized representative exercises control
1-28 over the development and implementation of the consumer's
1-29 individual service plan or over the persons delivering the services
1-30 directly to the consumer. The term includes the consumer-directed
1-31 service option, the service responsibility option, and other types
1-32 of service delivery models developed by the commission under this
1-33 section.

1-34 (3) "Consumer-directed service option" means a type of
1-35 consumer direction model in which:

1-36 (A) a consumer or the consumer's legally
1-37 authorized representative, as the employer, exercises control
1-38 over:

1-39 (i) the recruitment, hiring, management, or
1-40 dismissal of persons providing services directly to the consumer;
1-41 or

1-42 (ii) the retention of contractors or
1-43 vendors for other authorized program services; and

1-44 (B) the consumer-directed services agency serves
1-45 as fiscal agent and performs employer-related administrative
1-46 functions for the consumer or the consumer's legally authorized
1-47 representative, including payroll and the filing of tax and related
1-48 reports.

1-49 (4) "Designated representative" means an adult
1-50 volunteer appointed by a consumer or the consumer's legally
1-51 authorized representative, as an employer, to perform all or part
1-52 of the consumer's or the representative's duties as employer as
1-53 approved by the consumer or the representative.

1-54 (5) "Legally authorized representative":

1-55 (A) means:

1-56 (i) a parent or legal guardian if the person
1-57 is a minor;

1-58 (ii) a legal guardian if the person has been
1-59 adjudicated as incapacitated to manage the person's personal
1-60 affairs; or

1-61 (iii) any other person authorized or
1-62 required by law to act on behalf of the person with regard to the
1-63 person's care; and

2-1 (B) does not include a designated
 2-2 representative.

2-3 (6) "Service responsibility option" means a type of
 2-4 consumer direction model in which:

2-5 (A) a consumer or the consumer's legally
 2-6 authorized representative participates in the selection of,
 2-7 trains, and manages persons providing services directly to the
 2-8 consumer; and

2-9 (B) the provider agency, as the employer,
 2-10 performs employer-related administrative functions for the
 2-11 consumer or the consumer's legally authorized representative,
 2-12 including the hiring and dismissal of persons providing services
 2-13 directly to the consumer [~~"Personal assistance services" and~~
 2-14 ~~"respite services" have the meanings assigned by Section 142.001,~~
 2-15 ~~Health and Safety Code].~~

2-16 (b) The commission shall develop and oversee the
 2-17 implementation of consumer direction models under which a person
 2-18 with a disability or an elderly person who is receiving certain
 2-19 state-funded or Medicaid-funded services, or the person's legally
 2-20 authorized representative, exercises control over the development
 2-21 and implementation of the person's individual service plan or over
 2-22 the persons who directly deliver the services [~~a program in which~~
 2-23 ~~the use of vouchers is established as a payment option for the~~
 2-24 ~~delivery of certain state-funded and Medicaid-funded services to~~
 2-25 ~~persons with disabilities].~~

2-26 (c) In adopting rules for the consumer direction models
 2-27 [~~voucher payment program], the commission shall:~~

2-28 (1) with assistance from the work group established
 2-29 under Section 531.052, determine which services are appropriate and
 2-30 suitable for delivery through consumer direction [~~ensure that the~~
 2-31 ~~program includes the:~~

2-32 [~~(A) delivery to persons with disabilities of~~
 2-33 ~~personal assistance services, respite services, supported~~
 2-34 ~~employment services, and other services that the commission with~~
 2-35 ~~assistance from the work group established under Section 531.052,~~
 2-36 ~~determines are appropriate and applicable and may be provided with~~
 2-37 ~~available funding; and~~

2-38 [~~(B) provision of durable medical equipment and~~
 2-39 ~~assistive technology to persons with disabilities to the extent~~
 2-40 ~~funds are available for that purpose];~~

2-41 (2) [~~work in conjunction with the comptroller and~~
 2-42 ~~appropriate health and human services agencies to develop the~~
 2-43 ~~program;~~

2-44 [(3) design the program in a manner in which, for
 2-45 certain programs considered appropriate by the commission, with
 2-46 assistance from the work group established under Section 531.052, a
 2-47 private entity or local governmental entity applies with and is
 2-48 approved by the Internal Revenue Service to act as the agent for a
 2-49 consumer for the limited purpose of:

2-50 [(A) computing federal and state employment
 2-51 taxes;

2-52 [(B) preparing and filing income tax forms and
 2-53 reports; and

2-54 [(C) distributing money to a service provider
 2-55 after a deduction for employment taxes;

2-56 [(4)] ensure that each consumer direction model [~~the~~
 2-57 ~~program] is designed to comply with applicable federal and state
 2-58 [~~tax] laws;~~~~

2-59 (3) maintain procedures [(5) ensure that a consumer
 2-60 is the employer of and retains control over the selection,
 2-61 management, and dismissal of an individual providing health care
 2-62 services covered by the program;

2-63 [(6) establish a system] to ensure that a potential
 2-64 consumer or the consumer's legally authorized representative has
 2-65 adequate and appropriate information, including the
 2-66 responsibilities of a consumer or representative under each service
 2-67 delivery [~~payment] option, to make an informed choice among the~~
 2-68 ~~types of consumer direction models [payment options];~~

2-69 (4) [(7)] require each consumer or the consumer's

3-1 legally authorized representative to sign a statement
 3-2 acknowledging receipt of the information required by Subdivision
 3-3 (3) [(6)];

3-4 (5) maintain procedures [(8) develop a system] to
 3-5 monitor delivery of services through consumer direction [the
 3-6 program] to ensure:

3-7 (A) adherence to existing applicable program
 3-8 standards;

3-9 (B) appropriate use of funds; and
 3-10 (C) consumer satisfaction with the delivery of
 3-11 services;

3-12 (6) [(9)] ensure that authorized program services
 3-13 that are not being delivered to a consumer through consumer
 3-14 direction are provided by a provider agency chosen by the consumer
 3-15 or the consumer's legally authorized representative [a consumer may
 3-16 contract with a service provider acting as the consumer's agent
 3-17 under Subdivision (3) to obtain any necessary services, including
 3-18 services not being provided to the consumer under the program]; and

3-19 (7) [(10)] work in conjunction with the work group
 3-20 established under Section 531.052 to set a timetable to [implement
 3-21 and] complete the implementation of the consumer direction models
 3-22 [program].

3-23 (d) The consumer direction models established [voucher
 3-24 payment program developed] under this section may be implemented
 3-25 [only] in appropriate and suitable programs of the commission or a
 3-26 health and human services agency [Texas Department of Human
 3-27 Services, the Texas Department of Mental Health and Mental
 3-28 Retardation, the Texas Rehabilitation Commission, and the Texas
 3-29 Department of Health].

3-30 SECTION 3. The heading to Section 531.052, Government Code,
 3-31 is amended to read as follows:

3-32 Sec. 531.052. CONSUMER DIRECTION [DIRECTED SERVICES] WORK
 3-33 GROUP.

3-34 SECTION 4. Section 531.052, Government Code, is amended by
 3-35 amending Subsections (a), (b), (c), (e), and (g), and adding
 3-36 Subsection (c-1) to read as follows:

3-37 (a) A work group is created to:

3-38 (1) advise the commission concerning the delivery of
 3-39 services through consumer direction in all programs offering
 3-40 long-term services and supports to ensure that consumers have
 3-41 access to a service delivery model that enhances a consumer's
 3-42 ability to have freedom and exercise control and authority over the
 3-43 consumer's choices, regardless of age or disability; and

3-44 (2) assist the commission in developing and
 3-45 implementing consumer direction models and expanding the delivery
 3-46 of services through consumer direction [the voucher payment
 3-47 program] under Section 531.051.

3-48 (b) The work group is composed of:

3-49 (1) representatives of the commission, appointed by
 3-50 the executive commissioner;

3-51 (2) representatives of the [Texas] Department of Aging
 3-52 and Disability [Human] Services, appointed by the commissioner of
 3-53 that agency;

3-54 (3) [representatives of the Texas Department of Mental
 3-55 Health and Mental Retardation, appointed by the commissioner of
 3-56 that agency,

3-57 [(4)] representatives of the [Texas] Department of
 3-58 State Health Services, appointed by the commissioner of that
 3-59 agency;

3-60 (4) [(5)] representatives of the Department of
 3-61 Assistive and Rehabilitative Services [Texas Rehabilitation
 3-62 Commission], appointed by the commissioner of that agency;

3-63 (5) [(6)] consumers or potential consumers of the
 3-64 array of services provided through consumer direction under Section
 3-65 531.051 [under the voucher payment pilot project under former
 3-66 Section 22.0325, Human Resources Code], jointly appointed by the
 3-67 executive commissioner and the commissioner of the health and human
 3-68 services agency that administers the program providing the service
 3-69 [Texas Department of Human Services];

4-1 (6) advocates for elderly persons who are consumers of
 4-2 the array of services provided to elderly persons through consumer
 4-3 direction [~~(7) persons with disabilities, including persons with~~
 4-4 mental illness and persons with mental retardation, who are
 4-5 consumers or potential consumers of services provided under the
 4-6 voucher payment program], appointed by the executive commissioner;

4-7 (7) [~~(8)~~] advocates for persons with disabilities who
 4-8 are consumers of the array of services provided to persons with
 4-9 disabilities through consumer direction[~~, including persons with~~
 4-10 mental illness and persons with mental retardation], appointed by
 4-11 the executive commissioner;

4-12 (8) [~~(9)~~] providers of services to be provided through
 4-13 consumer direction [~~under the voucher payment program], appointed~~
 4-14 by the executive commissioner;

4-15 (9) [~~(10)~~] representatives of the Texas Workforce
 4-16 Commission, appointed by the executive director of that commission;
 4-17 [and]

4-18 (10) [~~(11)~~] representatives of any other state agency
 4-19 as considered necessary by the executive commissioner, appointed by
 4-20 the governing body of their respective agency;

4-21 (11) representatives of any other state agency as
 4-22 recommended by the work group and approved by the executive
 4-23 commissioner, appointed by the governing body of the respective
 4-24 agency; and

4-25 (12) any other public representative appointed by the
 4-26 executive commissioner.

4-27 (c) A majority of the members of the work group must be
 4-28 composed of consumers and~~[7] advocates[7, or providers]~~ described by
 4-29 Subsection (b).

4-30 (c-1) Duties of the work group created under this section
 4-31 include:

- 4-32 (1) developing recommendations to:
 4-33 (A) expand the delivery of services through
 4-34 consumer direction to other programs serving persons with
 4-35 disabilities and elderly persons;
 4-36 (B) expand the array of services delivered
 4-37 through consumer direction;
 4-38 (C) increase the use of consumer direction models
 4-39 by consumers;
 4-40 (D) optimize the provider base for consumer
 4-41 direction; and
 4-42 (E) expand access to support advisors for those
 4-43 consumers receiving long-term services and supports through
 4-44 consumer direction;

4-45 (2) monitoring national research for best practices in
 4-46 self-determination and consumer direction; and

4-47 (3) developing recommendations and providing
 4-48 assistance regarding consumer outreach efforts to increase
 4-49 informed choices, skills, opportunities, and supports as a means to
 4-50 lead self-determined lives through the use of consumer direction
 4-51 models.

4-52 (e) The executive commissioner shall appoint a member of the
 4-53 work group to serve as presiding officer, and members of the work
 4-54 group shall elect any other necessary officers. The work group
 4-55 shall meet at the call of the presiding officer.

4-56 (g) Not later than September 1 of each even-numbered year,
 4-57 the work group shall report to the legislature regarding the
 4-58 activities of the work group [~~This section expires September 1,~~
 4-59 2007].

4-60 SECTION 5. Subsections (e) through (h), Section 531.051,
 4-61 Government Code, are repealed.

4-62 SECTION 6. The executive commissioner of the Health and
 4-63 Human Services Commission shall ensure that not later than January
 4-64 1, 2008, the membership of the work group established under Section
 4-65 531.052, Government Code, complies with the requirements of that
 4-66 section as amended by this Act.

4-67 SECTION 7. This Act takes effect September 1, 2007.

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