

## **BILL ANALYSIS**

C.S.H.B. 785  
By: Rodriguez  
Human Services  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The unemployment rate for adults with disabilities exceeds the unemployment rate for adults without disabilities and, while many adults with disabilities want to work, the support needed to find and retain employment is frequently not available to them. Preparing a transition-aged youth with disabilities for employment by providing supported employment services to help the youth obtain and maintain meaningful employment in an integrated setting, as opposed to the current practice of placing a disabled person in a sheltered workshop or enclave, will help reverse the unemployment trend among disabled adults.

H.B. 1230, enacted by the 80th Legislature, Regular Session, 2007, improved the services provided to Texas youth with disabilities during the transition from school to adult life. H.B. 1230 required a workshop to convene to determine how the state could increase the quality and quantity of supported employment services and opportunities for transitioning youth with disabilities and required the workshop to submit a report to the legislature with findings and recommendations. The workshop's efforts resulted in five major goals for the delivery of employment and supported employment services to youth: program changes, infrastructure model reform, capacity building, outreach and public awareness, and Texas Education Agency transition services and employment programs.

C.S.H.B. 785 requires the executive commissioner of the Health and Human Services Commission to adopt rules to eliminate barriers to employment for individuals receiving services under a federal Section 1915(c) waiver program and provides for minimum standards for certain employment service providers, health and human services agency expertise in social security income and benefits and federal work incentives, reduced reliance on sheltered workshops as an employment option for people with disabilities, and funding options to increase the number of individuals providing disability navigator services in each local workforce area.

### **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**

C.S.H.B. 785 amends the Government Code to require the executive commissioner of the Health and Human Services Commission (HHSC) to ensure that employment services are structured in a manner that is designed to assist persons with disabilities to obtain and maintain meaningful employment in integrated settings. The bill requires the executive commissioner to adopt rules necessary to eliminate barriers to employment services for individuals eligible to receive services under a home- and community-based services waiver program that offers employment services, including rules relating to the expansion of the annual hourly limit for employment services in any program in which the hours are capped, ensuring that the employment services include assistance with obtaining employment, and ensuring that the services are available under the consumer-directed services option.

C.S.H.B. 785 requires the executive commissioner to adopt rules regarding employment services offered through certain federal home- and community-based services waiver programs and licensed ICF-MR facilities and general revenue funded employment services provided through local mental retardation authorities. The bill requires the rules to ensure that, as part of the service planning process for a person receiving services, employment options are discussed and employment strategies are developed to achieve employment goals and that each provider of employment services considers the availability and accessibility of transportation as part of the employment plan. The bill requires the Department of Aging and Disability Services (DADS) to provide training and technical assistance to providers required to provide or contract for the provision of employment services under certain federal home- and community-based services waiver programs that offer employment services, licensed ICF-MR facilities required to provide or contract for the provision of employment services, and local mental retardation authorities providing general revenue funded employment services.

C.S.H.B. 785 requires HHSC, DADS, and the Department of Assistive and Rehabilitative Services (DARS) to collaboratively develop minimum standards for employment services providers that provide services through either department. The bill specifies that the minimum standards to the extent possible, should be consistent with the minimum standards stated in DARS' terms and conditions for employment services provider contracts, as those conditions existed on January 1, 2009. The bill requires DARS to review and approve applications to provide employment services to ensure that all providers meet the minimum standards regardless of the type or duration of employment services provided or whether the persons receiving the services are clients of DARS or DADS, maintain a list of employment services providers that meet the minimum standards, and make the list available to a person that requests information regarding employment services, regardless of whether the person receives services from DARS. The bill prohibits a person from providing employment services through a contract with DARS or DADS, through a contract with a provider of services who contracts with DADS, or to a client under the consumer-directed services option through DADS, unless the person has applied for and been approved as a provider by DARS. The bill authorizes a person providing employment services through a contract with DADS or DARS on September 1, 2009, to continue providing services without approval under the new requirements until September 1, 2011. The bill clarifies that approval of a person as an employment services provider by DARS does not constitute a contractual obligation and that a health and human services agency is not required to contract with such a person. The bill specifies that a person who contracts with a health and humans services agency to provide employment services is governed by the terms and conditions of the contract, regardless of whether the person has received DARS approval as an employment services provider. The bill requires the executive commissioner to ensure that agreements or contracts are developed as needed to allow DADS and DARS to provide employment services through providers approved by DARS.

C.S.H.B. 785 requires the executive commissioner to ensure that training related to social security income, benefit programs, and federal employment services is required for appropriate employees of DADS and DARS. The bill requires DADS to ensure that case managers, and others who coordinate program services, have access to and are trained to provide information regarding the use of social security, federal work incentives, and the Medicaid buy-in program to interested consumers. The bill requires DADS to designate employees, and the executive commissioner to ensure that contracts with each local mental retardation authority require the authority to designate an employee, to provide that information to consumers and their families.

C.S.H.B. 785 amends the Health and Safety Code to define "sheltered workshop" to mean an employment setting in which individuals with disabilities are: substantially segregated from individuals without disabilities, other than non-disabled individuals who are providing services to those individuals with disabilities; congregate with other individuals with disabilities who are similarly employed; and paid less than the minimum wage under state or federal law. The bill requires DADS to develop a plan to significantly reduce reliance on sheltered workshops as an employment option for people with disabilities. The bill requires the plan to identify all federal

funding opportunities that would assist DADS in achieving the reduction and to provide for the reduction not later than September 1, 2015. The bill requires DADS to submit the plan to the executive commissioner not later than September 1, 2010.

C.S.H.B. 785 amends the Human Resources Code to require vocational rehabilitation counselors, in addition to vocational rehabilitation transition specialists and transition counselors, to participate in a specialized training program established by DARS related to transitioning youth with disabilities.

C.S.H.B. 785 amends the Labor Code to require the Texas Workforce Commission (TWC) to identify funding options that will allow TWC to increase the number of individuals providing services to assist persons with disabilities in navigating programs that have an impact on locating and maintaining employment to a level that ensures that each local workforce area can access at least one individual who provides those services. The bill requires TWC to implement these requirements subject to the availability of funds. The bill defines "disability navigator services."

C.S.H.B. 785 requires the Health and Human Services Commission to analyze employment services provider Medicaid payment rates and rate methodology and determine the optimum rates and rate methodology that will ensure an adequate employment services provider base for individuals with disabilities. The bill requires HHSC to consider the use of an outcome-based methodology for payment of employment services providers, including the methodology and rate structure used by DARS on January 1, 2009, in conducting the analysis. The bill requires HHSC to report to the governor, the lieutenant governor, and speaker of the house of representatives on the results of the analysis and make recommendations for any necessary legislation as determined by the commission not later than September 1, 2010.

C.S.H.B. 785 authorizes a person providing employment services through a contract with DADS or DARS, through a contract with a provider of services who contracts with DADS, or to a client under the consumer-directed services option through DADS on September 1, 2009, to continue providing those services until September 1, 2011, without DARS approval relating to minimum standards for service providers required by provisions of the bill.

C.S.H.B. 785 requires the commission, DADS, and DARS to identify all funds appropriated or otherwise made available in the federal American Recovery and Reinvestment Act of 2009 that could lawfully be used to support employment services programs and apply for and actively pursue all necessary actions to procure those funds for those purposes.

C.S.H.B. 785 requires a state agency that is affected by a provision of the bill to request a federal waiver or authorization if the agency determines that a waiver or authorization is necessary for the implementation of the provision, and it authorizes the agency to delay implementation until the federal waiver or authorization is obtained.

#### **EFFECTIVE DATE**

September 1, 2009.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 785 differs from the original by removing the clarification that the employment services required to be structured in a certain manner by the executive commissioner include supported employment services programs.

C.S.H.B. 785 removes rules required in the original to be adopted by the executive commissioner of the Health and Human Services Commission (HHSC) that allow consumers to exercise self-determination and choose the amount of money in the consumer's budget that the consumer allocates toward employment services, ensure that case managers assist consumers of waiver

services in developing an individualized budget, selecting an approved employment services provider, and creating an employment services plan, and ensure that a provider of employment services under contract with the Department of Aging and Disability Services (DADS) provides transportation to competitive employment locations.

C.S.H.B. 785 clarifies the rule required by the original that provides for expanding an individual's time and budget allowances for employment services for consumers receiving services under a home- and community-based services waiver program, to instead require a rule that provides for expanding the annual hourly limit for employment services in any program for which the hours are capped. The substitute clarifies the rule required by the original that provides for ensuring that employment services are available under all home- and community-based services waiver programs, to instead provide for ensuring the services are available under the consumer-directed services option. The substitute adds a rule not required by the original to ensure employment services include assistance with obtaining employment. The substitute adds a requirement not in the original, that the executive commissioner adopt rules regarding employment services offered through certain services waiver programs, licensed ICF-MR facilities, and employment services provided through local mental retardation authorities.

C.S.H.B. 785 differs from the original by changing responsibility for adopting minimum standards for employment services providers from the executive commissioner of HHSC, the Department of Assistive and Rehabilitative Services (DARS), and DADS to the HHSC, DARS, and DADS. The substitute adds a provision not included in the original specifying that the minimum standards, to the extent possible, should be consistent with the standards stated in the DADS' terms and conditions for employment services provider contracts. The substitute differs from the original by clarifying that the prohibition against a person providing employment services through a contract with DARS or DADS also applies to a person who provides services through a contract with a provider of services who contracts with DADS, or to a client under the consumer-directed services option through DADS. The substitute adds a provision not included in the original relating to approval of a person as an employment services providers not constituting a contractual obligation. The substitute changes the requirement in the original that the executive commissioner ensure that agreements or contracts for employment services are developed to allow other health and human services agencies to contract with services providers, to instead require that the agreements or contracts are developed to allow DADS and DARS to provide employment services through approved providers. The substitute requires that the executive commissioner ensure that training regarding social security benefits and federal work incentives is required for employees of DADS and DARS to ensure that a person with a disability receives services, whereas the original requires the executive commissioner to ensure that the employees have sufficient expertise to provide those services. The substitute includes a requirement not in the original relating to the executive commissioner ensuring that contracts with each local mental retardation authority require the authority to designate an employee to provide information to consumers.

C.S.H.B. 785 adds a definition for "sheltered workshop" not in the original. The substitute modifies the definition of "disability navigator services" to clarify that disability navigator services include services that assist persons with disabilities in navigating a variety of programs that promote work incentive information, including locating and maintaining employment, rather than programs that have an impact on locating and maintaining employment. The substitute adds a provision not included in the original that makes the implementation of provisions relating to disability navigator services subject to the availability of certain funds. The substitute adds the specification that the outcome-based methodology required to be considered by HHSC in analyzing employment services provider Medicaid payment rates include consideration of the DARS methodology and rate structure. The substitute differs from the original by providing authorization for a provider to continue providing services without approval, rather than without being required to apply for provider approval, relating to minimum standards requirements. The substitute adds a provision not included in the original relating to the American Recovery and Reinvestment Act of 2009.

