

BILL ANALYSIS

Senate Research Center
81R13354 UM-D

S.B. 1407
By: Shapleigh
Health & Human Services
4/13/2009
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

On March 15, 2005, the Department of Justice (DOJ) notified the Department of Aging and Disability Services (DADS) of its intent to initiate a Civil Rights of Institutionalized Persons Act (CRIPA) investigation of Lubbock State School. The DOJ released the letter of findings regarding Lubbock State School on December 11, 2006. On March 11, 2008, the DOJ notified DADS of its intent to expand its CRIPA investigation to Denton State School. Five months later, on August 20, 2008, the DOJ notified DADS that it would expand the investigation to include the remaining state schools.

After the Lubbock State School investigation, the DOJ found that Lubbock State School "substantially departed from generally accepted professional standards of care in its failure to: protect residents from harm; provide adequate behavioral services; provide freedom from unnecessary or inappropriate restraints; provide adequate habilitation; provide adequate medical care (including psychiatric services, general medical care, pharmacy services, dental care, occupational and physical therapy, and physical and nutritional management); and provide services in the most integrated setting appropriate to their needs."

On December 1, 2008, the DOJ released its letter of findings for the remaining 12 state schools. The DOJ's most recent letter signifies that the serious problems found at Lubbock State School are not unique to one state school and are indicative of systemic issues. The DOJ attributes these systemic issues to high staff attrition and vacancy rates for direct care staff and clinical professionals. In fact, since fiscal year 2004, DADS has suspended or fired more than 800 employees for abusing residents. Until DADS can successfully retain, train, and supervise its staff, the problems and deficiencies identified by the DOJ cannot begin to be addressed.

In addition, the institutionalization rate in Texas is disproportionate and twice the national average. Spending for institutional care far outweighs that of spending for community services, and Texas currently ranks 50th in the nation for community services spending as opposed to 26th for institutional care spending. There are currently more than 107,000 individuals with disabilities who remain on interest lists for DADS services and often wait eight to nine years for services to help them live and be successful in their community of choice. The need for Texas' state schools will significantly decline over the coming years, and the state is in dire need of an adequate community infrastructure to ensure individuals with significant medical and/or behavioral support services receive the care they need.

This bill creates the State Developmental Center Evaluation Authority (authority). The nine-member authority will assess the needs of people with intellectual and developmental disabilities, their families, and state school employees when determining whether any state schools should be closed and/or consolidated. Through the authority, the bill creates a mechanism for purposeful, thoughtful evaluation, planning, and utilization of the state's financial resources.

As proposed S.B. 1407 amends current law to create the State Developmental Center Evaluation Authority and the residential placement of individuals with mental retardation.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 531.002(17), Health and Safety Code, to define "state developmental center" rather than "state school."

SECTION 2. Amends Chapter 531, Health and Safety Code, by adding Section 531.0021, as follows:

Sec. 531.0021. REFERENCE TO STATE SCHOOL. Provides that a reference in law to a "state school" means a state developmental center.

SECTION 3. Amends Section 532.001(b), Health and Safety Code, to provide that the Department of Aging and Disability Services (DADS) and the Department of State Health Services, rather than department, also include community services operated by those departments and certain facilities, as appropriate. Makes conforming and nonsubstantive changes.

SECTION 4. Amends Subtitle B, Title 7, Health and Safety Code, by adding Chapter 556, as follows:

CHAPTER 556. STATE DEVELOPMENTAL CENTER EVALUATION AUTHORITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 556.001. DEFINITIONS. Defines "authority," "commission," "community services provider," "department," and "executive commissioner."

Sec. 556.002. STATE DEVELOPMENTAL CENTER EVALUATION AUTHORITY. Provides that the State Developmental Center Evaluation Authority (authority) is established to evaluate and make recommendations regarding the operation and management of state developmental centers. Provides that the authority is administratively attached to the Health and Human Services Commission (HHSC) but is independent of direction by HHSC or the executive commissioner of the HHSC. Requires HHSC to provide administrative support and resources to the authority as necessary to enable the authority to perform its duties.

Sec. 556.003. SUNSET PROVISION. Provides that the authority is subject to Chapter 325 (Sunset Law), Government Code (Texas Sunset Act). Provides that unless continued in existence as provided by that chapter, the authority is abolished and this chapter expires September 1, 2021.

[Reserves Sections 556.004-556.020 for expansion.]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 556.021. APPOINTMENT OF AUTHORITY MEMBERS. (a) Provides that the authority is composed of nine members of the public appointed by the governor, lieutenant governor, and speaker of the house of representatives..

(b) Sets forth restrictions prohibiting a person from being eligible for appointment to the authority.

(c) Prohibits a person from serving as a member of the authority or acting as the general counsel to the authority if the person is required to register as a lobbyist under Chapter 305 (Registration of Lobbyists), Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the authority.

(d) Provides that Chapter 551 (Open Meetings), Government Code, applies to the authority.

(e) Provides that a majority of the members of the authority constitute a quorum for the transaction of business.

(f) Requires that appointments the authority be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(g) Provides that members serve at the will of the person who appointed the member.

Sec. 556.022. VACANCY. Requires the governor or lieutenant governor to fill a vacancy on the authority in the same manner as the original appointment.

Sec. 556.023. PRESIDING OFFICER; OTHER OFFICERS; MEETINGS. (a) Requires the members of the authority to elect a presiding officer and other necessary officers.

(b) Authorizes the authority to hold meetings in different areas of the state.

[Reserves Sections 556.024-556.050 for expansion.]

SUBCHAPTER C. POWERS AND DUTIES OF AUTHORITY

Sec. 556.051. GENERAL POWERS AND DUTIES OF AUTHORITY. (a) Provides that the authority is responsible for recommending the consolidation or closure of state developmental centers in accordance with criteria and benchmarks as described by this chapter and determined by the authority. Provides that the authority is also responsible for overseeing the implementation of the authority's recommendations by HHSC and DADS as required by this chapter.

(b) Requires the authority to ensure that the capacity of state developmental centers has been reduced to not more than 3,000 individuals by January 1, 2014.

Sec. 556.052. ADVISORY COMMITTEE. (a) Provides that an advisory committee is created to assist and provide information to the authority.

(b) Provides that the advisory committee is composed of certain representatives, appointed by the executive commissioner.

(c) Requires the advisory committee to study and make recommendations to the authority regarding the evaluation and consolidation or closure of state developmental centers.

Sec. 556.053. EVALUATION OF STATE DEVELOPMENTAL CENTERS. (a) Requires the authority, each biennium, to evaluate the state developmental center system and determine which state developmental centers should be consolidated or closed by HHSC and DADS.

(b) Requires the authority to consider certain factors in evaluating a state developmental center.

(c) Authorizes the advisory committee to the authority to assist the authority in performing the evaluation required by this section.

(d) Authorizes the authority to solicit public testimony and input during the evaluation process.

Sec. 556.054. RECOMMENDATION FOR CONSOLIDATION OR CLOSURE; REPORT. (a) Requires the authority, not later than December 1 of each even-numbered year, to submit a report to the governor, the lieutenant governor, the speaker of the house of representatives, and the standing committee of each house of the legislature with jurisdiction over state developmental centers. Requires that the report include a specific recommendation of whether to consolidate or close one or more state developmental

centers and, if consolidation or closure is recommended, which state developmental center or centers should be consolidated or closed.

(b) Requires the authority to include certain information in the report.

Sec. 556.055. EFFECT OF RECOMMENDATION. (a) Requires HHSC and DADS to implement the consolidation or closure of the state developmental center beginning on September 1 of the odd-numbered year following the submission of the report unless the legislature adopts a resolution rejecting the consolidation or closure of a state developmental center recommended for consolidation or closure by the authority in the first regular legislative session following the report's submission by the authority.

(b) Requires the authority to monitor the consolidation or closure of a state developmental center that was recommended for consolidation or closure by the authority.

Sec. 556.056. MORATORIUM ON STATE DEVELOPMENTAL CENTER PLACEMENTS. Prohibits an individual with mental retardation from being admitted or committed to a state developmental center under Chapter 593 (Admission and Commitment to Mental Retardation Services) on or after September 1, 2009, and until a census of 3,000 has been achieved. Requires DADS to ensure that individuals who would otherwise be committed under that chapter receive services by ensuring programs are available to provide those services.

[Reserves Sections 556.057-556.100 for expansion.]

SUBCHAPTER D. COMMUNITY-BASED GROUP HOMES PILOT PROGRAM

Sec. 556.101. COMMUNITY-BASED GROUP HOMES PILOT PROGRAM. (a) Requires DADS to establish a pilot program to study the feasibility of DADS operating group homes serving not more than four individuals with mental retardation who voluntarily choose to reside at the group home.

(b) Requires DADS, in establishing a pilot program under this section, to identify and select two areas in the state that have few community-based resources for individuals with mental retardation; operate at least one group home in each selected community for not less than 12 months; and evaluate certain conditions of the operation of the group home by DADS.

(c) Requires DADS, not later than December 1, 2010, to submit to the governor, the lieutenant governor, the speaker of the house of representatives, and HHSC a report that includes certain requirements.

Sec. 556.102. EXPIRATION. Provides that this subchapter expires September 2, 2011.

SECTION. (a) Requires the governor and lieutenant governor, not later than September 1, 2009, to appoint the members of the authority as provided by Chapter 556, Health and Safety Code, as added by this Act.

(b) Requires the executive commissioner of HHSC, not later than January 1, 2010, to appoint the advisory committee as provided by Section 556.052, Health and Safety Code, as added by this Act.

(c) Requires DADS, not later than September 1, 2009, to establish and begin implementation of the community-based group homes pilot program under Subchapter D, Chapter 556, Health and Safety Code, as added by this Act.

SECTION 6. Requires a state agency, if necessary for implementation of a provision of this Act, to request a waiver or authorization from a federal agency, and authorizes delay of implementation until such waivers or authorizations are granted.

SECTION 7. Effective date: upon passage or September 1, 2009.