

By: Naishtat

H.B. No. 4552

A BILL TO BE ENTITLED

AN ACT

relating to authorizing the use of General Revenue in certain circumstances for Medical Assistance Waiver Programs.

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

SECTION 1. Section 32.058, Human Resources Code, is amended to read as follows:

Sec. 32.058. LIMITATION ON ~~[MEDICAL ASSISTANCE IN]~~ CERTAIN MEDICAL ASSISTANCE WAIVER PROGRAMS ~~[ALTERNATIVE COMMUNITY-BASED CARE SETTINGS]~~. (a) In this section, "medical assistance waiver program" means a program ~~[administered by the Department of Aging and Disability Services]~~, other than the Texas Home Living ~~[home living]~~ program, that provides services under a waiver granted in accordance with 42 U.S.C. Section 1396n(c).

(b) Except as provided by Subsection (c) or ~~(d)~~ ~~(e)~~, ~~or (f)~~, the department may not provide services under a medical assistance waiver program to a person if the projected cost of providing those services over a 12-month period exceeds the individual cost limit specified in the medical assistance waiver program.

(c) Notwithstanding section 32.024(e), the ~~[The]~~ department shall use general revenue funds to continue to provide services ~~[under a medical assistance waiver program]~~ to a person who was receiving medical assistance waiver program ~~[those]~~ services on September 1, 2005, at a cost that exceeded the individual cost limit

1 specified in the medical assistance waiver program~~[, if~~  
2 ~~continuation of those services.~~

3 ~~[(1) is necessary for the person to live in the most~~  
4 ~~integrated setting appropriate to the needs of the person; and~~

5 ~~[(2) does not affect the department's compliance with~~  
6 ~~the federal average per capita expenditure requirement of the~~  
7 ~~medical assistance waiver program under 42 U.S.C. Section~~  
8 ~~1396n(c)(2)(D)].~~

9 (d) Notwithstanding section 32.024(e), the department is  
10 authorized to use general revenue funds to pay for services if:

11 (1) the projected cost of providing services over a  
12 12-month period exceeds the individual cost limit specified in a  
13 medical assistance waiver program;

14 (2) federal financial participation is not available  
15 to pay for such services; and

16 (3) the department determines that:

17 (A) the person's health and safety cannot be  
18 protected by the services provided within the individual cost limit  
19 established for the program; and

20 (B) there is no other available living  
21 arrangement in which the person's health and safety can be  
22 protected, as evidenced by:

23 (i) an assessment conducted by clinical  
24 staff of the Health and Human Services Commission or the Department  
25 of Aging and Disability Services; and

26 (ii) supporting documentation, including  
27 the person's medical and service records ~~[The department may~~

1 ~~continue to provide services under a medical assistance waiver~~  
2 ~~program, other than the home and community-based services program,~~  
3 ~~to a person who is ineligible to receive those services under~~  
4 ~~Subsection (b) and to whom Subsection (c) does not apply if:~~

5 ~~[(1) the projected cost of providing those services to~~  
6 ~~the person under the medical assistance waiver program over a~~  
7 ~~12-month period does not exceed 133.3 percent of the individual~~  
8 ~~cost limit specified in the medical assistance waiver program; and~~

9 ~~[(2) continuation of those services does not affect~~  
10 ~~the department's compliance with the federal average per capita~~  
11 ~~expenditure requirement of the medical assistance waiver program~~  
12 ~~under 42 U.S.C. Section 1396n(c)(2)(D)].~~

13 (e) The department shall not expend any funds under  
14 Subsection (c) or (d) if such expenditure would affect the  
15 department's compliance with federal cost-effectiveness  
16 requirements applicable to medical assistance waiver programs,  
17 including 42 U.S.C. Section 1396n(c)(2)(D) ~~[The department may~~  
18 ~~exempt a person from the cost limit established under Subsection~~  
19 ~~(d)(1) for a medical assistance waiver program if the department~~  
20 ~~determines that:~~

21 ~~[(1) the person's health and safety cannot be~~  
22 ~~protected by the services provided within the cost limit~~  
23 ~~established for the program under that subdivision; and~~

24 ~~[(2) there is no available living arrangement, other~~  
25 ~~than one provided through the program or another medical assistance~~  
26 ~~waiver program, in which the person's health and safety can be~~  
27 ~~protected, as evidenced by:~~

1                   ~~[(A) an assessment conducted by clinical staff of~~  
2 ~~the department; and~~

3                   ~~[(B) supporting documentation, including the~~  
4 ~~person's medical and service records].~~

5           (f) The department shall employ utilization management and  
6 utilization review practices as necessary to ensure that the  
7 appropriate scope and level of services are provided to individuals  
8 receiving medical assistance waiver program services and to ensure  
9 compliance with federal cost-effectiveness requirements [~~The~~  
10 ~~department may continue to provide services under the home and~~  
11 ~~community-based services program to a person who is ineligible to~~  
12 ~~receive those services under Subsection (b) and to whom Subsection~~  
13 ~~(c) does not apply if the department makes, with regard to the~~  
14 ~~person's receipt of services under the home and community-based~~  
15 ~~services program, the same determinations required by Subsections~~  
16 ~~(c)(1) and (2) in the same manner provided by Subsection (c) and~~  
17 ~~determines that continuation of those services does not affect:~~

18                   ~~[(1) the department's compliance with the federal~~  
19 ~~average per capita expenditure requirement of the home and~~  
20 ~~community-based services program under 42 U.S.C. Section~~  
21 ~~1396n(c)(2)(D); and~~

22                   ~~[(2) any cost-effectiveness requirements provided by~~  
23 ~~the General Appropriations Act that limit expenditures for the home~~  
24 ~~and community-based services program].~~

25           (g) This section does not establish an entitlement to  
26 services or to general revenue funding for services.

27           (h) [~~(g)~~] The executive commissioner of the Health and

1 Human Services Commission may adopt rules to implement this section  
2 [~~Subsections (d), (e), and (f)~~].

3 (i) [~~(h)~~] If a federal agency determines that compliance  
4 with any provision in this section would make this state ineligible  
5 to receive federal funds to administer a program to which this  
6 section applies, a state agency may, but is not required to,  
7 implement that provision.

8 SECTION 2. This Act takes effect immediately if it receives  
9 a vote of two-thirds of all the members elected to each house, as  
10 provided by Section 39, Article III, Texas Constitution. If this  
11 Act does not receive the vote necessary for immediate effect, this  
12 Act takes effect September 1, 2009.