

1-1 By: Zaffirini S.B. No. 2407
1-2 (In the Senate - Filed March 13, 2009; March 31, 2009, read
1-3 first time and referred to Committee on Finance; May 4, 2009,
1-4 reported adversely, with favorable Committee Substitute by the
1-5 following vote: Yeas 12, Nays 0; May 4, 2009, sent to printer.)

1-6 COMMITTEE SUBSTITUTE FOR S.B. No. 2407 By: Zaffirini

1-7 A BILL TO BE ENTITLED
1-8 AN ACT

1-9 relating to the provision of services to individuals with mental
1-10 retardation.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Subsection (a), Section 531.02442, Government
1-13 Code, is amended by amending Subdivision (1) and adding Subdivision
1-14 (4) to read as follows:

1-15 (1) "Institution" means:

1-16 (A) a residential care facility operated or
1-17 maintained by the department [~~Texas Department of Mental Health and~~
1-18 ~~Mental Retardation~~] to provide 24-hour services, including
1-19 residential services, to persons with mental retardation; or

1-20 (B) an ICF-MR, as defined by Section 531.002,
1-21 Health and Safety Code.

1-22 (4) "Department" means the Department of Aging and
1-23 Disability Services.

1-24 SECTION 2. Section 531.02442, Government Code, is amended
1-25 by amending Subsection (b) and adding Subsections (f), (g), and (h)
1-26 to read as follows:

1-27 (b) In addition to providing information regarding care and
1-28 support options as required by Section 531.042, the department
1-29 [~~Texas Department of Mental Health and Mental Retardation~~] shall
1-30 implement a community living options information process in each
1-31 institution to inform persons with mental retardation who reside in
1-32 the institution and their legally authorized representatives of
1-33 alternative community living options. If a person with mental
1-34 retardation residing in an institution and the person's legally
1-35 authorized representative would like to participate in the
1-36 community living options information process, the department and
1-37 the local mental retardation authority must provide information
1-38 regarding the process.

1-39 (f) The department shall contract with local mental
1-40 retardation authorities to implement the community living options
1-41 information process for residents of institutions who are at least
1-42 22 years of age. The local mental retardation authorities shall
1-43 provide and implement the process for institutions under Subsection
1-44 (a)(1)(A) as provided by Section 531.02443.

1-45 (g) A contract with a local mental retardation authority to
1-46 implement the community living options information process for an
1-47 institution other than an institution under Subsection (a)(1)(A)
1-48 must:

1-49 (1) delegate to the local mental retardation authority
1-50 the department's duties under this section with regard to the
1-51 implementation of the process at the institution;

1-52 (2) include performance measures designed to assist
1-53 the department in evaluating the effectiveness of the local mental
1-54 retardation authority in implementing the community living options
1-55 information process; and

1-56 (3) ensure that the local mental retardation authority
1-57 provides service coordination and relocation services to a resident
1-58 who is at least 22 years of age and who chooses, is eligible for, and
1-59 is recommended by an interdisciplinary team for a community living
1-60 option to facilitate a timely, appropriate, and successful
1-61 transition from the institution to the community living program.

1-62 (h) Each year the department shall:

1-63 (1) review and make necessary updates to materials

2-1 used during the community living options information process; and
2-2 (2) provide training regarding the community living
2-3 options information process to staff members involved with the
2-4 process at each institution and each local mental retardation
2-5 authority.

2-6 SECTION 3. Section 531.02443, Government Code, is amended
2-7 by amending Subsection (d) and adding Subsection (g) to read as
2-8 follows:

2-9 (d) The contract with the local mental retardation
2-10 authority must:

2-11 (1) delegate to the local mental retardation authority
2-12 the department's duties under Section 531.02442 with regard to the
2-13 implementation of the community living options information process
2-14 at a state school;

2-15 (2) include performance measures designed to assist
2-16 the department in evaluating the effectiveness of a local mental
2-17 retardation authority in implementing the community living options
2-18 information process; ~~and~~

2-19 (3) ensure that the local mental retardation authority
2-20 provides service coordination and relocation services to an adult
2-21 resident who chooses, is eligible for, and is recommended by the
2-22 interdisciplinary team for a community living option to facilitate
2-23 a timely, appropriate, and successful transition from the state
2-24 school to the community living option; and

2-25 (4) require the local mental retardation authority, in
2-26 coordination with the department and within existing resources, to
2-27 coordinate tours and visits to community living options for an
2-28 adult resident or an adult resident's legally authorized
2-29 representative, as appropriate based on the resident's behavioral
2-30 needs.

2-31 (g) The department, in coordination with local mental
2-32 retardation authorities that perform duties required by the
2-33 community living options information process under Section
2-34 531.02442 or this section, shall annually submit a report to the
2-35 commission and the interagency task force on ensuring appropriate
2-36 care settings for persons with disabilities regarding the outcomes
2-37 of the community living options information process as performed by
2-38 the local mental retardation authority. A report required by this
2-39 section must include:

2-40 (1) the number of individuals in a state school who
2-41 indicated a desire to pursue an alternative community living option
2-42 and the status of the individual's transition to the community;

2-43 (2) the number of times the local mental retardation
2-44 authority performed duties under Section 531.02442 or this section
2-45 for individuals and the number of individuals for whom the
2-46 authority performed this function;

2-47 (3) the number of individuals transitioned to an
2-48 alternative community living option after the local mental
2-49 retardation authority performed the community living options
2-50 information process for the individual;

2-51 (4) the responses to satisfaction survey questions;
2-52 and

2-53 (5) any other relevant information as determined by
2-54 the department.

2-55 SECTION 4. Subchapter B, Chapter 531, Government Code, is
2-56 amended by adding Section 531.02446 to read as follows:

2-57 Sec. 531.02446. DIVERSION PROTOCOLS TO PREVENT COMMITMENT
2-58 TO CERTAIN INSTITUTIONS. (a) The executive commissioner by rule
2-59 shall develop protocols to divert adults and children with mental
2-60 retardation at imminent risk of commitment to a state school from
2-61 commitment to a state school.

2-62 (b) The executive commissioner shall ensure that the
2-63 diversion protocols are designed to:

2-64 (1) reduce the commitment to state schools of
2-65 individuals younger than 22 years of age; and

2-66 (2) provide options to adults and children with mental
2-67 retardation at imminent risk of commitment to a state school to
2-68 ensure that they have access to the least restrictive living
2-69 environment appropriate for the person.

3-1 (c) The department shall develop the diversion protocols
3-2 with the advice and assistance of the interagency task force on
3-3 ensuring appropriate care settings for persons with disabilities
3-4 and representatives of family members or legally authorized
3-5 representatives of adult residents of state schools, persons with
3-6 mental retardation, state schools, and local mental retardation
3-7 authorities.

3-8 (d) As part of the diversion protocols, the executive
3-9 commissioner may contract with an organization for the provision of
3-10 temporary, emergency living arrangements for children at imminent
3-11 risk of commitment to a state school.

3-12 (e) An entity awarded a contract under this section must
3-13 provide temporary, emergency living arrangements at homes, with no
3-14 more than six children placed in the home.

3-15 SECTION 5. Subdivision (2), Section 252.002, Health and
3-16 Safety Code, is amended to read as follows:

3-17 (2) "Department" means the [~~Texas~~] Department of Aging
3-18 and Disability [~~Human~~] Services.

3-19 SECTION 6. Subchapter B, Chapter 533, Health and Safety
3-20 Code, is amended by adding Section 533.03551 to read as follows:

3-21 Sec. 533.03551. CASE MANAGEMENT BY LOCAL MENTAL RETARDATION
3-22 AUTHORITIES. (a) The executive commissioner shall designate
3-23 local mental retardation authorities for the purpose of performing
3-24 case management functions for certain Section 1915(c) waiver
3-25 programs, including the home and community-based services waiver
3-26 program and the Texas home living waiver services waiver program.

3-27 (b) The executive commissioner shall ensure that a local
3-28 mental retardation authority performing case management functions
3-29 for a Section 1915(c) waiver program has an organizational
3-30 structure that separates local mental retardation authority
3-31 functions from any service provider functions under the applicable
3-32 Section 1915(c) waiver programs.

3-33 (c) The executive commissioner, with the advice and
3-34 assistance of a work group composed of representatives appointed by
3-35 the executive commissioner from private and public service
3-36 providers under the Section 1915(c) waiver programs, advocates for
3-37 individuals with mental retardation, families of individuals with
3-38 mental retardation, consumers, and other interested stakeholders,
3-39 shall develop rules to implement this section. The rules must:

3-40 (1) clearly delineate the roles and responsibilities
3-41 of the Department of Aging and Disability Services, a local mental
3-42 retardation authority, and a service provider under this section
3-43 and include criteria specifying when a service provider is required
3-44 to receive approval from a local mental retardation authority
3-45 before changing an individual plan of care;

3-46 (2) require a local mental retardation authority, in
3-47 conducting case management functions for a Section 1915(c) waiver
3-48 program to:

3-49 (A) perform consumer screening and assessment;
3-50 (B) enroll consumers in the home and
3-51 community-based waiver services or Texas home living waiver
3-52 services and, as applicable, other Medicaid waiver-related
3-53 services, in a manner that ensures consumer choice;

3-54 (C) develop an initial plan of care for a
3-55 consumer, approve an annual plan of care for a consumer, conduct
3-56 quarterly reviews of a plan of care for a consumer, and approve
3-57 changes to a plan of care for a consumer;

3-58 (D) manage consumer transfers between service
3-59 providers to ensure consumer choice;

3-60 (E) facilitate communication of complaints to
3-61 the appropriate person;

3-62 (F) at least quarterly, meet with consumers in
3-63 person; and

3-64 (G) ensure consumer access to a crisis response
3-65 system;

3-66 (3) require a service provider to:

3-67 (A) implement and manage the plan of care for a
3-68 consumer for whom the service provider provides services;

3-69 (B) ensure that services provided to a consumer

4-1 are provided in accordance with the consumer's approved plan of
 4-2 care;
 4-3 (C) respond to the consumer's or the consumer's
 4-4 family's needs and to crisis situations involving the consumer or
 4-5 the consumer's family; and
 4-6 (D) communicate the need for changes to a
 4-7 consumer's plan of care and coordinate those changes; and
 4-8 (4) require the Department of Aging and Disability
 4-9 Services to:
 4-10 (A) enroll service providers for Section 1915(c)
 4-11 waiver programs, including the home and community-based services
 4-12 waiver program or the Texas home living waiver services waiver
 4-13 program;
 4-14 (B) manage service provider contracts related to
 4-15 Section 1915(c) waiver programs;
 4-16 (C) conduct surveys and certification reviews;
 4-17 (D) perform utilization review, including
 4-18 consumer screening and assessment and final individual plan of care
 4-19 authorizations;
 4-20 (E) conduct other relevant administrative and
 4-21 regulatory functions;
 4-22 (F) ensure the case management functions of a
 4-23 local mental retardation authority are conducted consistently
 4-24 across this state and that a local mental retardation authority's
 4-25 interface with service providers is efficient and effective;
 4-26 (G) establish a protocol for providing consumers
 4-27 with information about service and support options and choice of
 4-28 service providers; and
 4-29 (H) ensure that consumer needs are met in the
 4-30 most efficient and effective manner possible by requiring use of a
 4-31 person-directed planning process to develop an individually
 4-32 tailored plan of care that includes services and supports chosen by
 4-33 and directed by each consumer to the maximum extent possible with
 4-34 periodic review of a consumer's progress toward desired outcomes.

4-35 SECTION 7. Subsections (a) and (b), Section 593.013, Health
 4-36 and Safety Code, are amended to read as follows:

4-37 (a) A person may not be admitted or committed to a
 4-38 residential care facility unless an interdisciplinary team from a
 4-39 local mental retardation authority serving the county in which the
 4-40 application was filed recommends that placement.

4-41 (b) The ~~An~~ interdisciplinary team shall:

4-42 (1) interview the person with mental retardation, the
 4-43 person's parent if the person is a minor, and the person's guardian;

4-44 (2) review the person's:

4-45 (A) social and medical history;

4-46 (B) medical assessment, which must ~~[shall]~~

4-47 include an audiological, neurological, and vision screening;

4-48 (C) psychological and social assessment; and

4-49 (D) determination of adaptive behavior level;

4-50 (3) determine the person's need for additional
 4-51 assessments, including educational and vocational assessments;

4-52 (4) obtain any additional assessment necessary to plan
 4-53 services;

4-54 (5) identify the person's habilitation and service
 4-55 preferences and needs; and

4-56 (6) recommend services to address the person's needs
 4-57 that consider the person's preferences.

4-58 SECTION 8. Subchapter B, Chapter 593, Health and Safety
 4-59 Code, is amended by adding Section 593.0251 to read as follows:

4-60 Sec. 593.0251. POLICY REGARDING SERVICES IN STATE SCHOOL.

4-61 It is the policy of this state that a person residing in a
 4-62 residential care facility operated by the Department of Aging and
 4-63 Disability Services that is a state school has the right to continue
 4-64 receiving services in a facility if:

4-65 (1) the person or, if appropriate, the person's
 4-66 legally authorized representative, indicates a preference for the
 4-67 person continuing to receive services in the facility; and

4-68 (2) the facility is not required to transfer, furlough
 4-69 to an alternative placement, or discharge the person under Section

5-1 594.011.

5-2 SECTION 9. Subchapter B, Chapter 161, Human Resources Code,
5-3 is amended by adding Section 161.033 to read as follows:

5-4 Sec. 161.033. STATE SCHOOL REQUIREMENTS FOR LONG-RANGE PLAN
5-5 AND STATEWIDE CENSUS. (a) In this section, "alleged offender
5-6 resident" means a resident who:

5-7 (1) was committed to or transferred to a state school
5-8 under Chapter 46B or 46C, Code of Criminal Procedure, as a result of
5-9 being charged with or convicted of a criminal offense; or

5-10 (2) is a child committed to or transferred to a state
5-11 school under Chapter 55, Family Code, as a result of being alleged
5-12 by petition or having been found to have engaged in delinquent
5-13 conduct constituting a criminal offense.

5-14 (b) In developing the long-range plan required by Section
5-15 533.032, Health and Safety Code, the department shall:

5-16 (1) include strategies for downsizing state schools
5-17 and transitioning more state school residents to community-based
5-18 care;

5-19 (2) describe initiatives for achieving cost
5-20 efficiencies relating to the strategies required by Subdivision
5-21 (1); and

5-22 (3) estimate the fiscal impact of each strategy and
5-23 initiative, including the impact on department funding and the
5-24 number of full-time equivalent department employees and the cost
5-25 implications to other health and human services agencies.

5-26 (c) Through census management, not closure, the department
5-27 may reduce the number of state school residents, excluding alleged
5-28 offender residents, to not more than a total of 3,000 residents,
5-29 with not more than 350 residents residing at each state school.
5-30 This section does not require the department to remove a state
5-31 school resident from a state school against the resident's will or
5-32 against the will of the resident's legally authorized guardian for
5-33 the purpose of meeting capacity limits specified by this section.
5-34 This section does not authorize the department to deny admission to
5-35 a state school on the basis that the admission would cause the state
5-36 school to exceed the capacity limits specified by this section.

5-37 SECTION 10. (a) In implementing Section 533.03551, Health
5-38 and Safety Code, as added by this Act, the Department of Aging and
5-39 Disability Services shall:

5-40 (1) conduct a review of the existing processes and
5-41 documentation requirements of the home and community-based
5-42 services waiver program and eliminate complexities or requirements
5-43 that do not add value or quality to the program;

5-44 (2) consider information and data from previous and
5-45 existing projects or programs related to the provision of services
5-46 through the home and community-based services waiver program or
5-47 other Section 1915(c) waiver programs designed to achieve
5-48 efficiencies and improved access to care; and

5-49 (3) oversee the development and implementation of the
5-50 new service delivery design to ensure that appropriate state action
5-51 is taken to identify and resolve barriers to service delivery
5-52 through that design.

5-53 (b) The Health and Human Services Commission shall evaluate
5-54 the reimbursement rates of local mental retardation authorities and
5-55 service providers for the cost of conducting case management and
5-56 other functions, as applicable, in accordance with Section
5-57 533.03551, Health and Safety Code, as added by this Act.

5-58 (c) The executive commissioner of the Health and Human
5-59 Services Commission shall:

5-60 (1) evaluate the consumer benefit and
5-61 cost-effectiveness of providing case management in the manner
5-62 provided by Section 533.03551, Health and Safety Code, as added by
5-63 this Act; and

5-64 (2) not later than December 1, 2010, submit a report to
5-65 the lieutenant governor, the speaker of the house of
5-66 representatives, the Senate Committee on Finance, and the House
5-67 Appropriations Committee regarding the status of the project during
5-68 the development and implementation phases of Section 533.03551,
5-69 Health and Safety Code, as added by this Act.

6-1 SECTION 11. (a) The Health and Human Services Commission
6-2 and the Department of Aging and Disability Services shall jointly
6-3 design a plan to implement a long-term services and supports
6-4 capitated or noncapitated pilot program to serve individuals with
6-5 intellectual or developmental disabilities.

6-6 (b) The Department of Aging and Disability Services may
6-7 contract with a person to conduct a study and make recommendations
6-8 regarding the design and implementation of the long-term services
6-9 and supports capitated or noncapitated pilot program and shall
6-10 include meaningful input regarding the plan from individuals with
6-11 intellectual or developmental disabilities who receive services
6-12 from the department, the families of those individuals, service
6-13 providers, local mental retardation authorities, entities that
6-14 advocate for those individuals, and other interested parties.

6-15 (c) The plan designed under this section must examine
6-16 managed care models employed by other states for individuals with
6-17 intellectual or developmental disabilities in determining the most
6-18 appropriate manner to implement the pilot program.

6-19 (d) Not later than December 1, 2010, the Health and Human
6-20 Services Commission and the Department of Aging and Disability
6-21 Services shall submit a report regarding the plan to the standing
6-22 committees of the house of representatives and senate having
6-23 primary jurisdiction over the Medicaid program. The report must
6-24 include:

- 6-25 (1) recommendations for the implementation of the
- 6-26 pilot program, including:
 - 6-27 (A) the area or areas in this state in which the
 - 6-28 program should be implemented;
 - 6-29 (B) options for consolidating waiver services;
 - 6-30 (C) the costs and methods of financing;
 - 6-31 (D) utilization review;
 - 6-32 (E) provider network;
 - 6-33 (F) eligibility criteria;
 - 6-34 (G) service coordination;
 - 6-35 (H) quality management;
 - 6-36 (I) waiver development and federal requirements;

6-37 and
6-38 (J) any other relevant issues as determined by
6-39 the commission or the department; and

6-40 (2) a consumer-impact analysis that includes a review
6-41 of the impact of managed care on individuals receiving services.

6-42 SECTION 12. (a) The Health and Human Services Commission
6-43 and the Department of Aging and Disability Services shall jointly
6-44 conduct a study, with meaningful stakeholder input, regarding the
6-45 effectiveness of the requirements for admission and commitment to a
6-46 residential care facility provided by Chapter 593, Health and
6-47 Safety Code, as amended by this Act, and department rules.

6-48 (b) In conducting the study, the Health and Human Services
6-49 Commission and the Department of Aging and Disability Services
6-50 shall consider whether:

6-51 (1) existing processes ensure that proposed and
6-52 existing residents of a residential care facility receive supports
6-53 and services in the least restrictive alternative for the person,
6-54 including alternatives that become available or are developed after
6-55 the person is a resident;

6-56 (2) standards of evidence as required by law are
6-57 appropriate to support commitment to a residential care facility,
6-58 including making a determination regarding an operational
6-59 definition of that evidence;

6-60 (3) orders for long-term placement in a residential
6-61 care facility should be reviewed on an ongoing basis; and

6-62 (4) a process for renewing commitment orders should be
6-63 required by statute.

6-64 (c) Not later than November 1, 2010, the Health and Human
6-65 Services Commission and the Department of Aging and Disability
6-66 Services shall provide a joint written report to the legislature
6-67 and the Sunset Advisory Commission regarding the study, including
6-68 any recommendations for legislation to address proposed changes to
6-69 the requirements for admission or commitment to a residential care

7-1 facility.

7-2 (d) As part of its review of the Department of Aging and
7-3 Disability Services for the 82nd Legislature, the Sunset Advisory
7-4 Commission shall consider the report submitted to the commission in
7-5 accordance with this section.

7-6 SECTION 13. (a) Not later than January 1, 2010, the
7-7 executive commissioner of the Health and Human Services Commission
7-8 shall develop and implement the diversion protocols required under
7-9 Section 531.02446, Government Code, as added by this Act.

7-10 (b) Not later than September 1, 2009, the executive
7-11 commissioner of the Health and Human Services Commission shall
7-12 appoint the work group as required by Section 533.03551, Health and
7-13 Safety Code, as added by this Act.

7-14 (c) Not later than July 1, 2010, the executive commissioner
7-15 of the Health and Human Services Commission shall ensure that the
7-16 transfer of case management services is completed as provided by
7-17 Section 533.03551, Health and Safety Code, as added by this Act.

7-18 SECTION 14. As soon as practicable after the effective date
7-19 of this Act, the executive commissioner of the Health and Human
7-20 Services Commission shall apply for and actively pursue a waiver or
7-21 an amendment to this state's waiver under Section 1915(c) of the
7-22 federal Social Security Act (42 U.S.C. Section 1396n(c)) or other
7-23 authorization from the federal Centers for Medicare and Medicaid
7-24 Services or any other federal agency authorizing the provision of
7-25 home and community-based services at licensed group homes that
7-26 choose to participate and in which five or six individuals with
7-27 mental retardation reside and receive those services.

7-28 SECTION 15. This Act does not make an appropriation. This
7-29 Act takes effect only if a specific appropriation for
7-30 implementation of this Act is provided in a general appropriations
7-31 act of the 81st Legislature.

7-32 SECTION 16. This Act takes effect September 1, 2009.

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