

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**April 16, 2009**

**TO:** Honorable Steve Ogden, Chair, Senate Committee on Finance

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: SB2407** by Zaffirini (Relating to the provision of services to individuals with mental retardation.), **As Introduced**

**Estimated Two-year Net Impact to General Revenue Related Funds** for SB2407, As Introduced: a negative impact of (\$17,784,187) through the biennium ending August 31, 2011.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2010	(\$13,223,131)
2011	(\$4,561,056)
2012	(\$4,360,446)
2013	(\$4,360,746)
2014	(\$4,361,056)

**All Funds, Five-Year Impact:**

Fiscal Year	Probable (Cost) from <i>General Revenue Fund</i> 1	Probable (Cost) from <i>Federal Funds</i> 555	Change in Number of State Employees from FY 2009
2010	(\$13,223,131)	(\$3,146,044)	3.8
2011	(\$4,561,056)	(\$4,363,402)	5.0
2012	(\$4,360,446)	(\$4,162,792)	5.0
2013	(\$4,360,746)	(\$4,163,092)	5.0
2014	(\$4,361,056)	(\$4,163,402)	5.0

**Fiscal Analysis**

SECTION 5 would require that a person with mental retardation residing in an institution or the person's legally authorized representative (LAR) must participate in the community living options information process (CLOIP). The Department of Aging and Disability Services (DADS) would be required to update materials used during the CLOIP and provide training regarding CLOIP to staff members involved with the process at each institution and at each local mental retardation authority (MRA) annually.

SECTION 6 would require a local MRA to coordinate tours and visits to community living options for an adult resident or an adult resident's LAR; expand active voting membership on the interdisciplinary team; require a local MRA to submit an annual report to DADS on the outcomes of the CLOIP; and require DADS to submit an annual report to the legislature regarding CLOIP.

SECTION 7 would require the executive commissioner of the Health and Human Services Commission (HHSC), by rule, to develop protocols to divert adults and children with mental retardation from commitment to a state school and toward the least restrictive living environment. The executive commissioner would be required to contract with a non-profit entity for the provision of temporary, emergency living arrangements for children at immediate risk of commitment to a state school.

SECTION 10 would require the executive commissioner to adopt rules by January 1, 2010 transferring local MRA responsibility for case management services for individuals receiving services under the Home and Community-Based Services (HCS) waiver program.

SECTION 13 would require courts committing individuals with mental retardation to residential care facilities to consider the least restrictive alternative identified by the interdisciplinary team. The court order must state that the commitment for care, treatment, and training is authorized for a maximum of a 12-month period. Unless a new order committing the person to a residential care facility has been issued, the facility administrator must discharge the resident at the end of the 12-month period. The facility administrator is required to notify an MRA representative at least 30 days before the date a resident is scheduled to be discharged of the resident's scheduled discharge, and request that the authority prepare and assist in implementing a transition plan for placing the resident in the community served by the authority.

SECTION 14 would require DADS to include strategies for downsizing state schools and transitioning more state school residents to community-based care, describe initiatives for achieving cost efficiencies relating to these strategies, and estimate the fiscal impact of each strategy and initiative in its long-range plan as required under Chapter 533 of the Health and Safety Code.

SECTION 15 would require DADS to establish a positive behavior support training and technical assistance project to serve children with intense behavioral support needs. The executive commissioner would be required to adopt rules implementing the project.

SECTION 16 would require DADS and HHSC to jointly study and report to select legislative bodies on the feasibility of providing medical assistance for long-term services and supports through the Medicaid managed care program to persons with mental retardation who are eligible for that assistance.

SECTION 17 would require DADS, by September 1, 2011, to file an application for a new commitment order for each person who was committed to a residential care facility in a proceeding that began before September 1, 2009, is currently residing in a residential care facility, and has resided in a residential care facility for at least one year.

SECTION 19 would require the executive commissioner of HHSC to apply for a waiver authorizing the provision of HCS waiver services at group homes in which five or six individuals with mental retardation reside and receive those services.

## **Methodology**

HHSC assumes it can absorb the costs of rulemaking within existing resources.

SECTION 5: This analysis assumes the provisions of this section would not result in significant costs relative to the current requirements for CLOIP in Chapter 531 of the Health and Safety Code. DADS indicates it would require \$20,000 in All Funds annually for staff training and materials.

SECTION 6: DADS assumes each of the 13 MRAs would require 2 mid-size vehicles at a cost of \$28,000 each to transport state school residents for tours of community living options, for a total one-time All Funds cost of \$728,000 in fiscal year 2010. DADS assumes each MRA would require 2 new staff members to manage additional duties. The total staffing costs including salaries, benefits, and standard operating costs would be \$805,667 in All Funds per year. DADS assumes it would compensate the MRAs for these expenses.

SECTION 7: HHSC indicates the annual cost to contract with a non-profit entity to provide temporary emergency living arrangements for children would be \$1,396,206 in General Revenue Funds. This is based on the number of children placed in state schools in fiscal year 2008, the average fiscal year 2008 monthly cost to serve clients in the HCS program, and a service period of three months.

SECTION 10: DADS indicates a cost of \$9,512,102 in General Revenue Funds would be incurred in fiscal year 2010 to enable the local MRAs to hire approximately 707 staff in preparation of assuming the case management function for individuals receiving services under the HCS waiver program. In fiscal year 2011 and additional years, DADS assumes ongoing costs of case management would be shifted from HCS providers to the MRAs at no net cost to the state. DADS also indicates it would need to hire 5 additional staff members for oversight of MRAs. The total cost would be \$310,844 in fiscal year 2010 and approximately \$403,145 in fiscal year 2011 and each subsequent year. This analysis assumes the FTEs are phased-in for fiscal year 2010.

SECTION 13: DADS assumes 300 clients will be discharged from state schools at the end of twelve months (approximately 25 per month) as a result of revisions to the commitment criteria. However, this analysis assumes these clients would be served in privately-operated ICF-MRs because the bill would not create new slots in the HCS program. Medicaid waivers are currently not considered a federal entitlement and therefore the state has discretion as to how many individuals are served. If services were provided to these individuals in the HCS waiver program, DADS estimates the annual All Funds cost would be \$9,260,550 in fiscal year 2010 and approximately \$17,096,400 in fiscal year 2011 and ongoing years. This is based on serving approximately 300 clients per year, phased-in during fiscal year 2010, at a monthly cost of \$4,749 per person.

SECTION 15: DADS assumes the cost of implementing the positive behavior plan for children would be \$3,194,555 in All Funds in fiscal year 2010, and approximately \$5,897,640 in All Funds in fiscal year 2011 and in each additional year. This is based on serving approximately 98 children, phased-in during fiscal year 2010, at a monthly cost of \$5,015 per person.

SECTIONS 14, 16, 17: DADS and HHSC assume they can absorb their respective costs within existing resources.

SECTION 19: DADS assumes operation of the waiver would be cost neutral.

DADS indicates it will incur All Funds cost of \$401,800 in fiscal year 2010 and \$401,800 in fiscal year 2011 for systems modifications to implement the CLOIP process changes, CARE system changes to allow for increased MRA reporting, and enhancement to the HCS System to include 5 and 6 bed group homes and enable MRAs to enter additional information.

## **Technology**

DADS indicates it will incur \$401,800 in All Funds in fiscal year 2010 and \$401,800 in All Funds in fiscal year 2011 for systems modifications.

## **Local Government Impact**

The bill would require a local mental retardation authority (MRA) that has a contract with DADS to include performance measures to assist the department in evaluating the effectiveness of the CLOIP, ensure the MRA provides service coordination and relocation services to an eligible adult resident, ensure the MRA conducts tours and visits to community living options. Local MRAs would be required to submit an annual report to the department that would include certain relevant information as defined by the bill.

DADS indicates that each of 13 MRAs would require 2 new vehicles, at an estimated cost of \$28,000 each, and 2 new staff members to manage additional duties related to expansion of CLOIP requirements. The total staffing costs including salaries, benefits, and standard operating costs would be \$805,667 per year. DADS also assumes local MRAs will incur transition costs of approximately \$9,512,102 in fiscal year 2010 to assume the case management function for the HCS waiver program,

and ongoing costs associated with provision of case management services. This analysis assumes the MRAs would receive reimbursement for provision of these services.

Local courts could incur additional costs associated with DADS filing an application for a new commitment order for each person who was committed to a residential care facility; however, those costs are not anticipated to be significant.

The fiscal impact to local governmental entities could be significant to comply with the provisions of the bill, but would vary depending on the current level of services an entity is providing.

**Source Agencies:** 529 Health and Human Services Commission, 537 State Health Services, Department of, 539 Aging and Disability Services, Department of

**LBB Staff:** JOB, MN, JI, LL, LI, TP