

BILL ANALYSIS

Senate Research Center
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S.B. 222
By: Nelson
Health & Human Services
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 222 is intended to support the needs of elderly or disabled Texans by expediting access to community services and helping individuals and their families navigate the long-term care system.

This bill directs the Department of Aging and Disability Services (DADS) to require home and community-based services (HCS) waiver program providers to convert existing three-bed and four-bed residential models to six-bed models. This bill establishes Medicaid community-based entitlement programs as the core programs for Medicaid 1915(c) HCS waivers and allows waiver services to wrap around entitlement programs as needed. This bill directs DADS to develop a public awareness campaign to increase awareness of HCS waiver and then various service delivery options. This bill directs DADS to post on its public website the percentage of individuals on interest lists who historically receive services when their name comes to the top of the list.

As proposed, S.B. 222 amends current law relating to access to certain long-term care services and supports under the medical assistance program.

[**Note:** While the statutory reference in this bill is to the Texas Department of Mental Health and Mental Retardation (TXMHMR), the following amendments affect the Department of Aging and Disability Services and the Department of Assistive Rehabilitative Services as the successor agencies to TXMHMR.]

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 (Section 531.02181, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter B, Chapter 531, Government Code, by adding Section 531.02181, as follows:

Sec. 531.02181. PROVISION AND COORDINATION OF ATTENDANT CARE SERVICES. (a) Requires the Health and Human Services Commission (HHSC) to ensure that recipients who are eligible to receive attendant care services under a Section 1915(c) waiver program are first provided those services, if available, under a Medicaid state plan program, including the primary home care, community attendant services, and personal care services programs. Authorizes HHSC to allow a recipient to receive attendant care services under a waiver program only if the recipient requires services beyond those that are available under a Medicaid state plan program, or the services are not otherwise provided under a Medicaid state plan program.

(b) Requires the executive commissioner of HHSC (executive commissioner) to adopt rules and procedures necessary to implement this section, including rules and procedures for:

(1) the coordination of services between Medicaid state plan programs and Section 1915(c) waiver programs to ensure the recipients' needs are being met and to prevent duplication of services;

(2) an automated authorization system through which case managers authorize the provision of attendant care services through the appropriate Medicaid state plan program or Section 1915(c) waiver program and register the number of hours authorized through each program;

(3) billing procedures for attendant care services provided through each Medicaid state plan program or Section 1915(c) waiver program; and

(4) determinations by case managers and service providers regarding whether provided services are personal care services or habilitation/supported home living services, if that determination is necessary.

SECTION 2. Amends Subchapter B, Chapter 531, Government Code, by adding Section 531.0515, as follows:

Sec. 531.0515. RISK MANAGEMENT CRITERIA FOR CERTAIN WAIVER PROGRAMS. (a) Defines, in this section, "legally authorized representative."

(b) Requires HHSC to consider developing risk management criteria under home and community-based services waiver programs designed to allow individuals eligible to receive services under the programs to assume greater choice and responsibility over the services and supports the individuals receive.

(c) Requires HHSC to ensure that any risk management criteria developed under this section include a requirement that if an individual to whom services and supports are to be provided has a legally authorized representative, the representative be involved in determining which services and supports the individual will receive, and a requirement that if services or supports are declined, the decision to decline is clearly documented.

SECTION 3. Amends Section 533.0355, Health and Safety Code, by adding Subsection (h), as follows:

(h) Requires the Department of Aging and Disability Services (DADS) to ensure that local mental retardation authorities are informing and counseling individuals and their legally authorized representatives, if applicable, about all program and service options for which the individuals are eligible in accordance with Section 533.038(d) (relating to the explanation of services and programs for which a person with mental retardation is eligible), including options such as the availability and types of temporary ICF-MR placements for which and individual may be eligible while the individual is on a Texas Department of Mental Health and Mental Retardation (TXMHMR) interest list or other waiting list for other services.

SECTION 4. Amends Subchapter D, Chapter 161, Human Resources Code, by adding Sections 161.084 and 161.085, as follows:

Sec. 161.084. ALTERNATIVE OPTIONS IN MEDICAID PUBLIC AWARENESS AND EDUCATION CAMPAIGN. (a) Defines, in this section, "Section 1915(c) waiver program."

(b) Requires DADS in cooperation with HHSC to develop and implement a public awareness and education campaign designed to educate the public on the availability of home and community-based services under Section 1915(c) waiver programs, and the various delivery options available under the Medicaid program,

including the consumer direction models available to recipients under Section 531.051, Government Code.

(c) Authorizes DADS to coordinate the implementation of the campaign under this section with any other related campaign or activity.

Sec. 161.085. INTEREST LIST REPORTING. Requires DADS to post on DADS's Internet website historical data, categorized by state fiscal year, on the percentages of individuals who elect to receive services under a program for which DADS maintains an interest list once their names reach the top of the list.

SECTION 5. (a) Defines, in this section, "long-term care services," "medical assistance program," and "nursing facility."

(b) Requires HHSC in cooperation with DADS to conduct a study of individuals who receive long-term care services in nursing facilities under the medical assistance program. Requires that the study identify:

(1) the reasons medical assistance recipients of long-term care services are placed in nursing facilities as opposed to being provided long-term care services in home or community-based settings;

(2) the types of medical assistance services recipients in nursing facilities typically receive and where and from whom those services are typically provided;

(3) community-based services and supports available under a medical assistance waiver granted in accordance with Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n(c)), for which recipients residing in nursing facilities would be eligible; and

(4) ways to expedite recipients' access to community-based services and supports identified under Subdivision (3) of this subsection for which interest lists or other waiting lists exist.

(c) Requires HHSC, not later than September 1, 2012, to submit a written report containing the findings of the study conducted under Subsection (b) of this section together with HHSC's recommendations to the governor, the Legislative Budget Board, the Senate Finance Committee, the Senate Health and Human Services Committee, the House Appropriations Committee, and the House Human Services Committee.

SECTION 6. Requires HHSC to seek an amendment to the home and community-based services program waiver obtained in accordance with Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n(c)) to allow for the provision of residential care and services under the waiver program by six-bed group home providers. Requires that the amendment sought under this section allow for the conversion of three-bed and four-bed group home providers under the waiver program to six-bed group home providers.

SECTION 7. 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 a waiver or authorization is granted.

SECTION 8. Effective date: September 1, 2011.