

AN ACT

relating to access to certain long-term care services and supports under the medical assistance program.

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

SECTION 1. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.0515 to read as follows:

Sec. 531.0515. RISK MANAGEMENT CRITERIA FOR CERTAIN WAIVER PROGRAMS. (a) In this section, "legally authorized representative" has the meaning assigned by Section 531.051.

(b) The commission shall 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) The commission shall ensure that any risk management criteria developed under this section include:

(1) 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

(2) a requirement that if services or supports are declined, the decision to decline is clearly documented.

SECTION 2. Section 533.0355, Health and Safety Code, is amended by adding Subsection (h) to read as follows:

1       (h) The Department of Aging and Disability Services shall  
2 ensure that local mental retardation authorities are informing and  
3 counseling individuals and their legally authorized  
4 representatives, if applicable, about all program and service  
5 options for which the individuals are eligible in accordance with  
6 Section 533.038(d), including options such as the availability and  
7 types of ICF-MR placements for which an individual may be eligible  
8 while the individual is on a department interest list or other  
9 waiting list for other services.

10       SECTION 3. Subchapter D, Chapter 161, Human Resources Code,  
11 is amended by adding Sections 161.084 and 161.085 to read as  
12 follows:

13       Sec. 161.084. MEDICAID SERVICE OPTIONS PUBLIC EDUCATION  
14 INITIATIVE. (a) In this section, "Section 1915(c) waiver program"  
15 has the meaning assigned by Section 531.001, Government Code.

16       (b) The department, in cooperation with the commission,  
17 shall educate the public on:

18               (1) the availability of home and community-based  
19 services under a Medicaid state plan program, including the primary  
20 home care and community attendant services programs, and under a  
21 Section 1915(c) waiver program; and

22               (2) the various service delivery options available  
23 under the Medicaid program, including the consumer direction models  
24 available to recipients under Section 531.051, Government Code.

25       (c) The department may coordinate the activities under this  
26 section with any other related activity.

27       Sec. 161.085. INTEREST LIST REPORTING. The department

1 shall post on the department's Internet website historical data,  
2 categorized by state fiscal year, on the percentages of individuals  
3 who elect to receive services under a program for which the  
4 department maintains an interest list once their names reach the  
5 top of the list.

6 SECTION 4. (a) In this section:

7 (1) "Long-term care services" has the meaning assigned  
8 by Section 22.0011, Human Resources Code.

9 (2) "Medical assistance program" means the medical  
10 assistance program administered under Chapter 32, Human Resources  
11 Code.

12 (3) "Nursing facility" means a convalescent or nursing  
13 home or related institution licensed under Chapter 242, Health and  
14 Safety Code.

15 (b) The Health and Human Services Commission, in  
16 cooperation with the Department of Aging and Disability Services,  
17 shall prepare a written report regarding individuals who receive  
18 long-term care services in nursing facilities under the medical  
19 assistance program. The report should use existing data and  
20 information to identify:

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

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

1           (3) community-based services and supports available  
2 under a Medicaid state plan program, including the primary home  
3 care and community attendant services programs, or under a medical  
4 assistance waiver granted in accordance with Section 1915(c) of the  
5 federal Social Security Act (42 U.S.C. Section 1396n(c)) for which  
6 recipients residing in nursing facilities may be eligible; and

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

11           (c) Not later than September 1, 2012, the Health and Human  
12 Services Commission shall submit the report described by Subsection  
13 (b) of this section together with the commission's recommendations  
14 to the governor, the Legislative Budget Board, the Senate Committee  
15 on Finance, the Senate Committee on Health and Human Services, the  
16 House Appropriations Committee, and the House Human Services  
17 Committee. The recommendations must address options for expediting  
18 access to community-based services and supports by recipients  
19 described by Subdivision (3), Subsection (b) of this section.

20           SECTION 5. As soon as practicable after the effective date  
21 of this Act, the executive commissioner of the Health and Human  
22 Services Commission shall apply for and actively pursue amendments  
23 from the federal Centers for Medicare and Medicaid Services, or any  
24 other appropriate federal agency, to the community living  
25 assistance and support services waiver and the home and  
26 community-based services program waiver granted under Section  
27 1915(c) of the federal Social Security Act (42 U.S.C. Section

1 1396n(c)) to authorize the provision of personal attendant services  
2 through the programs operated under those waivers.

3 SECTION 6. If before implementing any provision of this Act  
4 a state agency determines that a waiver or authorization from a  
5 federal agency is necessary for implementation of that provision,  
6 the agency affected by the provision shall request the waiver or  
7 authorization and may delay implementing that provision until the  
8 waiver or authorization is granted.

9 SECTION 7. This Act takes effect September 1, 2011.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 222 passed the Senate on April 7, 2011, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 27, 2011, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 222 passed the House, with amendment, on May 20, 2011, by the following vote: Yeas 142, Nays 7, one present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor