

BILL ANALYSIS

C.S.H.B. 205
By: McClendon
Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that the number and location of inpatient beds the state can make available is not adequate to meet statewide patient needs without resorting to long distance transport of patients, local jail placements, and uncompensated hospital care stays. These inpatient beds can be used either as forensic beds for people who are receiving court-ordered mental health services or as civil inpatient beds for people who are in need of inpatient mental health services for safety reasons. National and statewide trends show an increased need for forensic beds to provide competency restoration treatment for persons who are arrested but found by a court to be incompetent to stand trial, and, with a finite number of inpatient beds in the state, those persons who are not under arrest or court-ordered placement have diminished access to civil inpatient beds.

As a result, the state is not able to keep up with the need for appropriate placements for the care, treatment, and restoration of many persons needing inpatient mental health services. Interested parties contend that this situation places a strain on local law enforcement manpower, jail space, and medical and monetary resources because law enforcement personnel are frequently tasked with finding appropriate care settings for persons who may not have committed a crime but exhibit behavioral issues indicating a need to be placed in a hospital or mental health facility. The parties contend that the population of persons needing inpatient beds and the length of inpatient stays could be lowered if mental health services, including inpatient and outpatient resources, were more readily available in alternative settings in more areas of the state. C.S.H.B. 205 seeks to address this issue by requiring the state to plan for and provide an appropriate number of inpatient beds for mental health patients.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 2 of this bill.

ANALYSIS

Section 531.0055, Government Code, as amended by Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, expressly grants to the executive commissioner of the Health and Human Services Commission all rulemaking authority for the operation of and provision of services by the health and human services agencies. Similarly, Sections 1.16-1.29, Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, provide for the transfer of a power, duty, function, program, or activity from a health and human services agency abolished by that act to the corresponding legacy agency. To the extent practical, this bill analysis is written to reflect any transfer of rulemaking authority and to update references as necessary to an agency's authority with respect to a particular health and human services program.

C.S.H.B. 205 amends the Health and Safety Code to require the Department of State Health Services (DSHS), in conjunction with the Health and Human Services Commission (HHSC), in

order to ensure the appropriate and timely provision of mental health services to patients who voluntarily receive those services or who are ordered by a court to receive those services in civil or criminal proceedings, to plan for the proper and separate allocation of outpatient or community-based mental health services provided by secure and nonsecure outpatient facilities that provide residential care alternatives and mental health services. The bill requires DSHS, in conjunction with HHSC and in order to ensure the appropriate and timely provisions of mental health services to such patients, to plan for the proper and separate allocation of beds in the state hospitals for the following two groups of patients:

- patients who are voluntarily receiving outpatient or community-based mental health services, voluntarily admitted to a state hospital, admitted to a state hospital for emergency detention, or ordered by a court to receive inpatient mental health services at a state hospital or outpatient mental health services from an outpatient facility that provides residential care alternatives and mental health services; and
- patients who are ordered to participate in an outpatient treatment program to attain competency to stand trial or committed to a state hospital or other facility to attain competency to stand trial or to receive inpatient mental health services following an acquittal by reason of insanity.

C.S.H.B 205 requires the plan to include the following:

- a determination of the needs for outpatient mental health services of the two groups of patients;
- a determination of the minimum number of beds that the state hospital system must maintain to adequately serve the two groups of patients;
- a statewide plan for and the allocation of sufficient funds for meeting the outpatient mental health service needs of and for the maintenance of beds by the state hospitals for the two groups; and
- a process to address and develop, without adverse impact to local service areas, the accessibility and availability of sufficient outpatient mental health services provided to and beds provided by the state hospitals to the two groups based on the success of contractual outcomes of mental health service providers and facilities who have entered into contracts to provide certain community-based mental health services and beds for certain persons receiving inpatient mental health services.

C.S.H.B 205 requires DSHS to establish and meet at least monthly with an advisory panel to assist in the development of the plan and sets out the composition of the advisory panel. The bill sets out specific factors required to be considered by DSHS and the advisory panel in developing the plan and requires DSHS to update the plan biennially. The bill requires DSHS, in conjunction with the advisory panel, to develop the initial version of the plan no later than December 31, 2013, and to identify standards and methodologies for the implementation of the plan and begin implementing the plan no later than August 31, 2014. The bill requires DSHS, no later than December 1, 2014, to submit a report to the legislature and governor that includes the initial version of the plan, the status of the plan's implementation, and the impact of the plan on the delivery of services. The bill prohibits DSHS, while the plan is being developed and implemented, from imposing a sanction, penalty, or fine under any rule, contract, or directive on a local mental health authority for the authority's noncompliance with any methodology or standard adopted or applied by DSHS relating to the allocation of beds by authorities for the two groups of patients.

C.S.H.B. 205 requires DSHS to make every effort, through collaboration and contractual arrangements with local mental health authorities, to contract with and use a broad base of local community outpatient mental health service providers and inpatient mental health facilities, as

appropriate, to make available a sufficient and appropriately located amount of outpatient mental health services and a sufficient and appropriately located number of beds in inpatient mental health facilities to ensure the appropriate and timely provision of mental health services to the two groups of patients.

C.S.H.B. 205 requires DSHS to develop and implement a procedure through which a court that has the authority to commit a person who is incompetent to stand trial or who has been acquitted by reason of insanity is aware of all of the commitment options for the person, including jail diversion and community-based programs.

C.S.H.B. 205 requires the executive commissioner of HHSC, not later than May 1, 2014, to adopt any rules necessary to implement the provision relating to the allocation of outpatient mental health services and beds in state hospitals and the rules required to implement the procedure for informing courts of commitment options.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 205 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Subchapter B, Chapter 533, Health and Safety Code, is amended by adding Sections 533.051, 533.052, and 533.053 to read as follows:

Sec. 533.051. ALLOCATION OF BEDS IN STATE HOSPITALS.

(a) The commission shall plan separately for the allocation of beds in the state hospitals for the following two groups of patients:

(1) patients who are voluntarily admitted to a state hospital under Chapter 572, admitted to a state hospital for emergency detention under Chapter 573, or ordered by a court to

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subchapter B, Chapter 533, Health and Safety Code, is amended by adding Sections 533.051, 533.052, and 533.053 to read as follows:

Sec. 533.051. ALLOCATION OF OUTPATIENT MENTAL HEALTH SERVICES AND BEDS IN STATE HOSPITALS.

(a) To ensure the appropriate and timely provision of mental health services to patients who voluntarily receive those services or who are ordered by a court to receive those services in civil or criminal proceedings, the department, in conjunction with the commission, shall plan for the proper and separate allocation of outpatient or community-based mental health services provided by secure and nonsecure outpatient facilities that provide residential care alternatives and mental health services and for the proper and separate allocation of beds in the state hospitals for the following two groups of patients:

(1) patients who are voluntarily receiving outpatient or community-based mental health services, voluntarily admitted to a state hospital under Chapter 572, admitted to a state

receive inpatient mental health services at a state hospital under Chapter 574; and

(2) patients who are committed to a state hospital for an examination of competency or to attain competency to stand trial under Chapter 46B, Code of Criminal Procedure, or to receive inpatient mental health services following an acquittal by reason of insanity under Chapter 46C, Code of Criminal Procedure.

(b) The plan developed by the commission under Subsection (a) must include:

(1) separate determinations of the minimum numbers of beds that the state hospital system is required to maintain for the two groups of patients described by Subsection (a);

(2) a statewide plan for the separate allocation of funds for the maintenance of beds by the state hospitals for the two groups of patients; and

(3) a process to adjust the number of beds made available to the two groups of patients based on the success the commission has in contracting with private mental health facilities under Sections 533.034 and 533.052.

hospital for emergency detention under Chapter 573, or ordered by a court under Chapter 574 to receive inpatient mental health services at a state hospital or outpatient mental health services from an outpatient facility that provides residential care alternatives and mental health services; and

(2) patients who are ordered to participate in an outpatient treatment program to attain competency to stand trial under Chapter 46B, Code of Criminal Procedure, or committed to a state hospital or other facility to attain competency to stand trial under Chapter 46B, Code of Criminal Procedure, or to receive inpatient mental health services following an acquittal by reason of insanity under Chapter 46C, Code of Criminal Procedure.

(b) The plan developed by the department under Subsection (a) must include:

(1) a determination of the needs for outpatient mental health services of the two groups of patients described by Subsection (a);

(2) a determination of the minimum number of beds that the state hospital system must maintain to adequately serve the two groups of patients;

(3) a statewide plan for and the allocation of sufficient funds for meeting the outpatient mental health service needs of and for the maintenance of beds by the state hospitals for the two groups of patients; and

(4) a process to address and develop, without adverse impact to local service areas, the accessibility and availability of sufficient outpatient mental health services provided to and beds provided by the state hospitals to the two groups of patients based on the success of contractual outcomes with mental health service providers and facilities under Sections 533.034 and 533.052.

(c) To assist in the development of the plan under Subsection (a), the department shall establish and meet at least monthly with an advisory panel composed of the following persons:

(1) one representative designated by the Texas Department of Criminal Justice;

(2) one representative designated by the Texas Association of Counties;

(3) two representatives designated by the Texas Council of Community Centers, including one representative of an urban local service area and one representative of a rural

(c) In developing a plan under Subsection (a), the commission shall consider:

(1) the frequency of use of beds and the historical patterns of use of beds in each state hospital by the two groups of patients described by Subsection (a);

(2) local needs and demands for beds in each state hospital for the two groups of patients;

(3) the availability of private mental health facilities with which the commission may contract to provide beds for the two groups of patients; and

local service area;

(4) two representatives designated by the County Judges and Commissioners Association of Texas, including one representative who is the presiding judge of a court with jurisdiction over mental health matters;

(5) one representative designated by the Sheriffs' Association of Texas;

(6) two representatives designated by the Texas Municipal League, including one representative who is a municipal law enforcement official;

(7) one representative designated by the Texas Conference of Urban Counties;

(8) one representative designated by the Texas Catalyst for Empowerment; and

(9) four representatives designated by the Department of State Health Services' Council for Advising and Planning for the Prevention and Treatment of Mental and Substance Use Disorders, including:

(A) the chair of the council;

(B) one representative of the council's members who is a consumer of or advocate for mental health services;

(C) one representative of the council's members who is a consumer of or advocate for substance abuse treatment; and

(D) one representative of the council's members who is a family member of or advocate for persons with mental health and substance abuse disorders.

(d) In developing the plan under Subsection (a), the department and advisory panel shall consider:

(1) needs for outpatient mental health services of the two groups of patients described by Subsection (a);

(2) the frequency of use of beds and the historical patterns of use of beds in the state hospitals and other facilities by the two groups of patients;

(3) local needs and demands for outpatient mental health services by the two groups of patients;

(4) local needs and demands for beds in the state hospitals and other facilities for the two groups of patients;

(5) the availability of outpatient mental health service providers and inpatient mental health facilities that may be contracted with to provide outpatient mental health services and beds for the two groups of patients;

(4) the differences between the two groups of patients described by Subsection (a) with regard to:

(A) admission to and discharge from a state hospital;

(B) rapid stabilization and discharge to the community;

(C) length of stay in a state hospital;

(D) disputes arising from the determination of a patient's length of stay in a state hospital by a health maintenance organization or a managed care organization;

(E) third-party billing; and

(F) legal challenges or requirements related to the examination and treatment of the group of patients described by Subsection (a)(2).

(d) The commission shall update the plan biennially.

Sec. 533.052. CONTRACTING WITH PRIVATE MENTAL HEALTH FACILITIES TO PROVIDE BEDS FOR

(6) the differences between the two groups of patients with regard to:

(A) admission to and discharge from a state hospital or outpatient facility;

(B) rapid stabilization and discharge to the community;

(C) length of stay in a state hospital or outpatient facility;

(D) disputes arising from the determination of a patient's length of stay in a state hospital by a health maintenance organization or a managed care organization;

(E) third-party billing; and

(F) legal challenges or requirements related to the examination and treatment of the patients; and

(7) public input provided to the department or advisory panel in a form and at a time and place that is effective and appropriate and in a manner that complies with any applicable laws, including administrative rules.

(e) The department shall update the plan biennially.

(f) Not later than December 31, 2013, the department, in conjunction with the advisory panel, shall develop the initial version of the plan required by Subsection (a).

(g) Not later than August 31, 2014, the department shall:

(1) identify standards and methodologies for the implementation of the plan required by Subsection (a); and

(2) begin implementing the plan.

(h) Not later than December 1, 2014, the department shall submit a report to the legislature and governor that includes the initial version of the plan, the status of the plan's implementation, and the impact of the plan on the delivery of services.

(i) While the plan required by Subsection (a) is being developed and implemented, the department may not, pursuant to any rule, contract, or directive, impose a sanction, penalty, or fine on a local mental health authority for the authority's noncompliance with any methodology or standard adopted or applied by the department relating to the allocation of beds by authorities for the two groups of patients described by Subsection (a).

Sec. 533.052. CONTRACTING WITH CERTAIN MENTAL HEALTH SERVICE PROVIDERS AND FACILITIES TO

CERTAIN PERSONS.

The **commission** shall make every effort to contract with private mental health facilities to make available a sufficient number of beds, as specified in the plan developed by the **commission** under Section 533.051, for the group of patients described by Section 533.051(a)(2) to ensure that a sufficient number of beds in state hospitals are available for the group of patients described by Section 533.051(a)(1).

Sec. 533.053. INFORMING COURTS OF COMMITMENT OPTIONS.

The **commission** shall develop and implement a procedure through which a court that has the authority to commit a person who is incompetent to stand trial or who has been acquitted by reason of insanity is aware of all of the mental health facilities in which beds are available and to which the court may commit the person as provided by Chapters 46B and 46C, Code of Criminal Procedure, including private mental health facilities that contract with the commission under Section 533.052.

SECTION 2. Not later than **December 1, 2013**, the executive commissioner of the Health and Human Services Commission shall adopt any rules necessary to implement Section 533.051, Health and Safety Code, as added by this Act, and the rules required by Section 533.053, Health and Safety Code, as added by this Act.

SECTION 3. This Act takes effect September 1, 2013.

PROVIDE SERVICES AND BEDS FOR CERTAIN PERSONS.

The **department** shall make every effort, through collaboration and contractual arrangements with local mental health authorities, to contract with and use a broad base of local community outpatient mental health service providers and inpatient mental health facilities, as appropriate, to make available a sufficient and appropriately located amount of outpatient mental health services and a sufficient and appropriately located number of beds in inpatient mental health facilities, as specified in the plan developed by the **department** under Section 533.051, to ensure the appropriate and timely provision of mental health services to the two groups of patients described by Section 533.051(a).

Sec. 533.053. INFORMING COURTS OF COMMITMENT OPTIONS.

The **department** shall develop and implement a procedure through which a court that has the authority to commit a person who is incompetent to stand trial or who has been acquitted by reason of insanity under Chapters 46B and 46C, Code of Criminal Procedure, is aware of all of the commitment options for the person, including jail diversion and community-based programs.

SECTION 2. Not later than **May 1, 2014**, the executive commissioner of the Health and Human Services Commission shall adopt any rules necessary to implement Section 533.051, Health and Safety Code, as added by this Act, and the rules required by Section 533.053, Health and Safety Code, as added by this Act.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.