

BILL ANALYSIS

C.S.H.B. 807
By: Zerwas
Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under current law, certain persons employed by a government agency are exempt from licensing requirements for psychologists. This means that an agency may call a mental health service provider a "psychologist" even if the person does not have the appropriate doctoral degree or any of the required training and expertise associated with a license to practice psychology. Interested parties assert that there may even be cases where an agency's chief psychologist is not a doctoral-level provider and therefore does not meet the requirements for licensure in Texas. These discrepancies can be confusing to consumers and to the general public. In addition, interested parties have identified several necessary updates to provisions relating to the application for and performance of determinations of mental retardation. C.S.H.B. 807 seeks to rectify these issues.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

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. 807 amends the Health and Safety Code to remove a provision authorizing a person believed to be a person with mental retardation, the parent if the person is a minor, or the guardian of the person to make written application to the Department of Aging and Disability Services (DADS), a community center, a physician, or a psychologist licensed to practice in Texas or certified by DADS for a determination of mental retardation and instead authorizes such a person to make a written application for a determination to an authorized provider, defined by the bill as a physician licensed to practice in Texas, a psychologist licensed to practice in Texas, a professional licensed to practice in Texas and certified by DADS, or a provider certified by DADS before September 1, 2013. The bill requires an authorized provider, rather than a physician or psychologist licensed to practice in Texas or certified by DADS, to perform the determination of mental retardation. The bill authorizes DADS to charge a reasonable fee for certifying such a provider, rather than for certifying a licensed psychologist.

C.S.H.B. 807 amends the Occupations Code to specify that the Psychologists' Licensing Act does not apply to the activity or service of a person who is employed by a governmental agency if the person performs duties the person is employed by the agency to perform within the confines of the agency and if the person does not represent that the person is a psychologist. The

bill exempts such a psychologist from provisions relating to fees increases.

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. 807 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

HOUSE COMMITTEE SUBSTITUTE

No equivalent provision.

SECTION 1. Sections 593.004 and 593.005, Health and Safety Code, are amended to read as follows:

Sec. 593.004. APPLICATION FOR DETERMINATION OF MENTAL RETARDATION. (a) In this section, "authorized provider" means:

(1) a physician licensed to practice in this state;

(2) a psychologist licensed to practice in this state;

(3) a professional licensed to practice in this state and certified by the department; or

(4) a provider certified by the department before September 1, 2013.

(b) A person believed to be a person with mental retardation, the parent if the person is a minor, or the guardian of the person may make written application to an authorized provider [the department, a community center, a physician, or a psychologist licensed to practice in this state or certified by the department] for a determination of mental retardation using forms provided by the department.

Sec. 593.005. DETERMINATION OF MENTAL RETARDATION. (a) In this section, "authorized provider" has the meaning assigned by Section 593.004.

(a-1) An authorized provider [A physician or psychologist licensed to practice in this state or certified by the department] shall perform the determination of mental retardation. The department may charge a reasonable fee for certifying an authorized provider [a psychologist].

(b) The authorized provider [physician or psychologist] shall base the determination on an interview with the person and on a professional assessment that, at a minimum, includes:

(1) a measure of the person's intellectual

functioning;

(2) a determination of the person's adaptive behavior level; and

(3) evidence of origination during the person's developmental period.

(c) The authorized provider [~~physician or psychologist~~] may use a previous assessment, social history, or relevant record from a school district, a public or private agency, or a ~~another~~ physician or psychologist if the authorized provider [~~physician or psychologist~~] determines that the assessment, social history, or record is valid.

(d) If the person is indigent, the determination of mental retardation shall be performed at the department's expense by an authorized provider [~~a physician or psychologist licensed in this state or certified by the department~~].

SECTION 1. Section 501.004(a), Occupations Code, is amended to read as follows:

(a) This chapter does not apply to:

(1) the activity or service of a person, or the use of an official title by the person, who is employed as a psychologist or psychological associate by a [~~governmental agency or~~] regionally accredited institution of higher education if the person performs duties the person is employed by the [~~agency or~~] institution to perform within the confines of the [~~agency or~~] institution;

(2) the activity or service of a student, intern, or resident in psychology if:

(A) the person is pursuing a course of study to prepare for the profession of psychology under qualified supervision in a recognized training institution or facility;

(B) the activity or service is part of the person's supervised course of study; and

(C) the person is designated as a "psychological intern," as a "psychological trainee," or by another title that clearly indicates the person's training status;

(3) the activity or service of a licensed professional, other than a person licensed under this chapter, if:

(A) the activity or service is permitted under the person's license; and

(B) the person does not represent that the person is a psychologist or describe the service provided by using the term "psychological";

SECTION 2. Same as introduced version.

(4) the activity or service of a recognized member of the clergy who is acting within the person's ministerial capabilities if the person does not:

(A) represent that the person is a psychologist; or

(B) describe the service provided by using the term "psychological"; ~~or~~

(5) the voluntary activity or service of a person employed by or working on behalf of a charitable nonprofit organization if the person does not:

(A) represent that the person is a psychologist; or

(B) describe the service provided by using the term "psychological"; or

(6) the activity or service of a person who is employed by a governmental agency if the person:

(A) performs duties the person is employed by the agency to perform within the confines of the agency; and

(B) does not represent that the person is a psychologist.^[2]

No equivalent provision.

SECTION 2. 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.

SECTION 3. Section 501.153(c), Occupations Code, is amended to read as follows:

(c) A psychologist is exempt from this section if the psychological services provided and the psychologist's use of an official title are within the scope of the psychologist's employment as described by Section 501.004(a)(1) or (6).

SECTION 4. Same as introduced version.