

By: Zerwas, Sheffield of Coryell, Howard,
Coleman

H.B. No. 3791

Substitute the following for H.B. No. 3791:

By: Zerwas

C.S.H.B. No. 3791

A BILL TO BE ENTITLED

AN ACT

1
2 relating to a "Texas solution" to reforming and addressing issues
3 related to the Medicaid program, including the creation of an
4 alternative program designed to ensure health benefit plan coverage
5 to certain low-income individuals through the private marketplace;
6 authorizing a fee.

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

8 ARTICLE 1. BLOCK GRANT FUNDING SYSTEM FOR STATE MEDICAID PROGRAM

9 SECTION 1.01. Subtitle I, Title 4, Government Code, is
10 amended by adding Chapter 539 to read as follows:

11 CHAPTER 539. BLOCK GRANT FUNDING SYSTEM FOR STATE MEDICAID PROGRAM

12 SUBCHAPTER A. GENERAL PROVISIONS

13 Sec. 539.001. DEFINITIONS. In this chapter:

14 (1) "Health benefit exchange" means an American Health
15 Benefit Exchange administered by the federal government or an
16 exchange created under Section 1311(b) of the Patient Protection
17 and Affordable Care Act (42 U.S.C. Section 18031(b)).

18 (2) "Medicaid program" means the medical assistance
19 program established and operated under Title XIX, Social Security
20 Act (42 U.S.C. Section 1396 et seq.).

21 (3) "State Medicaid program" means the medical
22 assistance program provided by this state under the Medicaid
23 program.

24 Sec. 539.002. FEDERAL AUTHORIZATION TO REFORM MEDICAID

1 REQUIRED. If the federal government establishes, through
2 conversion or otherwise, a block grant funding system for the
3 Medicaid program or otherwise authorizes the state Medicaid program
4 to operate under a block grant funding system, including under a
5 Medicaid program waiver, the commission, in cooperation with
6 applicable health and human services agencies, shall, subject to
7 Section 539.003, administer and operate the state Medicaid program
8 in accordance with this chapter.

9 Sec. 539.003. CONFLICT WITH OTHER LAW. To the extent of a
10 conflict between a provision of this chapter and:

11 (1) another provision of state law, the provision of
12 this chapter controls, subject to Section 540.002(b); and

13 (2) a provision of federal law or any authorization
14 described under Section 539.002, the federal law or authorization
15 controls.

16 Sec. 539.004. ESTABLISHMENT OF REFORMED STATE MEDICAID
17 PROGRAM. The commission shall establish a state Medicaid program
18 that provides benefits under a risk-based Medicaid managed care
19 model.

20 Sec. 539.005. RULES. The executive commissioner shall
21 adopt rules necessary to implement this chapter.

22 SUBCHAPTER B. ACUTE CARE

23 Sec. 539.051. ELIGIBILITY FOR MEDICAID ACUTE CARE. (a) An
24 individual is eligible to receive acute care benefits under the
25 state Medicaid program if the individual:

26 (1) has a household income at or below 100 percent of
27 the federal poverty level;

1 (2) is under 19 years of age and:

2 (A) is receiving Supplemental Security Income
3 (SSI) under 42 U.S.C. Section 1381 et seq.; or

4 (B) is in foster care or resides in another
5 residential care setting under the conservatorship of the
6 Department of Family and Protective Services; or

7 (3) meets the eligibility requirements that were in
8 effect on September 1, 2013.

9 (b) The commission shall provide acute care benefits under
10 the state Medicaid program to each individual eligible under this
11 section through the most cost-effective means, as determined by the
12 commission.

13 (c) If an individual is not eligible for the state Medicaid
14 program under Subsection (a), the commission shall refer the
15 individual to the program established under Chapter 540 that helps
16 connect eligible residents with health benefit plan coverage
17 through private market solutions, a health benefit exchange, or any
18 other resource the commission determines appropriate.

19 Sec. 539.052. MEDICAID SLIDING SCALE SUBSIDIES. (a) An
20 individual who is eligible for the state Medicaid program under
21 Section 539.051 may receive a Medicaid sliding scale subsidy to
22 purchase a health benefit plan from an authorized health benefit
23 plan issuer.

24 (b) A sliding scale subsidy provided to an individual under
25 this section must:

26 (1) be based on:

27 (A) the average premium in the market; and

1 (B) a realistic assessment of the individual's
2 ability to pay a portion of the premium; and

3 (2) include an enhancement for individuals who choose
4 a high deductible health plan with a health savings account.

5 (c) The commission shall ensure that counselors are made
6 available to individuals receiving a subsidy to advise the
7 individuals on selecting a health benefit plan that meets the
8 individuals' needs.

9 (d) An individual receiving a subsidy under this section is
10 responsible for paying:

11 (1) any difference between the premium costs
12 associated with the purchase of a health benefit plan and the amount
13 of the individual's subsidy under this section; and

14 (2) any copayments associated with the health benefit
15 plan.

16 (e) If the amount of a subsidy received by an individual
17 under this section exceeds the premium costs associated with the
18 individual's purchase of a health benefit plan, the individual may
19 deposit the excess amount in a health savings account that may be
20 used only in the manner described by Section 539.054(b).

21 Sec. 539.053. ADDITIONAL COST-SHARING SUBSIDIES. In
22 addition to providing a subsidy to an individual under Section
23 539.052, the commission shall provide additional subsidies for
24 coinsurance payments, copayments, deductibles, and other
25 cost-sharing requirements associated with the individual's health
26 benefit plan. The commission shall provide the additional
27 subsidies on a sliding scale based on income.

1 Sec. 539.054. DELIVERY OF SUBSIDIES; HEALTH SAVINGS
2 ACCOUNTS. (a) The commission shall determine the most appropriate
3 manner for delivering and administering subsidies provided under
4 Sections 539.052 and 539.053. In determining the most appropriate
5 manner, the commission shall consider depositing subsidy amounts
6 for an individual in a health savings account established for that
7 individual.

8 (b) A health savings account established under this section
9 may be used only to:

10 (1) pay health benefit plan premiums and cost-sharing
11 amounts; and

12 (2) if appropriate, purchase health care-related
13 goods and services.

14 Sec. 539.055. MEDICAID HEALTH BENEFIT PLAN ISSUERS AND
15 MINIMUM COVERAGE. The commission shall allow any health benefit
16 plan issuer authorized to write health benefit plans in this state
17 to participate in the state Medicaid program. The commission in
18 consultation with the commissioner of insurance shall establish
19 minimum coverage requirements for a health benefit plan to be
20 eligible for purchase under the state Medicaid program, subject to
21 the requirements specified by this chapter.

22 Sec. 539.056. REINSURANCE FOR PARTICIPATING HEALTH BENEFIT
23 PLAN ISSUERS. (a) The commission in consultation with the
24 commissioner of insurance shall study a reinsurance program to
25 reinsure participating health benefit plan issuers.

26 (b) In examining options for a reinsurance program, the
27 commission and commissioner of insurance shall consider a plan

1 design under which:

2 (1) a participating health benefit plan is not charged
3 a premium for the reinsurance; and

4 (2) the health benefit plan issuer retains risk on a
5 sliding scale.

6 SUBCHAPTER C. LONG-TERM SERVICES AND SUPPORTS

7 Sec. 539.101. PLAN TO REFORM DELIVERY OF LONG-TERM SERVICES
8 AND SUPPORTS. The commission shall develop a comprehensive plan to
9 reform the delivery of long-term services and supports that is
10 designed to achieve the following objectives under the state
11 Medicaid program or any other program created as an alternative to
12 the state Medicaid program:

13 (1) encourage consumer direction;

14 (2) simplify and streamline the provision of services;

15 (3) provide flexibility to design benefits packages
16 that meet the needs of individuals receiving long-term services and
17 supports under the program;

18 (4) improve the cost-effectiveness and sustainability
19 of the provision of long-term services and supports;

20 (5) reduce reliance on institutional settings; and

21 (6) encourage cost sharing by family members when
22 appropriate.

23 ARTICLE 2. IMMEDIATE REFORM: PROGRAM TO ENSURE HEALTH BENEFIT

24 COVERAGE FOR CERTAIN INDIVIDUALS THROUGH PRIVATE MARKETPLACE

25 SECTION 2.01. Subtitle I, Title 4, Government Code, is
26 amended by adding Chapter 540 to read as follows:

1 CHAPTER 540. PROGRAM TO ENSURE HEALTH BENEFIT PLAN COVERAGE FOR
2 CERTAIN INDIVIDUALS THROUGH PRIVATE MARKET SOLUTIONS

3 SUBCHAPTER A. GENERAL PROVISIONS

4 Sec. 540.001. DEFINITION. In this chapter, "medical
5 assistance program" means the program established under Chapter 32,
6 Human Resources Code.

7 Sec. 540.002. CONFLICT WITH OTHER LAW. (a) Except as
8 provided by Subsection (b), to the extent of a conflict between a
9 provision of this chapter and:

10 (1) another provision of state law, the provision of
11 this chapter controls; and

12 (2) a provision of federal law or any authorization
13 described under Subchapter B, the federal law or authorization
14 controls.

15 (b) The program operated under this chapter is in addition
16 to any medical assistance program operated under a block grant
17 funding system under Chapter 539.

18 Sec. 540.003. PROGRAM FOR HEALTH BENEFIT PLAN COVERAGE
19 THROUGH PRIVATE MARKET SOLUTIONS. Subject to the requirements of
20 this chapter, the commission in consultation with the Texas
21 Department of Insurance shall develop and implement a program that
22 helps connect certain low-income residents of this state with
23 health benefit plan coverage through private market solutions.

24 Sec. 540.004. NOT AN ENTITLEMENT. This chapter does not
25 establish an entitlement to assistance in obtaining health benefit
26 plan coverage.

27 Sec. 540.005. RULES. The executive commissioner shall

1 adopt rules necessary to implement this chapter.

2 SUBCHAPTER B. FEDERAL AUTHORIZATION

3 Sec. 540.051. FEDERAL AUTHORIZATION FOR FLEXIBILITY TO
4 ESTABLISH PROGRAM. (a) The commission in consultation with the
5 Texas Department of Insurance shall negotiate with the United
6 States secretary of health and human services, the federal Centers
7 for Medicare and Medicaid Services, and other appropriate persons
8 for purposes of seeking a waiver or other authorization necessary
9 to obtain the flexibility to use federal matching funds to help
10 provide, in accordance with Subchapter C, health benefit plan
11 coverage to certain low-income individuals through private market
12 solutions.

13 (b) Any agreement reached under this section must:

14 (1) create a program that is made cost neutral to this
15 state by:

16 (A) leveraging premium tax revenues; and

17 (B) achieving cost savings through offsets to
18 general revenue health care costs or the implementation of other
19 cost savings mechanisms;

20 (2) create more efficient health benefit plan coverage
21 options for eligible individuals through:

22 (A) program changes that may be made without the
23 need for additional federal approval; and

24 (B) program changes that require additional
25 federal approval;

26 (3) require the commission to achieve efficiency and
27 reduce unnecessary utilization, including duplication, of health

1 care services;

2 (4) be designed with the goals of:

3 (A) relieving local tax burdens;

4 (B) reducing general revenue reliance so as to
5 make general revenue available for other state priorities; and

6 (C) minimizing the impact of any federal health
7 care laws on Texas-based businesses; and

8 (5) afford this state the opportunity to develop a
9 state-specific solution with benefits that specifically meet the
10 unique needs of this state's population.

11 (c) An agreement reached under this section may be:

12 (1) limited in duration; and

13 (2) contingent on continued funding by the federal
14 government.

15 SUBCHAPTER C. PROGRAM REQUIREMENTS

16 Sec. 540.101. ENROLLMENT ELIGIBILITY. (a) Subject to
17 Subsection (b), an individual may be eligible to enroll in a program
18 designed and established under this chapter if the person:

19 (1) is younger than 65;

20 (2) has a household income at or below 133 percent of
21 the federal poverty level; and

22 (3) is not otherwise eligible to receive benefits
23 under the medical assistance program, including through a program
24 operated under Chapter 539 through a block grant funding system or a
25 waiver, other than one granted under this chapter, to the program.

26 (b) The executive commissioner may amend or further define
27 the eligibility requirements of this section if the commission

1 determines it necessary to reach an agreement under Subchapter B.

2 Sec. 540.102. MINIMUM PROGRAM REQUIREMENTS. A program
3 designed and established under this chapter must:

4 (1) if cost-effective for this state, provide premium
5 assistance to purchase health benefit plan coverage in the private
6 market, including health benefit plan coverage offered through a
7 managed care delivery model;

8 (2) provide enrollees with access to health benefits,
9 including benefits provided through a managed care delivery model,
10 that:

11 (A) are tailored to the enrollees;

12 (B) provide levels of coverage that are
13 customized to meet health care needs of individuals within defined
14 categories of the enrolled population; and

15 (C) emphasize personal responsibility and
16 accountability through flexible and meaningful cost sharing
17 requirements and wellness initiatives, including through
18 incentives for compliance with health, wellness, and treatment
19 strategies and disincentives for noncompliance;

20 (3) include pay-for-performance initiatives for
21 private health benefit plan issuers that participate in the
22 program;

23 (4) use technology to maximize the efficiency with
24 which the commission and any health benefit plan issuer, health
25 care provider, or managed care organization participating in the
26 program manages enrollee participation;

27 (5) allow recipients under the medical assistance

1 program to enroll in the program to receive premium assistance as an
2 alternative to the medical assistance program;

3 (6) encourage eligible individuals to enroll in other
4 private or employer-sponsored health benefit plan coverage, if
5 available and appropriate;

6 (7) encourage the utilization of health care services
7 in the most appropriate low-cost settings; and

8 (8) establish health savings accounts for enrollees,
9 as appropriate.

10 SECTION 2.02. The Health and Human Services Commission in
11 consultation with the Texas Department of Insurance and the
12 Medicaid Reform Task Force shall actively develop a proposal for
13 the authorization from the appropriate federal entity as required
14 by Subchapter B, Chapter 540, Government Code, as added by this
15 article. As soon as possible after the effective date of this Act,
16 the Health and Human Services Commission shall request and actively
17 pursue obtaining the authorization from the appropriate federal
18 entity.

19 ARTICLE 3. MEDICAID: INCREMENTAL REFORM

20 SECTION 3.01. Subchapter B, Chapter 531, Government Code,
21 is amended by adding Section 531.0974 to read as follows:

22 Sec. 531.0974. CUSTOMIZED BENEFITS PACKAGE. The commission
23 shall, for individuals receiving home and community-based services
24 and supports instead of institutional long-term services and
25 supports, develop and implement customized benefits packages that
26 are designed to prevent the overutilization of services.
27 Customized benefits packages under this section must be based on an

1 individualized needs assessment administered at a single point of
2 entry.

3 SECTION 3.02. Subchapter B, Chapter 32, Human Resources
4 Code, is amended by adding Sections 32.0501, 32.0642, and 32.077 to
5 read as follows:

6 Sec. 32.0501. DUAL ELIGIBLE INTEGRATED CARE DEMONSTRATION
7 PROJECT. (a) In this section:

8 (1) "ICF-IDD" has the meaning assigned to "ICF-MR" by
9 Section 531.002, Health and Safety Code.

10 (2) "Nursing facility" has the meaning assigned by
11 Section 531.912, Government Code.

12 (3) "State supported living center" has the meaning
13 assigned by Section 531.002, Health and Safety Code.

14 (b) Subject to Subsection (c), the department shall
15 establish a dual eligible integrated care demonstration project
16 that would allow appropriate individuals described by Section
17 32.050(a), as determined by the department, to receive long-term
18 services and supports under both the medical assistance program and
19 the Medicare program through a single managed care plan.

20 (c) An individual who is a resident of a nursing facility,
21 ICF-IDD, or state supported living center is exempt from
22 participation in the demonstration project.

23 Sec. 32.0642. PARENTAL FEE PROGRAM. (a) To the extent
24 allowed by federal law, the department shall establish a parental
25 fee program that requires the parent or legal guardian of a child
26 receiving institutional long-term services and supports or home and
27 community-based services and supports under the medical assistance

1 program established under this chapter to pay a fee that:

2 (1) correlates with the services and supports
3 provided; and

4 (2) takes into consideration the child's household
5 income.

6 (b) Failure to pay a fee under this section may not affect a
7 child's eligibility for benefits under the medical assistance
8 program.

9 (c) The executive commissioner of the Health and Human
10 Services Commission shall adopt rules necessary to implement this
11 section.

12 Sec. 32.077. HOUSING BENEFITS FOR CERTAIN RECIPIENTS. To
13 the extent allowed by federal law, the department shall provide
14 housing payment assistance for recipients receiving home and
15 community-based services and supports under the medical assistance
16 program established under this chapter.

17 SECTION 3.03. (a) The Health and Human Services Commission
18 shall conduct a study to examine the estate recovery program
19 implemented by this state under 42 U.S.C. Section 1396p(b)(1) and
20 determine options the state has to improve recovery under and
21 increase the efficacy of the program.

22 (b) Not later than December 1, 2014, the commission shall
23 submit a written report containing the findings of the study
24 conducted under this section together with the commission's
25 recommendations to the governor, the lieutenant governor, and the
26 standing committees of the senate and house of representatives
27 having primary jurisdiction over the Medicaid program.

1 SECTION 3.04. (a) The Health and Human Services Commission
2 shall conduct a study on imposing alternative income and asset
3 limits for purposes of determining eligibility for long-term
4 services and supports under the medical assistance program under
5 Chapter 32, Human Resources Code. The commission shall consider:

6 (1) imposing greater restrictions on exempt assets;

7 (2) limiting the amount of income that an individual
8 may transfer into a qualified trust under 42 U.S.C. Section
9 1396p(d)(4)(B) to an amount equal to the average cost of nursing
10 home care; and

11 (3) reducing the income eligibility limit to qualify
12 for Medicaid institutional long-term services and supports or home
13 and community-based waiver services under the medical assistance
14 program under Chapter 32, Human Resources Code.

15 (b) Not later than December 1, 2014, the commission shall
16 submit a written report containing the findings of the study
17 conducted under this section together with the commission's
18 recommendations to the governor, the lieutenant governor, and the
19 standing committees of the senate and house of representatives
20 having primary jurisdiction over the Medicaid program.

21 ARTICLE 4. MEDICAID REFORM TASK FORCE

22 SECTION 4.01. (a) In this section:

23 (1) "Commission" means the Health and Human Services
24 Commission.

25 (2) "Medicaid program" and "state Medicaid program"
26 have the meanings assigned by Section 539.001, Government Code, as
27 added by this Act.

1 (3) "Task force" means the Medicaid Reform Task Force
2 established under this section.

3 (b) The Medicaid Reform Task Force is established for
4 purposes of advising the commission in designing a state Medicaid
5 plan and program and a program for ensuring health benefit plan
6 coverage for low-income individuals that are:

7 (1) consistent with Articles 2 and 3 of this Act; and

8 (2) if the federal government establishes a block
9 grant funding system in accordance with Section 539.002, Government
10 Code, as added by this Act, consistent with Article 1 of this Act.

11 (c) The task force consists of 12 members appointed as
12 follows:

13 (1) one member appointed by the governor;

14 (2) two members of the senate appointed by the
15 lieutenant governor;

16 (3) two members of the house of representatives
17 appointed by the speaker of the house of representatives;

18 (4) one member from the Senate Committee on Finance,
19 appointed by the presiding officer;

20 (5) one member from the House Appropriations
21 Committee, appointed by the presiding officer;

22 (6) one member of the Senate Committee on Health and
23 Human Services, appointed by the presiding officer;

24 (7) one member of the House Public Health Committee,
25 appointed by the presiding officer;

26 (8) the executive commissioner of the commission or
27 the executive commissioner's designee;

1 (9) the commissioner of insurance or the
2 commissioner's designee to represent the Texas Department of
3 Insurance; and

4 (10) the director of the Legislative Budget Board or
5 the director's designee.

6 (d) The lieutenant governor and the speaker of the house of
7 representatives shall each appoint a member of the task force to act
8 as co-presiding officers.

9 (e) A member of the task force serves without compensation.

10 (f) Not later than January 1, 2014, the appropriate
11 appointing officers shall appoint the members of the task force.

12 (g) Not later than December 1, 2014, the task force shall
13 submit a report to the legislature regarding its activities under
14 this section.

15 (h) This section expires September 1, 2015.

16 ARTICLE 5. FEDERAL AUTHORIZATION AND EFFECTIVE DATE

17 SECTION 5.01. Subject to Section 2.02 of this Act, if before
18 implementing any provision of this Act a state agency determines
19 that a waiver or authorization from a federal agency is necessary
20 for implementation of that provision, the agency affected by the
21 provision shall request the waiver or authorization and may delay
22 implementing that provision until the waiver or authorization is
23 granted.

24 SECTION 5.02. This Act takes effect September 1, 2013.