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By:  Davis of Harris H.B. No. 1295

A BILL TO BE ENTITLED

AN ACT

relating to early childhood intervention and rehabilitative and habilitative services.

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

SECTION 1.  Subchapter A, Chapter 533, Government Code, is amended by adding Section 533.00521 to read as follows:

Sec. 533.00521.  STAR HEALTH PROGRAM: EARLY CHILDHOOD INTERVENTION SERVICES. (a) A managed care organization that contracts with the commission to provide health care services to recipients under the STAR Health program may not require prior authorization for the provision of early childhood intervention program services under Chapter 73, Human Resources Code, to a child eligible for the program, including services specified in the child's individualized family service plan issued by the commission under the program.

(b)  A contract between a managed care organization and the commission for the organization to provide health care services to recipients under the STAR Health program must contain a requirement that the organization:

(1)  proactively review and monitor recipient access and utilization of early childhood intervention services under Chapter 73, Human Resources Code; and

(2)  demonstrate to the commission that the organization is in compliance with Subsection (a), including a requirement that the organization submit quarterly reports to the commission that verify that the organization did not include a prior authorization request for early childhood intervention services under Chapter 73, Human Resources Code, as part of a medical necessity determination.

SECTION 2.  Section 73.001, Human Resources Code, is amended by adding Subdivision (5) to read as follows:

(5)  "Medicaid" means the medical assistance program established under Chapter 32, Human Resources Code.

SECTION 3.  Section 73.0051(l), Human Resources Code, is redesignated as Section 73.0052, Human Resources Code, and amended to read as follows:

Sec. 73.0052.  SYSTEM OF PAYMENTS. (a) Subject to the requirements of this section, the [~~(l)  The~~] executive commissioner by rule may establish a system of payments by families of children receiving services under this chapter, including a schedule of sliding fees, in a manner consistent with 34 C.F.R. Sections 303.13(a)(3), 303.520, and 303.521.

(b)  In adopting a system of payments under this section and to the extent permitted by federal law, the executive commissioner shall require that if a child has private health benefits coverage, the health benefits plan provider that provides the coverage is the primary payor of services provided under this chapter, except as provided by Subsection (c).

(c)  If the child covered by private health benefits coverage described by Subsection (b) would be required to pay any amount out-of-pocket for a service provided under this chapter, including any deductible, copayment, coinsurance, or other cost-sharing payment, the executive commissioner shall ensure the claim for services is paid using money from the following sources in the following order:

(1)  federal funds received under Part C, Individuals with Disabilities Education Act (IDEA) (20 U.S.C. Section 1431 et seq.);

(2)  Medicaid, if applicable; and

(3)  to the extent money is appropriated for that purpose, general revenue.

SECTION 4.  Chapter 73, Human Resources Code, is amended by adding Sections 73.00521 and 73.00522 to read as follows:

Sec. 73.00521.  DELIVERY OF SERVICES. (a) Notwithstanding any other law and except as provided by Subsection (b), the commission shall provide services under this chapter to each eligible child through the STAR Kids managed care program established under Section 533.00253, Government Code, regardless of the child's Medicaid eligibility.

(b)  Notwithstanding any other law, the commission shall provide through the STAR Health program services under this chapter to each eligible child who is in the conservatorship of the Department of Family and Protective Services.

Sec. 73.00522.  OMBUDSMAN FOR CERTAIN STAR KIDS MANAGED CARE PROGRAM ENROLLEES. (a) In this section, "ombudsman" means the individual designated as the ombudsman for children receiving early childhood intervention services through the STAR Kids managed care program under Section 73.00521(a).

(b)  The executive commissioner shall designate an ombudsman for children receiving early childhood intervention services through the STAR Kids managed care program under Section 73.00521(a).

(c)  The ombudsman's office is administratively attached to the office of the ombudsman of the commission.

(d)  The commission may use an alternate title for the ombudsman in consumer-directed materials if the commission determines that the alternate title would benefit consumers' understanding of or access to ombudsman services.

(e)  The ombudsman serves as a neutral party to assist children who are eligible to receive or receiving early childhood intervention services through the STAR Kids managed care program under Section 73.00521(a) and their parents and guardians in resolving issues related to applying for and receiving those services.

(f)  The ombudsman shall for children and the parents and guardians of children eligible to receive or receiving early childhood intervention services through the STAR Kids managed care program under Section 73.00521(a):

(1)  provide dispute and complaint resolution services;

(2)  perform consumer protection and advocacy functions; and

(3)  collect inquiry and complaint data.

(g)  The executive commissioner by rule shall adopt and ensure the use of procedures for the reporting, monitoring, and resolution of disputes and complaints described by Subsection (f) that are consistent with the procedures adopted and used under Medicaid.

SECTION 5.  Section 73.009(a), Human Resources Code, is amended to read as follows:

(a)  The commission [~~department~~] shall develop and the executive commissioner shall establish policies concerning services described by this section. A child under three years of age and the child's parent, guardian, or other legally authorized representative:

(1)  [~~family~~] may be referred for services described by this section if the child is:

(A) [~~(1)~~]  identified as having a developmental delay;

(B) [~~(2)~~]  suspected of having a developmental delay; or

(C) [~~(3)~~]  considered at risk of developmental delay; and

(2)  shall be referred for services described by this section if the child is:

(A)  in the conservatorship of the Department of Family and Protective Services; and

(B)  at least one year of age unless an earlier referral for services is made.

SECTION 6.  Chapter 73, Human Resources Code, is amended by adding Sections 73.0105, 73.0111, and 73.012 to read as follows:

Sec. 73.0105.  COMBINED OR CONCURRENT APPOINTMENTS. The commission shall ensure that:

(1)   the parent, guardian, or other legally authorized representative of siblings who are eligible for the same service under this chapter is allowed to elect to have the siblings receive the service from the same provider at the same appointment if the provider agrees that the provision of services in this manner is appropriate treatment for the needs of each child; or

(2)  if the siblings' parent, guardian, or other legally authorized representative does not make the election under Subdivision (1) or the siblings are eligible for different services under this chapter that are available from the same provider, the parent, guardian, or legally authorized representative may schedule the appointments for the services near in time to each other.

Sec. 73.0111.  PROVIDER OMBUDSMAN. (a) In this section, "ombudsman" means the individual designated as the ombudsman for providers of services authorized under this chapter.

(b)  The executive commissioner shall designate an ombudsman for providers of services authorized under this chapter.

(c)  The ombudsman's office is administratively attached to the office of the ombudsman of the commission.

(d)  The commission may use an alternate title for the ombudsman in provider-directed materials if the commission determines that the alternate title would benefit providers' understanding of or access to ombudsman services.

(e)  The ombudsman serves as a neutral party to assist providers of services authorized under this chapter in resolving issues related to providing early childhood intervention services under this chapter, including through the STAR Kids managed care program.

(f)  The ombudsman shall:

(1)  provide dispute and complaint resolution services;

(2)  perform provider protection and advocacy functions; and

(3)  collect inquiry and complaint data.

(g)  The executive commissioner by rule shall adopt and ensure the use of procedures for the reporting, monitoring, and resolution of disputes and complaints described by Subsection (f) that are consistent with the procedures adopted and used under Medicaid.

Sec. 73.012.  REIMBURSEMENT METHODOLOGY FOR CASE MANAGEMENT SERVICES. (a) The executive commissioner shall:

(1)  apply for and actively pursue from the federal Centers for Medicare and Medicaid Services or other appropriate federal agency any waiver or other authorization necessary to provide reimbursement under Medicaid for case management services provided under this chapter; and

(2)  pending authorization under Subdivision (1), request clear direction and guidance from the federal Centers for Medicare and Medicaid Services on the reimbursement methodology that may be used for the provision of case management services under this chapter, including direction on allowable and unallowable costs.

(b)  If appropriate and based on the guidance received under Subsection (a), the executive commissioner shall amend rules governing reimbursement for the provision of case management services under this chapter to ensure providers are reimbursed for all allowable costs.

(c)  This section expires September 1, 2021.

SECTION 7.  Subtitle B, Title 3, Human Resources Code, is amended by adding Chapter 74 to read as follows:

CHAPTER 74. TELE-CONNECTIVE PILOT PROGRAM

Sec. 74.0001.  DEFINITIONS. In this chapter:

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

(2)  "Developmental delay" has the meaning assigned by Section 73.001.

(3)  "Eligible child" means a child who is eligible for early childhood intervention services under Chapter 73.

(4)  "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(5)  "Tele-connective pilot program" means the program developed and implemented under Section 74.0002.

(6)  "Telehealth service" and "telemedicine medical service" have the meanings assigned by Section 111.001, Occupations Code.

Sec. 74.0002.  TELE-CONNECTIVE PILOT PROGRAM. The commission shall develop and implement a pilot program to provide early childhood intervention services under Chapter 73 to eligible children through the provision of telehealth and telemedicine medical services delivered using access points established in school districts selected to participate in the program.

Sec. 74.0003.  SCHOOL DISTRICT SELECTION. The commission in cooperation with the Texas Education Agency shall select the school districts in which to implement the tele-connective pilot program. In determining the school districts in which to implement the program, the commission and the Texas Education Agency:

(1)  shall consider each school district in which there is:

(A)  a low or inadequate number of service providers authorized under Chapter 73; or

(B)  a significant risk of losing service providers authorized under Chapter 73; and

(2)  may implement the program only in school districts in which the implementation is reasonable and feasible.

Sec. 74.0004.  PROVIDER PARTICIPATION. (a) The commission shall ensure that providers of services under Chapter 73 other than school districts are allowed to participate as providers in the tele-connective pilot program and provide services outside the school-based setting.

(b)  The commission shall collaborate with the Texas Education Agency to establish school-based provider access points for the program.

Sec. 74.0005.  ADEQUATE NETWORK OF ACCESS POINTS. The commission and the Texas Education Agency shall ensure that an adequate number of school-based and non-school-based tele-connective pilot program access points are established in a school district participating in the program.

Sec. 74.0006.  AUTOMATIC AND VOLUNTARY PARTICIPATION OF CERTAIN ELIGIBLE CHILDREN. (a) Subject to Subsection (b) and notwithstanding Section 73.0051(j), the commission shall automatically enroll an eligible child in the tele-connective pilot program if the child has a developmental delay of at least 30 percent but less than 70 percent in only one area. An eligible child may not be enrolled in the tele-connective pilot program and may receive services in an in-person setting if the child has a developmental delay:

(1)  in any degree in at least two areas; or

(2)  of at least 70 percent in one area.

(b)  The parent, guardian, or other legally authorized representative of an eligible child may, at any time, elect to opt the child out of the tele-connective pilot program.

Sec. 74.0007.  SCHOOL DISTRICT EMPLOYEE TRAINING. The Texas Education Agency shall develop a training course on the tele-connective pilot program to be given to appropriate school district employees.

Sec. 74.0008.  INITIAL SCREENING AND EVALUATION. (a) An initial screening or evaluation under the tele-connective pilot program must:

(1)  be an in-person consultation; and

(2)  have the parent, guardian, or other legally authorized representative of the eligible child present.

(b)  The parent, guardian, or other legally authorized representative of an eligible child must be given the opportunity to opt the child out of the tele-connective pilot program at the time of the child's initial screening or evaluation.

(c)  Notwithstanding any other law, after a child is enrolled in the tele-connective pilot program, health care services, including any initial treatment or prescription, that are delivered or issued by a physician or by a health care provider acting under the delegation or supervision of the physician or under the health care provider's license may be provided using telecommunications or other information technology.

Sec. 74.0009.  PROVIDER REIMBURSEMENT. The executive commissioner in adopting rules governing the tele-connective pilot program shall ensure that provider reimbursement for a telehealth or telemedicine medical service is made at a rate that is comparable to the rate paid under private health benefit plans.

Sec. 74.0010.  CONFIDENTIALITY OF INFORMATION. The commission shall ensure that the tele-connective pilot program complies with federal and state law regarding confidentiality of medical information, including the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.) and the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g).

Sec. 74.0011.  ACCESS POINT EVALUATION. Not later than September 1, 2020, the commission shall conduct an evaluation of the tele-connective pilot program to ensure that an adequate number of access points have been established in each school district participating in the program. This section expires January 1, 2021.

Sec. 74.0012.  REPORT. Not later than January 1, 2021, the commission shall submit an initial report to the governor, the lieutenant governor, the speaker of the house of representatives, and the presiding officers of the standing committees of the senate and house of representatives having primary jurisdiction over the early childhood intervention program authorized by Chapter 73. The report must evaluate the operation of the tele-connective pilot program and make recommendations regarding the continuation or expansion of the program.

Sec. 74.0013.  FUNDING. The commission shall actively seek and apply for any available federal money to support the tele-connective pilot program, including federal money made available by the:

(1)  Federal Communications Commission, including money available under the federal Rural Health Care Program;

(2)  United States Health Resources and Services Administration's Office for the Advancement of Telehealth; and

(3)  United States Department of Agriculture, including the Distance Learning and Telemedicine Grant Program established under 7 C.F.R. Part 1734.

Sec. 74.0014.  EXPIRATION. This chapter expires September 1, 2023.

SECTION 8.  The heading to Subchapter E, Chapter 1367, Insurance Code, is amended to read as follows:

SUBCHAPTER E. EARLY CHILDHOOD INTERVENTION SERVICES AND DEVELOPMENTAL DELAYS

SECTION 9.  Section 1367.201, Insurance Code, is amended to read as follows:

Sec. 1367.201.  DEFINITION. In this subchapter, rehabilitative and habilitative therapies and related services include:

(1)  occupational therapy evaluations and services;

(2)  physical therapy evaluations and services;

(3)  speech therapy evaluations and services; [~~and~~]

(4)  dietary or nutritional evaluations;

(5)  specialized skills training by a person certified as an early intervention specialist;

(6)  applied behavior analysis treatment by a board certified behavior analyst or licensed psychologist; and

(7)  case management provided by a person certified as an early intervention specialist.

SECTION 10.  Section 1367.202, Insurance Code, is amended to read as follows:

Sec. 1367.202.  APPLICABILITY OF SUBCHAPTER. (a) This subchapter applies only to a health benefit plan that:

(1)  provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage that is offered by:

(A)  an insurance company;

(B)  a group hospital service corporation operating under Chapter 842;

(C)  a fraternal benefit society operating under Chapter 885;

(D)  a stipulated premium company operating under Chapter 884;

(E)  a health maintenance organization operating under Chapter 843; or

(F)  a multiple employer welfare arrangement subject to regulation under Chapter 846;

(2)  is offered by an approved nonprofit health corporation that holds a certificate of authority under Chapter 844; or

(3)  provides health and accident coverage through a risk pool created under Chapter 172, Local Government Code, notwithstanding Section 172.014, Local Government Code, or any other law.

(b)  Notwithstanding any other law, this subchapter also applies to a standard health benefit plan provided under Chapter 1507.

(c)  Notwithstanding any provision in Chapter 1575 or 1579 or any other law, this subchapter applies to:

(1)  a basic plan under Chapter 1575; and

(2)  a primary care coverage plan under Chapter 1579.

SECTION 11.  Section 1367.203, Insurance Code, is amended to read as follows:

Sec. 1367.203.  EXCEPTION. (a) This subchapter does not apply to:

(1)  a plan that provides coverage:

(A)  only for a specified disease or for another limited benefit;

(B)  only for accidental death or dismemberment;

(C)  for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury;

(D)  as a supplement to a liability insurance policy;

(E)  for credit insurance;

(F)  only for dental or vision care; or

(G)  only for indemnity for hospital confinement;

(2)  a small employer health benefit plan written under Chapter 1501;

(3)  a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss);

(4)  a workers' compensation insurance policy;

(5)  medical payment insurance coverage provided under a motor vehicle insurance policy; or

(6)  a long-term care insurance policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefit coverage so comprehensive that the policy is a health benefit plan as described by Section 1367.202.

(b)  This subchapter does not apply to a qualified health plan to the extent that a determination is made under 45 C.F.R. Section 155.170 that:

(1)  this subchapter requires the plan to offer benefits in addition to the essential health benefits required under 42 U.S.C. Section 18022(b); and

(2)  this state is required to defray the cost of the benefits mandated under this subchapter.

SECTION 12.  Section 1367.204, Insurance Code, is amended to read as follows:

Sec. 1367.204.  PROVISION [~~OFFER~~] OF COVERAGE REQUIRED. [~~(a)~~] A health benefit plan issuer must provide [~~offer~~] coverage that complies with this subchapter.

[~~(b)  The individual or group policy or contract holder may reject coverage required to be offered under this section.~~]

SECTION 13.  Section 1367.205, Insurance Code, is amended by amending Subsections (a) and (b) and adding Subsection (d) to read as follows:

(a)  A health benefit plan required to provide [~~that provides~~] coverage for rehabilitative and habilitative therapies and related services under this subchapter may not prohibit or restrict payment for covered services provided to a child and determined to be necessary to and provided in accordance with an individualized family service plan issued by the Health and Human Services Commission [~~Interagency Council on Early Childhood Intervention~~] under Chapter 73, Human Resources Code.

(b)  Rehabilitative and habilitative therapies and related services described by Subsection (a) must be covered in the amount, duration, scope, and service setting established in the child's individualized family service plan.

(d)  A health benefit plan prior authorization requirement, or another requirement that a service be authorized, otherwise applicable to a covered rehabilitative or habilitative therapy service or a related service is satisfied if the service is specified in a child's individualized family service plan.

SECTION 14.  Section 1367.206, Insurance Code, is amended to read as follows:

Sec. 1367.206.  PROHIBITED ACTIONS. Under the coverage required to be provided [~~offered~~] under this subchapter, a health benefit plan issuer may not:

(1)  apply the cost of rehabilitative and habilitative therapies and related services described by Section 1367.205(a) to an annual or lifetime maximum plan benefit or similar provision under the plan; or

(2)  use the cost of rehabilitative or habilitative therapies and related services described by Section 1367.205(a) as the sole justification for:

(A)  increasing plan premiums; or

(B)  terminating the insured's or enrollee's participation in the plan.

SECTION 15.  Subchapter A, Chapter 302, Labor Code, is amended by adding Section 302.0061 to read as follows:

Sec. 302.0061.  WORKFORCE DEVELOPMENT GRANTS FOR PROVIDERS UNDER EARLY CHILDHOOD INTERVENTION PROGRAM. (a) In this section, "early childhood intervention program" means the program established under Chapter 73, Human Resources Code, to provide early childhood intervention services in accordance with Part C, Individuals with Disabilities Education Act (IDEA)(20 U.S.C. Section 1431 et seq.).

(b)  The commission shall actively seek and apply for federal funding to establish a program designed to provide workforce development grants to providers participating in the early childhood intervention program for purposes of improving the provision of program services by offering providers appropriate education and training.

SECTION 16.  (a) The Health and Human Services Commission, after consulting with the Texas Education Agency, other appropriate state agencies, and the advisory committee established under Section 73.004, Human Resources Code, shall conduct a financial evaluation of the early childhood intervention services provided under Chapter 73, Human Resources Code, and report on that evaluation. The report must quantify the amount by which providing early childhood intervention services in this state affects other budget strategies.

(b)  Not later than September 1, 2020, the Health and Human Services Commission shall submit the report prepared under Subsection (a) of this section to the governor, the lieutenant governor, the speaker of the house of representatives, and the presiding officers of the standing committees of the senate and house of representatives having primary jurisdiction over the early childhood intervention program authorized by Chapter 73, Human Resources Code.

SECTION 17.  Not later than December 1, 2019, the Health and Human Services Commission shall issue guidance to health benefit plan issuers clarifying that providers of early childhood intervention services under Chapter 73, Human Resources Code, as amended by this Act, must file claims using the national provider identifier number and Texas provider identifier number.

SECTION 18.  Section 533.00521(b), Government Code, as added by this Act, applies to a contract entered into or renewed on or after the effective date of this Act. A contract entered into or renewed before that date is governed by the law in effect on the date the contract was entered into or renewed, and that law is continued in effect for that purpose.

SECTION 19.  Subchapter E, Chapter 1367, Insurance Code, as amended by this Act, applies only to a health benefit plan delivered, issued for delivery, or renewed on or after January 1, 2020. A health benefit plan delivered, issued for delivery, or renewed before January 1, 2020, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 20.  (a) As soon as practicable after the effective date of this Act, but not later than January 1, 2020, the Health and Human Services Commission shall develop and implement the tele-connective pilot program required by Chapter 74, Human Resources Code, as added by this Act.

(b)  Immediately after the effective date of this Act, the Health and Human Services Commission shall apply for and actively pursue from the federal Centers for Medicare and Medicaid Services or other appropriate federal agency any waiver or other authorization necessary to implement Section 73.00521, Human Resources Code, as added by this Act. The commission may delay implementing Section 73.00521, Human Resources Code, as added by this Act, until the waiver or authorization is granted.

(c)  If before implementing any provision of this Act other than Sections 73.00521 and 73.012(a)(1), Human Resources Code, as added by this Act, a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 21.  This Act takes effect September 1, 2019.