

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

1 requirement that the organization submit quarterly reports to the
2 commission that verify that the organization did not include a
3 prior authorization request for early childhood intervention
4 services under Chapter 73, Human Resources Code, as part of a
5 medical necessity determination.

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

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

10 SECTION 3. Section 73.0051(1), Human Resources Code, is
11 redesignated as Section 73.0052, Human Resources Code, and amended
12 to read as follows:

13 Sec. 73.0052. SYSTEM OF PAYMENTS. (a) Subject to the
14 requirements of this section, the [(1) The] executive
15 commissioner by rule may establish a system of payments by families
16 of children receiving services under this chapter, including a
17 schedule of sliding fees, in a manner consistent with 34 C.F.R.
18 Sections 303.13(a)(3), 303.520, and 303.521.

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

25 (c) If the child covered by private health benefits coverage
26 described by Subsection (b) would be required to pay any amount
27 out-of-pocket for a service provided under this chapter, including

1 any deductible, copayment, coinsurance, or other cost-sharing
2 payment, the executive commissioner shall ensure the claim for
3 services is paid using money from the following sources in the
4 following order:

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

8 (2) Medicaid, if applicable; and

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

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

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

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

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

1 (b) The executive commissioner shall designate an ombudsman
2 for children receiving early childhood intervention services
3 through the STAR Kids managed care program under Section
4 73.00521(a).

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

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

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

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

21 (1) provide dispute and complaint resolution
22 services;

23 (2) perform consumer protection and advocacy
24 functions; and

25 (3) collect inquiry and complaint data.

26 (g) The executive commissioner by rule shall adopt and
27 ensure the use of procedures for the reporting, monitoring, and

1 resolution of disputes and complaints described by Subsection (f)
2 that are consistent with the procedures adopted and used under
3 Medicaid.

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

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

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

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

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

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

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

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

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

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

27 Sec. 73.0105. COMBINED OR CONCURRENT APPOINTMENTS. The

1 commission shall ensure that:

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

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

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

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

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

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

26 (e) The ombudsman serves as a neutral party to assist
27 providers of services authorized under this chapter in resolving

1 issues related to providing early childhood intervention services
2 under this chapter, including through the STAR Kids managed care
3 program.

4 (f) The ombudsman shall:

5 (1) provide dispute and complaint resolution
6 services;

7 (2) perform provider protection and advocacy
8 functions; and

9 (3) collect inquiry and complaint data.

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

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

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

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

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

6 (c) This section expires September 1, 2021.

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

9 CHAPTER 74. TELE-CONNECTIVE PILOT PROGRAM

10 Sec. 74.0001. DEFINITIONS. In this chapter:

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

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

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

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

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

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

24 Sec. 74.0002. TELE-CONNECTIVE PILOT PROGRAM. The
25 commission shall develop and implement a pilot program to provide
26 early childhood intervention services under Chapter 73 to eligible
27 children through the provision of telehealth and telemedicine

1 medical services delivered using access points established in
2 school districts selected to participate in the program.

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

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

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

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

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

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

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

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

1 school district participating in the program.

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

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

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

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

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

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

23 (1) be an in-person consultation; and

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

26 (b) The parent, guardian, or other legally authorized
27 representative of an eligible child must be given the opportunity

1 to opt the child out of the tele-connective pilot program at the
2 time of the child's initial screening or evaluation.

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

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

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

22 Sec. 74.0011. ACCESS POINT EVALUATION. Not later than
23 September 1, 2020, the commission shall conduct an evaluation of
24 the tele-connective pilot program to ensure that an adequate number
25 of access points have been established in each school district
26 participating in the program. This section expires January 1,
27 2021.

1 read as follows:

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

- 5 (1) occupational therapy evaluations and services;
- 6 (2) physical therapy evaluations and services;
- 7 (3) speech therapy evaluations and services; ~~and~~
- 8 (4) dietary or nutritional evaluations;i
- 9 (5) specialized skills training by a person certified
10 as an early intervention specialist;
- 11 (6) applied behavior analysis treatment by a board
12 certified behavior analyst or licensed psychologist; and
- 13 (7) case management provided by a person certified as
14 an early intervention specialist.

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

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

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

- 24 (A) an insurance company;
- 25 (B) a group hospital service corporation
26 operating under Chapter 842;
- 27 (C) a fraternal benefit society operating under

1 Chapter 885;

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

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

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

8 (2) is offered by an approved nonprofit health
9 corporation that holds a certificate of authority under Chapter
10 844; or

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

15 (b) Notwithstanding any other law, this subchapter also
16 applies to a standard health benefit plan provided under Chapter
17 1507.

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

20 (1) a basic plan under Chapter 1575; and

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

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

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

26 (1) a plan that provides coverage:

27 (A) only for a specified disease or for another

1 limited benefit;

2 (B) only for accidental death or dismemberment;

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

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

8 (E) for credit insurance;

9 (F) only for dental or vision care; or

10 (G) only for indemnity for hospital confinement;

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

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

15 (4) a workers' compensation insurance policy;

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

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

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

26 (1) this subchapter requires the plan to offer
27 benefits in addition to the essential health benefits required

1 under 42 U.S.C. Section 18022(b); and

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

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

6 Sec. 1367.204. PROVISION [~~OFFER~~] OF COVERAGE REQUIRED.

7 [~~(a)~~] A health benefit plan issuer must provide [~~offer~~] coverage
8 that complies with this subchapter.

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

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

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

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

26 (d) A health benefit plan prior authorization requirement,
27 or another requirement that a service be authorized, otherwise

1 applicable to a covered rehabilitative or habilitative therapy
2 service or a related service is satisfied if the service is
3 specified in a child's individualized family service plan.

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

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

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

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

16 (A) increasing plan premiums; or

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

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

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

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

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

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

24 SECTION 17. Not later than December 1, 2019, the Health and
25 Human Services Commission shall issue guidance to health benefit
26 plan issuers clarifying that providers of early childhood
27 intervention services under Chapter 73, Human Resources Code, as

1 amended by this Act, must file claims using the national provider
2 identifier number and Texas provider identifier number.

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

9 SECTION 19. Subchapter E, Chapter 1367, Insurance Code, as
10 amended by this Act, applies only to a health benefit plan
11 delivered, issued for delivery, or renewed on or after January 1,
12 2020. A health benefit plan delivered, issued for delivery, or
13 renewed before January 1, 2020, is governed by the law as it existed
14 immediately before the effective date of this Act, and that law is
15 continued in effect for that purpose.

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

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

1 this Act, until the waiver or authorization is granted.

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

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