

BILL ANALYSIS

C.S.H.B. 3720
By: Frank
Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Texas Medicaid offers the ability for individuals with physical or intellectual and developmental disabilities to live in their home communities and avoid institutional settings through a series of Medicaid Section 1915(c) waiver programs. These programs provide long-term services and supports to these individuals in a setting that best fits their needs. Currently, Texas has limited space in these programs and interested parties that seek program services must add their information to an interest list. As of January 2021, more than 170,000 people were on at least one interest list, with some people waiting well over a decade for services. The 86th Legislature directed the Health and Human Services Commission to conduct a study of interest lists for certain programs. C.S.H.B. 3720 seeks to incorporate strategies identified in the subsequent report to the legislature to take steps to improve management of the waiver program interest lists, improve the collection of data for people on an interest list, and allow for interest list reduction for priority populations.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

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

ANALYSIS

C.S.H.B. 3720 amends the Government Code to require the Health and Human Services Commission (HHSC), in consultation with the Intellectual and Developmental Disability (IDD) System Redesign Advisory Committee, the state Medicaid managed care advisory committee, and interested stakeholders, to develop a questionnaire to be completed by or on behalf of an individual who requests to be placed on or is currently on an interest list for any of the following Medicaid waiver programs:

- the community living assistance and support services (CLASS) waiver program;
- the home and community-based services (HCS) waiver program;
- the deaf-blind with multiple disabilities (DBMD) waiver program;
- the Texas home living (TxHmL) waiver program;
- the medically dependent children (MDCP) waiver program; or
- the STAR+PLUS home and community-based services (HCBS) program.

The bill establishes minimum content requirements for the questionnaire and requires HHSC, subject to the availability of funds, to require all individuals on an applicable interest list to annually update the questionnaire. The bill sets certain deadlines for HHSC relating to the questionnaire.

C.S.H.B. 3720 requires HHSC, if it determines that it is feasible, to develop an online portal to allow an individual or their parent or other legally authorized representative to request placement on an applicable waiver program interest list and to complete and update the questionnaire. The bill requires HHSC to determine the feasibility of developing the portal as soon as practicable after the bill's effective date.

C.S.H.B. 3720 requires HHSC to take the following actions if an individual is on an applicable waiver program's interest list and the individual or their parent or other legally authorized representative does not respond to a written or verbal request made by HHSC to update information concerning the individual or otherwise fails to maintain contact with HHSC:

- designate the individual's status on the interest list as inactive until the individual or their parent or other legally authorized representative notifies HHSC that the individual is still interested in receiving services under the waiver program; and
- at the time the individual or their parent or other legally authorized representative provides such notice to HHSC, designate the individual's status on the interest list as active and restore the individual to the position on the list that corresponds with the date the individual was initially placed on the list.

The bill prohibits the designation of an individual's status on an interest list as inactive from resulting in the removal of the individual from that list or any other waiver program interest list.

C.S.H.B. 3720 requires HHSC, not later than September 1 of each year, to provide to the IDD System Redesign Advisory Committee, or, if that advisory committee is abolished, an appropriate stakeholder advisory committee, as determined by the executive commissioner of HHSC, the number of individuals, including individuals whose status is designated as inactive, who are on an interest list to receive services under an applicable waiver program.

C.S.H.B. 3720 requires HHSC to conduct a medical necessity assessment of a child who receives federal Supplemental Security Income (SSI) benefits and whose parent or other legally authorized representative expresses interest in placing the child on the interest list for the MDCP waiver program in order to ensure the child is eligible for services before placing the child on the program's interest list. The bill also requires HHSC, as appropriate and as soon as practicable after the bill's effective date, to conduct a medical necessity assessment of each child who is on the interest list for the MDCP waiver program on the bill's effective date to ensure the child's eligibility for program services.

C.S.H.B. 3720 amends the Human Resources Code to establish that, to the extent allowed by federal law, an individual is financially eligible to participate in the TxHmL waiver program if the individual's family income is not more than the special income limit established by HHSC for other Section 1915(c) Medicaid waiver programs, including the HCS waiver program. To the extent permitted by federal law, HHSC must also expand medical eligibility criteria under the TxHmL waiver program to ensure that an individual is medically eligible to participate in the program if the individual:

- has a primary diagnosis by a licensed physician of a related condition that is included on the list of diagnostic codes for persons with related conditions that are approved by HHSC; and
- has moderate to extreme deficits in adaptive behavior, as determined by HHSC rule, obtained by administering a standardized assessment of adaptive behavior.

The bill defines "related condition" as, consistent with federal regulations, a severe and chronic disability that:

- is attributed to cerebral palsy or epilepsy or to any other condition, other than mental illness, found to be closely related to intellectual disability because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with intellectual disability, and requires treatment or services similar to those required for individuals with intellectual disability;
- is manifested before the individual reaches 22 years of age;
- is likely to continue indefinitely; and

- results in substantial functional limitation in at least three of the areas of major life activity specified by the bill.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3720 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute revises the original's provisions regarding the questionnaire to require that the questionnaire be developed for individuals who are currently on an applicable interest list and for individuals who are not on a list but who request to be placed on one, whereas the original limited the questionnaire only to individuals who are on an interest list. The substitute also provides for the questionnaire to be completed on behalf of an individual as an alternative to the individual completing the questionnaire themselves, whereas the original did not. Accordingly, the substitute requires the questionnaire to allow for an individual's parent or legally authorized representative to provide their contact information as an alternative to the individual's contact information and allows the parent or other representative to respond to requests to update information concerning the individual.

Both the original and the substitute provide for an individual on an interest list to be considered inactive if a request from HHSC to update information goes unanswered. The original required HHSC to omit an individual who remains inactive for four or more years from the number of individuals on the applicable waiver program's interest list when reporting the numbers on that list, whereas the substitute does not include this requirement. The substitute includes provisions not in the original that do the following:

- provide for the manner in which an individual's status, after being designated as inactive, may be designated as active and their position on the applicable interest list restored; and
- prohibit an individual's inactive status from resulting in their removal from the applicable list or any other waiver program interest list.

The substitute omits a specification from the original regarding the frequency of HHSC's requests for updates to an individual's information.

The substitute includes a requirement that was not in the original for HHSC to provide annually to the IDD System Redesign Advisory Committee or an appropriate stakeholder advisory committee, as applicable, the number of individuals, including individuals whose status is designated as inactive, who are on an interest list to receive services under an applicable waiver program.

The substitute requires HHSC to develop the online portal if HHSC determines that it is feasible, whereas the original required only that HHSC explore the feasibility of creating the portal.

While the original and the substitute both include provisions relating to the assessment of a child's eligibility for MDCP waiver program services, the requirements differ. The substitute includes a specification not in the original that the assessment to be conducted is a medical necessity assessment, and the original and substitute also differ as follows:

- with respect to the assessment of children who are on the program's interest list on the bill's effective date, the original required assessment only for children who are eligible to receive SSI benefits, whereas the substitute requires assessment of each child on the interest list as appropriate; and

- with respect to the assessment of a child receiving SSI benefits before the child may be placed on the program's interest list, the substitute clarifies that it is the child's parent or other legally authorized representative whose expressed interest in placing the child on the interest list triggers the required assessment, whereas the original specified that it was the individual receiving the benefits that expressed the interest.

While the original and the substitute both establish provisions relating to eligibility for the TxHmL waiver program, the provisions differ. Whereas the original required HHSC, in determining eligibility criteria for the program, to establish income eligibility levels at a certain level and to add an additional level of care to the program's criteria, the substitute does not. The substitute instead establishes that an individual is financially eligible to participate in the program if the individual's family income is not more than the special income limit established by HHSC for other Section 1915(c) waiver programs and requires HHSC to expand medical eligibility criteria for the program to ensure that an individual is medically eligible to participate in the program if the individual has a primary diagnosis by a licensed physician of an applicable related condition and has moderate to extreme deficits in adaptive behavior. The substitute includes a definition of "related condition."

The substitute includes a procedural provision not in the original clarifying that certain actions HHSC is required to take under the bill are to be done as soon as practicable after the bill's effective date.