

## **BILL ANALYSIS**

C.S.H.B. 4169  
By: Price  
Human Services  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Texas Home and Community-Based Services (HCS) and Texas Home Living (TxHmL) waivers include various services and supports for people with intellectual and developmental disabilities in the community, including day and employment services. In order to come into compliance with federal Home and Community-Based Services Settings requirements, the Health and Human Services Commission (HHSC) made several changes to the HCS and TxHmL waiver programs, including replacing existing day services, formerly called "day habilitation," with a new, fully compliant service called individualized skills and socialization effective March 1, 2023.

Prior to the transition, individuals could participate in prevocational services, including activities where an individual could be paid, so long as the goal of the activity was to build skills necessary to achieve integrated employment and not for the primary purpose of producing goods or performing services. Individualized skills and socialization regulations adopted by HHSC prohibit billing for prevocational services where the individual could be paid. This appears to be a potential misunderstanding of federal requirements. However, the federal March 2023 deadline for HHSC to get a transition plan approved and implemented left insufficient time for continued negotiation with the Centers for Medicare & Medicaid after this concern was identified and escalated by stakeholders.

C.S.H.B. 4169 seeks to require HHSC to apply for and actively pursue a waiver or other necessary authorization from the appropriate federal agency to include prevocational services as part of the individualized skills and socialization services delivered under a Medicaid waiver program providing long-term services and supports.

### **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 this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 4169 amends the Human Resources Code to require prevocational services provided under the community living assistance and support services (CLASS) waiver program or another Medicaid waiver program providing long-term services or supports to a Medicaid recipient to be designed to assist the recipient in achieving permanent integrated employment receiving compensation at or above the minimum wage in the recipient's community and in accordance with state and federal law. The bill defines "prevocational services" as services that are designed

to prepare an individual for paid or unpaid work and achieve a generalized result rather than being job-task oriented.

C.S.H.B. 4169 requires the Health and Human Services Commission (HHSC), as soon as practicable after the bill's effective date, to apply for and actively pursue a waiver or other necessary authorization from the appropriate federal agency to include prevocational services as part of the individualized skills and socialization services delivered under a Medicaid waiver program providing long-term services and supports. The bill provides for the delayed implementation of other bill provisions by HHSC until the waiver or authorization is granted.

C.S.H.B. 4169 establishes that if HHSC is granted the waiver or other authorization:

- the reimbursement rate for the service HHSC establishes may not exceed the reimbursement rate for individualized skills and socialization services; and
- if the service is combined with individualized skills and socialization services, HHSC must ensure the service may not exceed the total allowable hours or the total costs for individualized skills and socialization services provided under a service plan.

If the waiver or other authorization is denied, HHSC must collaborate with relevant stakeholders and applicable federal agencies to establish a service similar to prevocational services in a manner that is authorized by federal law. The bill requires HHSC to apply for another waiver or other authorization for this purpose not later than the 60th day after the date the initial waiver or other authorization was denied.

### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2023.

### **COMPARISON OF INTRODUCED AND SUBSTITUTE**

While C.S.H.B. 4169 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute omits the provision from the introduced establishing that, for purposes of determining a Medicaid recipient's eligibility for individualized skills and socialization services under a Medicaid program providing long-term services or supports to Medicaid recipients, habilitation services include prevocational services.

The substitute includes a provision that instead requires HHSC to seek a waiver or other necessary authorization from the appropriate federal agency to include prevocational services as part of the individualized skills and socialization services delivered under a Medicaid waiver program providing long-term services and supports. Accordingly, the substitute includes provisions absent from the introduced that do the following:

- require HHSC to apply for and actively pursue the waiver as soon as practicable after the bill's effective date; and
- provide for the delayed implementation of other bill provisions by HHSC until the waiver or authorization is granted.

The substitute includes additional provisions, also absent from the introduced, establishing related requirements for HHSC if the request is approved and establishing a separate set of requirements applicable if the request is denied.

The substitute omits the provision from the introduced providing for the delayed implementation of any provision of the bill for which an applicable state agency determines a federal waiver or authorization is necessary for implementation until the waiver or authorization is requested and granted.