

## **BILL ANALYSIS**

Senate Research Center

S.B. 26  
By: Kolkhorst et al.  
Health & Human Services  
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Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Public mental health services in Texas are delivered through 39 community-based, behavioral health services organizations and 10 state-operated hospitals that work together to create a network of state-funded, locally delivered, mental, behavioral, and psychiatric care. Despite the historic investments in mental health, issues continue as more individuals with serious mental illness present with substance abuse issues, cycling in and out of hospitals, community programs and jail.

Many individuals served by state hospitals are diagnosed with serious mental illnesses (SMI) while others have chronic medical conditions requiring daily support or training to execute the activities of daily living. Waitlists for mental health services in community programs and the State Hospital system has grown.

Currently, the Texas State Hospital system lacks dedicated staff and a structured methodology for transitioning hospital patients back into the community when they are discharged and engaging them in needed services. Additionally, there is a need for increasing access to services targeted at youth, particularly those at risk for entering the juvenile justice and child welfare systems.

C.S.S.B. 26 seeks to expand mental health capacity, especially for children and adolescents, through the creation of an innovation grant program. The bill also directs a structured methodology for transitioning patients out of State Hospitals.

It increases transparency and accountability for the Texas community-based mental and behavioral health systems by requiring them to submit to regular performance audits and to increase data reporting related to the populations they serve to better assess needs in communities. Finally, it directs the development of incentives to support long-term placement for elderly Texans with intense behavioral health needs.

S.B. 26 amends current law relating to local mental health authority and local behavioral health authority audits and mental and behavioral health reporting, services, and programs.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 3 (Section 531.09915, Government Code) of this bill.

Rulemaking authority previously granted to executive commissioner of the Health and Human Services Commission is modified in SECTION 6 (Section 534.0535, Health and Safety Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 8.151, Education Code, as follows:

Sec. 8.151. DEFINITIONS. Defines "executive commissioner." Makes a nonsubstantive change.

SECTION 2. Amends Section 8.152, Education Code, by adding Subsections (c) and (d), as follows:

(c) Authorizes a local mental health authority, if the local mental health authority is unable to employ a professional who qualifies as a non-physician mental health professional, to request a waiver from the executive commissioner of the Health and Human Services Commission (executive commissioner; HHSC) for approval to employ, for purposes of performing the functions and duties of a non-physician mental health professional under Subchapter E (Mental Health and Substance Use Resources for School District Personnel), a person who:

(1) is a licensed master social worker, as defined by Section 505.002 (Definition), Occupations Code; or

(2) has been issued a licensed professional counselor associate license by the Texas State Board of Examiners of Professional Counselors.

(d) Requires a person approved under a waiver under Subsection (c) to carry out the functions and duties required of a non-physician mental health professional under this subchapter in the same manner as a non-physician mental health professional employed under Subsection (a) (relating to requiring a local mental health authority to employ a non-physician mental health professional to serve as a mental health and substance use resource for school districts located in the region served by a regional education service center and in which the local mental health authority provides services) or (b) (relating to requiring the local mental health authority that primarily operates in the county in which the center is located, if two or more local mental health authorities provide services in a region served by a regional education service center, to perform certain actions).

SECTION 3. Amends Subchapter B, Chapter 531, Government Code, by adding Section 531.09915, as follows:

Sec. 531.09915. INNOVATION MATCHING GRANT PROGRAM FOR MENTAL HEALTH EARLY INTERVENTION AND TREATMENT. (a) Defines "inpatient mental health facility," "program," and "state hospital."

(b) Requires HHSC, to the extent money is appropriated to HHSC for that purpose, to establish a matching grant program to provide support to eligible entities for community-based initiatives that promote identification of mental health issues and improve access to early intervention and treatment for children and families. Authorizes the initiatives to:

(1) be evidence-based or otherwise demonstrate positive outcomes, including:

(A) improved relationship skills;

(B) improved self-esteem;

(C) reduced involvement in the juvenile justice system;

(D) participation in the relinquishment avoidance program under Subchapter E (Protection of the Child), Chapter 262, Family Code; and

(E) avoidance of emergency room use; and

(2) include:

(A) training; and

(B) services and supports for:

(i) community-based initiatives;

(ii) agencies that provide services to children and families;

(iii) individuals who work with children or caregivers of children showing atypical social or emotional development or other challenging behaviors; and

(iv) children in or at risk of placement in foster care or the juvenile justice system.

(c) Authorizes HHSC to award a grant under the program only in accordance with a contract between HHSC and a grant recipient. Requires that the contract include provisions under which HHSC is given sufficient control to ensure the public purpose of providing mental health prevention services to children and families is accomplished and the state receives the return benefit.

(d) Requires the executive commissioner by rule to establish application and eligibility requirements for an entity to be awarded a grant under the program.

(e) Provides that the following entities are eligible for a grant awarded under the program:

(1) a hospital licensed under Chapter 241 (Hospitals), Health and Safety Code;

(2) a mental hospital licensed under Chapter 577 (Private Mental Hospitals and Other Mental Health Facilities), Health and Safety Code;

(3) a hospital district;

(4) a local mental health authority;

(5) a child-care facility, as defined by Chapter 42 (Regulation of Certain Facilities, Homes, and Agencies that Provide Child-Care Services), Human Resources Code;

(6) a county or municipality; and

(7) a nonprofit organization that is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt entity under Section 501(c)(3) of that code.

(f) Requires HHSC, in awarding grants under the program, to prioritize entities that work with children and family members of children with a high risk of experiencing a crisis or developing a mental health condition to reduce:

(1) the need for future intensive mental health services;

(2) the number of children at risk of placement in foster care or the juvenile justice system; or

(3) the demand for placement in state hospitals, inpatient mental health facilities, and residential behavioral health facilities.

(g) Requires HHSC to condition each grant awarded under the program on the grant recipient providing matching money in an amount that is equal to at least 10 percent of the grant amount.

(h) Authorizes a grant recipient to use grant money awarded under the program and matching money provided by the recipient only to develop innovative strategies that provide:

- (1) resiliency;
- (2) coping and social skills;
- (3) healthy social and familial relationships; and
- (4) parenting skills and behaviors.

(i) Prohibits a grant recipient from using grant money awarded under the program or matching money provided by the recipient to:

- (1) reimburse an expense or pay a cost that another source, including the Medicaid program, is obligated to reimburse or pay by law or under a contract; or
- (2) supplant or be a substitute for money awarded to the recipient from a non-Medicaid federal funding source, including federal grant funding.

(j) Provides that a Medicaid provider's receipt of a grant under the program does not affect any legal or contractual duty of the provider to comply with requirements under the Medicaid program.

(k) Authorizes HHSC to use a reasonable amount of the money appropriated by the legislature for the purposes of the program, not to exceed five percent, to pay the administrative costs of implementing and administering the program.

SECTION 4. Amends Subchapter B, Chapter 531, Government Code, by adding Section 531.09991, as follows:

Sec. 531.09991. PLAN FOR THE TRANSITION OF CARE OF CERTAIN INDIVIDUALS. (a) Requires HHSC, not later than January 1, 2025, in consultation with nursing facilities licensed under Chapter 242 (Convalescent and Nursing Facilities and Related Institutions), Health and Safety Code, to develop a plan for transitioning from a hospital that primarily provides behavioral health services to a nursing facility individuals who require:

- (1) a level of care provided by nursing facilities; and
- (2) a high level of behavioral health supports and services.

(b) Requires that the plan include:

- (1) recommendations for providing incentives to providers for the provision of services to individuals described by Subsection (a), including an assessment of the feasibility of including incentive payments under the Quality Incentive Payment Program (QIPP) for those providers;
- (2) recommendations for methods to create bed capacity, including reserving specific beds; and

(3) a fiscal estimate, including estimated costs to nursing facilities and savings to hospitals that will result from transitioning individuals under Subsection (a).

(c) Authorizes HHSC to implement the plan, including recommendations under the plan, only if HHSC determines that implementing the plan would increase the amount of available state general revenue.

(d) Provides that this section expires September 1, 2025.

SECTION 5. Amends Section 531.1025, Government Code, by adding Subsection (c), as follows:

(c) Requires HHSC's office of inspector general (office) to conduct performance audits and require financial audits to be conducted of each local behavioral health authority designated under Section 533.0356 (Local Behavioral Health Authorities), Health and Safety Code, and local mental health authority, as defined by Section 531.002 (Definitions), Health and Safety Code. Requires the office to:

(1) establish a performance audit schedule that ensures the office audits each authority described by this subsection at least once every five years; and

(2) establish a financial audit schedule that ensures each authority described by this subsection:

(A) undergoes a financial audit conducted by an independent auditor at least once every three years; and

(B) submits to the office the results of the financial audit; and

(3) require additional audits to be conducted as necessary based on adverse findings in a previous audit or as requested by HHSC.

SECTION 6. Amends Section 534.0535, Health and Safety Code, as follows:

Sec. 534.0535. JOINT DISCHARGE PLANNING. (a) Requires the executive commissioner to adopt or amend, and requires the Department of State Health Services (DSHS) to enforce, rules that require continuity of services and planning for patient care between DSHS facilities and local mental health authorities.

(b) Requires that the rules, at a minimum:

(1) specify the local mental health authority's responsibility for ensuring the successful transition of patients who are determined by the facility to be medically appropriate for discharge; and

(2) require participation by a DSHS facility in joint discharge planning with a local mental health authority, rather than planning between a DSHS facility and a local mental health authority, before the facility discharges a patient or places the patient on an extended furlough with an intent to discharge. Makes a nonsubstantive change.

(c) Makes a nonsubstantive change to this subsection.

(d) Requires the local mental health authority to arrange for the provision of the services upon discharge. Deletes existing text requiring the local mental health authority to arrange for the provision of the services if DSHS funds are to be used and authorizing the local authority to subcontract with or make a referral to a local agency or entity.

(e) Requires HHSC to require each facility to designate at least one employee to provide transition support services for patients who are determined medically appropriate for discharge from the facility.

(f) Requires that transition support services provided by the local mental health authority be designed to complement joint discharge planning efforts and authorize the services to include:

(1) enhanced services and supports for complex or high-need patients, including services and supports necessary to create viable discharge or outpatient management plans; and

(2) post-discharge monitoring for up to one year after the discharge date to reduce the likelihood of readmission.

(g) Requires HHSC to ensure that each DSHS facility concentrates the provision of transition support services for patients who have been:

(1) admitted to and discharged from a facility multiple times during a 30-day period; or

(2) in the facility for longer than 365 consecutive days.

SECTION 7. Amends Chapter 572, Health and Safety Code, by adding Section 572.0026, as follows:

Sec. 572.0026. VOLUNTARY ADMISSION RESTRICTIONS. Authorizes the facility administrator of an inpatient mental health facility or the administrator's designee to approve only the admission of a person for whom a proper request for voluntary inpatient services is filed if, at the time the request is filed, there is available space at the inpatient mental health facility.

SECTION 8. Amends Section 1001.084, Health and Safety Code, as redesignated by Chapter 1236 (S.B. 1296), Acts of the 84th Legislature, Regular Session, 2015, by amending Subsections (a), (b), (c), and (d) and adding Subsections (d-1), (d-2), and (g), as follows:

(a) Requires DSHS, in collaboration with HHSC, to establish and maintain a public reporting system of performance and outcome measures relating to mental health and substance use services, rather than substance abuse services, established by HHSC, rather than by the Legislative Budget Board, DSHS, and HHSC. Requires that the system allow external users to view and compare the performance and outcomes of:

(1) local mental health authorities;

(2) local behavioral health authorities; and

(3) local intellectual and developmental disability authorities.

Deletes existing text requiring that the system allow external users to view and compare the performance, outputs, and outcomes of community centers established under Subchapter A (Community Centers), Chapter 534, that provide mental health services; Medicaid managed care pilot programs that provide mental health services; and agencies, organizations, and persons that contract with the state to provide substance abuse services.

(b) Requires that the public reporting system allow external users to view and compare the performance and outcomes, rather than performance, outputs, and outcomes, of the Medicaid managed care programs that provide mental health services.

(c) Requires DSHS to post the performance and outcome measures, rather than performance, output, and outcome measures, on DSHS's Internet website so that the information is accessible to the public. Requires DSHS to post the measures monthly, or as frequently as possible. Deletes existing text requiring DSHS to post the measures quarterly or semiannually in accordance with when the measures are reported to DSHS.

(d) Requires that the public reporting system include outcome measures that capture:

(1)-(4) creates these subdivisions from existing text and makes nonsubstantive changes;

(5) access to timely and adequate screening and rapid crisis stabilization services;

(6) timely access to and appropriate treatment from community-based crisis residential services and hospitalization;

(7) improved functioning as a result of medication-related and psychosocial rehabilitation services;

(8) information related to the number of people referred to a state hospital, state supported living center, or community-based hospital, the length of time between referral and admission, the length of stay, and the length of time between the date a person is determined ready for discharge or transition and the date of discharge or transition;

(9) the rate of denial of services or requests for assistance from jails and other entities and the reason for denial;

(10) quality of care in community-based mental health services and state facilities;

(11) the average number of hours of service provided to individuals in a full level of care compared to the recommended number of hours of service for each level of care; and

(12) any other relevant information to determine the quality of services provided during the reporting period.

Deletes existing text requiring DSHS to consider public input in determining the appropriate outcome measures to collect in the public reporting system. Makes nonsubstantive changes.

(d-1) Provides that a local intellectual and developmental disability authority is only required to report information described by Subsection (d)(8) that is related to a state supported living center.

(d-2) Provides that this subsection and Subsections (d) and (d-1) expire September 1, 2025.

(g) Defines "local behavioral health authority," "local intellectual and developmental disability authority," "local mental health authority," "state hospital," and "state supported living center."

SECTION 9. Requires the executive commissioner, not later than November 1, 2024, by rule to establish the process for requesting a waiver under Section 8.152(c), Education Code, as added by this Act.

SECTION 10. Repealer: Section 1001.084(e), Health and Safety Code, as redesignated by Chapter 1236 (S.B. 1296), Acts of the 84th Legislature, Regular Session, 2015.

SECTION 11. Requires a state agency, if necessary for implementation of a provision of this Act, to request a waiver or authorization from a federal agency, and authorizes a delay of implementation until such a waiver or authorization is granted.

SECTION 12. Effective date: September 1, 2023.