

BILL ANALYSIS

C.S.S.B. 26
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Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The 2022-2023 General Appropriations Act, Senate Bill (S.B. 1), 87th Legislature, Regular Session, 2021 (Article II, Health and Human Services Commission (HHSC), Rider 57) directed HHSC to produce a study on step-down services that can be used to divert people from state mental health hospitals to the community. This report was issued and noted that people discharging from state hospitals have complex needs and challenges that require supportive services, which start while the person is in the hospital and continue during and after the person transitions back into their community. According to the CDC, access to mental health care is important when children have difficulty with emotions or behavior. However, the CDC reports that only about 20 percent of children with mental, emotional, or behavioral disorders receive care from a specialized mental health care provider. There is a need for increasing access to services targeted at youth. 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. The bill further seeks to increase transparency and accountability for the Texas community-based mental and behavioral health systems by providing for the submission of regular performance and financial audits and to increase data reporting related to the populations they serve.

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 executive commissioner of the Health and Human Services Commission in SECTION 1 of this bill.

ANALYSIS

C.S.S.B. 26 amends the Government Code and the Health and Safety Code to set out provisions relating to the creation of a matching grant program for mental health early intervention and treatment, the admission and transition of care for certain individuals, and performance and financial audits of local behavioral health authorities and local mental health authorities and other reporting requirements.

Innovation Matching Grant Program for Mental Health Early Intervention and Treatment

C.S.S.B. 26 requires the Health and Human Services Commission (HHSC) 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, to the extent money is appropriated to HHSC for that purpose. The initiatives may:

- be evidence-based or otherwise demonstrate positive outcomes, including improved relationship skills, improved self-esteem, reduced involvement in the juvenile justice system, participation in the relinquishment avoidance program, and avoidance of emergency room use;
- include training; and
- include services and supports for community-based initiatives, agencies that provide services to children and families, individuals who work with children or caregivers of children showing atypical social or emotional development or other challenging behaviors, and children in or at risk of placement in foster care or the juvenile justice system.

C.S.S.B. 26 authorizes HHSC to award a grant under the program only in accordance with a contract between HHSC and a grant recipient. The contract must 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. The bill requires the executive commissioner of HHSC to establish by rule application and eligibility requirements for an entity to be awarded a grant under the program. The bill establishes that the following entities are eligible for a grant awarded under the program:

- a hospital licensed under the Texas Hospital Licensing Law;
- a mental hospital licensed under statutory provisions relating to private mental hospitals and other mental health facilities;
- a hospital district;
- a local mental health authority;
- a child-care facility that is licensed, certified, or registered by the Department of Family and Protective Services;
- a county or municipality; and
- a 501(c)(3) tax-exempt organization.

C.S.S.B. 26 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 the need for future intensive mental health services, the number of children at risk of placement in foster care or the juvenile justice system, or the demand for placement in state hospitals, inpatient mental health facilities, and residential behavioral health facilities. The bill 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. The bill limits the use of grant money awarded under the program and matching money provided by the recipient to developing innovative strategies that provide resiliency, coping and social skills, healthy social and familial relationships, and parenting skills and behaviors.

C.S.S.B. 26 prohibits a grant recipient from using grant money awarded under the program or matching money provided by the recipient to do the following:

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

The bill establishes 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 Medicaid requirements.

C.S.S.B. 26 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.

C.S.S.B. 26 defines the following terms for purposes of these provisions:

- "inpatient mental health facility" by reference as a mental health facility that can provide 24-hour residential and psychiatric services and that is, as follows:
 - a facility operated by the Department of State Health Services (DSHS);
 - a private mental hospital licensed by DSHS;
 - a community center, facility operated by or under contract with a community center or other entity DSHS designates to provide mental health services;
 - a local mental health authority or a facility operated by or under contract with a local mental health authority;
 - an identifiable part of a general hospital in which diagnosis, treatment, and care for persons with mental illness is provided and that is licensed by DSHS; or
 - a hospital operated by a federal agency; and
- "state hospital" by reference as a hospital operated by DSHS primarily to provide inpatient care and treatment for persons with mental illness.

Admission and Transition of Care for Certain Individuals

C.S.S.B. 26 requires HHSC, not later than January 1, 2025, and in consultation with licensed nursing facilities, to develop a plan for transitioning from a hospital that primarily provides behavioral health services to a nursing facility individuals who require a level of care provided by nursing facilities and a high level of behavioral health supports and services. The bill requires the plan to include the following:

- recommendations for providing incentives to providers for the provision of services to such individuals, including an assessment of the feasibility of including incentive payments under the quality incentive payment program for those providers;
- recommendations for methods to create bed capacity, including reserving specific beds; and
- a fiscal estimate, including estimated costs to nursing facilities and savings to hospitals that will result from transitioning such individuals.

The bill conditions HHSC's authority to implement the plan, including recommendations under the plan, on HHSC determining that implementing the plan would increase the amount of available state general revenue. The bill's provisions regarding the transition plan expire September 1, 2025.

C.S.S.B. 26 revises the provision regarding the rules that the executive commissioner must adopt, and DSHS must enforce, that require the continuity of services and planning for patient care between DSHS facilities and local mental health authorities in the following manner:

- requires the rules to 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;
- replaces the requirement that the rules require joint discharge planning between a DSHS facility and a local mental health authority before a facility discharges a patient or places the patient on an extended furlough with an intent to discharge with the requirement that the rules require participation by a DSHS facility in joint discharge planning with a local mental health authority before the facility discharges a patient or places the patient on an extended furlough with an intent to discharge; and
- gives the executive commissioner the option to amend those rules as an alternative to adopting rules.

The bill replaces the requirement that the local mental health authority plan with the DSHS facility and determine the appropriate community services for the patient with a requirement that the authority plan with the facility to determine the appropriate community services for the patient. The bill replaces a provision requiring the local mental health authority to arrange for the provision of services if DSHS funds are to be used and authorizing the authority to subcontract with or make a referral to a local agency or entity with a provision requiring the authority to arrange for the provision of the services upon discharge.

C.S.S.B. 26 sets out provisions that do the following with respect to joint discharge planning between DSHS facilities and local mental health authorities:

- 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;
- requires transition support services provided by the local mental health authority to be designed to complement joint discharge planning efforts and authorizes those services to include enhanced services and supports for complex or high-need patients, including services and supports necessary to create viable discharge or outpatient management plans, and post-discharge monitoring for up to one year after the discharge date to reduce the likelihood of readmission; and
- requires HHSC to ensure that each DSHS facility concentrates the provision of transition support services for patients who have been admitted to and discharged from a facility multiple times during a 30-day period or who have been in the facility for longer than 365 consecutive days.

C.S.S.B. 26 limits the persons whose admission to an inpatient mental health facility may be approved by the facility administrator or the administrator's designee to persons 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 facility.

Performance and Financial Audits and Reporting Requirements

C.S.S.B. 26 requires the HHSC office of inspector general to conduct performance audits and require financial audits to be conducted of each local behavioral health authority and local mental health authority. The bill requires the office to do the following:

- establish a performance audit schedule that ensures the office audits each applicable authority at least once every five years;
- establish a financial audit schedule that ensures each applicable authority undergoes a financial audit conducted by an independent auditor at least once every three years and submits to the office the results of the financial audit; and
- require additional audits to be conducted as necessary based on adverse findings in a previous audit or as requested by HHSC.

C.S.S.B. 26 revises provisions regarding the mental health and substance abuse public reporting system, as redesignated by Chapter 1236 (S.B. 1296), Acts of the 84th Legislature, Regular Session, 2015, in the following manner:

- removes the Legislative Budget Board and DSHS from the agencies whose performance and outcome measures relating to mental health and substance use services are the basis of the public reporting system established and maintained by DSHS in collaboration with HHSC;
- removes the requirement that the public reporting system allow external users to view and compare the performance, outputs, and outcomes of community centers 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;
- requires the public reporting system instead to allow external users to view and compare the performance and outcomes of local mental health authorities, local behavioral health authorities, and local intellectual and developmental disability authorities;
- changes the frequency with which DSHS must post the performance and outcome measures on the DSHS website from quarterly or semiannually in accordance with when the measures are reported to DSHS to monthly, or as frequently as possible;
- removes the requirement that DSHS consider public input in determining the appropriate outcome measures to collect in the public reporting system;

- includes the following among the items the outcome measures must capture for inclusion in the public reporting system:
 - access to timely and adequate screening and rapid crisis stabilization services;
 - timely access to and appropriate treatment from community-based crisis residential services and hospitalization;
 - improved functioning as a result of medication-related and psychosocial rehabilitation services;
 - 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;
 - the rate of denial of services or requests for assistance from jails and other entities and the reason for denial;
 - quality of care in community-based mental health services and state facilities;
 - 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
 - any other relevant information to determine the quality of services provided during the reporting period;
- limits the information that a local intellectual and developmental disability authority must report related to the number of people referred, 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 to such information as it relates to a state supported living center; and
- establishes that the provisions providing that limitation and requiring the public reporting system to include outcome measures that capture specified items expire September 1, 2025.

C.S.S.B. 26 defines the following terms for purposes of these provisions:

- "local behavioral health authority" as an authority designated by DSHS to provide mental health and chemical dependency services in a local service area;
- "local intellectual and developmental disability authority" by reference as an entity to which the executive commissioner of HHSC delegates the executive commissioner's authority and responsibility within a specified region for planning, policy development, coordination, including coordination with criminal justice entities, and resource development and allocation and for supervising and ensuring the provision of intellectual disability services to persons with intellectual and developmental disabilities in the most appropriate and available setting to meet individual needs in one or more local service areas;
- "local mental health authority" by reference as an entity to which the executive commissioner of HHSC delegates the executive commissioner's authority and responsibility within a specified region for planning, policy development, coordination, including coordination with criminal justice entities, and resource development and allocation and for supervising and ensuring the provision of mental health services to persons with mental illness in the most appropriate and available setting to meet individual needs in one or more local service areas;
- "state hospital" by reference as a hospital operated by DSHS primarily to provide inpatient care and treatment for persons with mental illness; and
- "state supported living center" by reference as a state-supported and structured residential facility operated by HHSC to provide to clients with an intellectual disability a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills.

Repealed and Procedural Provisions

C.S.S.B. 26 repeals Section 1001.084(e), Health and Safety Code, as redesignated by Chapter 1236 (S.B. 1296), Acts of the 84th Legislature, Regular Session, 2015.

C.S.S.B. 26 provides for the delayed implementation of any provision 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.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 26 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

While both the engrossed and substitute require the HHSC office of inspector general to conduct performance audits of each local behavioral health authority and local mental health authority, the substitute differs from the engrossed in the following manner:

- the substitute increases the frequency with which each applicable authority must be audited from once every 10 years, as in the engrossed, to once every five years;
- the substitute includes provisions absent from the engrossed requiring the office of inspector general to require financial audits to be conducted of each applicable authority and to establish a financial audit schedule that ensures each applicable authority undergoes a financial audit conducted by an independent auditor at least once every three years and submits to the office the financial audit results; and
- whereas the engrossed required the office to conduct additional performance audits as necessary based on adverse findings in a previous audit, the substitute requires the office to require additional performance or financial audits to be conducted as necessary based on adverse findings in a previous audit or as requested by HHSC.

The substitute omits a provision in the engrossed that limited the entities subject to the requirement to report 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 to only local intellectual and developmental disability authorities. Instead, the substitute limits the information that a local intellectual and developmental authority is required to report related to the number of people referred, 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 to such information as it relates to a state supported living center.