

**SUBJECT:** Consumer-directed services program for Medicaid waiver recipients

**COMMITTEE:** Select Committee on State Health Care Expenditures — committee substitute recommended

**VOTE:** 7 ayes — Delisi, Gutierrez, Capelo, Crownover, Deshotel, Harper-Brown, Uresti

0 nays

4 absent — Berman, Miller, Truitt, Wohlgemuth

**WITNESSES:** For — None

Against — None

On — Becky Beechinor, Texas Department of Human Services; Nora Cox, Health and Human Services Commission; Heather Vasek, Texas Association of Home Care; *(Registered, but did not testify:)* Linda Gibson and Mary Lou Gibson, Comptroller's Office

**BACKGROUND:** Medicaid waiver slots are the primary funding mechanism for moving people with disabilities from institutional to community settings. Under federal law, Medicaid can pay for long-term care services only in institutional settings unless the client obtains a waiver. People who receive services under a Medicaid waiver may receive many of the same services that would be offered in an institution, including personal assistant care, or other services or devices that are needed only in a community setting, such as certain assistive devices or respite care. The Health and Human Services Commission (HHSC) is the designated state agency for the Medicaid program, but waiver programs are administered by other agencies.

The 75th Legislature in 1997 enacted HB 2084 by Hilderbran, requiring the Texas Department of Human Services (DHS) and the Texas Rehabilitation Commission to implement a pilot program to test the use of vouchers as a cost-neutral payment option for personal assistance and respite services.

In 1999, the 76th Legislature enacted SB 1586 by Zaffirini, creating a voucher system for Medicaid services to people with disabilities (Government Code, sec. 531.051-052). In July 2002, Texas received approval from the Centers for Medicare and Medicaid Services (CMS) to implement this program in the state's Medicaid waiver programs.

All people with disabilities who receive state services in the community can join the voucher program to pay for personal assistance services, respite services, durable medical equipment and assistive technology, supported employment services, and other services. The program offers help computing federal and state employment taxes, preparing and filing income-tax forms, and distributing money to the service provider while ensuring that the consumer is the employer. The program has established a monitoring system to ensure that it supports the standards set for it, uses funds appropriately, and provides consumer satisfaction. About 164,000 people now receive services through this program.

A task force studied the design and implementation of the program and published recommendations in September 2002, including:

- expanding the program;
- expanding consumer direction to new service areas;
- possible implementation of an "agency with choice" option for consumers who do not want to act as employers; and
- continuing the task force.

DHS administers three main waiver programs: Community-Based Alternatives for people with disabilities who are eligible for nursing-home care; Community Living Assistance and Support Services for people with developmental disabilities other than mental retardation; and the Medically Dependent Children's Program (MDCP).

The Texas Department of Mental Health and Mental Retardation administers the Home- and Community-Based Services waiver program, which provides therapeutic and family-support services to maintain people with mental retardation at home or in small-group homes as an alternative to institutional placement.

**DIGEST:** CSHB 3182 would direct HHSC to create a consumer-directed services program in which waiver recipients would receive a monthly stipend to buy home and community-based services.

The stipend would be based on the consumer's functional needs and the financial resources available in the waiver program. The program would have to ensure that the consumer was the employer of and retained control over the purchase or dismissal of services. It also would have to include purchasing guidelines and would have to allow a private entity or local government to apply to serve as the financial intermediary to manage the stipend and taxes. HHSC would have to create a system to monitor the program to ensure appropriate use of funds and services and consumer satisfaction.

HHSC would have to work with CMS to determine other programs that would be available for inclusion in the program and cost-sharing provisions as practicable. It also would have to seek any needed waivers or authorization and could delay implementation until they were granted, but it would have to apply in time to implement the program by January 1, 2004.

The bill would take effect September 1, 2003. The consumer-directed program could not be implemented before January 2, 2004, in the consolidated waiver program. It would expire September 1, 2007.

**SUPPORTERS SAY:** Consumer-directed purchase of services would empower consumers and make the Medicaid program a more efficient and conscious purchaser of services. When consumers decide who to hire and which services to keep, the program gets the most for its money.

CSHB 3182 would recommit the state's efforts to offer consumer-directed services. The original legislation was enacted in 1999. Many changes have occurred in the delivery of health and human services since then, and more will occur if the reorganization proposed in HB 2292 by Wohlgemuth becomes law. The Legislature should send a clear message to HHSC that it intends this program to continue.

The bill would change the statutory language from "voucher" to "stipend," which has nuanced implications for the program. The change in language would convey more accurately the concept that the benefit is a fixed amount

each month that could be carried over from one month to the next to save up for big purchases.

The bill also would establish new reporting requirements for the program. Given that the work group has completed its report to the Legislature and may not be continued because the program no longer is in the implementation phase, the Legislature would receive no additional reports. The bill would remedy that.

CSHB 3182 would revise the original legislation to improve the program. It would expand the program to include MDCP waiver clients, would require HHSC to consider cost sharing, and would allow the program to be expanded to include other services. The bill would give the commission legislative authority to pursue these changes and amend the federal waiver.

The bill would not exclude groups that now receive these services. Though it would address only the waiver programs, other programs could be included if HHSC and CMS found inclusion of those services appropriate.

**OPPONENTS  
SAY:**

CSHB 3182 is unnecessary. HHSC already has a program functionally identical to what this bill proposes. SB 1586 by Zaffirini established the program in 1999, and HHSC implemented it. The program's successful implementation was the subject of a report to the Legislature in 2002. Texas has more people enrolled in consumer-directed purchasing than any other state. Texas was one of the first states to receive a federal waiver to do this. The program is working, and this bill merely would repeat statutory authority that exists elsewhere.

The state can expand the program under current statutory authority. The program already requires cost sharing. Vouchers are planned for expansion into the MDCP program in September 2003, at the same time this bill would take effect. HHSC can amend the waivers without additional legislative authority.

The difference between the term "voucher" and "stipend" is irrelevant. Texas already has approved language from CMS for the waiver amendments using the term "consumer-directed services." Requiring HHSC to use the term "stipend" would have no appreciable impact on the program.

CSHB 3182 could endanger the program in the future. The bill would include only waiver programs but would direct HHSC and CMS to add other programs if appropriate. Even assuming that HHSC determined that the primary home care and other general revenue-funded services were appropriate for now, there is no assurance that they would be included in the future. Those programs were included in SB 1586 and should be included explicitly and permanently in this bill.

The Legislature already receives a thorough assessment of all HHSC's functions through the appropriations process and other reviews conducted by the Legislative Budget Board, Sunset Advisory Commission, and State Auditor's Office. If ongoing review were really that important, the bill should continue the workgroup.

If the Legislature wants to send HHSC a message that it would like these programs to continue, it should fund them adequately. Budget proposals from both the House and the Senate would reduce funding for long-term and community care.

The bill would fail to include the SB 1586 task force's recommendations for improvements in the consumer-directed services program. That group recommended implementing the "agency with choice" model for consumers who do not want to serve as employers, action to ensure a viable personal assistant provider base, and continuing the workgroup. The workgroup should be continued to ensure that these recommendations can be implemented.

The state should not follow the comptroller's e-Texas recommendation that it apply for a cash and counseling waiver. That waiver was created based on Texas' program and involves a direct cash benefit, rather than focusing on consumer-directed purchasing. The state already has all the authorization and waivers it needs to operate its successful program.

OTHER  
OPPONENTS  
SAY:

CSHB 3182 would depart from the e-Texas recommendation. According to the comptroller's report, *Additional e-Texas Recommendations*, published April 2003, the state could apply for a cash and counseling waiver from CMS to implement a program that would allow the state to offer a cash option, as three other states have done, for services in a similar way to the consumer-directed purchasing program.

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**NOTES:** The author intends to offer a floor amendment that would remove the expiration date for the new statute.

As filed, HB 3182 would have created a cash and counseling program, whereas the committee substitute would create a stipend program.