

BILL ANALYSIS

Senate Research Center
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H.B. 2572
By: Truitt (Janek)
Health & Human Services
5/19/2005
Committee Report (Amended)

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Chapters 533 and 535 of the Health and Safety Code address the roles and responsibilities of local mental health and mental retardation authorities. These provisions were amended by H.B. 2292, 78th Texas Legislature, in a manner which restricted the types of services that can be provided by local mental health and mental retardation authorities. These changes adversely affected the local service delivery structure in ways that were not anticipated when the legislation was enacted. Over the past two years, representatives of the public and private sector have worked to resolve these problems, and H.B. 2572 is the result of those efforts.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 3 (Section 533.0355, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to the Health and Human Services Commission in SECTION 3 (Section 533.0355, Health and Safety Code) of this bill.

Rulemaking authority previously granted to the Department of Mental Health and Mental Retardation is rescinded in SECTION 3 (Section 533.0355, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

[While the statutory reference in this bill is to the Texas Department of Mental Health and Mental Retardation, the following amendments affect the Department of Aging and Disability Services and the Department of State Health Services, as successor agencies to the Department of Mental Health and Mental Retardation.]

SECTION 1. Amends Section 533.031, Health and Safety Code, by adding Subdivisions (4), (5), (6), and (7) to define "commission," "executive commissioner," "ICF-MR and related waiver programs," and "qualified service provider."

SECTION 2. Amends Section 533.035, Health and Safety Code, by amending Subsections (a), (c), and (e) and adding Subsections (b-1) and (e-1), as follows:

(a) Requires the executive commissioner of the Health and Human Services Commission (executive commissioner) (HHSC) to designate a local mental health authority and a local mental retardation authority in one or more local service areas. Authorizes the executive commissioner, rather than the Texas Board of Mental Health and Mental Retardation (board), to delegate to the local authorities the authority and responsibility of the executive commissioner, HHSC, or a department of HHSC related to planning, policy development, coordination, including coordination with criminal justice entities, resource allocation, and resource development for and oversight of mental health and mental retardation services in the most appropriate and available setting to meet individual needs in that service area. Prohibits the executive commissioner, in designating local authorities, from decreasing the number of local mental health authorities or local mental retardation authorities from the number that existed on January 1, 2005. Makes conforming changes.

(b-1) Provides that this subsection expires September 1, 2007. Requires the Department of Mental Health and Mental Retardation (department) to take certain steps before the department institutes a change in payment methodology.

(c) Includes that a local authority mental health and mental retardation authority (authority) is required to consider public input, ultimate cost-benefit, and client care issues to ensure consumer choice and the best use of public money in determining whether the authority will provide the service or contract with another organization to provide the service.

(e) Authorizes a local mental health, rather than mental health and mental retardation, authority, in assembling a network of service providers, to serve as a qualified service provider only in accordance with Subsection (c). Deletes existing text referring to a provider of last resort.

(e-1) Authorizes a local mental retardation authority to serve as a provider of ICF-MR and related waiver services only under certain conditions.

SECTION 3. Amends Section 533.0355, Health and Safety Code, as follows:

Sec. 533.0355. New heading: LOCAL MENTAL RETARDATION AUTHORITY RESPONSIBILITIES UNDER CERTAIN MEDICAID PROGRAMS. (a) Requires the executive commissioner to adopt rules establishing the roles and responsibilities of local mental retardation authorities. Deletes definition of "waiver program."

(b) Sets forth certain requirements for rules adopted under this section. Deletes existing text referring to waiver programs.

(c) Requires, in determining eligibility functions, an authority to offer a state school as an option among the residential services available to an individual who is eligible for those services and who meets the department's criteria for state school admission, regardless of whether other residential services are available to the individual. Requires the community mental health and mental retardation centers to document the number of individuals who are eligible for state school services under the department's criteria, the number of individuals who meet eligibility who are requesting state school admissions, and the number of individuals who meet eligibility criteria who are referred for state school services. Requires HHSC to adopt rules related to the performance criteria required of the community mental health and mental retardation centers regarding the provision of information related to services and referral for services.

(d) Requires the executive commissioner by rule to require the local mental retardation authority to make certain considerations in establishing a local mental retardation authority's role as a qualified service provider of ICF-MR and related waiver programs. Deletes existing text setting forth requirements for a local mental retardation authority.

(e) Requires the executive commissioner, in adopting a rule under this section, to seek the participation of and comments from local mental retardation authorities, providers, advocates, and other interested stakeholders. Deletes text of existing Subsection (d).

(f) Provides that any increase based on extenuating circumstances is considered a temporary increase in the local mental retardation authority's provider capacity. Deletes text of existing Subsection (e).

(g) Requires the department, at least biennially, to review and determine the local mental retardation authority's status as a qualified service provider in accordance with certain criteria that includes the consideration of the authority's ability to assure the availability of services in its area. Deletes text of existing Subsection (f).

(h) Requires the Department of Aging and Disability Services to ensure that local services delivered further certain goals. Deletes text of existing Subsections (g), (h), and (i).

SECTION 4. Amends Section 535.002(b), Health and Safety Code, to require HHSC, rather than authorize the department, to use local authorities to implement this chapter. Deletes existing text prohibiting the department from designating those authorities as the sole providers of services if other providers are available.

SECTION 5. Repealer: Sections 533.035(f) and (g) (pertaining to local mental health and mental retardation authorities), Health and Safety Code, and Section 2.82A (pertaining to local mental health and mental retardation authorities implementing support services), Chapter 198, Acts of the 78th Legislature, Regular Session, 2003.

SECTION 6. Requires, HHSC, not later than January 1, 2007, to submit a report to the governor, lieutenant governor, and speaker of the house of representatives that includes any information HHSC finds relevant regarding the implementation of Sections 535.035 and 535.0355, Health and Safety Code, as amended by this Act, by local mental retardation authorities.

SECTION 7. (a) Requires the executive commissioner to establish a local mental retardation authority task group to develop recommendations for the legislature regarding innovative financing, fund management, and local service delivery options for mental retardation services.

(b) Sets forth certain requirements for appointments to the task group.

(c) Requires the task group to take certain information into consideration in developing recommendations.

(d) Requires the task group to submit a report regarding the task group's recommendations to the governor, lieutenant governor, speaker of the house of representatives, and legislature not later than January 1, 2007.

(e) Provides that this section expires September 1, 2007.

SECTION 8. (a) Requires the executive commissioner to establish a local mental health authority task group to develop recommendations for the legislature regarding innovative financing, fund management, and local service delivery options for mental health services.

(b) Sets forth certain requirements for appointments to the task group.

(c) Requires the task group to take certain information into consideration in developing recommendations.

(d) Requires the task group to submit a report regarding the task group's recommendations to the governor, lieutenant governor, speaker of the house of representatives, and legislature not later than January 1, 2007.

(e) Provides that this section expires September 1, 2007.

SECTION 9. Effective date: September 1, 2005.

SUMMARY OF COMMITTEE CHANGES

Committee Amendment No. 1:

Amends H.B. 2572 by striking existing SECTION 7 and SECTION 8, and replacing those sections as follows:

SECTION __. Amends Subchapter B, Chapter 533, Health and Safety Code, by adding Section 533.0357, as follows:

Sec. 533.0357. LOCAL AUTHORITY PARTNERSHIP DEVELOPMENT. (a) Requires HHSC to encourage local authorities to develop partnerships and greater coordination of services to person who have a physical illness as well as mental illness or chemical dependency.

(b) Requires the department, at the request of the local authority, to approve a request for the development of an integrated physical health and behavioral health service delivery model that is developed in partnership with a public hospital, county health department, or other governmental entity and that furthers certain goals.

(c) Requires governmental entities acting under a contract with the Department of State Health Services under this section to provide primary health care services and behavioral health care services as necessary to enhance the integration of physical and behavioral health care services delivery in the separate delivery area.

(d) Requires a contract developed under this section to be a performance-based contract that has certain characteristics.

SECTION __. Amends Subchapter B, Chapter 533, Health and Safety Code, by adding Section 533.0405, as follows:

Sec. 533.0405. RESOURCES FOR EMOTIONALLY DISTURBED CHILDREN AND YOUTH. (a) Requires the department to ensure that local authorities design systems of certain care resources for children with serious emotional disturbances that recognize the unique needs of those children and certain programs.

(b) Requires a local authority to develop formal partnerships and coordinate with entities to ensure that a child with a serious emotional disturbance receives the most appropriate and effective care and services, to the extent possible.

(c) Requires the authority, as appropriate, to use teams composed of representatives public and private service providers and members of the child's family to develop individual family service plans that encompass, to the extent possible, appropriate services and direct interagency and provider cooperation as necessary to further the plans.

(d) Provides that this section does not affect a requirement of state or federal law for informed parental consent before a child receives or is assessed or is screened for health or mental health services.

SECTION __. (a) Requires the legislature to establish a joint interim committee to study the local mental health and mental retardation services delivery system and to develop recommendations for improving the provision of services and increasing the accountability for funds management in the system.

(b) Provides that the committee should consider whether the current local system meets certain goals.

(c) Requires the committee to take certain matters into consideration in developing recommendations for the improvement of services delivery.

(d) Requires the committee, not later than January 1, 2007, to report its findings and recommendations to the governor, the lieutenant governor, and the speaker of the house of representatives.

(e) Requires the lieutenant governor and the speaker of the house of representatives to determine the composition of the committee. Requires the committee to be composed of

five members of the house and five members of the senate. Requires the presiding officer of the committee to be a member of the senate.

(f) Provides that this section expires September 1, 2007.

Committee Amendment No. 2:

(1) Amends the recital to SECTION 2 to strike ",(c),".

(2) Amends SECTION 2 to strike amended Section 533.035(c), Health and Safety Code.

(3) Amends SECTION 2 to strike amended Sections 533.035(e), Health and Safety Code, and substitute the following:

(e) Authorizes a local mental health, rather than mental health and mental retardation, authority, in assembling a network of service providers, to serve as a qualified service provider only in accordance with Subsection (c) and requires the authority to make every reasonable attempt to solicit the development of an available and appropriate provider base that is sufficient to meet the needs of the area's consumers. Deletes existing text referring to a provider of last resort.