

BILL ANALYSIS

Senate Research Center
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S.B. 1060
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Individuals with intellectual and developmental disabilities (I/DD) may receive care in a variety of settings, such as large state-operated institutions and state schools, smaller community residential settings, or their own homes. Texas spends \$1.5 billion per year to serve Texans with I/DD but the state's current infrastructure of services and support is imbalanced, as demonstrated by the waiting list that includes over 37,000 people, some of whom have waited over eight years, for community-based services.

Texas has almost twice the national average rate of institutionalization during a time when an increasing number of individuals with I/DD and their families are asking for help to stay in their homes and to live as productive, engaged members of their community. Adding to their concerns about living in state schools are recurring allegations and findings of abuse, neglect, and exploitation, including findings in 2008 by the U.S. Department of Justice that showed state school operations violated constitutional rights and failed to protect residents from harm. Maintaining 13 aging facilities for a declining census of residents limits the state's opportunities to provide the services and support Texans need.

This bill would require the development of a comprehensive strategic plan to reform and rebalance Texas' system of long-term care services and supports for people with disabilities across programs and settings. The plan must also prescribe a method that will result in consolidation and closure of an unspecified number of state school facilities through a reduction in state school placements, with a goal of meeting the national average utilization rate within eight years of the plan's submission.

As proposed, S.B. 1060 provides for the creation of a strategic plan to reform long-term services and supports for individuals with disabilities.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle I, Title 4, Government Code, by adding Chapter 536, as follows:

CHAPTER 536. STRATEGIC PLAN REGARDING LONG-TERM SERVICES AND SUPPORTS FOR INDIVIDUALS WITH DISABILITIES

Sec. 536.001. PURPOSE; INTENT. (a) Provides that the purpose of this chapter is to develop a comprehensive plan to reform and rebalance Texas' system of long-term services and supports for people with disabilities, including individuals who are eligible for ICF-MR services.

(b) Provides that it is the intent of the legislature that the system analysis and planning effort prescribed by this chapter encompass services for individuals with disabilities across different programs and settings.

(c) Provides that it is the intent of the legislature that the reformed system:

- (1) be based on principles of self-determination;
- (2) include person-centered planning and maximize opportunities for consumer direction for all eligible individuals;
- (3) provide and expand timely access to services in the consumer's setting of choice, whether in the community or in an institution;
- (4) base service provision on functional need;
- (5) simplify and streamline community-based services to ensure that, to the extent possible, individuals have access to the same array of services regardless of an individual's disability;
- (6) improve the quality of services delivered across programs and settings, with particular attention given to services delivered to consumers in state schools and state centers;
- (7) strengthen oversight of community-based services; and
- (8) increase the cost-effectiveness and sustainability of long-term care services and supports.

Sec. 536.002. PRINCIPLES OF SELF-DETERMINATION. Sets forth the principles of "self-determination" for purposes of this chapter.

Sec. 536.003. CREATION OF STRATEGIC PLAN. Requires the Health and Human Services Commission (HHSC) to create a strategic plan for reform of the services and supports available for persons with disabilities, including individuals eligible for ICF-MR services. Requires HHSC to develop the plan using a clearly defined process that allows ongoing and meaningful statewide public involvement.

Sec. 536.004. CONTENTS OF STRATEGIC PLAN. (a) Requires that the strategic plan required by this chapter:

- (1) assess the need for services and supports based on current interest lists, national trends, best practices, consumer satisfaction surveys, and any other relevant data;
- (2) prescribe methods to expand timely access to community-based services by eliminating wait times for services of greater than two years; transferring funds from institutional to community-based strategies where appropriate; developing community-based provider capacity, providing incentives for ICF-MR providers to transition to serving consumers in the most integrated setting; improving and expanding behavioral supports in the community for adults and children; and applying "Money Follows the Person" methods of financing for persons residing in state schools, state centers, or public or private ICF-MRs;
- (3) analyze current utilization management methods for community-based services and determine necessary modifications to ensure more timely access to services;
- (4) examine local access issues for community-based services and identify appropriate solutions;
- (5) examine the current functional eligibility criteria, functional assessment tools, and service planning reimbursement methodology for the home and community-based services waiver system and determine appropriate methods to modify those protocols so individuals can access

needed services, regardless of the program in which the individual is enrolled;

(6) prescribe methods to redesign the home and community-based services waiver system across all programs by simplifying and streamlining the administrative, policy, and regulatory processes to the extent possible; ensuring that person-centered plans and philosophy match utilization review and utilization management methods and philosophy; permitting, to the extent allowed by federal law, flexibility in the development of a consumer's individualized service plan based on the needs of the consumer rather than the consumer's disability label or diagnosis; ensuring that a consumer's individualized service plan can be modified when the consumer's support needs change; and implementing other strategies to streamline services for consumers with a disability who are eligible for waiver services;

(7) prescribe methods to improve services delivered to consumers in state schools and state centers;

(8) prescribe methods to reduce reliance on institutional placements of consumers;

(9) prescribe methods to end institutional placements of individuals who are younger than 22 years of age;

(10) prescribe methods to consolidate and close state schools and state centers in accordance with Subsection (b);

(11) prescribe methods to downsize large and medium-sized public and private IFC-MRs;

(12) prescribe methods to improve the quality of services provided to consumers by examining current methods and processes related to the quality of services and identifying which methods or processes need further enhancements, need to be developed, or are effective and should be considered for implementation across all services; increasing oversight and accountability in community-based settings; developing an appropriate population of qualified direct services workers in the community; developing and making available alternatives to guardianship for consumers who need support in their decision-making; and identifying quality measures, including timeliness of service delivery, number of consumers served, and types of services being received, and providing a process by which this information is reported to the legislature on an annual basis; and

(13) identify barriers to system reform and make recommendations to eliminate or address barriers to system reform, including any necessary statutory amendment.

(b) Requires that the strategic plan prescribe a method that will result in the consolidation and closure of state school and state center facilities through a reduction in the number of consumers placed in those facilities. Requires that the plan, in determining the method for consolidating and closing state school and closing state center facilities:

(1) establish a goal of reducing, within eight years of the submission of the strategic plan, the utilization rate of state schools and other facilities with 16 or more beds to not more than the average national utilization rate;

(2) establish benchmarks that will demonstrate measurable progress during the eight-year period following the submission of the strategic plan

toward the reduction of the utilization rate of state schools and other facilities with 16 or more beds;

(3) reflect the recommendations of a steering committee that includes certain individuals as appointed by the speaker of the house of representatives; certain individuals as appointed by the lieutenant governor; certain individuals as appointed by the executive commissioner of HHSC; for the purpose of providing assistance and serving as a resource to the steering committee, representatives of relevant agencies, including the Texas Department of Housing and Community Affairs and other agencies other than HHSC, as determined by the other members of the steering committee;

(4) require the executive commissioner of HHSC to appoint or hire a person, who is not an employee of DADS, to oversee the closure process;

(5) identify the number and location of state schools and state centers that will be closed under the plan and the timeline for each closure;

(6) establish guiding principles for state schools and state centers that will be closed under the plan, including guidelines for the future use of closed facilities and principles addressing the needs of residents and their families, employees, and affected communities;

(7) define transitional supports, including employment supports, that will be made available to a state school or state center resident who moves from a state school or state center; and

(8) prescribe methods to provide consumers in state schools or state centers who do not have a legally authorized representative with access to alternatives to guardianship.

(c) Requires that the strategic plan establish a timeline and defined benchmarks for measuring progress in implementing the plan. Requires the executive commissioner of HHSC to ensure that the plan includes an ongoing evaluation process that allows the plan to be amended in response to needs identified by the process. Requires that the proposed timeline and benchmarks progressively move the state closer to the goal of reducing the utilization rate of state schools and other facilities with 16 or more beds to a rate that is not more than the national utilization rate and to the goal of reducing wait times for community-based services. Requires that the plan require HHSC to inform the governor, the lieutenant governor, the speaker of the house of representatives, the Legislative Budget Board (LLB), and the standing committees of both houses of the legislature with appropriate subject matter jurisdiction when significant revisions to the strategic plan are made or when a proposed timeline is not met.

(d) Requires the executive commissioner of HHSC, in developing the strategic plan, to consider the efforts of other states, Texas' settlement of *Lelsz v. Kavanagh*, and any relevant directives or information resulting from the investigation of state school or state center facilities by the United States Department of Justice.

(e) Authorizes the executive commissioner of HHSC to contract with a disinterested person with expertise in evaluating and planning long-term care services and supports for persons with disabilities, self-determination and consumer direction, and facilities closures, to aid HHSC in developing the plan required by this chapter.

Sec. 536.005. CLOSURE OR CONSOLIDATION OF CERTAIN FACILITIES. Requires the executive commissioner of HHSC, as soon as possible after HHSC submits the strategic plan required by this chapter, to begin the facility closure process described

by the plan. Authorizes HHSC to begin the implementation of the plan and close or consolidate a facility as described by the plan without additional or specific legislative action.

SECTION 2. Requires HHSC, not later than December 1, 2010, to submit the strategic plan required by Chapter 536, Government Code, as added by this Act, to the presiding officers of the Senate Health and Human Services Committee and the House Human Services Committee.

SECTION 3. Effective date: upon passage or September 1, 2009.