

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 2463
By: Raymond et al. (Campbell)
Health & Human Services
5/15/2015
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The legislature created the Department of Assistive and Rehabilitative Services (DARS) in 2003 to work with Texans with disabilities to improve the quality of their lives and to enable their full participation in society. To achieve its mission, DARS focuses on providing time-limited services through a variety of state- and federally funded programs. As a result of its review of DARS, the Sunset Advisory Commission (Sunset) recommended several statutory modifications that are contained in C.S.H.B. 2463.

DARS is subject to abolishment under the Texas Sunset Act on September 1, 2015, unless continued by the legislature. Sunset did not recommend continuing DARS, but instead recommended consolidating the agency with the other health and human services agencies in a functional approach under the Health and Human Services Commission (HHSC), as provided in separate legislation.

The committee substitute transfers DARS' functions to HHSC on September 1, 2016. It also establishes a legislative oversight committee to oversee the transition of DARS' functions to HHSC.

C.S.H.B. 2463 amends current law relating to the continuation of the functions of the Department of Assistive and Rehabilitative Services and certain other functions.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 2 (Sections 117.079, 117.080, 117.081, and 117.082, Human Resources Code) of this bill.

Rulemaking authority previously granted to the executive commissioner of the Health and Human Services Commission is rescinded in SECTION 4 (Sections 117.028 and 117.052, Human Resources Code) of this bill.

Rulemaking authority previously granted to the executive commissioner of the Health and Human Services Commission is rescinded in SECTION 6 (Section 117.153, Human Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 117.001, Human Resources Code, by amending Subdivision (1) to define "caseworker" and adding Subdivisions (1-a) to define "center for independent living," (1-b) to define "commission," (4-a) to define "direct services," and (4-b) to define "direct services program."

SECTION 2. Amends Subchapter D, Chapter 117, Human Resources Code, by adding Sections 117.079, 117.080, 117.081, and 117.082, as follows:

Sec. 117.079. INTEGRATION OF INDEPENDENT LIVING SERVICES PROGRAMS. (a) Requires DARS, not later than September 1, 2016, to integrate into a

single independent living services program the following programs that DARS operates under Title VII of the federal Rehabilitation Act of 1973 (29 U.S.C. Section 796 et seq.):

- (1) the Independent Living Program for individuals who are blind or have visual impairments; and
- (2) the Independent Living Services Program for individuals with significant disabilities.

(b) Requires the executive commissioner of HHSC (executive commissioner) to adopt any rules necessary to facilitate the integration of the programs identified in Subsection (a), including rules that direct DARS, as the single designated state entity responsible for administering the state's independent living services program, to comply with the requirements of 29 U.S.C. Section 796c for the integrated program.

(c) Provides that this section expires September 1, 2017.

Sec. 117.080. PROVISION OF INDEPENDENT LIVING SERVICES. (a) Requires DARS to ensure that all services provided under the independent living services program that DARS operates under Title VII of the federal Rehabilitation Act of 1973 (29 U.S.C. Section 796 et seq.) are directly provided by centers for independent living, except as provided by Subsection (b), and are not directly provided by DARS.

(b) Requires DARS, if an area of the state does not have a center for independent living, or no center for independent living in that area is able to provide certain necessary services under the independent living services program, to seek to identify a center for independent living that is willing and able to contract with a nonprofit organization or other person to provide the independent living services in the area under the program. Authorizes DARS, if no center for independent living is willing and able to contract with another organization or other person, to directly contract with an organization or other person who is not a center for independent living to provide the independent living services in the area under the program.

(c) Requires DARS to evaluate the independent living services provided by a center for independent living and to provide necessary training or technical assistance to help the center for independent living expand its capacity to provide a full range of independent living services.

(d) Requires DARS to monitor the performance of each center for independent living in providing independent living services, including how the center for independent living monitors the performance of the organizations and other persons with whom it contracts to provide independent living services.

(e) Requires the executive commissioner to adopt rules to implement this section that include:

- (1) an equitable and transparent methodology for allocating funds to centers for independent living under the independent living services program;
- (2) requirements applicable to DARS in contracting with centers for independent living to provide independent living services under the program;
- (3) requirements applicable to centers for independent living in contracting with organizations and other persons to provide independent living services under the program;

(4) requirements applicable to DARS in contracting with organizations or other persons who are not centers for independent living to provide independent living services under the program;

(5) a process for DARS to monitor independent living services contracts;

(6) guidelines on DARS's role in providing technical assistance and training to centers for independent living as necessary; and

(7) expectations for DARS employees to refer persons who contact DARS seeking independent living services to centers for independent living.

(f) Requires DARS, notwithstanding the requirements of this section, to ensure that services provided under the independent living services program are provided as required by this section not later than August 31, 2016. Provides that this subsection expires September 1, 2017.

Sec. 117.081. COMPREHENSIVE REHABILITATION SERVICES PROGRAM. Requires DARS to operate a comprehensive rehabilitation services program to provide comprehensive rehabilitation services to persons with traumatic brain or spinal cord injuries. Requires the executive commissioner to adopt rules for the program that include:

(1) a system of organization for the delivery of the comprehensive rehabilitation services;

(2) eligibility requirements for the comprehensive rehabilitation services;

(3) the types of services that may be provided to a client under the program; and

(4) requirements for client participation in the costs of the comprehensive rehabilitation services.

Sec. 117.082. CHILDREN'S AUTISM PROGRAM. Requires DARS to operate a children's autism program to provide services to children with autism spectrum disorders. Requires the executive commissioner to adopt rules for the program that include:

(1) a system of organization for the delivery of the autism services;

(2) eligibility requirements for the autism services;

(3) the types of services that may be provided to a client under the program; and

(4) requirements for participation by the client's family in the costs of the autism services.

SECTION 3. Amends Chapter 117, Human Resources Code, by adding Subchapter D-1, as follows:

SUBCHAPTER D-1. ADMINISTRATION OF DIRECT SERVICES PROGRAMS IN GENERAL

Sec. 117.091. DIRECT SERVICES PROGRAM CASEWORKER GUIDELINES. (a) Requires DARS to use program data and best practices to establish and maintain guidelines that provide direction for caseworkers' decisions in all of DARS's direct services programs. Provides that the guidelines:

(1) must categorize direct services program cases based on the types of services provided and, for each category, include provisions addressing

the recommended length of time a case in that category should last and the recommended total expenditures for a case in that category;

(2) must include provisions for creating intermediate goals for a client receiving services through a direct services program that will allow the caseworker to monitor the client's progress and the caseworker's supervisor to evaluate how the client's case is advancing;

(3) must include criteria for caseworkers to use in evaluating progress on the intermediate goals described in Subdivision (2); and

(4) may include other provisions designed to assist caseworkers and their supervisors to achieve successful outcomes for clients.

(b) Authorizes a caseworker to exceed the recommended guidelines described in Subsection (a)(1) in a direct services program case but requires the caseworker to obtain the approval of the caseworker's supervisor after documenting the need to exceed the guidelines.

(c) Provides that the guidelines established under this section are not intended to limit the provision of appropriate or necessary services to a client.

(d) Requires DARS to provide the guidelines established under this section to caseworkers in a format that allows caseworkers to easily access the information.

Sec. 117.092. DIRECT SERVICES PROGRAM CASE REVIEW SYSTEM. (a) Requires DARS to establish and maintain a single, uniform case review system for all direct services programs.

(b) Requires that the case review system:

(1) include risk assessment tools that account for the different risks involved in each direct services program;

(2) require that case reviews:

(A) be used to consistently evaluate each direct services program across all regions, with the goal of evaluating at least 10 percent of all cases in each program and region annually;

(B) focus on areas of highest risk and prioritize the review of the following cases:

(i) except as provided by Subparagraph (ii), cases in which direct services have been provided for more than two years;

(ii) cases in the Blind Children's Vocational Discovery and Development Program in which direct services have been provided for more than five years; and

(iii) cases that are significantly outside the expenditure guidelines for that type of case;

(C) be used to evaluate a caseworker's eligibility determinations and decisions to close a case before a service plan is developed or without the client reaching the client's goal; and

(D) focus on the quality of a caseworker's decision-making and compliance with program requirements; and

(3) require a caseworker's supervisor to use the reviews of a caseworker's cases in conducting the caseworker's performance evaluation and in providing informal guidance to the caseworker to improve the caseworker's performance.

Sec. 117.093. DIRECT SERVICES PROGRAM MONITORING. (a) Requires DARS personnel not employed to perform functions directly under a direct services program to be designated to monitor those programs from a statewide perspective. Requires the designated personnel to collect, monitor, and analyze data relating to direct services programs and report outcomes and trends to program managers and, as necessary, the commissioner of assistive and rehabilitative services or other appropriate executive management.

(b) Requires that the monitoring function under Subsection (a) include monitoring of performance data from all regions and all direct services programs to identify trends and case review data to ensure compliance with the case review system under Section 117.092.

(c) Requires personnel designated to perform the monitoring function required by this section to work with direct services program staff to develop objective and detailed outcome measures for the programs.

(d) Authorizes DARS to conduct internal peer reviews of DARS's field offices at regular intervals to assess the field offices' compliance with federal regulations and DARS policies and to compare each field office's compliance with the compliance of the other field offices. Authorizes DARS to use personnel designated to perform the monitoring function required by this section to facilitate the internal peer reviews.

SECTION 4. (a) Amends Subchapter A, Chapter 117, Human Resources Code, by adding Sections 117.004 and 117.005, as follows:

Sec. 117.004. INAPPLICABILITY OF CERTAIN LAW. Provides that, notwithstanding Section 117.003 (Sunset Provision), Section 325.017 (Procedure After Termination), Government Code, does not apply to DARS.

Sec. 117.005. MEANING OF CERTAIN REFERENCES IN LAW. (a) Provides that a reference in this chapter or in any other law to DARS in relation to a function transferred to HHSC under Section 117.012 means HHSC or the division of HHSC performing the function after its transfer.

(b) Provides that, in this chapter or in any other law and notwithstanding any other law, a reference to any of the following state agencies or entities or to the chief executive officer or governing body of any of the following state agencies or entities in relation to a function transferred to HHSC under Section 117.012 from DARS that DARS assumed in accordance with Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, means the executive commissioner, HHSC, or the division of HHSC performing the function after its transfer to HHSC:

- (1) the Texas Rehabilitation Commission;
- (2) the Interagency Council on Early Childhood Intervention;
- (3) the Texas Commission for the Blind; and
- (4) the Texas Commission for the Deaf and Hard of Hearing.

(c) Provides that a reference in this chapter or in any other law to the commissioner of assistive and rehabilitative services (commissioner) in

relation to a function transferred to HHSC under Section 117.012 means the executive commissioner, the executive commissioner's designee, or the director of the division of HHSC performing the function after its transfer.

(d) Provides that a reference in this chapter or in any other law to the Assistive and Rehabilitative Services Council (council) in relation to a function after its transfer to HHSC under Section 117.012 means the executive commissioner or the executive commissioner's designee, as appropriate, and that a function previously performed by the council is a function of that appropriate person.

(b) Amends Chapter 117, Human Resources Code, by adding Subchapter A-1, as follows:

SUBCHAPTER A-1. TRANSFER OF ASSISTIVE AND REHABILITATIVE
SERVICES TO COMMISSION

Sec. 117.011. DEFINITIONS. Defines "administrative support services" and "function."

Sec. 117.012. TRANSFER OF ASSISTIVE AND REHABILITATIVE SERVICES TO COMMISSION. (a) Provides that, not later than September 1, 2016, and subject to Subsection (b), all functions of DARS and the council, including administrative support services functions, are transferred to HHSC as provided by this subchapter.

(b) Provides that, if S.B. 208, H.B. 3294, or similar legislation of the 84th Legislature, Regular Session, 2015, is enacted and becomes law and provides for the transfer of certain DARS functions to an entity other than HHSC, the functions transfer as provided by that legislation are not subject to transfer under Subsection (a).

Sec. 117.013. EFFECT OF TRANSFERS. (a) Provides that all of the following that relate to a function that is transferred to HHSC under Section 117.012 are transferred to HHSC on the date the related function is transferred to HHSC:

- (1) all obligations and contracts, including obligations and contracts related to a grant program;
- (2) all property and records in the custody of DARS or the council from which the function is transferred;
- (3) all funds appropriated by the legislature and other money;
- (4) all complaints, investigations, or contested cases that are pending before DARS or the commissioner, without change in status; and
- (5) all necessary personnel, as determined by the executive commissioner.

(b) Provides that a rule, policy, or form adopted by or on behalf of DARS or the council that related to a function that is transferred to HHSC under Section 117.012 becomes a rule, policy, or form of HHSC on transfer of the related function and remains in effect until altered by the executive commissioner or HHSC, as appropriate, or unless it conflicts with a rule, policy, or form of HHSC.

(c) Provides that a license, permit, or certification in effect that was issued by DARS that related to a function that is transferred to HHSC under

Section 117.012 is continued in effect as a license, permit, or certification of HHSC on transfer of the related function until the license, permit, or certification expires, is suspended or revoked, or otherwise becomes invalid.

Sec. 117.014. APPLICABILITY OF FORMER LAW. Provides that an action brought or proceeding commenced before the date of a transfer prescribed by this subchapter, including a contested case or a remand of an action or proceeding by a reviewing court, is governed by the laws and rules applicable to the action or proceeding before the transfer.

Sec. 117.015. AUTHORITY OF DEPARTMENT. Provides that the powers and authority of DARS with respect to a function are not reduced or otherwise limited until the date the function is transferred in accordance with this subchapter or other law, notwithstanding Section 117.003 or any other law.

Sec. 117.016. EXPIRATION OF SUBCHAPTER. Provides that this subchapter expires September 1, 2019.

(c) Amends Section 117.003, Human Resources Code, as follows:

Sec. 117.003. SUNSET PROVISION. Provides that DARS is subject to Chapter 325 (Texas Sunset Act), Government Code. Provides that, unless continued in existence as provided by that chapter, DARS is abolished September 1, 2015, rather than DARS is abolished and this chapter expires September 1, 2015.

(d) Requires HHSC, as soon as appropriate under Subchapter A-1, Chapter 117, Human Resources Code, as added by this section, and in a manner that minimizes disruption of services, to take appropriate action to be designated as the state agency responsible under federal law for any state or federal program that is transferred to HHSC in accordance with that subchapter and for which federal law requires the designation of a responsible state agency.

(e) Repealers, effective September 1, 2016, including provisions amended by S.B. No. 219, Acts of the 84th Legislature, Regular Session, 2015:

Section 117.002 (Agency), Human Resources Code;

Section 117.021 (Assistive and Rehabilitative Services Council), Human Resources Code;

Section 117.022 (Appointments), Human Resources Code;

Section 117.023 (Training Program for Council Members), Human Resources Code;

Section 117.024 (Terms), Human Resources Code;

Section 117.025 (Vacancy), Human Resources Code;

Section 117.026 (Presiding Officer; Other Officers; Meetings), Human Resources Code;

Section 117.027 (Reimbursement or Expenses), Human Resources Code;

Section 117.028 (Public Interest Information and Complaints), Human Resources Code;

Section 117.029 (Public Access and Testimony), Human Resources Code;

Section 117.030 (Policymaking and Management Responsibilities), Human Resources Code;

Section 117.032 (Offices), Human Resources Code;

Section 117.051 (Commissioner), Human Resources Code;

Section 117.052 (Personnel), Human Resources Code;

Section 117.053 (Information About Qualifications and Standards of Conducts), Human Resources Code;

Section 117.054 (Merit Pay), Human Resources Code;

Section 117.055 (Career Ladder), Human Resources Code;

Section 117.056 (Equal Employment Opportunity Policy), Human Resources Code;

Section 117.0711 (Management and Direction by Executive Commissioner), Human Resources Code;

Section 117.0712 (Contracting and Auditing Authority; Delegation), Human Resources Code; and

Section 117.072 (Information Regarding Complaints), Human Resources Code.

(f) Provides that, notwithstanding Subsection (e) of this section, the implementation of a provision repealed by that subsection ceases on the date all functions of DARS or the council are transferred to HHSC as provided by Subchapter A-1, Chapter 117, Human Resources Code, as added by this section, or to another entity, to the extent DARS or the council is responsible for the provision's implementation.

(g) Provides that this section takes effect only if DARS is not continued in existence by any legislation of the 84th Legislature, Regular Session, 2015.

SECTION 5. (a) Defines "commission," "committee," "executive commissioner," and "function."

(b) Provides that the Health and Human Services Transition Legislative Oversight Committee (committee) is created to facilitate the transfer of functions to or from HHSC as provided by this Act and other enacted legislation of the 84th Legislature, Regular Session, 2015, that becomes law, requiring such a transfer, with minimal negative effect on the delivery of services to which those functions relate.

(c) Provides that the committee is composed of 11 voting members, as follows:

(1) four members of the senate, appointed by the lieutenant governor;

(2) four members of the house of representatives, appointed by the speaker of the house of representatives; and

(3) three members of the public, appointed by the governor.

(d) Provides that the executive commissioner serves as an ex officio, nonvoting member of the committee.

(e) Provides that a member of the committee serves at the pleasure of the appointing official.

(f) Requires the lieutenant governor and the speaker of the house of representatives to each designate a presiding co-chair from among their respective appointments.

(g) Prohibits a member of the committee from receiving compensation for serving on the committee but entitles a member of the committee to reimbursement for travel expenses incurred by the member while conducting the business of the committee as provided by the General Appropriations Act.

(h) Requires the committee to:

(1) facilitate the transfer of functions to HHSC prescribed by Subchapter A-1, Chapter 117, Human Resources Code, as added by this Act, and any other transfers described by Subsection (b) of this section, with minimal negative effect on the delivery of services to which those functions relate;

(2) with assistance from HHSC and the state agencies and entities from which functions are transferred under the laws described under Subdivision (1) of this subsection, advise the executive commissioner concerning:

(A) the functions to be transferred and the funds and obligations that are related to the functions;

(B) the transfer of the functions and related records, property, funds, and obligations by the state agencies and entities; and

(C) any required reorganization of HHSC's administrative structure resulting from the transfers; and

(3) meet at the call of either chair at times determined appropriate by either chair.

(i) Provides that Chapter 551 (Open Meetings), Government Code, applies to the committee.

(j) Requires the committee to submit a report to the governor, lieutenant governor, speaker of the house of representatives, and legislature not later than December 1 of each even-numbered year. Requires that the report include an update on the progress of and issues related to the purposes and duties of the committee.

(k) Provides that the committee is abolished September 1, 2019.

(l) Requires that the transfers and functions described by Subsection (b) of this section be accomplished in accordance with a transition plan developed by the executive commissioner that ensures that the transfers and provision of health and human services in this state are accomplished in a careful and deliberative manner. Requires that the transition plan:

(1) include an outline of the proposed organization of the transferred functions in HHSC's organizational structure; and

(2) include details regarding movement of functions and a timeline that specifies the dates on which transfers are to be made.

(m) Requires the executive commissioner, in developing the transition plan, before submitting the plan to the committee, the governor, and the Legislative Budget Board (LBB) as required by Subsection (n) of this section, to hold public hearings in various geographic areas in this state regarding the plan and to solicit and consider input from appropriate stakeholders.

(n) Requires the executive commissioner to submit the transition plan to the committee, the governor, and the LBB not later than March 1, 2016. Requires the committee to

comment on and make recommendations to the executive commissioner regarding any concerns or adjustments to the transition plan the committee determines appropriate. Prohibits the executive commissioner from finalizing the transition plan until the executive commissioner has reviewed and considered the comments and recommendations of the committee regarding the transition plan.

(o) Requires the executive commissioner to publish in the Texas Register:

(1) the transition plan developed under this section;

(2) any adjustments to the transition plan recommended by the committee;

(3) a statement regarding whether the executive commissioner adopted or otherwise incorporated the recommended adjustments; and

(4) if the executive commissioner did not adopt a recommended adjustment, the justification for not adopting the adjustment.

(p) Requires the lieutenant governor, the speaker of the house of representatives, and the governor, not later than October 1, 2015, to make the appointments to the committee as required by Subsection (c) of this section and requires the lieutenant governor and the speaker of the house of representatives, not later than October 1, 2015, to each designate a presiding co-chair of the committee in accordance with Subsection (f) of this section.

(q) Provides that this section takes effect only if DARS is not continued in existence by any legislation of the 84th Legislature, Regular Session, 2015.

SECTION 6. Repealer: Section 91.022 (Service Delivery), Human Resources Code, as amended by S.B. No. 219, Acts of the 84th Legislature, Regular Session, 2015.

Repealer: Section 117.153 (Training and Supervision of Counselors), Human Resources Code, as redesignated and amended by S.B. No. 219, Acts of the 84th Legislature, Regular Session, 2015.

SECTION 7. Requires the executive commissioner to adopt the rules required by Section 117.080(e), Human Resources Code, as added by this Act, as soon as practicable after the effective date of this Act.

SECTION 8. 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 9. Effective date, except as otherwise provided by this Act: September 1, 2015.