

BILL ANALYSIS

Senate Research Center

H.B. 4169
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Health & Human Services
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Texas Home and Community-Based Services (HCS) and Texas Home Living (TxHmL) waivers include various services and supports for people with intellectual and developmental disabilities in the community, including day and employment services. In order to come into compliance with federal Home and Community-Based Services Settings requirements, the Health and Human Services Commission (HHSC) made several changes to the HCS and TxHmL waiver programs, including replacing existing day services, formerly called "day habilitation," with a new, fully compliant service called individualized skills and socialization effective March 1, 2023.

Prior to the transition, individuals could participate in prevocational services, including activities where an individual could be paid, so long as the goal of the activity was to build skills necessary to achieve integrated employment and not for the primary purpose of producing goods or performing services. Individualized skills and socialization regulations adopted by HHSC prohibit billing for prevocational services where the individual could be paid. This appears to be a potential misunderstanding of federal requirements. However, the federal March 2023 deadline for HHSC to get a transition plan approved and implemented left insufficient time for continued negotiation with the Centers for Medicare and Medicaid Services after this concern was identified and escalated by stakeholders.

H.B. 4169 seeks to require HHSC to apply for and actively pursue a waiver or other necessary authorization from the appropriate federal agency to include prevocational services as part of the individualized skills and socialization services delivered under a Medicaid waiver program providing long-term services and supports.

H.B. 4169 amends current law relating to providing prevocational or similar services under certain Medicaid waiver programs.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 (Section 32.0755, Human Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter B, Chapter 32, Human Resources Code, by adding Section 32.0755, as follows:

Sec. 32.0755. PREVOCATIONAL SERVICES UNDER CERTAIN WAIVER PROGRAMS. (a) Defines "prevocational services."

(b) Requires that prevocational services provided under the community living assistance and support services (CLASS) waiver program or another medical assistance waiver program providing long-term services or supports to a medical assistance recipient be designed to assist the recipient in achieving permanent integrated employment receiving compensation at or above the minimum wage in the recipient's community and in accordance with state and federal law.

(c) Requires the Health and Human Services Commission (HHSC) to seek a waiver or other necessary authorization from the appropriate federal agency to include prevocational services as part of the individualized skills and socialization services delivered under a medical assistance waiver program providing long-term services and supports.

(d) Requires HHSC to collaborate with relevant stakeholders and applicable federal agencies to establish a service similar to prevocational services in a manner that is authorized by federal law, if HHSC's request for a waiver or other authorization under Subsection (c) is not granted.

(e) Provides that if HHSC is granted a waiver or other authorization under Subsection (d):

(1) the reimbursement rate for the service HHSC establishes under that subsection is prohibited from exceeding the reimbursement rate for individualized skills and socialization services; and

(2) if the service is combined with individualized skills and socialization services, HHSC is required to ensure the service is prohibited from exceeding the total allowable hours or the total costs for individualized skills and socialization services provided under a service plan.

(f) Requires the executive commissioner of HHSC by rule to establish clearly stated, service-related performance standards applicable to providers providing prevocational or similar services to recipients under a medical assistance waiver program in accordance with this section. Requires HHSC to monitor the performance of each provider of prevocational or similar services under a medical assistance waiver program to ensure compliance with those standards.

SECTION 2. (a) Requires HHSC, 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.

(b) Requires HHSC to apply for a waiver or other authorization under Section 32.0755(d), as added by this Act, not later than the 60th day after the date the waiver or other authorization is denied, if the waiver or other authorization under Section 32.0755(c), Human Resources Code, as added by this Act, is not granted.

SECTION 3. Effective date: upon passage or September 1, 2023.