

BILL ANALYSIS

Senate Research Center

S.B. 367
By: Zaffirini
Health & Human Services
6/18/2001
Enrolled
Corrected Version Posted 10/08/02

DIGEST AND PURPOSE

The U.S. Supreme Court holds that unnecessary institutionalization of persons with disabilities is unconstitutional under the Americans with Disabilities Act, and requires states to place persons with disabilities in community settings rather than in institutions under certain circumstances. S.B. 367 directs the Health and Human Services Commission and appropriate Health and Human Services agencies to provide services and support to aid persons with disabilities to live in the person's home community.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Department of Human Services, the Texas Department of Mental Health and Mental Retardation, and the Department of Protective and Regulatory Services in SECTION 4 (Section 22.038, Human Resources Code) of this bill.

Rulemaking authority previously granted to the commissioner of health and human services is modified in SECTION 2 (Section 531.042, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 531B, Government Code, by adding Sections 531.0244, 531.02441, and 531.02442, as follows:

Sec. 531.0244. ENSURING APPROPRIATE CARE SETTING FOR PERSONS WITH DISABILITIES. (a) Requires the Health and Human Services Commission (commission) and appropriate health and human services agencies (agencies) to implement a comprehensive, effectively working plan (plan) that provides a system of services and support that fosters independence and productivity and provides meaningful opportunities for a person with a disability to live in the most appropriate care setting, considering certain criteria.

(b) Requires the plan to require appropriate agencies to perform certain tasks.

(c) Provides that, for the purposes of developing the strategies required by Subsection (b)(4), a person with a mental illness who is admitted to a facility of the Texas Department of Mental Health and Mental Retardation (MHMR) for inpatient mental health services three or more times during a 180-day period is presumed to be in imminent risk of requiring placement in an institution. Requires the strategies to be developed in a manner that presumes the person's eligibility for and the appropriateness of intensive community-based services and support.

(d) Prohibits an agency, in implementing the plan, from denying an eligible person with a disability access to an institution or removing an eligible person with a disability from an institution if the person prefers the type and degree of care provided in the institution and that care is appropriate for the person. Authorizes a health and human services agency to deny the person access to an institution or remove the person from an institution to protect the person's health or safety.

(e) Requires each appropriate health and human services agency to implement the strategies and recommendations under the plan required by Subsection (a) subject to the availability of funds.

(f) Provides that this section does not create a cause of action.

(g) Requires the commissioner of health and human services (commissioner) to submit a report on the status of the implementation of the plan to the governor and the legislature not later than December 1 of each even-numbered year. Requires the report to include certain recommendations.

Sec. 531.02441. INTERAGENCY TASK FORCE ON ENSURING APPROPRIATE CARE SETTINGS FOR PERSONS WITH DISABILITIES. (a) Requires the commissioner to establish an interagency task force to assist the commission and appropriate agencies in developing a plan to ensure proper care settings for persons with disabilities.

(b) Requires the commissioner to determine the number of members of the work group and appoint members from certain groups and entities.

(c) Requires the commissioner to designate a member of the task force as a presiding officer and requires other necessary officers be elected by the members of the task force.

(d) Requires the task force to meet at the call of the commissioner.

(e) Provides that a member of the task force serves at the will of the commissioner.

(f) Prohibits a member of the task force from receiving compensation for serving on the task force, but provides that the member be reimbursed for travel expenses incurred while conducting task force business, as provided by the General Appropriations Act.

(g) Requires the task force to study and make recommendations on certain items.

(h) Requires the task force, in addition to making recommendations under Subsection (g), to advise the commission and agencies with respect to implementing the plan, giving primary consideration to certain items.

(i) Requires that the task force report its findings and recommendations to the commissioner not later than September 1 of each year.

Sec. 531.02442. COMMUNITY LIVING OPTIONS INFORMATION PROCESS FOR CERTAIN PERSONS WITH MENTAL RETARDATION. (a) Defines “institution,” “legally authorized representative,” and “local mental retardation authority.”

(b) Requires MHMR, in addition to providing information regarding care and support options as required by Section 531.042, to implement a community living options information process in each institution to inform persons with mental retardation who reside in the institution and their legally authorized representative of alternative community living options.

(c) Requires MHMR to provide the information required by Subsection (b) through the community living options information process at least annually. Requires MHMR to provide the information at any other time on request by a person with mental retardation who resides in an institution or the person’s legally authorized representative.

(d) Requires MHMR, if a desire to pursue an alternative community living option is indicated by certain individuals after receiving the information provided under this section, to refer the persons to the local mental retardation authority (authority). Requires the authority to place the person in an alternative community living option, subject to the availability of funds, or on a waiting list for those options if they are not available for certain reasons.

(e) Requires MHMR to document in the records of each person with mental retardation who resides in an institution the information provided to the person or the person's legally authorized representative through the community living options information process and the results of that process.

SECTION 2. Amends Section 531.042, Government Code, as follows:

Sec. 531.042. New heading: INFORMATION AND ASSISTANCE REGARDING CARE AND SUPPORT OPTIONS; REPORTS. (a) Requires the commissioner by rule to require each health and human services agency (agency) to provide information regarding all care and support options available, including community-based services appropriate to the needs of the patient or client, before the agency allows placement in a care setting, including a nursing home, intermediate care facility for the mentally retarded, or institution for the mentally retarded licensed or operated by the Department of Protective and Regulatory Services (DPRS) to the patient or client and at least one family member of the patient or client, if possible.

(b) Requires the rules to require each health and human services agency to provide information about all long-term care options and long-term support options available to the patient or client, including community-based options and options available through another agency or private provider. Requires the information to also be provided to the patient's legally authorized representative, as defined by Section 241.151 (Definitions), Health and Safety Code, if the patient has one. Requires the information to be provided to the patient's or client's agency caseworker and foster parents, if applicable, if the patient or client is in the conservatorship of a health and human services agency.

(c) Requires a health and human services agency that provides a patient, client, or other person as required by this section, rather than guardian, with information regarding care and support options available to the patient or client to assist the patient, client, or other person in taking advantage of an option selected by the patient, client, or other person, subject to the availability of funds. Requires the agency, if the selected option is not immediately available for any reason, to provide assistance in placing the patient or client on a waiting list for that option. Deletes existing text relating to information about community based care and support options.

(d) Requires each agency to report annually to the legislature, rather than the commission, the number of community-based and residential-care placements made by that agency.

SECTION 3. Amends Chapter 531B, Government Code, by adding Section 531.055, as follows:

Sec. 531.055. VOUCHER PROGRAM FOR TRANSITIONAL LIVING ASSISTANCE FOR PERSONS WITH DISABILITIES. Defines "institutional housing setting" and "integrated housing." Requires the commission, subject to the availability of funds, to coordinate with certain departments to develop a housing assistance program to assist persons with disabilities in moving from institutional housing to integrated housing. Requires the agencies to address certain items in developing the program. Requires the commission, subject to the availability of funds, to require the Texas Department of Human Services (TDHS) to implement

and administer the housing assistance program (program). Requires TDHS to coordinate with the Texas Department of Housing and Community Affairs (TDHCA) in implementing and administering the program, determining the availability of funding from the United States Department of Housing and Urban Development, and obtaining those funds. Requires TDHS and TDHCA to provide the commission with information necessary to facilitate the development and implementation of the program.

SECTION 4. Amends Chapter 22, Human Resources Code, by adding Sections 22.037 and 22.038, as follows:

Sec. 22.037. PILOT PROGRAM FOR COMMUNITY-BASED ALTERNATIVES FOR PERSONS WITH DISABILITIES. (a) Defines “institution” and “legally authorized representative.”

(b) Requires TDHS to develop and implement, in cooperation with MHMR and DPRS, a pilot program in at least three sites to provide a system of services and support that fosters independence and productivity and provides opportunities for persons with disabilities to live in the community. Requires TDHS to determine the pilot sites, with one site in a rural area, one site in an urban area, and one site in a mixed urban and rural area. Requires TDHS, in determining the sites, to consider the length of waiting lists for community-based services and support in each area and give preference to areas with the longest waiting lists.

(c) Requires the pilot program to include, subject to the availability of funds, certain systems and programs.

(d) Requires TDHS to implement each component of the pilot program for which the legislature appropriates sufficient money and exempts TDHS from implementation of components that are not appropriated sufficient money by the legislature.

(e) Requires TDHS to submit a report concerning the effectiveness of the pilot program to the governor and to the presiding officers of both houses of the legislature not later than January 15, 2005. Sets forth certain items that must be included in the report.

Sec. 22.038. MEMORANDUM OF UNDERSTANDING ON PILOT PROGRAM FOR COMMUNITY-BASED ALTERNATIVES FOR PERSONS WITH DISABILITIES. Requires TDHS, MHMR, and DPRS to adopt a memorandum of understanding to implement the pilot program under Section 22.037. Sets forth certain items that must be included in the memorandum. Requires TDHS, MHMR, and DPRS to review and update the memorandum not later than September 1 of each year. Requires each agency, by rule, to adopt the memorandum of understanding and all revisions to the memorandum.

SECTION 5. Amends Chapter 533B, Health and Safety Code, by adding Section 533.048, as follows:

Sec. 533.048. GUARDIANSHIP ADVISORY COMMITTEE. (a) Defines “institution.”

(b) Requires the commissioner to appoint a guardianship advisory committee composed of nine members, five of whom must be parents of residents of institutions.

(c) Requires the commissioner to designate a member of the advisory committee to serve as presiding officer. Requires the members of the advisory committee to elect any other necessary officers.

(d) Requires the advisory committee to meet at the call of the presiding officer.

(e) Provides that a member of the advisory committee serves at the will of the commissioner.

(f) Prohibits a member of the advisory committee from receiving compensation for serving on the advisory committee but provides that the member is entitled to reimbursement for travel expenses incurred by the member while conducting the business of the advisory committee as provided by the General Appropriations Act.

(g) Requires the advisory committee to develop a plan and make specific recommendations to the department regarding methods to facilitate the appointment of relatives of residents of institutions as guardians of those residents to make decisions regarding appropriate care settings for the residents.

SECTION 6. Requires the commissioner of health and human services to establish the task force and adopt rules, not later than December 1, 2001.

SECTION 7. Requires MHMR to implement the community living options information process required by Section 531.02442, Government Code, as added by this Act, not later than March 1, 2002.

SECTION 8. Requires each agency to provide to each patient or client, and to the guardian of a patient or client, if any, who is in a care setting on the effective date of this Act, and to each other person as required by Section 531.042, Government Code, as added by this Act, the information required by that section, not later than March 1, 2002, notwithstanding Section 531.042(a), Government Code.

SECTION 9. Requires TDHS to implement the pilot program under Section 22.037, Human Resources Code, as added by this Act, not later than December 1, 2002.

SECTION 10. Requires TDHS, MHMR, and DPRS to adopt the memorandum of understanding under Section 22.038, Human Resources Code, as added by this Act, not later than September 1, 2002.

SECTION 11. Effective date: September 1, 2001.