

## BILL ANALYSIS

Senate Research Center  
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S.B. 367  
By: Zaffirini  
Health & Human Services  
2/26/2001  
As Filed

### 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. As proposed, 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 in SECTION 4 (Section 22.037, Human Resources Code), the Texas Department of Human Services and the Texas Department of Mental Health and Mental Retardation in SECTION 4 (Section 22.038, Human Resources Code), and the commissioner of health and human services in SECTION 5 of this bill.

### SECTION BY SECTION ANALYSIS

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

Sec. 531.0244. ENSURING APPROPRIATE CARE SETTING FOR PERSONS WITH DISABILITIES. Requires the Health and Human Services Commission (commission) and appropriate health and human services agencies (agencies) to implement a plan that provides a system of services and support that fosters independence and productivity and provides opportunities for a person with a disability to live in the community. Requires the plan to require appropriate agencies to perform certain tasks. 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 to report include certain recommendations.

Sec. 531.02441. INTERAGENCY WORK GROUP ON ENSURING APPROPRIATE CARE SETTINGS FOR PERSONS WITH DISABILITIES. Requires the commissioner to establish an interagency work group to assist the commission and appropriate agencies in developing a plan to ensure proper care settings for persons with disabilities. Requires the commissioner to determine the number of members of the work group and appoint members from certain groups and entities. Requires the commissioner to designate a member of the work group as a presiding officer and requires other necessary officers be elected by the members of the work group. Requires the work group to meet at the call of the presiding officer. Provides that a member of the work group serves at the will of the commissioner and prohibits a member of the work group from receiving compensation for serving on the work group, but may be reimbursed for travel expenses incurred while conducting work group business, as provided by the General Appropriations Act. Requires the work group to study and make recommendations on certain items. Requires that the work group report its findings and recommendations to the commissioner not later than September 1 of each year. Exempts

the work group from Chapter 2110.

Sec. 531.02442. **ADVISORY COMMITTEE ON ENSURING APPROPRIATE CARE SETTINGS FOR PERSONS WITH DISABILITIES.** Requires the commissioner to establish an advisory committee to advise the commissioner and appropriate agencies on ensuring appropriate care settings for persons with disabilities. Provides for the size of the advisory committee and the commissioner's appointment of members from certain groups and entities. Requires the advisory committee to advise the commission and appropriate agencies on implementation of the plan required by Section 531.0244(a), giving primary consideration to certain areas. Prohibits a member of the advisory committee from receiving compensation for serving on the advisory committee, but entitles the member to reimbursement for travel expenses incurred while conducting committee business, as provided by the General Appropriations Act. Exempts the committee from Chapter 2110.

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

Sec. 531.042. New heading: **INFORMATION AND ASSISTANCE REGARDING CARE AND SUPPORT OPTIONS; REPORTS.** 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 appropriate community based services or a nursing home or intermediate care facility for the mentally retarded, to the patient or client. Authorizes an agency to obtain the assistance of a private provider in providing patients, clients or guardians with information on long-term care and support options. Requires the agency that provides care and support option information to a patient, client, or guardian to assist the patient, client, or guardian in taking advantage of the option chosen. 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, to add 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 setting." Requires the commission to coordinate with certain departments to develop a housing assistance program to assist persons with disabilities in moving from an institutional housing setting to an integrated housing setting. Requires the agencies to address certain items in developing the program. Requires the commission to require the Texas Department of Human Services (TDHS) to implement and administer the housing assistance program (program). Authorizes TDHS to coordinate with the Texas Department of Housing and Community Affairs in implementing and administering the program. Requires TDHS to provide the commission with information necessary to facilitate the development and implementation of the program.

SECTION 4. Amends Chapter 22, Human Resources Code, to add Section 22.037 and 22.038, as follows:

Sec. 22.037. **PILOT PROGRAM FOR COMMUNITY-BASED ALTERNATIVES FOR PERSONS WITH DISABILITIES.** Defines "institution." Requires TDHS to develop and implement, in cooperation with the Texas Department of Mental Health and Mental Retardation (MHMR), a pilot program in at least five 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. Requires the pilot program to include, subject to the availability of funds, certain systems and programs. Requires TDHS to establish, by rule, qualifications for a person who implements a component of the pilot program by providing outreach services to a resident of a state school and is not affiliated with the department, MHMR, or a state school. 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. 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 and MHMR 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 and MHMR 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. Requires the commissioner of health and human services to establish and adopt certain groups and rules, respectively, as amended by this Act not later than December 1, 2001.

SECTION 6. 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, the information required by Section 531.042, Government Code, as amended by this Act, and obtain the statement required by that section.

SECTION 7. Requires TDHS to implement the pilot program under Section 22.037, Human Resources Code, as added by this Act, not later than September 1, 2003.

SECTION 8. Requires TDHS and MHMR to adopt the memorandum of understanding under Section 22.038, Human Resources Code, as added by this Act, not later than December 1, 2002.

SECTION 9. Effective date: September 1, 2001.