

AN ACT

relating to the functions of local mental health and mental retardation authorities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 533.031, Health and Safety Code, is amended by adding Subdivisions (4), (5), (6), and (7) to read as follows:

(4) "Commission" means the Health and Human Services Commission.

(5) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(6) "ICF-MR and related waiver programs" includes ICF-MR programs, home and community-based services, Texas home living waiver services, or another Medicaid program serving persons with mental retardation.

(7) "Qualified service provider" means an entity that meets requirements for service providers established by the executive commissioner.

SECTION 2. Section 533.035, Health and Safety Code, is amended by amending Subsections (a) and (e) and adding Subsections (b-1) and (e-1) to read as follows:

(a) The executive commissioner shall designate a local mental health authority and a local mental retardation authority in one or more local service areas. The executive commissioner

1 ~~[board]~~ may delegate to the local authorities the ~~[board's]~~  
2 authority and responsibility of the executive commissioner, the  
3 commission, or a department of the commission related to ~~[for the]~~  
4 planning, policy development, coordination, including coordination  
5 with criminal justice entities, resource allocation, and resource  
6 development for and oversight of mental health and mental  
7 retardation services in the most appropriate and available setting  
8 to meet individual needs in that service area. The executive  
9 commissioner may designate a single entity as the local mental  
10 health authority and the local mental retardation authority for a  
11 service area. In designating local authorities, the executive  
12 commissioner may not decrease the number of local mental health  
13 authorities or local mental retardation authorities from the number  
14 that existed on January 1, 2005, except on:

- 15           (1) a request from two or more local authorities; or  
16           (2) a determination by the executive commissioner that  
17 a local authority has substantially failed to meet the terms and  
18 conditions of the performance contract.

19           (b-1) This subsection expires September 1, 2007, and does  
20 not apply to rate setting or the payment rates for intermediate care  
21 facilities for the mentally retarded, home and community-based  
22 services, Texas home living, and mental retardation service  
23 coordination. Before the department institutes a change in payment  
24 methodology, the department shall:

- 25           (1) evaluate various forms of payment for services  
26 including fee-for-service, case rate, capitation, and other  
27 appropriate payment methods to determine the most cost-effective

1 and efficient form of payment for services;

2 (2) evaluate the effect of each proposed payment  
3 methodology on:

4 (A) the availability of services in urban and  
5 rural service areas;

6 (B) the availability of services for persons who  
7 are indigent; and

8 (C) the cost certainty of the delivery of  
9 Medicaid rehabilitation services;

10 (3) develop an implementation plan for the new payment  
11 methodology that integrates the department's findings under  
12 Subdivisions (1) and (2); and

13 (4) report the department's findings and the  
14 implementation plan for a new payment methodology to the  
15 legislature not later than January 1, 2007.

16 (e) In assembling a network of service providers, a local  
17 mental health [~~and mental retardation~~] authority may serve as a  
18 qualified service provider only in accordance with Subsection (c)  
19 and [~~of services only as a provider of last resort and only if the~~  
20 ~~authority demonstrates to the department that:~~

21 [~~(1)~~] the authority shall make [~~has made~~] every  
22 reasonable attempt to solicit the development of an available and  
23 appropriate provider base that is sufficient to meet the needs of  
24 consumers in its service area[~~, and~~

25 [~~(2) there is not a willing provider of the relevant~~  
26 ~~services in the authority's service area or in the county where the~~  
27 ~~provision of the services is needed].~~

1       (e-1) A local mental retardation authority may serve as a  
2 provider of ICF-MR and related waiver services only if:

3           (1) the authority complies with the limitations  
4 prescribed by Section 533.0355(c); or

5           (2) the ICF-MR and related waiver services are  
6 necessary to ensure the availability of services and the authority  
7 demonstrates to the commission that there is not a willing ICF-MR  
8 and related waiver service qualified service provider in the  
9 authority's service area where the service is needed.

10       SECTION 3. Section 533.0355, Health and Safety Code, is  
11 amended to read as follows:

12       Sec. 533.0355. LOCAL MENTAL RETARDATION AUTHORITY  
13 RESPONSIBILITIES [~~ALLOCATION OF DUTIES~~] UNDER CERTAIN MEDICAID  
14 [~~WAIVER~~] PROGRAMS. (a) The executive commissioner shall adopt  
15 rules establishing the roles and responsibilities of local mental  
16 retardation authorities [~~In this section, "waiver program" means~~  
17 ~~the local mental retardation authority waiver program established~~  
18 ~~under the state Medicaid program~~].

19       (b) In adopting rules under this section, the executive  
20 commissioner must include rules regarding:

- 21           (1) access;  
22           (2) intake;  
23           (3) eligibility functions;  
24           (4) enrollment, initial assessment, and service  
25 authorization;  
26           (5) utilization management;  
27           (6) safety net functions, including crisis management

1 services and assistance in accessing facility-based care;

2 (7) service coordination functions;

3 (8) provision and oversight of state general revenue  
4 services;

5 (9) local planning functions, including stakeholder  
6 involvement, technical assistance and training, and provider  
7 complaint and resolution processes; and

8 (10) processes to assure accountability in  
9 performance, compliance, and monitoring. [A provider of services  
10 under the waiver program shall:

11 [~~(1) develop a person-directed plan and an individual~~  
12 ~~program plan for each person who receives services from the~~  
13 ~~provider under the waiver program;~~

14 [~~(2) perform justification and implementation~~  
15 ~~functions for the plans described by Subdivision (1);~~

16 [~~(3) conduct case management under the waiver program,~~  
17 ~~other than case management under Subsection (c)(3), in accordance~~  
18 ~~with applicable state and federal laws; and~~

19 [~~(4) plan, coordinate, and review the provision of~~  
20 ~~services to all persons who receive services from the service~~  
21 ~~provider under the waiver program.]~~

22 (c) In determining eligibility under Subsection (b)(3), an  
23 authority must offer a state school as an option among the  
24 residential services available to an individual who is eligible for  
25 those services and who meets the department's criteria for state  
26 school admission, regardless of whether other residential services  
27 are available to the individual. The community mental health and

1 mental retardation centers must document the number of individuals  
2 who are eligible for state school services under the department's  
3 criteria, the number of individuals who meet eligibility who are  
4 requesting state school admissions, and the number of individuals  
5 who meet eligibility criteria who are referred for state school  
6 services. The Health and Human Services Commission will adopt  
7 rules related to the performance criteria required of the community  
8 mental health and mental retardation centers regarding the  
9 provision of information related to services and referral for  
10 services.

11 (d) In establishing a local mental retardation authority's  
12 role as a qualified service provider of ICF-MR and related waiver  
13 programs under Section 533.035(e-1), the executive commissioner by  
14 rule shall require the local mental retardation authority to:

15 (1) base the authority's provider capacity on the  
16 authority's August 2004 enrollment levels for the waiver programs  
17 the authority operates and, if the authority's enrollment levels  
18 exceed those levels, to reduce the levels by voluntary attrition;  
19 and

20 (2) base any increase in the authority's provider  
21 capacity on:

22 (A) the authority's state-mandated conversion  
23 from one Medicaid program to another Medicaid program allowing for  
24 a permanent increase in the authority's provider capacity in  
25 accordance with the number of persons who choose the authority as  
26 their provider;

27 (B) the authority's voluntary conversion from

1 one Medicaid program to another Medicaid program allowing for a  
2 temporary increase in the authority's provider capacity in  
3 accordance with the number of persons who choose the authority as  
4 their provider; or

5 (C) other extenuating circumstances that:

6 (i) are clearly defined in rules adopted by  
7 the executive commissioner;

8 (ii) are monitored and approved by the  
9 department; and

10 (iii) do not include increases resulting  
11 from refinancing and do not include increases that unnecessarily  
12 promote the authority's provider role over its role as a local  
13 mental retardation authority [~~A local mental retardation authority~~  
14 ~~shall:~~

15 ~~[(1) manage any waiting lists for services under the~~  
16 ~~waiver program;~~

17 ~~[(2) perform functions relating to consumer choice and~~  
18 ~~enrollment for persons who receive services under the waiver~~  
19 ~~program; and~~

20 ~~[(3) conduct case management under the waiver program~~  
21 ~~relating to funding disputes between a service provider and the~~  
22 ~~local mental retardation authority].~~

23 (e) In adopting a rule under this section, the executive  
24 commissioner shall seek the participation of and comments from  
25 local mental retardation authorities, providers, advocates, and  
26 other interested stakeholders [~~(d) The department shall perform~~

27 ~~all administrative functions under the waiver program that are not~~

1 ~~assigned to a service provider under Subsection (b) or to a local~~  
2 ~~mental retardation authority under Subsection (c). Administrative~~  
3 ~~functions performed by the department include:~~

4 ~~(1) any surveying, certification, and utilization~~  
5 ~~review functions required under the waiver program; and~~

6 ~~(2) managing an appeals process relating to decisions~~  
7 ~~that affect a person receiving services under the waiver program].~~

8     (f) Any increase based on extenuating circumstances under  
9 Subsection (d)(2)(C) is considered a temporary increase in the  
10 local mental retardation authority's provider capacity ~~[(e) The~~  
11 ~~department shall review:~~

12 ~~(1) screening and assessment of levels of care;~~

13 ~~(2) case management fees paid under the waiver~~  
14 ~~program to a community center; and~~

15 ~~(3) administrative fees paid under the waiver program~~  
16 ~~to a service provider].~~

17     (g) At least biennially, the department shall review and  
18 determine the local mental retardation authority's status as a  
19 qualified service provider in accordance with criteria that  
20 includes the consideration of the authority's ability to assure the  
21 availability of services in its area, including:

22     (1) program stability and viability;

23     (2) the number of other qualified service providers in  
24 the area; and

25     (3) the geographical area in which the authority is  
26 located ~~[(f) The department shall perform any function relating~~  
27 ~~to inventory for persons who receive services under the waiver~~



1 ~~program and agency planning assessments].~~

2 (h) The Department of Aging and Disability Services shall  
3 ensure that local services delivered further the following goals:

4 (1) to provide individuals with the information,  
5 skills, opportunities, and support to make informed decisions  
6 regarding the services for which the individual is eligible;

7 (2) to respect the rights, needs, and preferences of  
8 an individual receiving services; and

9 (3) to integrate individuals with mental retardation  
10 and developmental disabilities into the community in accordance  
11 with relevant independence promotion plans and permanency planning  
12 laws.

13 ~~[(g) The review required under Subsection (e) must include a~~  
14 ~~comparison of fees paid before the implementation of this section~~  
15 ~~with fees paid after the implementation of this section. The~~  
16 ~~department may adjust fees paid based on that review.~~

17 ~~[(h) The department shall allocate the portion of the gross~~  
18 ~~reimbursement funds paid to a local authority and a service~~  
19 ~~provider for client services for the case management function in~~  
20 ~~accordance with this section and to the extent allowed by law.~~

21 ~~[(i) The department may adopt rules governing the functions~~  
22 ~~of a local mental retardation authority or service provider under~~  
23 ~~this section.]~~

24 SECTION 4. Section 535.002(b), Health and Safety Code, is  
25 amended to read as follows:

26 (b) If feasible and economical, the commission shall  
27 ~~[department may]~~ use local mental health and mental retardation

1 authorities to implement this chapter. [~~However, the department~~  
2 ~~may not designate those local mental health and mental retardation~~  
3 ~~authorities as the sole providers of services if other providers~~  
4 ~~are available.~~]

5 SECTION 5. (a) Sections 533.035(f) and (g), Health and  
6 Safety Code, are repealed.

7 (b) Section 2.82A, Chapter 198, Acts of the 78th  
8 Legislature, Regular Session, 2003, is repealed.

9 SECTION 6. Not later than January 1, 2007, the Health and  
10 Human Services Commission shall submit a report to the governor,  
11 lieutenant governor, and speaker of the house of representatives  
12 that includes any information the commission finds relevant  
13 regarding the implementation of Sections 535.035 and 535.0355,  
14 Health and Safety Code, as amended by this Act, by local mental  
15 retardation authorities.

16 SECTION 7. (a) The legislature shall establish a joint  
17 interim committee to study the local mental health and mental  
18 retardation services delivery system and to develop  
19 recommendations for improving the provision of services and  
20 increasing the accountability for funds management in the system.

21 (b) The committee should consider whether the current local  
22 system meets the following goals:

23 (1) improving [~~the integration of~~] services to persons  
24 who have physical illness as well as mental illness or chemical  
25 dependency and developing a continuum of services to all persons  
26 who are aging or who have physical or cognitive disabilities; and

27 (2) allowing the appropriate level of flexibility

1 needed to meet unique community needs, while addressing state  
2 requirements and ensuring an appropriate level of budget certainty  
3 for the state.

4 (c) In developing recommendations for the improvement of  
5 services delivery the committee should consider:

6 (1) the role of a community center and whether a  
7 community center should be designated as a provider of public  
8 safety net services for jail diversion services, crisis services,  
9 certain community-oriented services, community hospital services,  
10 or other services necessary to ensure the statewide availability of  
11 services; and

12 (2) the findings and recommendations of the mental  
13 health services task force as reported to the Senate Health and  
14 Human Services interim committee of the 77th Legislature in March  
15 2002 and the House Bill 1734 committee report from the 75th  
16 Legislature, Regular Session, 1997.

17 (d) Not later than January 1, 2007, the committee shall  
18 report its findings and recommendations to the governor, the  
19 lieutenant governor, and the speaker of the house of  
20 representatives.

21 (e) The lieutenant governor and the speaker of the house of  
22 representatives shall determine the composition of the committee.  
23 The committee must be composed of five members of the senate and  
24 five members of the house of representatives. The presiding  
25 officer of the committee must be a member designated from the  
26 senate.

27 (f) This section expires September 1, 2007.

1 SECTION 8. This Act takes effect September 1, 2005.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 2572 was passed by the House on May 10, 2005, by the following vote: Yeas 132, Nays 7, 3 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 2572 on May 27, 2005, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 2572 on May 29, 2005, by a non-record vote.

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Chief Clerk of the House

H.B. No. 2572

I certify that H.B. No. 2572 was passed by the Senate, with amendments, on May 25, 2005, by the following vote: Yeas 30, Nays 1; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 2572 on May 29, 2005, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor