

1-1 By: Truitt, et al. (Senate Sponsor - Janek) H.B. No. 2572
1-2 (In the Senate - Received from the House May 11, 2005;
1-3 May 13, 2005, read first time and referred to Committee on Health
1-4 and Human Services; May 20, 2005, reported favorably, as amended,
1-5 by the following vote: Yeas 5, Nays 0; May 20, 2005, sent to
1-6 printer.)

1-7 COMMITTEE AMENDMENT NO. 1 By: Janek

1-8 Amend H.B. No. 2572 (House engrossment) as follows:

1-9 (1) Strike SECTION 7 and SECTION 8 of the bill (page 6, line
1-10 63, through page 8, line 14).

1-11 (2) Add the following SECTIONS to the bill, appropriately
1-12 numbered, and renumber subsequent SECTIONS accordingly:

1-13 SECTION __. Subchapter B, Chapter 533, Health and Safety
1-14 Code, is amended by adding Section 533.0357 to read as follows:

1-15 Sec. 533.0357. LOCAL AUTHORITY PARTNERSHIP DEVELOPMENT.

1-16 (a) The department shall encourage local authorities to develop
1-17 partnerships and greater coordination of services to persons who
1-18 have a physical illness as well as mental illness or chemical
1-19 dependency.

1-20 (b) At the request of a local authority, the department
1-21 shall approve a request for the development of an integrated
1-22 physical health and behavioral health service delivery model that
1-23 is developed in partnership with a public hospital, county health
1-24 department, or other governmental entity and that furthers the
1-25 following goals:

1-26 (1) establishing a health care services delivery
1-27 system that integrates primary health care services and behavioral
1-28 health care services delivery;

1-29 (2) involving consumers, families, and stakeholders
1-30 fully in the development of a system that is oriented toward
1-31 resiliency and recovery;

1-32 (3) protecting and enhancing the rights of people with
1-33 mental illness or substance abuse problems;

1-34 (4) enhancing the implementation of the resiliency and
1-35 disease management model for mental health services; and

1-36 (5) screening for co-occurring physical, mental, and
1-37 substance abuse disorders and treating persons with integrated
1-38 treatment strategies.

1-39 (c) A public hospital, county health department, or other
1-40 governmental entity acting under a contract with the Department of
1-41 State Health Services under this section may provide primary health
1-42 care services and behavioral health care services as necessary to
1-43 enhance the integration of physical and behavioral health care
1-44 services delivery in the separate service delivery area.

1-45 (d) A contract developed under this section must be a
1-46 performance-based contract that provides flexibility in the design
1-47 of the behavioral health care services delivery system while
1-48 assuring that the local authority will achieve improved performance
1-49 outcomes.

1-50 SECTION __. Subchapter B, Chapter 533, Health and Safety
1-51 Code, is amended by adding Section 533.0405 to read as follows:

1-52 Sec. 533.0405. RESOURCES FOR EMOTIONALLY DISTURBED
1-53 CHILDREN AND YOUTH. (a) The department shall ensure that local
1-54 authorities design systems of care resources for children with
1-55 serious emotional disturbances that recognize:

1-56 (1) the unique needs of those children;
1-57 (2) the various programs in this state through which a
1-58 child may be directed to the authority for services; and

1-59 (3) the various programs available to the child, the
1-60 child's family, and the authority through which the child and the
1-61 child's family may receive behavioral health services or other
1-62 services.

1-63 (b) A local authority shall develop formal partnerships and
1-64 coordinate with entities to ensure that a child with a serious

2-1 emotional disturbance receives the most appropriate and effective
 2-2 care and services, to the extent possible.

2-3 (c) As appropriate, the authority shall use teams composed
 2-4 of representatives of public and private service providers and
 2-5 members of the child's family to develop individual and family
 2-6 service plans that encompass, to the extent possible, appropriate
 2-7 services and direct interagency and provider cooperation as
 2-8 necessary to further the plans.

2-9 (d) This section does not affect a requirement of state or
 2-10 federal law for informed parental consent before a child receives
 2-11 or is assessed or is screened for health or mental health services.

2-12 SECTION __. (a) The legislature shall establish a joint
 2-13 interim committee to study the local mental health and mental
 2-14 retardation services delivery system and to develop
 2-15 recommendations for improving the provision of services and
 2-16 increasing the accountability for funds management in the system.

2-17 (b) The committee should consider whether the current local
 2-18 system meets the following goals:

2-19 (1) improving the integration of services to persons
 2-20 who have physical illness as well as mental illness or chemical
 2-21 dependency and developing a continuum of services to all persons
 2-22 who are aging or who have physical or cognitive disabilities; and

2-23 (2) allowing the appropriate level of flexibility
 2-24 needed to meet unique community needs, while addressing state
 2-25 requirements and ensuring an appropriate level of budget certainty
 2-26 for the state.

2-27 (c) In developing recommendations for the improvement of
 2-28 services delivery the committee should consider:

2-29 (1) the role of a community center and whether a
 2-30 community center should be designated as a provider of public
 2-31 safety net services for jail diversion services, crisis services,
 2-32 certain community-oriented services, community hospital services,
 2-33 or other services necessary to ensure the statewide availability of
 2-34 services; and

2-35 (2) the findings and recommendations of the mental
 2-36 health services task force as reported to the Senate Health and
 2-37 Human Services interim committee of the 77th Legislature in March
 2-38 2002 and the House Bill 1734 committee report from the 75th
 2-39 Legislature, Regular Session, 1997.

2-40 (d) Not later than January 1, 2007, the committee shall
 2-41 report its findings and recommendations to the governor, the
 2-42 lieutenant governor, and the speaker of the house of
 2-43 representatives.

2-44 (e) The lieutenant governor and the speaker of the house of
 2-45 representatives shall determine the composition of the committee.
 2-46 The committee must be composed of five members of the senate and
 2-47 five members of the house of representatives. The presiding
 2-48 officer of the committee must be a member designated from the
 2-49 senate.

2-50 (f) This section expires September 1, 2007.

2-51 COMMITTEE AMENDMENT NO. 2

By: Janek

2-52 Amend H.B. No. 2572 (House engrossment) as follows:

2-53 (1) In the recital to SECTION 2 of the bill (page 3, line
 2-54 25), strike ", (c),".

2-55 (2) In SECTION 2 of the bill, strike amended Section 533.035(c),
 2-56 Health and Safety Code (page 3, line 65, through page 4, line 11).

2-57 (3) In SECTION 2 of the bill, strike amended Section
 2-58 533.035(e), Health and Safety Code (page 4, line 12, through page 4,
 2-59 line 23), and substitute the following:

2-60 (e) In assembling a network of service providers, a local
 2-61 mental health ~~[and mental retardation]~~ authority may serve as a
 2-62 qualified service provider only in accordance with Subsection (c)
 2-63 and [of services only as a provider of last resort and only if the
 2-64 authority demonstrates to the department that:

2-65 ~~[(1)]~~ the authority shall make ~~[has made]~~ every
 2-66 reasonable attempt to solicit the development of an available and
 2-67 appropriate provider base that is sufficient to meet the needs of

3-1 consumers in its service area[~~and~~
 3-2 [~~(2) there is not a willing provider of the relevant~~
 3-3 ~~services in the authority's service area or in the county where the~~
 3-4 ~~provision of the services is needed].~~

3-5 A BILL TO BE ENTITLED
 3-6 AN ACT

3-7 relating to the functions of local mental health and mental
 3-8 retardation authorities.

3-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

3-10 SECTION 1. Section 533.031, Health and Safety Code, is
 3-11 amended by adding Subdivisions (4), (5), (6), and (7) to read as
 3-12 follows:

3-13 (4) "Commission" means the Health and Human Services
 3-14 Commission.

3-15 (5) "Executive commissioner" means the executive
 3-16 commissioner of the Health and Human Services Commission.

3-17 (6) "ICF-MR and related waiver programs" includes
 3-18 ICF-MR programs, home and community-based services, Texas home
 3-19 living waiver services or another Medicaid program serving persons
 3-20 with mental retardation.

3-21 (7) "Qualified service provider" means an entity that
 3-22 meets requirements for service providers established by the
 3-23 executive commissioner.

3-24 SECTION 2. Section 533.035, Health and Safety Code, is
 3-25 amended by amending Subsections (a), (c), and (e) and adding
 3-26 Subsections (b-1) and (e-1) to read as follows:

3-27 (a) The executive commissioner shall designate a local
 3-28 mental health authority and a local mental retardation authority in
 3-29 one or more local service areas. The executive commissioner
 3-30 [board] may delegate to the local authorities the [board's]
 3-31 authority and responsibility of the executive commissioner, the
 3-32 commission, or a department of the commission related to [for the]
 3-33 planning, policy development, coordination, including coordination
 3-34 with criminal justice entities, resource allocation, and resource
 3-35 development for and oversight of mental health and mental
 3-36 retardation services in the most appropriate and available setting
 3-37 to meet individual needs in that service area. The executive
 3-38 commissioner may designate a single entity as the local mental
 3-39 health authority and the local mental retardation authority for a
 3-40 service area. In designating local authorities, the executive
 3-41 commissioner may not decrease the number of local mental health
 3-42 authorities or local mental retardation authorities from the number
 3-43 that existed on January 1, 2005.

3-44 (b-1) This subsection expires September 1, 2007. Before the
 3-45 department institutes a change in payment methodology, the
 3-46 department shall:

3-47 (1) evaluate various forms of payment for services
 3-48 including fee-for-service, case rate, capitation, and other
 3-49 appropriate payment methods to determine the most cost-effective
 3-50 and efficient form of payment for services;

3-51 (2) evaluate the effect of each proposed payment
 3-52 methodology on:

3-53 (A) the availability of services in urban and
 3-54 rural service areas;

3-55 (B) the availability of services for persons who
 3-56 are indigent; and

3-57 (C) the cost certainty of the delivery of
 3-58 Medicaid rehabilitation services;

3-59 (3) develop an implementation plan for the new payment
 3-60 methodology that integrates the department's findings under
 3-61 Subdivisions (1) and (2); and

3-62 (4) report the department's findings and the
 3-63 implementation plan for a new payment methodology to the
 3-64 legislature not later than January 1, 2007.

3-65 (c) A local mental health and mental retardation authority,
 3-66 with the department's approval, shall use the funds received under
 3-67 Subsection (b) to ensure mental health, mental retardation, and

4-1 chemical dependency services are provided in the local service
4-2 area. The local authority shall consider public input, ultimate
4-3 cost-benefit, and client care issues to ensure consumer choice and
4-4 the best use of public money in:

- 4-5 (1) assembling a network of service providers; ~~and~~
- 4-6 (2) making recommendations relating to the most
4-7 appropriate and available treatment alternatives for individuals
4-8 in need of mental health or mental retardation services; and
- 4-9 (3) determining whether the authority will provide the
4-10 service or contract with another organization to provide the
4-11 service.

4-12 (e) In assembling a network of service providers, a local
4-13 mental health ~~and mental retardation~~ authority may serve as a
4-14 qualified service provider only in accordance with Subsection (c)
4-15 [of services only as a provider of last resort and only if the
4-16 authority demonstrates to the department that:

4-17 ~~[(1) the authority has made every reasonable attempt~~
4-18 ~~to solicit the development of an available and appropriate provider~~
4-19 ~~base that is sufficient to meet the needs of consumers in its~~
4-20 ~~service area; and~~

4-21 ~~[(2) there is not a willing provider of the relevant~~
4-22 ~~services in the authority's service area or in the county where the~~
4-23 ~~provision of the services is needed].~~

4-24 (e-1) A local mental retardation authority may serve as a
4-25 provider of ICF-MR and related waiver services only if:

4-26 (1) the authority complies with the limitations
4-27 prescribed by Section 533.0355(c); or

4-28 (2) the ICF-MR and related waiver services are
4-29 necessary to ensure the availability of services and the authority
4-30 demonstrates to the commission that there is not a willing ICF-MR
4-31 and related waiver service qualified service provider in the
4-32 authority's service area where the service is needed.

4-33 SECTION 3. Section 533.0355, Health and Safety Code, is
4-34 amended to read as follows:

4-35 Sec. 533.0355. LOCAL MENTAL RETARDATION AUTHORITY
4-36 RESPONSIBILITIES [ALLOCATION OF DUTIES] UNDER CERTAIN MEDICAID
4-37 [WAIVER] PROGRAMS. (a) The executive commissioner shall adopt
4-38 rules establishing the roles and responsibilities of local mental
4-39 retardation authorities [In this section, "waiver program" means
4-40 the local mental retardation authority waiver program established
4-41 under the state Medicaid program].

4-42 (b) In adopting rules under this section, the executive
4-43 commissioner must include rules regarding:

- 4-44 (1) access;
- 4-45 (2) intake;
- 4-46 (3) eligibility functions;
- 4-47 (4) enrollment, initial assessment, and service
4-48 authorization;

4-49 (5) utilization management;
4-50 (6) safety net functions, including crisis management
4-51 services and assistance in accessing facility-based care;

4-52 (7) service coordination functions;
4-53 (8) provision and oversight of state general revenue
4-54 services;

4-55 (9) local planning functions, including stakeholder
4-56 involvement, technical assistance and training, and provider
4-57 complaint and resolution processes; and

4-58 (10) processes to assure accountability in
4-59 performance, compliance, and monitoring. [A provider of services
4-60 under the waiver program shall:

4-61 ~~[(1) develop a person-directed plan and an individual~~
4-62 ~~program plan for each person who receives services from the~~
4-63 ~~provider under the waiver program;~~

4-64 ~~[(2) perform justification and implementation~~
4-65 ~~functions for the plans described by Subdivision (1);~~

4-66 ~~[(3) conduct case management under the waiver program,~~
4-67 ~~other than case management under Subsection (c)(3), in accordance~~
4-68 ~~with applicable state and federal laws; and~~

4-69 ~~[(4) plan, coordinate, and review the provision of~~

5-1 ~~services to all persons who receive services from the service~~
 5-2 ~~provider under the waiver program.]~~

5-3 (c) In determining eligibility under Subsection (b)(3), an
 5-4 authority must offer a state school as an option among the
 5-5 residential services available to an individual who is eligible for
 5-6 those services and who meets the department's criteria for state
 5-7 school admission, regardless of whether other residential services
 5-8 are available to the individual. The community mental health and
 5-9 mental retardation centers must document the number of individuals
 5-10 who are eligible for state school services under the department's
 5-11 criteria, the number of individuals who meet eligibility who are
 5-12 requesting state school admissions, and the number of individuals
 5-13 who meet eligibility criteria who are referred for state school
 5-14 services. The Health and Human Services Commission will adopt
 5-15 rules related to the performance criteria required of the community
 5-16 mental health and mental retardation centers regarding the
 5-17 provision of information related to services and referral for
 5-18 services.

5-19 (d) In establishing a local mental retardation authority's
 5-20 role as a qualified service provider of ICF-MR and related waiver
 5-21 programs under Section 533.035(e-1), the executive commissioner by
 5-22 rule shall require the local mental retardation authority to:

5-23 (1) base the authority's provider capacity on the
 5-24 authority's August 2004 enrollment levels for the waiver programs
 5-25 the authority operates and, if the authority's enrollment levels
 5-26 exceed those levels, to reduce the levels by voluntary attrition;
 5-27 and

5-28 (2) base any increase in the authority's provider
 5-29 capacity on:

5-30 (A) the authority's state-mandated conversion
 5-31 from one Medicaid program to another Medicaid program allowing for
 5-32 a permanent increase in the authority's provider capacity in
 5-33 accordance with the number of persons who choose the authority as
 5-34 their provider;

5-35 (B) the authority's voluntary conversion from
 5-36 one Medicaid program to another Medicaid program allowing for a
 5-37 temporary increase in the authority's provider capacity in
 5-38 accordance with the number of persons who choose the authority as
 5-39 their provider; or

5-40 (C) other extenuating circumstances that:
 5-41 (i) are clearly defined in rules adopted by
 5-42 the executive commissioner;

5-43 (ii) are monitored and approved by the
 5-44 department; and

5-45 (iii) do not include increases resulting
 5-46 from refinancing and do not include increases that unnecessarily
 5-47 promote the authority's provider role over its role as a local
 5-48 mental retardation authority [A local mental retardation authority
 5-49 shall:

5-50 [(1) manage any waiting lists for services under the
 5-51 waiver program;

5-52 [(2) perform functions relating to consumer choice and
 5-53 enrollment for persons who receive services under the waiver
 5-54 program; and

5-55 [(3) conduct case management under the waiver program
 5-56 relating to funding disputes between a service provider and the
 5-57 local mental retardation authority].

5-58 (e) In adopting a rule under this section, the executive
 5-59 commissioner shall seek the participation of and comments from
 5-60 local mental retardation authorities, providers, advocates, and
 5-61 other interested stakeholders [(d) The department shall perform
 5-62 all administrative functions under the waiver program that are not
 5-63 assigned to a service provider under Subsection (b) or to a local
 5-64 mental retardation authority under Subsection (c). Administrative
 5-65 functions performed by the department include:

5-66 [(1) any surveying, certification, and utilization
 5-67 review functions required under the waiver program; and

5-68 [(2) managing an appeals process relating to decisions
 5-69 that affect a person receiving services under the waiver program].

6-1 (f) Any increase based on extenuating circumstances under
 6-2 Subsection (d)(2)(C) is considered a temporary increase in the
 6-3 local mental retardation authority's provider capacity [~~(e) The~~
 6-4 ~~department shall review:~~

6-5 ~~[(1) screening and assessment of levels of care;~~
 6-6 ~~[(2) case management fees paid under the waiver~~
 6-7 ~~program to a community center; and~~
 6-8 ~~[(3) administrative fees paid under the waiver program~~
 6-9 ~~to a service provider].~~

6-10 (g) At least biennially, the department shall review and
 6-11 determine the local mental retardation authority's status as a
 6-12 qualified service provider in accordance with criteria that
 6-13 includes the consideration of the authority's ability to assure the
 6-14 availability of services in its area, including:

6-15 (1) program stability and viability;
 6-16 (2) the number of other qualified service providers in
 6-17 the area; and
 6-18 (3) the geographical area in which the authority is
 6-19 located [~~(f) The department shall perform any function relating~~
 6-20 ~~to inventory for persons who receive services under the waiver~~
 6-21 ~~program and agency planning assessments].~~

6-22 (h) The Department of Aging and Disability Services shall
 6-23 ensure that local services delivered further the following goals:

6-24 (1) to provide individuals with the information,
 6-25 skills, opportunities, and support to make informed decisions
 6-26 regarding the services for which the individual is eligible;
 6-27 (2) to respect the rights, needs, and preferences of
 6-28 an individual receiving services; and
 6-29 (3) to integrate individuals with mental retardation
 6-30 and developmental disabilities into the community in accordance
 6-31 with relevant independence promotion plans and permanency planning
 6-32 laws.

6-33 [~~(g) The review required under Subsection (e) must include a~~
 6-34 ~~comparison of fees paid before the implementation of this section~~
 6-35 ~~with fees paid after the implementation of this section. The~~
 6-36 ~~department may adjust fees paid based on that review.~~

6-37 [~~(h) The department shall allocate the portion of the gross~~
 6-38 ~~reimbursement funds paid to a local authority and a service~~
 6-39 ~~provider for client services for the case management function in~~
 6-40 ~~accordance with this section and to the extent allowed by law.~~

6-41 [~~(i) The department may adopt rules governing the functions~~
 6-42 ~~of a local mental retardation authority or service provider under~~
 6-43 ~~this section.]~~

6-44 SECTION 4. Section 535.002(b), Health and Safety Code, is
 6-45 amended to read as follows:

6-46 (b) If feasible and economical, the commission shall
 6-47 [department may] use local mental health and mental retardation
 6-48 authorities to implement this chapter. [~~However, the department~~
 6-49 ~~may not designate those local mental health and mental retardation~~
 6-50 ~~authorities as the sole providers of services if other providers~~
 6-51 ~~are available.]~~

6-52 SECTION 5. (a) Sections 533.035(f) and (g), Health and
 6-53 Safety Code, are repealed.

6-54 (b) Section 2.82A, Chapter 198, Acts of the 78th
 6-55 Legislature, Regular Session, 2003, is repealed.

6-56 SECTION 6. Not later than January 1, 2007, the Health and
 6-57 Human Services Commission shall submit a report to the governor,
 6-58 lieutenant governor, and speaker of the house of representatives
 6-59 that includes any information the commission finds relevant
 6-60 regarding the implementation of Sections 535.035 and 535.0355,
 6-61 Health and Safety Code, as amended by this Act, by local mental
 6-62 retardation authorities.

6-63 SECTION 7. (a) The executive commissioner of the Health and
 6-64 Human Services Commission shall establish a local mental
 6-65 retardation authority task group to develop recommendations for the
 6-66 legislature regarding innovative financing, fund management, and
 6-67 local service delivery options for mental retardation services.

6-68 (b) The executive commissioner shall appoint:

6-69 (1) three representatives of each of the following

7-1 groups:

7-2 (A) consumer and advocacy organizations for

7-3 mental retardation services;

7-4 (B) private providers of mental retardation

7-5 services; and

7-6 (C) local mental retardation authorities;

7-7 (2) two county judges or their designees to represent

7-8 the Texas Association of Counties; and

7-9 (3) one county judge or the county judge's designee to

7-10 represent the Conference of Urban Counties.

7-11 (c) In developing recommendations, the task group shall

7-12 consider:

7-13 (1) consumer and family involvement in local service

7-14 delivery design and evaluation;

7-15 (2) the level of flexibility needed to meet unique

7-16 community needs;

7-17 (3) local mental retardation authority coordination

7-18 with state-operated inpatient resources, including state hospitals

7-19 and state schools;

7-20 (4) the anticipated effect of any proposed financing

7-21 or payment methodology on local control of funds, on local fund

7-22 contributions, the availability of services in urban and rural

7-23 service areas, and the availability of services for people who are

7-24 medically indigent;

7-25 (5) the assurance of budget certainty for the state;

7-26 and

7-27 (6) the role of a community center as a designated

7-28 provider of public safety net services for jail diversion services,

7-29 crisis services, certain community-oriented services, community

7-30 hospital services, and other services necessary to ensure the

7-31 statewide availability of community services.

7-32 (d) The task group shall submit a report regarding the task

7-33 group's recommendations to the governor, lieutenant governor,

7-34 speaker of the house of representatives, and legislature not later

7-35 than January 1, 2007.

7-36 (e) This section expires September 1, 2007.

7-37 SECTION 8. (a) The executive commissioner of the Health and

7-38 Human Services Commission shall establish a local mental health

7-39 authority task group to develop recommendations for the legislature

7-40 regarding innovative financing, fund management, and local service

7-41 delivery options for mental health services.

7-42 (b) The executive commissioner shall appoint:

7-43 (1) three representatives of each of the following

7-44 groups:

7-45 (A) consumer and advocacy organizations for

7-46 behavioral health services;

7-47 (B) private providers of behavioral health

7-48 services; and

7-49 (C) local mental health authorities;

7-50 (2) two county judges or their designees to represent

7-51 the Texas Association of Counties; and

7-52 (3) one county judge or the county judge's designee to

7-53 represent the Conference of Urban Counties.

7-54 (c) In developing recommendations, the task group shall

7-55 consider:

7-56 (1) consumer and family involvement in service

7-57 delivery design and evaluation;

7-58 (2) the level of flexibility needed to meet unique

7-59 community needs;

7-60 (3) local mental health authority coordination with

7-61 state-operated inpatient resources, including state hospitals and

7-62 state schools;

7-63 (4) the anticipated effect of any proposed financing

7-64 or payment methodology on local control of funds, on local fund

7-65 contributions, the availability of services in urban and rural

7-66 service areas, and the availability of services for people who are

7-67 medically indigent;

7-68 (5) the assurance of budget certainty for the state;

7-69 (6) the role of a community center as a designated

8-1 provider of public safety net services for jail diversion services,
8-2 crisis services, certain community-oriented services, community
8-3 hospital services, and other services necessary to ensure the
8-4 statewide availability of community services; and

8-5 (7) the findings and recommendations of the mental
8-6 health services task force as reported to the Senate Health and
8-7 Human Services interim committee of the 77th Legislature in March
8-8 2002 and the House Bill 1734 committee report from the 75th
8-9 Legislature, Regular Session, 1997.

8-10 (d) The task group shall submit a report regarding the task
8-11 group's recommendations to the governor, lieutenant governor,
8-12 speaker of the house of representatives, and legislature not later
8-13 than January 1, 2007.

8-14 (e) This section expires September 1, 2007.

8-15 SECTION 9. This Act takes effect September 1, 2005.

8-16 * * * * *