

## **BILL ANALYSIS**

Senate Research Center

H.B. 2439  
By: Truitt et al. (Janek)  
Health & Human Services  
5/7/2007  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Chapters 533 (Powers and Duties) and 535 (Support Services), Health and Safety Code, address the roles and responsibilities of local mental health and mental retardation authorities. These roles and responsibilities were amended by the 78th Legislature, Regular Session, 2003, through H.B. 2292. That bill limited the provision of services by those authorities. Negotiations between private providers and local mental retardation authorities, as well as negotiations between local mental health authorities and representatives of private providers, consumers, consumer advocates, family members, and agency personnel, have indicated a potential need to amend current law regarding the roles and responsibilities of those authorities.

H.B. 2439 sets forth certain parameters within which the local mental retardation authority is authorized to provide ICF-MR (intermediate care facility for the mentally retarded) and related waiver programs, establishes provider capacity limitations, and requires the Department of Aging and Disability Services (DADS) to review the ability of the authority to provide services in its area. This bill sets forth certain parameters for a local mental health authority's provision of services as a "provider of last resort," requires said authority to develop local network development plans, and requires the Department of State Health Services (DSHS) to review these plans.

Additionally, this bill requires DSHS and DADS to take certain actions, respective to each entity, relating to the support and advisement of local mental health and mental retardation authorities. This bill requires the executive commissioner of the Health and Human Services Commission to adopt certain rules regarding the roles and responsibilities of a local mental retardation authority. This bill repeals statute that requires biennial review of the appropriateness of mental health and mental retardation centers (centers) and that certain actions be taken toward the privatization of those center's services.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 3 (Section 533.0351, Health and Safety Code), SECTION 5 (Section 533.0355, Health and Safety Code), and SECTION 6 (Section 533.0359, Health and Safety Code) of this bill.

Rulemaking authority previously granted to the Texas Department of Mental Health and Mental Retardation is rescinded in SECTION 5 (Section 533.0355, Health and Safety Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 533.031, Health and Safety Code, by adding Subdivisions (4), (5), (6), (7), and (8), to define "commission," "executive commissioner," "ICF-MR and related waiver programs," "Section 1915(c) waiver program," and "qualified service provider," respectively.

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

- (a) Requires the executive commissioner of the Health and Human Services Commission (HHSC), rather than the commissioner of mental health and mental retardation, to designate a local mental health authority and a local mental retardation authority in one or

more local service areas. Authorizes the executive commissioner of HHSC (executive commissioner), rather than the Texas Board of Mental Health and Mental Retardation, to delegate the authority and responsibility of the executive commissioner, HHSC, or a department of HHSC related to mental health and mental retardation services. Makes a conforming change.

(b-1) Provides that this subsection applies only to the determination of payment methodologies for mental health services and not to rate setting or the payment rates for intermediate care facilities for certain programs and services, and that this subsection expires September 1, 2009. Requires the Department of State Health Services (DSHS), before instituting a change in payment methodology for mental health services, to evaluate certain forms of payment for services for cost-effectiveness, to evaluate certain effects of each methodology, to determine the implementation and ongoing costs of each methodology, to develop an implementation plan for the methodology, and to report findings and the implementation plan to the executive commissioner and the legislature not later than January 1, 2009.

(c) Requires a local mental health and mental retardation authority, with the approval of DSHS or the Department of Aging and Disability Services (DADS), as applicable, rather than the Department of Mental Health and Mental Retardation (department), to use the funds received under Subsection (b) to ensure mental health, mental retardation, and chemical dependency services are provided in the local service area. Requires said authority to consider certain factors in procuring services for a local service area, including a request for proposal or open-enrollment procurement method.

(e) Authorizes a local mental health authority, rather than a local mental health and mental retardation authority, to serve as a provider of services only as a last resort and only if the local authority demonstrates certain elements of the situation to the department in the local authority's local network development plan. Makes conforming changes.

(e-1) Authorizes a local mental retardation authority to serve as a provider of ICF-MR (intermediate care facility for the mentally retarded) and related waiver programs only if the local authority complies with the limitations prescribed by Section 533.0355(d), or if said programs are necessary to ensure availability of services and the local authority demonstrates to HHSC that there are no willing qualified service providers for such programs in the local authority's service area.

SECTION 3. Amends Section 533.0351, Health and Safety Code, as follows:

Sec. 533.0351. New heading: LOCAL AUTHORITY NETWORK ADVISORY COMMITTEE. (a) Deletes existing definition of "local authority." Redesignates text from existing Subsection (b). Requires the executive commissioner to establish a local authority network advisory committee (committee) to advise the executive commissioner and DSHS on technical and administrative issues that directly affect local mental health authority responsibilities. Makes conforming changes.

(b) Redesignates text from existing Subsection (c). Sets forth the composition of the committee to be appointed by the executive commissioner. Deletes existing text requiring appointment of a person to the committee to represent the public. Authorizes the executive commissioner to appoint facilitators to the committee as necessary. Requires the executive commissioner to also ensure a balanced representation between certain regions, counties, and mental health authorities.

(c) Redesignates text from existing Subsection (d). Requires members appointed to the committee to have some knowledge of, familiarity with, or understanding of, rather than expertise in, the day-to-day operations of a local mental health authority. Makes a conforming change.

(d) Redesignates text from existing Subsection (e). Sets forth certain duties for the committee.

(e) Redesignates text from existing Subsection (f). Deletes existing text referencing the department and replaces with text referring to DSHS.

(f) Redesignates text from existing Subsection (g). Provides that the committee is subject to Chapter 2110 (State Agency Advisory Committees), Government Code, except that the committee is not subject to Section 2110.004 (Reimbursement of Members Expenses; Appropriations Process) or 2110.008 (Duration of Advisory Committee) of that chapter, rather than the committee being subject to Chapter 2110 except as provided by this subsection. Provides that the committee is abolished on September 1, 2017, rather than being abolished automatically on September 1, 2007, unless the executive commissioner adopts a rule continuing the committee in existence beyond that date. Makes a conforming change.

(g) Authorizes DSHS to reimburse consumers of mental health services and family members of individuals with mental health needs appointed to the committee for travel costs incurred in performing their duties as provided in the General Appropriations Act.

SECTION 4. Amends Subchapter B, Chapter 533, Health and Safety Code, by adding Section 533.03521, as follows:

Sec. 533.03521. LOCAL NETWORK DEVELOPMENT PLAN CREATION AND APPROVAL. (a) Requires a local mental health authority to develop a local network development plan (plan) regarding the configuration and development of that authority's provider network. Requires the plan to reflect local needs and priorities and to maximize consumer choice and access to qualified service providers.

(b) Requires the local mental health authority to submit the plan to DSHS for approval.

(c) Requires DSHS to review the plan, upon receipt, to ensure that the plan complies with criteria established by Section 533.0358, Health and Safety Code, if the local mental health authority is providing services under that section, and that the plan indicates that the local mental health authority is reasonably attempting to solicit the development of a provider base that is available, appropriate, and sufficient to meet the needs of consumers in said authority's local service area.

(d) Requires DSHS to approve the plan if DSHS determines that the plan complies with Subsection (c).

(e) Requires DSHS, at least biennially, to review a local mental health authority's plan and to determine whether than plan complies with Subsection (c).

(f) Requires a mental health authority to annually post a list of persons with whom the authority had a contract or agreement in effect during all or part of the previous year, or on the date the list is posted, related to the provision of mental health services, as part of the authority's plan.

SECTION 5. Amends Section 533.0355, Health and Safety Code, as follows:

Sec. 533.0355. New heading: LOCAL MENTAL RETARDATION AUTHORITY RESPONSIBILITIES. (a) Requires the executive commissioner to adopt rules establishing the roles and responsibilities of local mental retardation authorities. Deletes existing definition of "waiver program."

(b) Requires the executive commissioner to include rules regarding certain local mental retardation authority responsibilities in adopting rules under this section. Deletes existing text specifically outlining such responsibilities.

(c) Requires a local mental retardation authority, in determining eligibility, to offer a state school as an option among the residential services and other community living options available to an individual who is eligible for those services and who meets the department's criteria for state school admission, regardless of whether other residential services are available to the individual.

(d) Requires the executive commissioner, in establishing a local mental retardation authority's role as a qualified service provider of ICF-MR and related waiver programs under Section 533.035(e-1), to require the local mental retardation authority to base the authority's provider capacity on certain enrollment levels and to reduce enrollment levels by attrition if such levels are beyond the authority's capacity, and to base any increase in the authority's provider capacity on certain circumstances. Deletes existing text requiring a local mental retardation authority to manage any waiting lists for services under the waiver program, to perform functions relating to consumer choice and enrollment, and to conduct case management under the waiver program. Deletes existing Subsection (d) requiring the department to perform all administrative functions under the waiver program that are not assigned to other certain entities.

(e) Provides that any increase based on extenuating circumstances under Subsection (d)(2)(D) is considered a temporary increase in the local mental retardation authority's provider capacity, to be reduced by attrition. Deletes existing text requiring the department to review certain actions taken in relation to the provision of services under the waiver program.

(f) Requires DADS, at least biennially, to review and determine the local mental retardation authority's status as a qualified service provide in accordance with certain criteria. Deletes existing text requiring the department to perform any function related to inventory for persons who receive services under the waiver program.

(g) Requires DADS to ensure that the local services delivered meet certain goals. Deletes existing text referring to the review deleted from Subsection (e). Deletes existing Subsection (h), which requires the department to allocate the portion of the gross reimbursement funds paid to a local authority and a service provider for client services. Deletes existing Subsection (i), which authorizes the department to adopt rules governing the functions of a local mental retardation authority or service provider under this section.

SECTION 6. Amends Subchapter B, Chapter 533, Health and Safety Code, by adding Sections 533.0357, 533.0358, and 533.0359, as follows:

Sec. 533.0357. **BEST PRACTICES CLEARINGHOUSE FOR LOCAL MENTAL HEALTH AUTHORITIES.** (a) Requires DSHS to establish an online clearinghouse of information relating to certain best practices of local mental health authorities, in coordination with local mental health authorities.

(b) Requires DSHS to solicit and collect examples of best practices related to certain topics from local mental health authorities that meet established outcome and performance measures, community centers, consumers and advocates with expertise in mental health or in the provision of mental health services, and other local entities concerned with mental health issues.

(c) Authorizes DSHS to contract for the services of one or more contractors to develop, implement, and maintain a system of collecting and evaluating the best practices of local mental health authorities as provided by this section.

(d) Requires DSHS to encourage local mental health authorities that successfully implement best practices in accordance with this section to other local mental health authorities that have service deficiencies.

(e) Requires the executive commissioner to assist a local mental health authority in attaining training and mentorship in using the best practices, and to track and document that authority's improvements in the provision of services or continued service deficiencies, before the executive commissioner may remove that authority's designation under Section 533.035(a) as a local mental health authority.

(f) Provides that Subsection (e) does not apply to the removal of local mental health authority's designation that is initiated at the request of a local government official who has responsibility for the provision of mental health services.

(g) Requires DSHS to implement this section using only existing resources.

(h) Requires DSHS to ensure that a local mental health authority providing best practices information to the department of mentoring another local mental health authority complies with Section 533.03521(f).

Sec. 533.0358. LOCAL MENTAL HEALTH AUTHORITY'S PROVISION OF SERVICES AS PROVIDER OF LAST RESORT. (a) Authorizes a local mental health authority to serve as a provider of services under Section 533.035(e) only if, through the plan process, said authority determines that at least one of certain potential circumstances applies to the authority.

(b) Requires a local mental health authority, if the authority continues to provide services in accordance with this section, to identify the proportion of its local network services that the authority will provide and the authority's basis for its determination that the authority must continue to provide services.

Sec. 533.0359. RULEMAKING FOR LOCAL MENTAL HEALTH AUTHORITIES. Requires the executive commissioner to use rulemaking procedures under Subchapter B (Rulemaking), Chapter 2001, Government Code, in developing rules governing local mental health authorities under Sections 533.035, 533.0351, 533.03521, 533.0357, and 533.0358, Health and Safety Code.

SECTION 7. Repealer: Sections 533.035(f) (regarding requirements of the department to review the status of a local mental health and mental retardation authority's status as a services provider) and (g) (regarding a requirement of the department to privatize services provided by local mental health and mental retardation authorities), Health and Safety Code.

SECTION 8. Authorizes a state agency to delay implementing a provision of this Act until a requested federal waiver or authorization necessary to implement that provision is obtained.

SECTION 9. Requires HHSC to submit a report to the governor, the lieutenant governor, and the speaker of the house of representatives, not later than January 1, 2008, that includes whether a waiver from a federal agency is necessary for implementation of any provision of the Act, and if so, the date HHSC applied for that waiver or will apply for that waiver, and any other information HHSC finds relevant regarding the implementation of Sections 533.035, 533.0351, 533.03521, 533.0357, and 533.0358, Health and Safety Code, as amended or added by this Act, by local mental health and mental retardation authorities.

SECTION 10. Requires the executive commissioner to re-create and appoint members of the local authority network advisory committee under Section 533.0351, Health and Safety Code, as amended by this Act not later than November 1, 2007.

SECTION 11. Effective date: upon passage or September 1, 2007.