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H.B. No. 2439

A BILL TO BE ENTITLED

1 AN ACT

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

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

5 SECTION 1. Section 533.031, Health and Safety Code, is
6 amended by adding Subdivisions (4), (5), (6), (7), and (8) to read
7 as follows:

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

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

12 (6) "ICF-MR and related waiver programs" includes
13 ICF-MR Section 1915(c) waiver programs, home and community-based
14 services, Texas home living waiver services, or another Medicaid
15 program serving persons with mental retardation.

16 (7) "Section 1915(c) waiver program" means a federally
17 funded Medicaid program of the state that is authorized under
18 Section 1915(c) of the federal Social Security Act (42 U.S.C.
19 Section 1396n(c)).

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

23 SECTION 2. Section 533.035, Health and Safety Code, is
24 amended by amending Subsections (a), (c), and (e) and adding

1 Subsections (b-1) and (e-1) to read as follows:

2 (a) The executive commissioner shall designate a local
3 mental health authority and a local mental retardation authority in
4 one or more local service areas. The executive commissioner
5 ~~[board]~~ may delegate to the local authorities the ~~[board's]~~
6 authority and responsibility of the executive commissioner, the
7 commission, or a department of the commission related to ~~[for the]~~
8 planning, policy development, coordination, including coordination
9 with criminal justice entities, resource allocation, and resource
10 development for and oversight of mental health and mental
11 retardation services in the most appropriate and available setting
12 to meet individual needs in that service area. The executive
13 commissioner may designate a single entity as the local mental
14 health authority and the local mental retardation authority for a
15 service area.

16 (b-1) This subsection expires September 1, 2009, and
17 applies only to the determination of payment methodologies for
18 mental health services and not to rate setting or the payment rates
19 for intermediate care facilities for the mentally retarded, Section
20 1915(c) waiver programs, mental retardation service coordination,
21 and other Medicaid services. Before the Department of State Health
22 Services institutes a change in payment methodology for mental
23 health services, the department shall:

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

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

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

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

7 (C) the cost certainty of the delivery of
8 Medicaid rehabilitation mental health services; and

9 (D) the ability of the local mental health
10 authority to meet unique local needs and develop and manage a
11 network of providers;

12 (3) determine the implementation and ongoing
13 operational costs for the state and local mental health authorities
14 associated with each proposed payment methodology;

15 (4) develop an implementation plan, with the advice
16 and assistance of the local authority network advisory committee,
17 for any new payment methodology for mental health services that
18 integrates the department's findings under Subdivisions (1), (2),
19 and (3); and

20 (5) report the department's findings and the
21 implementation plan for any new payment methodology for mental
22 health services to the executive commissioner and the legislature
23 not later than January 1, 2009.

24 (c) A local mental health and mental retardation authority,
25 with the [~~department's~~] approval of the Department of State Health
26 Services or the Department of Aging and Disability Services, or
27 both, as applicable, shall use the funds received under Subsection

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

- 6 (1) assembling a network of service providers; ~~and~~
7 (2) making recommendations relating to the most
8 appropriate and available treatment alternatives for individuals
9 in need of mental health or mental retardation services; and
10 (3) procuring services for a local service area,
11 including a request for proposal or open-enrollment procurement
12 method.

13 (e) Subject to Section 533.0358, in ~~In~~ assembling a
14 network of service providers, a local mental health ~~and mental~~
15 ~~retardation~~ authority may serve as a provider of services only as a
16 provider of last resort and only if the local authority
17 demonstrates to the department in the local authority's local
18 network development plan that:

19 (1) the local authority has made every reasonable
20 attempt to solicit the development of an available and appropriate
21 provider base that is sufficient to meet the needs of consumers in
22 its service area; and

23 (2) there is not a willing provider of the relevant
24 services in the local authority's service area or in the county
25 where the provision of the services is needed.

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

1 (1) the local authority complies with the limitations
2 prescribed by Section 533.0355(d); or

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

9 SECTION 3. Section 533.0351, Health and Safety Code, is
10 amended to read as follows:

11 Sec. 533.0351. LOCAL AUTHORITY NETWORK [~~TECHNICAL~~]
12 ADVISORY COMMITTEE. (a) [~~In this section, "local authority" means~~
13 ~~a local mental health or mental retardation authority.~~

14 [~~(b)~~] The executive commissioner shall establish a
15 [~~nine-member~~] local authority network advisory committee to advise
16 the executive commissioner and the Department of State Health
17 Services on technical and administrative issues that directly
18 affect local mental health authority responsibilities.

19 (b) [~~(c)~~] The committee is composed of equal numbers of
20 representatives of local mental health authorities, community
21 mental health service providers, private mental health service
22 providers, local government officials, advocates for individuals
23 with mental health needs, consumers of mental health services,
24 family members of individuals with mental health needs, and other
25 individuals with expertise in the field of mental health [~~and one~~
26 ~~member representing the public~~] appointed by the executive
27 commissioner. In addition, the executive commissioner may appoint

1 facilitators to the committee as necessary. In appointing the
2 members, the executive commissioner shall also ensure a balanced
3 representation of:

- 4 (1) different regions of this state;
5 (2) rural and urban counties; and
6 (3) single-county and multicounty local mental health
7 authorities.

8 (c) Members [~~(d) Except for the member representing the~~
9 ~~public, members~~] appointed to the advisory committee must have some
10 knowledge of, familiarity with, or understanding of [~~expertise in~~]
11 the day-to-day operations of a local mental health authority.

12 (d) [~~(e)~~] The advisory committee shall:

13 (1) review rules and proposed rules and participate in
14 any negotiated rulemaking process related to local mental health
15 authority operations;

16 (2) advise the executive commissioner and the
17 Department of State Health Services regarding evaluation and
18 coordination of initiatives related to local mental health
19 authority operations;

20 (3) advise the executive commissioner and the
21 Department of State Health Services [~~and assist the department~~] in
22 developing a method of contracting with local mental health
23 authorities that will result in contracts that are flexible and
24 responsive to:

25 (A) the needs and services of local communities;

26 and

27 (B) the department's performance expectations;

1 (4) coordinate with [~~and monitor the activities of~~]
2 work groups whose actions may affect local mental health authority
3 operations;

4 (5) report to the executive commissioner and the
5 Department of State Health Services [~~board~~] on the committee's
6 activities and recommendations at least once each fiscal quarter;
7 and

8 (6) work with the executive commissioner or the
9 Department of State Health Services as the executive commissioner
10 directs.

11 (e) [~~(f)~~] For any written recommendation the committee
12 makes to the Department of State Health Services [~~department~~], the
13 department shall provide to the committee a written response
14 regarding any action taken on the recommendation or the reasons for
15 the department's inaction on the subject of the recommendation.

16 (f) The [~~(g)~~ ~~Except as provided by this subsection, the~~]
17 committee is subject to Chapter 2110, Government Code, except that
18 the committee is not subject to Section 2110.004 or 2110.008,
19 Government Code. The committee is abolished [~~automatically~~] on
20 September 1, 2017 [~~2007~~], unless the executive commissioner [~~board~~]
21 adopts a rule continuing the committee in existence beyond that
22 date.

23 (g) The Department of State Health Services may reimburse
24 consumers of mental health services and family members of
25 individuals with mental health needs appointed to the committee for
26 travel costs incurred in performing their duties as provided in the
27 General Appropriations Act.

1 SECTION 4. Subchapter B, Chapter 533, Health and Safety
2 Code, is amended by adding Section 533.03521 to read as follows:

3 Sec. 533.03521. LOCAL NETWORK DEVELOPMENT PLAN CREATION AND
4 APPROVAL. (a) A local mental health authority shall develop a
5 local network development plan regarding the configuration and
6 development of the local mental health authority's provider
7 network. The plan must reflect local needs and priorities and
8 maximize consumer choice and access to qualified service providers.

9 (b) The local mental health authority shall submit the local
10 network development plan to the Department of State Health Services
11 for approval.

12 (c) On receipt of a local network development plan under
13 this section, the department shall review the plan to ensure that
14 the plan:

15 (1) complies with the criteria established by Section
16 533.0358 if the local mental health authority is providing services
17 under that section; and

18 (2) indicates that the local mental health authority
19 is reasonably attempting to solicit the development of a provider
20 base that is:

21 (A) available and appropriate; and

22 (B) sufficient to meet the needs of consumers in
23 the local authority's local service area.

24 (d) If the department determines that the local network
25 development plan complies with Subsection (c), the department shall
26 approve the plan.

27 (e) At least biennially, the department shall review a local

1 mental health authority's local network development plan and
2 determine whether the plan complies with Subsection (c).

3 (f) As part of a local network development plan, a local
4 mental health authority annually shall post on the local
5 authority's website a list of persons with whom the local authority
6 had a contract or agreement in effect during all or part of the
7 previous year, or on the date the list is posted, related to the
8 provision of mental health services.

9 SECTION 5. Section 533.0355, Health and Safety Code, is
10 amended to read as follows:

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

18 (b) In adopting rules under this section, the executive
19 commissioner must include rules regarding the following local
20 mental retardation authority responsibilities:

- 21 (1) access;
22 (2) intake;
23 (3) eligibility functions;
24 (4) enrollment, initial person-centered assessment,
25 and service 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), a
23 local mental retardation authority must offer a state school as an
24 option among the residential services and other community living
25 options available to an individual who is eligible for those
26 services and who meets the department's criteria for state school
27 admission, regardless of whether other residential services are

1 available to the individual.

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

6 (1) base the local authority's provider capacity on
7 the local authority's August 2004 enrollment levels for the waiver
8 programs the local authority operates and, if the local authority's
9 enrollment levels exceed those levels, to reduce the levels by
10 attrition; and

11 (2) base any increase in the local authority's
12 provider capacity on:

13 (A) the local authority's state-mandated
14 conversion from an ICF-MR program to a Section 1915(c) waiver
15 program allowing for a permanent increase in the local authority's
16 provider capacity in accordance with the number of persons who
17 choose the local authority as their provider;

18 (B) the local authority's voluntary conversion
19 from an ICF-MR program to a Section 1915(c) waiver program allowing
20 for a temporary increase in the local authority's provider
21 capacity, to be reduced by attrition, in accordance with the number
22 of persons who choose the local authority as their provider;

23 (C) the local authority's refinancing from
24 services funded solely by state general revenue to a Medicaid
25 program allowing for a temporary increase in the local authority's
26 provider capacity, to be reduced by attrition, in accordance with
27 the number of persons who choose the local authority as their

1 provider; or

2 (D) other extenuating circumstances that:

3 (i) are monitored and approved by the
4 Department of Aging and Disability Services;

5 (ii) do not include increases that
6 unnecessarily promote the local authority's provider role over its
7 role as a local mental retardation authority; and

8 (iii) may include increases necessary to
9 accommodate a family-specific or consumer-specific circumstance
10 and choice [~~A local mental retardation authority shall:~~

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

13 [~~(2) perform functions relating to consumer choice and~~
14 ~~enrollment for persons who receive services under the waiver~~
15 ~~program; and~~

16 [~~(3) conduct case management under the waiver program~~
17 ~~relating to funding disputes between a service provider and the~~
18 ~~local mental retardation authority.~~

19 [~~(d) The department shall perform all administrative~~
20 ~~functions under the waiver program that are not assigned to a~~
21 ~~service provider under Subsection (b) or to a local mental~~
22 ~~retardation authority under Subsection (c). Administrative~~
23 ~~functions performed by the department include:~~

24 [~~(1) any surveying, certification, and utilization~~
25 ~~review functions required under the waiver program; and~~

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

1 (e) Any increase based on extenuating circumstances under
2 Subsection (d)(2)(D) is considered a temporary increase in the
3 local mental retardation authority's provider capacity, to be
4 reduced by attrition [~~The department shall review:~~

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

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

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

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

16 ~~(1) program stability and viability;~~

17 ~~(2) the number of other qualified service providers in~~
18 ~~the area; and~~

19 ~~(3) the geographical area in which the local authority~~
20 ~~is located~~ [~~The department shall perform any function relating to~~
21 ~~inventory for persons who receive services under the waiver program~~
22 ~~and agency planning assessments].~~

23 (g) The Department of Aging and Disability Services shall
24 ensure that local services delivered further the following goals:

25 ~~(1) to provide individuals with the information,~~
26 ~~opportunities, and support to make informed decisions regarding the~~
27 ~~services for which the individual is eligible;~~

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

3 (3) to integrate individuals with mental retardation
4 and developmental disabilities into the community in accordance
5 with relevant independence initiatives and permanency planning
6 laws. ~~[The review required under Subsection (e) must include a~~
7 ~~comparison of fees paid before the implementation of this section~~
8 ~~with fees paid after the implementation of this section. The~~
9 ~~department may adjust fees paid based on that review.~~

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

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

17 SECTION 6. Subchapter B, Chapter 533, Health and Safety
18 Code, is amended by adding Sections 533.0357, 533.0358, and
19 533.0359 to read as follows:

20 Sec. 533.0357. BEST PRACTICES CLEARINGHOUSE FOR LOCAL
21 MENTAL HEALTH AUTHORITIES. (a) In coordination with local mental
22 health authorities, the department shall establish an online
23 clearinghouse of information relating to best practices of local
24 mental health authorities regarding the provision of mental health
25 services, development of a local provider network, and achievement
26 of the best return on public investment in mental health services.

27 (b) The department shall solicit and collect from local

1 mental health authorities that meet established outcome and
2 performance measures, community centers, consumers and advocates
3 with expertise in mental health or in the provision of mental health
4 services, and other local entities concerned with mental health
5 issues examples of best practices related to:

6 (1) developing and implementing a local network
7 development plan;

8 (2) assembling and expanding a local provider network
9 to increase consumer choice;

10 (3) creating and enforcing performance standards for
11 providers;

12 (4) managing limited resources;

13 (5) maximizing available funding;

14 (6) producing the best client outcomes;

15 (7) ensuring consumers of mental health services have
16 control over decisions regarding their health;

17 (8) developing procurement processes to protect
18 public funds;

19 (9) achieving the best mental health consumer outcomes
20 possible; and

21 (10) implementing strategies that effectively
22 incorporate consumer and family involvement to develop and evaluate
23 the provider network.

24 (c) The department may contract for the services of one or
25 more contractors to develop, implement, and maintain a system of
26 collecting and evaluating the best practices of local mental health
27 authorities as provided by this section.

1 (d) The department shall encourage local mental health
2 authorities that successfully implement best practices in
3 accordance with this section to mentor local mental health
4 authorities that have service deficiencies.

5 (e) Before the executive commissioner may remove a local
6 mental health authority's designation under Section 533.035(a) as a
7 local mental health authority, the executive commissioner shall:

8 (1) assist the local mental health authority in
9 attaining training and mentorship in using the best practices
10 established in accordance with this section; and

11 (2) track and document the local mental health
12 authority's improvements in the provision of service or continued
13 service deficiencies.

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

18 (g) The department shall implement this section using only
19 existing resources.

20 (h) The Department of State Health Services shall ensure
21 that a local mental health authority providing best practices
22 information to the department or mentoring another local mental
23 health authority complies with Section 533.03521(f).

24 Sec. 533.0358. LOCAL MENTAL HEALTH AUTHORITY'S PROVISION OF
25 SERVICES AS PROVIDER OF LAST RESORT. (a) A local mental health
26 authority may serve as a provider of services under Section
27 533.035(e) only if, through the local network development plan

1 process, the local authority determines that at least one of the
2 following applies:

3 (1) interested qualified service providers are not
4 available to provide services or no service provider meets the
5 local authority's procurement requirements;

6 (2) the local authority's network of providers does
7 not provide a minimum level of consumer choice by:

8 (A) presenting consumers with two or more
9 qualified service providers in the local authority's network for
10 service packages; and

11 (B) presenting consumers with two or more
12 qualified service providers in the local authority's network for
13 specific services within a service package;

14 (3) the local authority's provider network does not
15 provide consumers in the local service area with access to services
16 at least equal to the level of access provided as of a date the
17 executive commissioner specifies;

18 (4) the combined volume of services delivered by
19 qualified service providers in the local network does not meet all
20 of the local authority's service capacity for each service package
21 identified in the local network development plan;

22 (5) the performance of the services by the local
23 authority is necessary to preserve critical infrastructure and
24 ensure continuous provision of services; or

25 (6) existing contracts or other agreements restrict
26 the local authority from contracting with qualified service
27 providers for services in the local network development plan.

1 (b) If a local mental health authority continues to provide
2 services in accordance with this section, the local authority shall
3 identify in the local authority's local network development plan:

4 (1) the proportion of its local network services that
5 the local authority will provide; and

6 (2) the local authority's basis for its determination
7 that the local authority must continue to provide services.

8 Sec. 533.0359. RULEMAKING FOR LOCAL MENTAL HEALTH
9 AUTHORITIES. In developing rules governing local mental health
10 authorities under Sections 533.035, 533.0351, 533.03521, 533.0357,
11 and 533.0358, the executive commissioner shall use rulemaking
12 procedures under Subchapter B, Chapter 2001, Government Code.

13 SECTION 7. Sections 533.035(f) and (g), Health and Safety
14 Code, are repealed.

15 SECTION 8. If before implementing any provision of this Act
16 a state agency determines that a waiver or authorization from a
17 federal agency is necessary for implementation of that provision,
18 the agency affected by the provision shall request the waiver or
19 authorization and may delay implementing that provision until the
20 waiver or authorization is granted.

21 SECTION 9. Not later than January 1, 2008, the Health and
22 Human Services Commission shall submit a report to the governor,
23 the lieutenant governor, and the speaker of the house of
24 representatives that includes:

25 (1) whether a waiver from a federal agency is
26 necessary for implementation of any provision of this Act and, if a
27 waiver is necessary, the date the commission applied for that

1 waiver or will apply for the waiver; and

2 (2) any other information the commission finds
3 relevant regarding the implementation of Sections 533.035,
4 533.0351, 533.03521, 533.0355, 533.0357, and 533.0358, Health and
5 Safety Code, as amended or added by this Act, by local mental health
6 and mental retardation authorities.

7 SECTION 10. Not later than November 1, 2007, the executive
8 commissioner of the Health and Human Services Commission shall
9 re-create and appoint the members of the local authority network
10 advisory committee under Section 533.0351, Health and Safety Code,
11 as amended by this Act.

12 SECTION 11. This Act takes effect immediately if it
13 receives a vote of two-thirds of all the members elected to each
14 house, as provided by Section 39, Article III, Texas Constitution.
15 If this Act does not receive the vote necessary for immediate
16 effect, this Act takes effect September 1, 2007.