

By: Truitt, Davis of Harris, Rose, Isett,  
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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:

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, shall use the funds received under  
26                   Subsection (b) to ensure mental health, mental retardation, and  
27                   chemical dependency services are provided in the local service

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

4 (1) assembling a network of service providers; ~~and~~

5 (2) making recommendations relating to the most  
6 appropriate and available treatment alternatives for individuals  
7 in need of mental health or mental retardation services; and

8 (3) procuring services for a local service area,

9 including a request for proposal or open-enrollment procurement  
10 method.

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

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

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

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

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

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

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

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

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

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

1 representation of:

2 (1) different regions of this state;

3 (2) rural and urban counties; and

4 (3) single-county and multicounty local mental health  
5 authorities.

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

10 (d) [←→] The advisory committee shall:

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

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

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

23 (A) the needs and services of local communities;  
24 and

25 (B) the department's performance expectations;

26 (4) coordinate with [~~and monitor the activities of~~]  
27 work groups whose actions may affect local mental health authority

1 operations;

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

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

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

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

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

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

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

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

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

13                (1) complies with the criteria established by Section  
14 533.0358 if the local mental health authority is providing services  
15 under that section; and

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

19                        (A) available and appropriate; and  
20                        (B) sufficient to meet the needs of consumers in  
21 the local authority's local service area.

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

25        (e) At least biennially, the department shall review a local  
26 mental health authority's local network development plan and  
27 determine whether the plan complies with Subsection (c).

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

3 Sec. 533.0355. LOCAL MENTAL RETARDATION AUTHORITY  
4 RESPONSIBILITIES [~~ALLOCATION OF DUTIES~~] UNDER CERTAIN MEDICAID  
5 [~~WAIVER~~] PROGRAMS. (a) The executive commissioner shall adopt  
6 rules establishing the roles and responsibilities of local mental  
7 retardation authorities [~~In this section, "waiver program" means~~  
8 ~~the local mental retardation authority waiver program established~~  
9 ~~under the state Medicaid program~~].

10 (b) In adopting rules under this section, the executive  
11 commissioner must include rules regarding the following local  
12 mental retardation authority responsibilities:

13 (1) access;  
14 (2) intake;  
15 (3) eligibility functions;  
16 (4) enrollment, initial person-centered assessment,  
17 and service authorization;  
18 (5) utilization management;  
19 (6) safety net functions, including crisis management  
20 services and assistance in accessing facility-based care;  
21 (7) service coordination functions;  
22 (8) provision and oversight of state general revenue  
23 services;  
24 (9) local planning functions, including stakeholder  
25 involvement, technical assistance and training, and provider  
26 complaint and resolution processes; and  
27 (10) processes to assure accountability in

1 performance, compliance, and monitoring. [A provider of services  
2 under the waiver program shall:

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

6 [ (2) perform justification and implementation  
7 functions for the plans described by Subdivision (1);

8 [ (3) conduct case management under the waiver program,  
9 other than case management under Subsection (c)(3), in accordance  
10 with applicable state and federal laws; and

11 [ (4) plan, coordinate, and review the provision of  
12 services to all persons who receive services from the service  
13 provider under the waiver program.]

14 (c) In determining eligibility under Subsection (b)(3), a  
15 local mental retardation authority must offer a state school as an  
16 option among the residential services and other community living  
17 options available to an individual who is eligible for those  
18 services and who meets the department's criteria for state school  
19 admission, regardless of whether other residential services are  
20 available to the individual.

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

25 (1) base the local authority's provider capacity on  
26 the local authority's August 2004 enrollment levels for the waiver  
27 programs the local authority operates and, if the local authority's

1 enrollment levels exceed those levels, to reduce the levels by  
2 voluntary attrition; and

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

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

10 (B) the local authority's voluntary conversion  
11 from an ICF-MR program to a Section 1915(c) waiver program allowing  
12 for a temporary increase in the local authority's provider capacity  
13 in accordance with the number of persons who choose the local  
14 authority as their provider;

15 (C) the local authority's refinancing from  
16 services funded solely by state general revenue to a Medicaid  
17 program allowing for a temporary increase in the local authority's  
18 provider capacity in accordance with the number of persons who  
19 choose the local authority as their provider; or

20 (D) other extenuating circumstances that:

21 (i) are monitored and approved by the  
22 department;

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

26 (iii) may include increases necessary to  
27 accommodate a family-specific or consumer-specific circumstance and

1       choice [A local mental retardation authority shall:

2               [(1) manage any waiting lists for services under the

3               waiver program;

4               [(2) perform functions relating to consumer choice and

5               enrollment for persons who receive services under the waiver

6               program; and

7               [(3) conduct case management under the waiver program

8               relating to funding disputes between a service provider and the

9               local mental retardation authority.

10               [(d) The department shall perform all administrative

11               functions under the waiver program that are not assigned to a

12               service provider under Subsection (b) or to a local mental

13               retardation authority under Subsection (c). Administrative

14               functions performed by the department include:

15               [(1) any surveying, certification, and utilization

16               review functions required under the waiver program; and

17               [(2) managing an appeals process relating to decisions

18               that affect a person receiving services under the waiver program].

19               (e) Any increase based on extenuating circumstances under

20               Subsection (d)(2)(D) is considered a temporary increase in the

21               local mental retardation authority's provider capacity [The

22               department shall review:

23               [(1) screening and assessment of levels of care;

24               [(2) case management fees paid under the waiver

25               program to a community center; and

26               [(3) administrative fees paid under the waiver program

27               to a service provider].

1                   (f) At least biennially, the department shall review and  
2 determine the local mental retardation authority's status as a  
3 qualified service provider in accordance with criteria that  
4 includes the consideration of the local authority's ability to  
5 assure the availability of services in its area, including:

6                   (1) program stability and viability;  
7                   (2) the number of other qualified service providers in  
8 the area; and

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

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

15                   (1) to provide individuals with the information,  
16 opportunities, and support to make informed decisions regarding the  
17 services for which the individual is eligible;

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

20                   (3) to integrate individuals with mental retardation  
21 and developmental disabilities into the community in accordance  
22 with relevant independence initiatives and permanency planning  
23 laws. [~~The review required under Subsection (e) must include a~~  
24 ~~comparison of fees paid before the implementation of this section~~  
25 ~~with fees paid after the implementation of this section.~~ The  
26 ~~department may adjust fees paid based on that review.~~

27                   [(h) ~~The department shall allocate the portion of the gross~~

1 ~~reimbursement funds paid to a local authority and a service~~  
2 ~~provider for client services for the case management function in~~  
3 ~~accordance with this section and to the extent allowed by law.~~

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

7 SECTION 6. Subchapter B, Chapter 533, Health and Safety  
8 Code, is amended by adding Sections 533.0357, 533.0358, and  
9 533.0359 to read as follows:

10 Sec. 533.0357. BEST PRACTICES CLEARINGHOUSE FOR LOCAL  
11 MENTAL HEALTH AUTHORITIES. (a) In coordination with local mental  
12 health authorities, the department shall establish an online  
13 clearinghouse of information relating to best practices of local  
14 mental health authorities regarding the provision of mental health  
15 services, development of a local provider network, and achievement  
16 of the best return on public investment in mental health services.

17 (b) The department shall solicit and collect from local  
18 mental health authorities that meet established outcome and  
19 performance measures, community centers, consumers and advocates  
20 with expertise in mental health or in the provision of mental health  
21 services, and other local entities concerned with mental health  
22 issues examples of best practices related to:

23 (1) developing and implementing a local network  
24 development plan;

25 (2) assembling and expanding a local provider network  
26 to increase consumer choice;

27 (3) creating and enforcing performance standards for

1       providers;

2                (4) managing limited resources;

3                (5) maximizing available funding;

4                (6) producing the best client outcomes;

5                (7) ensuring consumers of mental health services have

6       control over decisions regarding their health;

7                (8) developing procurement processes to protect

8       public funds;

9                (9) achieving the best mental health consumer outcomes

10      possible; and

11                (10) implementing strategies that effectively

12      incorporate consumer and family involvement to develop and evaluate

13      the provider network.

14                (c) The department may contract for the services of one or

15      more contractors to develop, implement, and maintain a system of

16      collecting and evaluating the best practices of local mental health

17      authorities as provided by this section.

18                (d) The department shall encourage local mental health

19      authorities that successfully implement best practices in

20      accordance with this section to mentor local mental health

21      authorities that have service deficiencies.

22                (e) Before the executive commissioner may remove a local

23      mental health authority's designation under Section 533.035(a) as a

24      local mental health authority, the executive commissioner shall:

25                (1) assist the local mental health authority in

26      attaining training and mentorship in using the best practices

27      established in accordance with this section; and

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

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

8                   (g) The department shall implement this section using only  
9 existing resources.

10                  Sec. 533.0358. LOCAL MENTAL HEALTH AUTHORITY'S PROVISION OF  
11 SERVICES AS PROVIDER OF LAST RESORT. (a) A local mental health  
12 authority may serve as a provider of services under Section  
13 533.035(e) only if, through the local network development plan  
14 process, the local authority determines that at least one of the  
15 following applies:

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

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

21                   (A) presenting consumers with two or more  
22 qualified service providers in the local authority's network for  
23 service packages; and

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

27                  (3) the local authority's provider network does not

1       provide consumers in the local service area with access to services  
2       at least equal to the level of access provided as of a date the  
3       executive commissioner specifies;

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

8               (5) the performance of the services by the local  
9       authority is necessary to preserve critical infrastructure and  
10      ensure continuous provision of services; or

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

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

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

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

21               Sec. 533.0359. RULEMAKING FOR LOCAL MENTAL HEALTH  
22      AUTHORITIES. In developing rules governing local mental health  
23      authorities under Sections 533.035, 533.0351, 533.03521, 533.0357,  
24      and 533.0358, the executive commissioner shall use negotiated  
25      rulemaking procedures under Chapter 2008, Government Code, or other  
26      collaborative processes, as appropriate, and appoint facilitators  
27      to preside over the process. The rulemaking process must include

1       representatives of local mental health authorities, local  
2       government and community mental health service providers,  
3       advocates for individuals with mental health needs, consumers of  
4       mental health services, and any other individuals with expertise in  
5       the field of mental health that the executive commissioner  
6       appoints.

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

9           SECTION 8. If before implementing any provision of this Act  
10      a state agency determines that a waiver or authorization from a  
11      federal agency is necessary for implementation of that provision,  
12      the agency affected by the provision shall request the waiver or  
13      authorization and may delay implementing that provision until the  
14      waiver or authorization is granted.

15           SECTION 9. Not later than January 1, 2008, the Health and  
16      Human Services Commission shall submit a report to the governor,  
17      the lieutenant governor, and the speaker of the house of  
18      representatives that includes:

19               (1) whether a waiver from a federal agency is  
20      necessary for implementation of any provision of this Act and, if a  
21      waiver is necessary, the date the commission applied for that  
22      waiver or will apply for the waiver; and

23               (2) any other information the commission finds  
24      relevant regarding the implementation of Sections 533.035,  
25      533.0351, 533.03521, 533.0355, 533.0357, and 533.0358, Health and  
26      Safety Code, as amended or added by this Act, by local mental health  
27      and mental retardation authorities.

H.B. No. 2439

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

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