

By: Nelson

S.B. No. 222

A BILL TO BE ENTITLED

AN ACT

relating to access to certain long-term care services and supports under the medical assistance program.

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

SECTION 1. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.02181 to read as follows:

Sec. 531.02181. PROVISION AND COORDINATION OF CERTAIN ATTENDANT CARE SERVICES. (a) The commission shall ensure that recipients who are eligible to receive attendant care services under the community-based alternatives program are first provided those services, if available, under a Medicaid state plan program, including the primary home care and community attendant services programs. The commission may allow a recipient to receive attendant care services under the community-based alternatives program only if:

(1) the recipient requires services beyond those that are available under a Medicaid state plan program; or

(2) the services are not otherwise provided under a Medicaid state plan program.

(b) The executive commissioner shall adopt rules and procedures necessary to implement this section, including rules and procedures for:

(1) the coordination of services between Medicaid state plan programs and the community-based alternatives program to

1 ensure that recipients' needs are being met and to prevent
2 duplication of services;

3 (2) an automated authorization system through which
4 case managers authorize the provision of attendant care services
5 through the Medicaid state plan program or the community-based
6 alternatives program, as appropriate, and register the number of
7 hours authorized through each program; and

8 (3) billing procedures for attendant care services
9 provided through the Medicaid state plan program or the
10 community-based alternatives program, as appropriate.

11 SECTION 2. Subchapter B, Chapter 531, Government Code, is
12 amended by adding Section 531.0515 to read as follows:

13 Sec. 531.0515. RISK MANAGEMENT CRITERIA FOR CERTAIN WAIVER
14 PROGRAMS. (a) In this section, "legally authorized
15 representative" has the meaning assigned by Section 531.051.

16 (b) The commission shall consider developing risk
17 management criteria under home and community-based services waiver
18 programs designed to allow individuals eligible to receive services
19 under the programs to assume greater choice and responsibility over
20 the services and supports the individuals receive.

21 (c) The commission shall ensure that any risk management
22 criteria developed under this section include:

23 (1) a requirement that if an individual to whom
24 services and supports are to be provided has a legally authorized
25 representative, the representative be involved in determining
26 which services and supports the individual will receive; and

27 (2) a requirement that if services or supports are

1 declined, the decision to decline is clearly documented.

2 SECTION 3. Section 533.0355, Health and Safety Code, is
3 amended by adding Subsection (h) to read as follows:

4 (h) The Department of Aging and Disability Services shall
5 ensure that local mental retardation authorities are informing and
6 counseling individuals and their legally authorized
7 representatives, if applicable, about all program and service
8 options for which the individuals are eligible in accordance with
9 Section 533.038(d), including options such as the availability and
10 types of ICF-MR placements for which an individual may be eligible
11 while the individual is on a department interest list or other
12 waiting list for other services.

13 SECTION 4. Subchapter D, Chapter 161, Human Resources Code,
14 is amended by adding Sections 161.084 and 161.085 to read as
15 follows:

16 Sec. 161.084. MEDICAID SERVICE OPTIONS PUBLIC EDUCATION
17 INITIATIVE. (a) In this section, "Section 1915(c) waiver program"
18 has the meaning assigned by Section 531.001, Government Code.

19 (b) The department, in cooperation with the commission,
20 shall educate the public on:

21 (1) the availability of home and community-based
22 services under a Medicaid state plan program, including the primary
23 home care and community attendant services programs, and under a
24 Section 1915(c) waiver program; and

25 (2) the various service delivery options available
26 under the Medicaid program, including the consumer direction models
27 available to recipients under Section 531.051, Government Code.

1 (c) The department may coordinate the activities under this
2 section with any other related activity.

3 Sec. 161.085. INTEREST LIST REPORTING. The department
4 shall post on the department's Internet website historical data,
5 categorized by state fiscal year, on the percentages of individuals
6 who elect to receive services under a program for which the
7 department maintains an interest list once their names reach the
8 top of the list.

9 SECTION 5. (a) In this section:

10 (1) "Long-term care services" has the meaning assigned
11 by Section 22.0011, Human Resources Code.

12 (2) "Medical assistance program" means the medical
13 assistance program administered under Chapter 32, Human Resources
14 Code.

15 (3) "Nursing facility" means a convalescent or nursing
16 home or related institution licensed under Chapter 242, Health and
17 Safety Code.

18 (b) The Health and Human Services Commission, in
19 cooperation with the Department of Aging and Disability Services,
20 shall prepare a written report regarding individuals who receive
21 long-term care services in nursing facilities under the medical
22 assistance program. The report should use existing data and
23 information to identify:

24 (1) the reasons medical assistance recipients of
25 long-term care services are placed in nursing facilities as opposed
26 to being provided long-term care services in home or
27 community-based settings;

1 (2) the types of medical assistance services
2 recipients residing in nursing facilities typically receive and
3 where and from whom those services are typically provided;

4 (3) community-based services and supports available
5 under a Medicaid state plan program, including the primary home
6 care and community attendant services programs, or under a medical
7 assistance waiver granted in accordance with Section 1915(c) of the
8 federal Social Security Act (42 U.S.C. Section 1396n(c)) for which
9 recipients residing in nursing facilities may be eligible; and

10 (4) ways to expedite recipients' access to
11 community-based services and supports identified under Subdivision
12 (3) of this subsection for which interest lists or other waiting
13 lists exist.

14 (c) Not later than September 1, 2012, the Health and Human
15 Services Commission shall submit the report described by Subsection
16 (b) of this section together with the commission's recommendations
17 to the governor, the Legislative Budget Board, the Senate Committee
18 on Finance, the Senate Committee on Health and Human Services, the
19 House Appropriations Committee, and the House Human Services
20 Committee. The recommendations must address options for expediting
21 access to community-based services and supports by recipients
22 described by Subsection (b)(3) of this section.

23 SECTION 6. As soon as practicable after the effective date
24 of this Act, the executive commissioner of the Health and Human
25 Services Commission shall apply for and actively pursue amendments
26 from the federal Centers for Medicare and Medicaid Services, or any
27 other appropriate federal agency, to the community living

1 assistance and support services waiver and the home and
2 community-based services program waiver granted under Section
3 1915(c) of the federal Social Security Act (42 U.S.C. Section
4 1396n(c)) to authorize the provision of personal attendant services
5 through the programs operated under those waivers.

6 SECTION 7. If before implementing any provision of this Act
7 a state agency determines that a waiver or authorization from a
8 federal agency is necessary for implementation of that provision,
9 the agency affected by the provision shall request the waiver or
10 authorization and may delay implementing that provision until the
11 waiver or authorization is granted.

12 SECTION 8. This Act takes effect September 1, 2011.