

1-1 By: Nelson S.B. No. 222
1-2 (In the Senate - Filed November 18, 2010; January 31, 2011,
1-3 read first time and referred to Committee on Health and Human
1-4 Services; March 14, 2011, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;
1-6 March 14, 2011, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 222 By: Nelson

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to access to certain long-term care services and supports
1-11 under the medical assistance program.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subchapter B, Chapter 531, Government Code, is
1-14 amended by adding Section 531.02181 to read as follows:

1-15 Sec. 531.02181. PROVISION AND COORDINATION OF CERTAIN
1-16 ATTENDANT CARE SERVICES. (a) The commission shall ensure that
1-17 recipients who are eligible to receive attendant care services
1-18 under the community-based alternatives program are first provided
1-19 those services, if available, under a Medicaid state plan program,
1-20 including the primary home care and community attendant services
1-21 programs. The commission may allow a recipient to receive
1-22 attendant care services under the community-based alternatives
1-23 program only if:

1-24 (1) the recipient requires services beyond those that
1-25 are available under a Medicaid state plan program; or

1-26 (2) the services are not otherwise provided under a
1-27 Medicaid state plan program.

1-28 (b) The executive commissioner shall adopt rules and
1-29 procedures necessary to implement this section, including rules and
1-30 procedures for:

1-31 (1) the coordination of services between Medicaid
1-32 state plan programs and the community-based alternatives program to
1-33 ensure that recipients' needs are being met and to prevent
1-34 duplication of services;

1-35 (2) an automated authorization system through which
1-36 case managers authorize the provision of attendant care services
1-37 through the Medicaid state plan program or the community-based
1-38 alternatives program, as appropriate, and register the number of
1-39 hours authorized through each program; and

1-40 (3) billing procedures for attendant care services
1-41 provided through the Medicaid state plan program or the
1-42 community-based alternatives program, as appropriate.

1-43 SECTION 2. Subchapter B, Chapter 531, Government Code, is
1-44 amended by adding Section 531.0515 to read as follows:

1-45 Sec. 531.0515. RISK MANAGEMENT CRITERIA FOR CERTAIN WAIVER
1-46 PROGRAMS. (a) In this section, "legally authorized
1-47 representative" has the meaning assigned by Section 531.051.

1-48 (b) The commission shall consider developing risk
1-49 management criteria under home and community-based services waiver
1-50 programs designed to allow individuals eligible to receive services
1-51 under the programs to assume greater choice and responsibility over
1-52 the services and supports the individuals receive.

1-53 (c) The commission shall ensure that any risk management
1-54 criteria developed under this section include:

1-55 (1) a requirement that if an individual to whom
1-56 services and supports are to be provided has a legally authorized
1-57 representative, the representative be involved in determining
1-58 which services and supports the individual will receive; and

1-59 (2) a requirement that if services or supports are
1-60 declined, the decision to decline is clearly documented.

1-61 SECTION 3. Section 533.0355, Health and Safety Code, is
1-62 amended by adding Subsection (h) to read as follows:

1-63 (h) The Department of Aging and Disability Services shall

2-1 ensure that local mental retardation authorities are informing and
 2-2 counseling individuals and their legally authorized
 2-3 representatives, if applicable, about all program and service
 2-4 options for which the individuals are eligible in accordance with
 2-5 Section 533.038(d), including options such as the availability and
 2-6 types of ICF-MR placements for which an individual may be eligible
 2-7 while the individual is on a department interest list or other
 2-8 waiting list for other services.

2-9 SECTION 4. Subchapter D, Chapter 161, Human Resources Code,
 2-10 is amended by adding Sections 161.084 and 161.085 to read as
 2-11 follows:

2-12 Sec. 161.084. MEDICAID SERVICE OPTIONS PUBLIC EDUCATION
 2-13 INITIATIVE. (a) In this section, "Section 1915(c) waiver program"
 2-14 has the meaning assigned by Section 531.001, Government Code.

2-15 (b) The department, in cooperation with the commission,
 2-16 shall educate the public on:

2-17 (1) the availability of home and community-based
 2-18 services under a Medicaid state plan program, including the primary
 2-19 home care and community attendant services programs, and under a
 2-20 Section 1915(c) waiver program; and

2-21 (2) the various service delivery options available
 2-22 under the Medicaid program, including the consumer direction models
 2-23 available to recipients under Section 531.051, Government Code.

2-24 (c) The department may coordinate the activities under this
 2-25 section with any other related activity.

2-26 Sec. 161.085. INTEREST LIST REPORTING. The department
 2-27 shall post on the department's Internet website historical data,
 2-28 categorized by state fiscal year, on the percentages of individuals
 2-29 who elect to receive services under a program for which the
 2-30 department maintains an interest list once their names reach the
 2-31 top of the list.

2-32 SECTION 5. (a) In this section:

2-33 (1) "Long-term care services" has the meaning assigned
 2-34 by Section 22.0011, Human Resources Code.

2-35 (2) "Medical assistance program" means the medical
 2-36 assistance program administered under Chapter 32, Human Resources
 2-37 Code.

2-38 (3) "Nursing facility" means a convalescent or nursing
 2-39 home or related institution licensed under Chapter 242, Health and
 2-40 Safety Code.

2-41 (b) The Health and Human Services Commission, in
 2-42 cooperation with the Department of Aging and Disability Services,
 2-43 shall prepare a written report regarding individuals who receive
 2-44 long-term care services in nursing facilities under the medical
 2-45 assistance program. The report should use existing data and
 2-46 information to identify:

2-47 (1) the reasons medical assistance recipients of
 2-48 long-term care services are placed in nursing facilities as opposed
 2-49 to being provided long-term care services in home or
 2-50 community-based settings;

2-51 (2) the types of medical assistance services
 2-52 recipients residing in nursing facilities typically receive and
 2-53 where and from whom those services are typically provided;

2-54 (3) community-based services and supports available
 2-55 under a Medicaid state plan program, including the primary home
 2-56 care and community attendant services programs, or under a medical
 2-57 assistance waiver granted in accordance with Section 1915(c) of the
 2-58 federal Social Security Act (42 U.S.C. Section 1396n(c)) for which
 2-59 recipients residing in nursing facilities may be eligible; and

2-60 (4) ways to expedite recipients' access to
 2-61 community-based services and supports identified under Subdivision
 2-62 (3) of this subsection for which interest lists or other waiting
 2-63 lists exist.

2-64 (c) Not later than September 1, 2012, the Health and Human
 2-65 Services Commission shall submit the report described by Subsection
 2-66 (b) of this section together with the commission's recommendations
 2-67 to the governor, the Legislative Budget Board, the Senate Committee
 2-68 on Finance, the Senate Committee on Health and Human Services, the
 2-69 House Appropriations Committee, and the House Human Services

3-1 Committee. The recommendations must address options for expediting
3-2 access to community-based services and supports by recipients
3-3 described by Subsection (b)(3) of this section.

3-4 SECTION 6. As soon as practicable after the effective date
3-5 of this Act, the executive commissioner of the Health and Human
3-6 Services Commission shall apply for and actively pursue amendments
3-7 from the federal Centers for Medicare and Medicaid Services, or any
3-8 other appropriate federal agency, to the community living
3-9 assistance and support services waiver and the home and
3-10 community-based services program waiver granted under Section
3-11 1915(c) of the federal Social Security Act (42 U.S.C. Section
3-12 1396n(c)) to authorize the provision of personal attendant services
3-13 through the programs operated under those waivers.

3-14 SECTION 7. If before implementing any provision of this Act
3-15 a state agency determines that a waiver or authorization from a
3-16 federal agency is necessary for implementation of that provision,
3-17 the agency affected by the provision shall request the waiver or
3-18 authorization and may delay implementing that provision until the
3-19 waiver or authorization is granted.

3-20 SECTION 8. This Act takes effect September 1, 2011.

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