

## **BILL ANALYSIS**

Senate Research Center  
80R8137 CLG-F

S.B. 1866  
By: Zaffirini  
Health & Human Services  
4/28/2007  
As Filed

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

Currently, the Department of Aging and Disability Services (department) is authorized to grant an exemption to the individual cost limits specified in the Medicaid 1915(c) waivers operated by the former Department of Human Services; however, this authority does not apply to the Home and Community-Based Services (HCS) waiver. Additionally, while the authority to grant exemptions currently exists, the criteria for granting such exemptions does not exist in statute.

As proposed, S.B. 1866 provides the commissioner of the department (commissioner) with guidance to individualize services to persons whose level of medical need cannot be accommodated within the funding structure of the applicable Medicaid waiver program. The legislation would add the HCS waiver to the list of waivers for which the department is authorized to grant an exemption to the individual cost limit specified in the Medicaid waiver; and describe the specific circumstances under which the department commissioner may exempt an individual from the individual cost specified in a 1915(c) Medicaid waiver administered by the department. Such an exemption would be available only to individuals already receiving waiver services and would provide consistency across the waivers.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the executive commissioner of the Health and Human Services Commission is modified in SECTION 1 (Section 32.058, Human Resources Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 32.058, Human Resources Code, as follows:

Sec. 32.058. LIMITATION ON MEDICAL ASSISTANCE IN CERTAIN ALTERNATIVE COMMUNITY-BASED CARE SETTINGS. (a) Redefines "medical assistance waiver program." Deletes existing text defining "institution."

(b) Prohibits the Health and Human Services Commission (HHSC) or an agency operating as part of the medical assistance program as appropriate (department) from providing services under a medical assistance waiver program if the cost of providing those services over a 12-month period exceeds a certain amount. Deletes existing text prohibiting the department from providing services under a medical assistance waiver program to a person receiving medical assistance if the cost of providing those services exceeds a certain amount. Makes conforming changes.

(c) Requires the department to continue to provide services under a program to certain persons if continuation of those services does not affect the department's compliance with the federal average per capita expenditure requirement, rather than cost-effectiveness and efficiency requirements, of the program under 42 U.S.C. Section 1396n(c) (2) (D), and not Section 1396n (b). Makes conforming and nonsubstantive changes.

(d) Authorizes the department to continue to provide services under a program, other than the home and community-based services program, to a person who is

ineligible to receive those services under Subsection (b) and to whom Subsection (c) does not apply if certain conditions are met. Makes conforming changes.

(e) Authorizes the department to exempt a person from the cost limit established under Subsection (d)(1) for a medical assistance waiver program if the department determines that certain conditions exist.

(f) Authorizes the department to continue to provide services under the home and community-based services program to a person who is ineligible to receive those services under Subsection (b) and to whom Subsection (c) does not apply if the department makes, with regard to the person's receipt of services under the home and community-based services program, the same determinations required by Subsections (e)(1) and (2) in the same manner provided by Subsection (e) and determines that continuation of those services does not affect the department's compliance with certain requirements.

(g) Authorizes the executive commissioner of HHSC to adopt rules to implement Subsections (e) and (f), rather than under which the department is authorized to exempt a person from the cost limit established under Subsection (d)(1).

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2007.