

## **BILL ANALYSIS**

Senate Research Center  
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C.S.S.B. 2407  
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Finance  
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Committee Report (Substituted)

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

The United States Department of Justice (DOJ) notified the governor that it would begin a Civil Rights of Institutionalized Persons Act (CRIPA) investigation of all state schools in August 2008, after having already investigated the Lubbock and Denton State Schools. DOJ released its report in December 2008, and concluded that conditions and practices in Texas' state schools violate the constitutional and federal statutory rights of residents. Specifically, the facilities fail to provide consumers with adequate health care or protect residents from harm; provide adequate behavioral services, freedom from unnecessary or inappropriate restraint, and habilitation; and provide services to qualified person with disabilities in the most integrated setting appropriate to their needs.

DOJ affirms that the State of Texas has not taken adequate steps and is violating federal requirements regarding serving persons in the most integrated setting to meet their needs, including inadequate admission processes, ineffective community options processes, and poor execution of discharge processes. As a consequence, persons who desire to live in the community, and who reasonably can be accommodated there, are denied the opportunity to live and work in more integrated settings in violation of the state's obligations under Title II of the Americans with Disabilities Act (ADA).

According to DOJ, Texas has failed to make adequate progress toward serving persons in the most integrated setting. Between September 2007 and 2008, only four percent of persons, or 164 persons, moved from state schools to community settings; in 2006, Texas state schools or centers had twice the national average of children admitted; and since 2004, more than 800 employees across all 13 state schools have been suspended or fired for abusing facility residents. There is an inherent conflict of interest with how case management is currently provided. The local Mental Retardation Authorities (MRAs) should reassume the case management function because they have the expertise, infrastructure, and relationships with local communities and providers. This bill will also allow the state to provide services in a more cost-effective way, as it costs half as much to serve persons with intellectual disabilities in a community setting than in a state school.

C.S.S.B. 2407 relates to the provision of services to individuals with mental retardation.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 4 (Section 531.02446, Government Code) and SECTION 6 (Section 533.03551, Health and Safety Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 531.02442(a), Government Code, by amending Subdivision (1) and adding Subdivision (4), to redefine "institution" and define "department."

SECTION 2. Amends Section 531.02442, Government Code, by amending Subsection (b) and adding Subsections (f), (g), and (h), as follows:

- (b) Requires the Department of Aging and Disability Services (DADS) and the local mental retardation authority (authority), if a person with mental retardation residing in an institution and the person's legally authorized representative would like to participate in

the community living options information process, to provide information regarding the process. Makes a conforming change.

(f) Requires DADS to contract with authorities to implement the community living options information process for residents of institutions who are at least 22 years of age. Requires the authorities to provide and implement the process for institutions under Subsection (a)(1)(A) (relating to "institution" meaning a residential care facility operated or maintained by the Texas Department of Mental Health and Mental Retardation to provide 24-hour services) as provided by Section 531.02443 (Implementation of Community Living Options Information Process at State Institutions for Certain Adult Residents).

(g) Requires that a contract with an authority to implement the community living options information process for an institution other than an institution under Subsection (a)(1)(A) delegate to the authority DADS's duties under this section with regard to the implementation of the process at the institution; include performance measures designed to assist DADS in evaluating the effectiveness of the authority in implementing the community living options information process; and ensure that the authority provides service coordination and relocation services to a resident who is at least 22 years of age and who chooses, is eligible for, and is recommended by an interdisciplinary team for a community living option to facilitate a timely, appropriate, and successful transition from the institution to the community living program.

(h) Requires DADS each year to review and make necessary updates to materials during the community living options information process and provide training regarding the community living options information process to staff members involved with the process at each institution and each authority.

SECTION 3. Amends Section 531.02443, Government Code, by amending Subsection (d) and adding Subsection (g), as follows:

(d) Requires that the contract (relating to implementation of the community living options information process) with the authority perform certain actions, including that it require the authority, in coordination with DADS and within existing resources, to coordinate tours and visits to community living options for an adult resident or an adult resident's legally authorized representative, as appropriate based on the resident's behavioral needs. Makes a nonsubstantive change.

(g) Requires DADS, in coordination with authorities that perform duties required by the community living options information process under Section 531.02442 or this section, to annually submit a report to the Health and Human Services Commission (HHSC) and the interagency task force on ensuring appropriate care settings for persons with disabilities regarding the outcomes of the community living options information process as performed by the authority. Requires that the report required by this section include certain information.

SECTION 4. Amends Subchapter B, Chapter 531, Government Code, by adding Section 531.02446, as follows:

Sec. 531.02446. DIVERSION PROTOCOLS TO PREVENT COMMITMENT TO CERTAIN INSTITUTIONS. (a) Requires the executive commissioner of the Health and Human Services Commission (executive commissioner) by rule to develop protocols to divert adults and children with mental retardation at imminent risk of commitment to a state school from commitment to a state school.

(b) Requires the executive commissioner to ensure that the diversion protocols are designed to reduce the commitment to state schools of individuals younger than 22 years of age and provide options to adults and children with mental retardation at imminent risk of commitment to a state school to ensure that they have access to the least restrictive living environment appropriate for the person.

(c) Requires DADS to develop the diversion protocols with the advice and assistance of the interagency task force on ensuring appropriate care settings for persons with disabilities and representatives of family members or legally authorized representatives of adult residents of state schools, persons with mental retardation, state schools, and authorities.

(d) Authorizes the executive commissioner, as part of the diversion protocols, to contract with an organization for the provision of temporary, emergency living arrangements for the children at imminent risk of commitment to a state school.

(e) Requires an entity awarded a contract under this section to provide temporary, emergency living arrangements at homes, with no more than six children placed in the home.

SECTION 5. Amends Section 252.002(2), Health and Safety Code, to redefine "department."

SECTION 6. Amends Subchapter B, Chapter 533, Health and Safety Code, by adding Section 533.03551, as follows:

Sec. 533.03551. CASE MANAGEMENT BY LOCAL MENTAL RETARDATION AUTHORITIES. (a) Requires the executive commissioner to designate authorities for the purpose of performing case management functions for certain Section 1915(c) waiver programs, including the home and community-based services waiver program and the Texas home living waiver services waiver program.

(b) Requires the executive commissioner to ensure that an authority performing case management functions for a Section 1915(c) waiver program has an organizational structure that separates authority functions from any service provider functions under the applicable Section 1915(c) waiver programs.

(c) Requires the executive commissioner, with the advice and assistance of a work group composed of representatives appointed by the executive commissioner from private and public service providers under the Section 1915(c) waiver programs, advocates for individuals with mental retardation, families of individuals with mental retardation, consumers, and other interested stakeholders, to develop rules to implement this section. Sets forth the required content of the rules.

SECTION 7. Amends Sections 593.013(a) and (b), Health and Safety Code, as follows:

(a) Prohibits a person from being admitted or committed to a residential care facility unless an interdisciplinary team from an authority serving the county in which the application was filed recommends that placement.

(b) Requires the interdisciplinary team to perform certain actions. Makes conforming and nonsubstantive changes.

SECTION 8. Amends Subchapter B, Chapter 593, Health and Safety Code, by adding Section 593.0251, as follows:

Sec. 593.0251. POLICY REGARDING SERVICES IN STATE SCHOOL. Provides that it is the policy of this state that a person residing in a residential care facility operated by DADS that is a state school has the right to continue receiving services in a facility if the person or, if appropriate, the person's legally authorized representative, indicates a preference for the person continuing to receive services in the facility and the facility is not required to transfer, furlough to an alternative placement, or discharge the person under Section 594.011 (Service Provider).

SECTION 9. Amends Subchapter B, Chapter 161, Human Resources Code, by adding Section 161.033, as follows:

Sec. 161.033. STATE SCHOOL REQUIREMENTS FOR LONG-RANGE PLAN AND STATEWIDE CENSUS. (a) Defines "alleged offender resident" in this section.

(b) Requires DADS, in developing the long-range plan required by Section 533.032 (Long-Range Planning), Health and Safety Code, to:

(1) include strategies for downsizing state schools and transitioning more state school residents to community-based care;

(2) describe initiatives for achieving cost efficiencies relating to the strategies required by Subdivision (1); and

(3) estimate the fiscal impact of each strategy and initiative, including the impact on DADS funding and the number of full-time equivalent DADS employees and the cost implications to other health and human services agencies.

(c) Authorizes DADS, through census management, not closure, to reduce the number of state school residents, excluding alleged offender residents, to not more than a total of 3,000 residents, with not more than 350 residents at each state school. Provides that this section does not require DADS to remove a state school resident from a state school against the resident's will or against the will of the resident's legally authorized guardian for the purpose of meeting capacity limits specified by this section. Provides that this section does not authorize DADS to deny admission to a state school on the basis that the admission would cause the state school to exceed the capacity limits specified by this section.

SECTION 10. (a) Requires DADS, in implementing Section 533.03551, Health and Safety Code, as added by this Act, to conduct a review of the existing processes and documentation requirements of the home and community-based services waiver program and eliminate complexities or requirements that do not add value or quality to the program, consider information and data from previous and existing projects or programs related to the provision of services through the home and community-based services waiver program or other Section 1915(c) waiver programs designed to achieve efficiencies and improved access to care, and oversee the development and implementation of the new service delivery design to ensure that appropriate state action is taken to identify and resolve barriers to service delivery through that design.

(b) Requires HHSC to evaluate the reimbursement rates of authorities and service providers for the cost of conducting case management and other functions, as applicable, in accordance with Section 533.03551, Health and Safety Code, as added by this Act.

(c) Requires the executive commissioner to evaluate the consumer benefit and cost-effectiveness of providing case management in the manner provided by Section 533.03551, Health and Safety Code, as added by this Act, and not later than December 1, 2010, submit a report to the lieutenant governor, the speaker of the house of representatives, the Senate Finance Committee, and the House Appropriations Committee regarding the status of the project during the development and implementation phases of Section 533.03551, Health and Safety Code, as added by this Act.

SECTION 11. (a) Requires HHSC and DADS to jointly design a plan to implement a long-term services and supports capitated or noncapitated pilot program to serve individuals with intellectual or developmental disabilities.

(b) Authorizes DADS to contract with a person to conduct a study and make recommendations regarding the design and implementation of the long-term services and supports capitated or noncapitated pilot programs and requires DADS to include meaningful input regarding the plan from individuals with intellectual or developmental disabilities who receive services from DADS, the families of those individuals, service providers, authorities, entities that advocate for those individuals, and other interested parties.

(c) Requires that the plan designed under this section examine managed care models employed by other states for individuals with intellectual or developmental disabilities in determining the most appropriate manner to implement the pilot program.

(d) Requires HHSC and DADS, not later than December 1, 2010, to submit a report regarding the plan to the standing committees of the house of representatives and senate having primary jurisdiction over the Medicaid program. Sets forth the required content of the report.

SECTION 12. (a) Requires HHSC and DADS to jointly conduct a study, with meaningful stakeholder input, regarding the effectiveness of the requirements for admission and commitment to a residential care facility provided by Chapter 593, Health and Safety Code, as amended by this Act, and DADS rules.

(b) Requires HHSC and DADS, in conducting the study, to consider whether existing processes ensure that proposed and existing residents of a residential care facility receive supports and services in the least restrictive alternative for the person, including alternatives that become available or are developed after the person is a resident; standards of evidence as required by law are appropriate to support commitment to a residential care facility, including making a determination regarding an operational definition of that evidence; orders for long-term placement in a residential care facility should be reviewed on an ongoing basis; and a process for renewing commitment orders should be required by statute.

(c) Requires HHSC and DADS, not later than November 1, 2010, to provide a joint written report to the legislature and the Sunset Advisory Commission (Sunset) regarding the study, including any recommendations for legislation to address proposed changes to the requirements for admission or commitment to a residential care facility.

(d) Requires Sunset, as part of its review of DADS for the 82nd Legislature, to consider the report submitted to Sunset in accordance with this section.

SECTION 13. (a) Requires the executive commissioner, not later than January 1, 2010, to develop and implement the diversion protocols required under Section 531.02446, Government Code, as added by this Act.

(b) Requires the executive commissioner, not later than September 1, 2009, to appoint the work group as required by Section 533.03551, Health and Safety Code, as added by this Act.

(c) Requires the executive commissioner, not later than July 1, 2010, to ensure that the transfer of case management services is completed as provided by Section 533.03551, Health and Safety Code, as added by this Act.

SECTION 14. Requires the executive commissioner, as soon as practicable after the effective date of this Act, to apply for and actively pursue a waiver or an amendment to this state's waiver under Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1936n(c)) or other authorization from the federal Centers for Medicare and Medicaid Services or any other federal agency authorizing the provision of home and community-based services at licensed group homes that choose to participate and in which five or six individuals with mental retardation reside and receive those services.

SECTION 15. Provides that this Act does not make an appropriation. Provides that this Act takes effect only if a specific appropriation for implementation of this Act is provided in a general appropriations act of the 81st Legislature.

SECTION 16. Effective date: September 1, 2009.