

## **BILL ANALYSIS**

Senate Research Center

S.B. 1507  
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Health & Human Services  
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Enrolled

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

The Department of State Health Services (DSHS) is the agency in charge of administering forensic mental health services for justice-involved individuals, for example people who are determined to be incompetent to stand trial or not guilty by reason of insanity.

A growing number of individuals in state hospitals are involved in the criminal justice system and more inmates in Texas prisons and jails are living with one or more mental health conditions and substance abuse disorders. Though services provided by DSHS are vital to serving individuals with mental health issues in the criminal justice system, the size and complexity of the forensic population that DSHS serves has grown to an extent that efficient statewide and cross-agency coordination between the public mental health and criminal justice systems is critically necessary.

S.B. 1507 amends the Health and Safety Code by authorizing the creation of a forensic director position in DSHS with responsibility for statewide coordination and oversight of forensic services and DSHS programs relating to forensic evaluation, competency restoration, transition of forensic patients from inpatient to outpatient or community-based services, forensic monitoring, or forensic research and training. The director would ensure that state resources are appropriately applied to the forensic population, that individuals do not have to wait extended periods for needed services, and that forensic operations are streamlined and best practices adopted statewide.

Additionally, this bill directs the commissioner to assemble an expert work group of various mental health and forensic service stakeholders from across the state. The workgroup, for the Director's use and reference, will be charged with creating a comprehensive forensic services coordination plan for the state.

S.B. 1507 amends current law relating to the statewide coordination and oversight of forensic mental health services overseen by the Department of State Health Services, including the appointment of a forensic director.

[**Note:** While the statutory reference in this bill is to the Texas Department of Mental Health and Mental Retardation (TXMHMR) the following amendments affect the Department of Aging and Disability Services, as the successor agency to TXMHMR.]

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 (Section 532.0131, Health and Safety Code) and SECTION 4 of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 532, Health and Safety Code, by adding Sections 532.013 and 532.0131, as follows:

Sec. 532.013. FORENSIC DIRECTOR. (a) Defines “forensic patient” and “forensic services.”

(b) Requires the commissioner of the Department of State Health Services (commissioner) to appoint a forensic director.

(c) Requires a person, to be qualified for appointment as forensic director, to have proven expertise in the social, health, and legal systems for forensic patients, and in the intersection of those systems.

(d) Provides that the forensic director reports to the commissioner and is responsible for:

(1) statewide coordination and oversight of forensic services;

(2) coordination of programs operated by the Department of State Health Services (DSHS) relating to evaluation of forensic patients, transition of forensic patients from inpatient to outpatient or community-based services, community forensic monitoring, or forensic research and training; and

(3) addressing issues with the delivery of forensic services in the state, including:

(A) significant increases in populations with serious mental illness and criminal justice system involvement;

(B) adequate availability of DSHS facilities for civilly committed forensic patients;

(C) wait times for forensic patients who require competency restoration services;

(D) interruption of mental health services of recently released forensic patients;

(E) coordination of services provided to forensic patients by state agencies;

(F) provision of input regarding the regional allocation of mental health beds for certain forensic patients and other patients with mental illness under Section 533.0515; and

(G) provision of input regarding the development and maintenance of a training curriculum for judges and attorneys for treatment alternatives to inpatient commitment to a state hospital for certain forensic patients under Section 1001.086.

Sec. 531.0131. FORENSIC WORK GROUP. (a) Defines “forensic patient” and “forensic services.”

(b) Requires the commissioner to establish a work group of experts and stakeholders to make recommendations concerning the creation of a comprehensive plan for the effective coordination of forensic services.

(c) Requires the work group to have not fewer than nine members, with the commissioner selecting the total number of members at the time the commissioner establishes the work group.

(d) Requires the executive commissioner of the Health and Human Services Commission (executive commissioner) to appoint as members of the work group:

- (1) a representative of DSHS;
- (2) a representative of the Texas Department of Criminal Justice;
- (3) a representative of the Texas Juvenile Justice Department;
- (4) a representative of the Texas Correctional Office on Offenders with Medical or Mental Impairments;
- (5) a representative of the Sheriff's Association of Texas;
- (6) a superintendent of a state hospital with a maximum security forensic unit;
- (7) a representative of a local mental health authority;
- (8) a representative of the protection and advocacy system of this state established in accordance with 42 U.S.C. Section 15043, appointed by the administrative head of that system; and
- (9) additional members as needed to comply with the number of members selected by the commissioner, who must be recognized experts in forensic patients or persons who represent the interests of forensic patients, and who may be advocates, family members, psychiatrists, psychologists, social workers, psychiatric nurses, or representatives of hospitals licensed under Chapter 241 (Hospitals) or 577 (Private Mental Hospitals and Other Mental Health Facilities).

(e) Authorizes the work group, in developing recommendations, to use information compiled by other work groups in the state, especially work groups for which the focus is mental health issues.

(f) Requires the work group established under this section to, not later than July 1, 2016, send a report describing the work group's recommendations to the lieutenant governor, the speaker of the house of representatives, and the standing committees of the senate and the house of representatives with primary jurisdiction over forensic services.

(g) Authorizes the executive commissioner to adopt rules as necessary to implement this section.

(h) Provides that the work group established under this section is dissolved and this section expires November 1, 2019.

SECTION 2. Amends Subchapter B, Chapter 533, Health and Safety Code, by adding Section 533.0515, as follows:

Sec. 533.0515. REGIONAL ALLOCATION OF MENTAL HEALTH BEDS. (a) Defines "inpatient mental health facility."

(b) Requires the Health and Human Services Commission (HHSC), with input from local mental health authorities, local behavioral health authorities, stakeholders, and the forensic director appointed under Section 532.013, and after considering any plan developed under Section 533.051 (Allocation of Outpatient Mental Health Services and Beds in State Hospitals), to divide the state into regions for the purpose of allocating to each region state-funded beds in the state hospitals and other inpatient mental health facilities for patients who are:

- (1) voluntarily admitted to a state hospital or other inpatient mental health facility under Subchapter B (Voluntary Treatment or Rehabilitation),

Chapter 462 (Treatment of Chemically Dependent Persons), or Chapter 572 (Voluntary Mental Health Services);

(2) admitted to a state hospital or other inpatient mental health facility for emergency detention under Subchapter C (Emergency Detention), Chapter 462, or Chapter 573 (Emergency Detention);

(3) ordered by a court to receive at a state hospital or other inpatient mental health facility inpatient chemical dependency treatment under Subchapter D (Court-Ordered Treatment), Chapter 462, or inpatient mental health services under Chapter 574 (Court-Ordered Mental Health Services);

(4) committed to a state hospital or other inpatient mental health facility to attain competency to stand trial under Chapter 46B (Incompetency to Stand Trial), Code of Criminal Procedure; or

(5) committed to a state hospital or other inpatient mental health facility to receive inpatient mental health services following an acquittal by reason of insanity under Chapter 46C (Insanity Defense), Code of Criminal Procedure.

(c) Requires the Texas Department of Mental Health and Mental Retardation (TXMHMR) in conjunction with HHSC, to convene the advisory panel described by Section 533.051(c) (requiring TXMHMR to establish and meet at least monthly with an advisory panel composed of certain persons as set forth) at least quarterly in order for the advisory panel to:

(1) develop, make recommendations to the executive commissioner or TXMHMR, as appropriate, and monitor the implementation of updates to:

(A) a bed day allocation methodology for allocating to each region designated under Subsection (b) a certain number of state-funded beds in state hospitals and other inpatient mental health facilities for the patients described by Subsection (b) based on the identification and evaluation of factors that impact the use of state-funded beds by patients in a region, including clinical acuity, the prevalence of serious mental illness, and the availability of resources in the region; and

(B) a bed day utilization review protocol that includes a peer review process to:

(i) evaluate the use of state-funded beds in state hospitals and other inpatient mental health facilities by patients described by Subsection (b), alternatives to hospitalization for those patients, the readmission rate for those patients, and the average length of admission for those patients; and

(ii) conduct a review of the diagnostic and acuity profiles of patients described by Subsection (b) for the purpose of assisting TXMHMR, HHSC, and advisory panel in making informed decisions and using available resources efficiently and effectively; and

(2) receive and review status updates from TXMHMR regarding the implementation of the bed day allocation methodology and the bed day utilization review protocol.

(d) Requires the advisory panel, not later than December 1 of each even-numbered year, to submit to the executive commissioner for consideration a proposal for an updated bed day allocation methodology and bed day utilization review protocol, and requires the executive commissioner to adopt an updated bed day allocation methodology and bed day utilization review protocol.

(e) Requires TXMHMR, in conjunction with HHSC and the advisory panel, not later than December 1 of each even-numbered year, to prepare and submit to the governor, the lieutenant governor, the speaker of the house of representatives, the senate finance committee, the house appropriations committee, and the standing committees of the legislature having jurisdiction over mental health and human services a report that includes:

(1) a summary of the activities of HHSC, TXMHMR, and advisory panel to develop or update the bed day allocation methodology and bed day utilization review protocol;

(2) the outcomes of the implementation of the bed day allocation methodology by region, including an explanation of how the actual outcomes aligned with or differed from the expected outcomes;

(3) for planning purposes, for each region, the actual value of a bed day for the two years preceding the date of the report and the projected value of a bed day for the five years following the date of the report, as calculated by TXMHMR;

(4) for each region, an evaluation of the factors in Subsection (c)(1)(A), including the availability of resources in the region, that impact the use of state-funded beds in state hospitals and other inpatient mental health facilities by the patients described by Subsection (b);

(5) the outcomes of the implementation of the bed day utilization review protocol and the impact of the use of the protocol on the use of state-funded beds in state hospitals and other inpatient mental health facilities by the patients described by Subsection (b); and

(6) any recommendations of the TXMHMR, HHSC, or advisory panel to enhance the effective and efficient allocation of state-funded beds in state hospitals and other inpatient mental health facilities for the patients described by Subsection (b).

(f) Requires the advisory panel, with assistance from TXMHMR, notwithstanding Subsection (d), not later than March 1, 2016, to submit to the executive commissioner an initial proposal for a bed day allocation methodology and bed day utilization review protocol for review. Requires the executive commissioner to adopt an initial bed day allocation methodology and bed day utilization review protocol not later than June 1, 2016. Requires TXMHMR, before HHSC adopts the initial bed day allocation methodology, to continue to allocate state-funded beds in the state hospitals and other inpatient mental health facilities according to TXMHMR's policy as it existed immediately before September 1, 2015, and provides that the policy is continued in effect for that purpose. Provides that this subsection expires September 1, 2017.

SECTION 3. Amends Subchapter D, Chapter 1001, Health and Safety Code, by adding Sections 1001.086, 1001.087, and 1001.088, as follows:

Sec. 1001.086. TREATMENT ALTERNATIVES TRAINING CURRICULUM FOR JUDGES AND ATTORNEYS. (a) Requires DSHS, with input from the court of criminal appeals and the forensic director appointed under Section 532.013, to develop and maintain a training curriculum for judges and attorneys that provides information on

inpatient and outpatient treatment alternatives to inpatient commitment to a state hospital for a patient whom a court is ordering to receive mental health services:

(1) to attain competency to stand trial under Chapter 46B, Code of Criminal Procedure; or

(2) following an acquittal by reason of insanity under Chapter 46C, Code of Criminal Procedure.

(b) Requires that the training curriculum developed and maintained under Subsection (a) include a guide to treatment alternatives, other than inpatient treatment at a state hospital, from which a patient described by Subsection (a) may receive mental health services.

Sec. 1001.087. CONTRACTING FOR AND ADMINISTRATION OF CERTAIN FUNCTIONS RELATING TO SUBSTANCE ABUSE. (a) Authorizes DSHS to contract only with local mental health authorities and local behavioral health authorities to administer outreach, screening, assessment, and referral functions relating to the provision of substance abuse services. Authorizes a local mental health authority or local behavioral health authority to subcontract with a substance abuse or behavioral health service provider to provide those services.

(b) Requires a local mental health authority or local behavioral health authority who contracts with DSHS to administer outreach, screening, assessment, and referral functions relating to the provision of substance abuse services to develop an integrated service delivery model that, to the extent feasible, uses providers who have historically administered outreach, screening, assessment, and referral functions.

Sec. 1001.088. MENTAL HEALTH AND SUBSTANCE ABUSE HOTLINES. Requires DSHS to ensure that each local mental health authority and local behavioral health authority operates a toll-free telephone hotline that enables a person to call a single hotline number to obtain information from the authority about mental health services, substance abuse services, or both.

SECTION 4. (a) Requires the commissioner of state health services, not later than November 1, 2015, to establish a forensic work group, and requires the executive commissioner to appoint members of that work group, as required by Section 532.0131, Health and Safety Code, as added by this Act.

(b) Requires the executive commissioner, not later than November 1, 2015, to adopt any rules necessary for the implementation of Section 532.013 or 532.0131, Health and Safety Code, as added by this Act.

SECTION 5. Requires the commissioner of state health services to appoint a forensic director as required by Section 532.013, Health and Safety Code, as added by this Act, as soon as practicable after the effective date of this Act.

SECTION 6. Requires DSHS to develop the training curriculum required by Section 1001.086, Health and Safety Code, as added by this Act, not later than March 1, 2016.

SECTION 7. Provides that Section 1001.087, Health and Safety Code, as added by this Act, applies only to a contract that is entered into or renewed on or after September 1, 2015. Provides that a contract that is entered into or renewed before that date is governed by the law as it existed immediately before September 1, 2015, and that law is continued in effect for that purpose.

SECTION 8. Effective date: upon passage or September 1, 2015.