

SUBJECT: Interest list management for certain Medicaid HCBS waiver programs

COMMITTEE: Human Services — committee substitute recommended

VOTE: 8 ayes — Frank, Hinojosa, Klick, Meza, Neave, Noble, Rose, Shaheen

0 nays

1 absent — Hull

WITNESSES: For — Erin Lawler, Texas Council of Community Centers; (*Registered, but did not testify*: Jeff Miller, Disability Rights Texas; Carole Smith, Private Providers Association of Texas; Sandra Frizzell Batton, Providers Alliance for Community Services of Texas; Laurie Vanhose, Texas Association of Health Plans; Adrienne Trigg, Texas Medical Equipment Providers Association; Linda Litzinger, Texas Parent to Parent; Jennifer Martinez, The Arc of Texas; Tim Schauer, The Center for Pursuit, Reach Unlimited, and Avalon House)

Against — None

On — Terri Carriker, Protect Texas Fragile Kids; (*Registered, but did not testify*: Molly Lester, Health and Human Services Commission)

BACKGROUND: Government Code sec. 531.001 defines "section 1915(c) waiver program" as a federally funded program of the state under Medicaid authorized under Section 1915(c) of the federal Social Security Act.

Section 1915(c) of the Social Security Act allows states to develop home and community-based services (HCBS) waivers to provide long-term care services and supports to individuals with intellectual disabilities in their home and community, rather than in an institutional setting. The Health and Human Services Commission (HHSC) oversees several types of section 1915(c) HCBS waivers.

Government Code sec. 534.053 governs the Intellectual and

Developmental Disability System Redesign Advisory Committee that advises HHSC on the implementation of acute care and long-term services and supports system redesign.

Concerns have been raised that there are limited slots in Medicaid HCBS waiver programs. As of January 2021, more than 170,000 people were on at least one interest list, with some people waiting over a decade for services. Suggestions have been made to improve management of waiver program interest lists, improve data collection, and reduce the number of individuals in priority populations who are waiting for needed services.

DIGEST:

CSHB 3720 would require the Health and Human Services Commission (HHSC), in consultation with certain entities, to develop a questionnaire for individuals requesting to be placed on or currently on an interest list for an applicable waiver program.

The bill also would require HHSC to expand eligibility for the Texas Home Living (TxHmL) waiver program and conduct a medical necessity assessment for children to determine their eligibility for the medically dependent children (MDCP) waiver program.

Applicability. The bill would apply only to the following Section 1915(c) waiver programs:

- the community living assistance and support services (CLASS) waiver program;
- the home and community-based services (HCS) waiver program;
- the deaf-blind with multiple disabilities (DBMD) waiver program;
- the TxHmL waiver program;
- the MDCP waiver program; and
- the STAR+PLUS home and community-based services (HCBS) waiver program.

Questionnaire. As soon as practicable after the bill's effective date, HHSC, in consultation with the Intellectual and Developmental Disability System Redesign Advisory Committee, the state Medicaid managed care

advisory committee, and interested stakeholders, would have to develop a questionnaire to be completed by or on behalf of an individual who requested to be placed on or was currently on an applicable waiver program interest list.

At minimum, the questionnaire would have to request certain information about an individual seeking or receiving services under a waiver program, including:

- contact information for the individual or the individual's parent or other legally authorized representative;
- the individual's general demographic information;
- the individual's living arrangement;
- the types of assistance the individual required;
- the individual's current caregiver supports and circumstances that could cause the individual to lose those supports; and
- when the delivery of services under a waiver program should begin to ensure the individual's health and welfare.

Subject to the availability of funds, the commission would have to require all individuals on an interest list to annually update the questionnaire and the questionnaire would have to be implemented by September 1, 2024.

Online portal. If HHSC determined it was feasible, the commission would have to develop an online portal to allow an individual or an individual's parent or other legal representative to request placement on a waiver program interest list and complete and update the questionnaire developed under the bill. The determination and, if applicable, the development of the portal would have to be completed as soon practicable after the bill's effective date.

The bill also would require HHSC to designate an individual's status on an interest list as active or inactive, depending on whether notification was provided to the commission that the individual was still interested in receiving services under the waiver program. The commission's designation of an individual's inactive status could not result in the

individual being removed from that list or any other waiver program interest list.

By September 1 of each year, HHSC would have to provide to the Intellectual and Developmental Disability System Redesign Advisory Committee the number of individuals on an interest list to receive services under a waiver program, including individuals whose status was designated as inactive.

TxHml waiver program. Under the bill and to the extent allowed by federal law, an individual would be financially eligible to participate in the TxHmL waiver program if the individual's family income was not more than the special income limit established by HHSC for other Section 1915(c) waiver programs, including the HCS waiver program.

To the extent permitted by federal law, the commission would be required to expand medical eligibility criteria under the TxHmL waiver program to ensure that an individual was medically eligible to participate in the program if the individual:

- had a primary diagnosis by a licensed physician of a related condition that was included on the list of diagnostic codes for persons with related conditions that were approved by the commission; and
- had moderate to extreme deficits in adaptive behavior, as determined by commission rule, obtained by administering a standardized assessment of adaptive behavior.

The bill would define "related condition" as a severe and chronic disability that:

- was attributed to cerebral palsy, epilepsy, or any other condition, other than mental illness, found to be closely related to intellectual disability;
- was manifested before the individual reached 22 years old;
- was likely to continue indefinitely; and

- resulted in substantial functional limitation in at least three of the areas of major life activity specified in the bill.

MDCP waiver program. The bill would require HHSC to conduct a medical necessity assessment of a child to determine their eligibility for services before placing the child on the interest list for the MDCP waiver program. This provision would apply only to a child who received Supplemental Security Income.

As soon as practicable after the bill's effective date, the commission, as appropriate, would have to conduct a medical necessity assessment of each child who was on the MDCP waiver program interest list on the bill's effective date to ensure the child's eligibility for program services.

The bill would take effect September 1, 2021.

NOTES:

According to the Legislative Budget Board, the bill would have a negative impact of \$6.8 million in general revenue through fiscal 2023.