

AN ACT

relating to the functions of local mental health and mental retardation authorities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 533.031, Health and Safety Code, is amended by adding Subdivisions (4), (5), (6), (7), and (8) to read as follows:

(4) "Commission" means the Health and Human Services Commission.

(5) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(6) "ICF-MR and related waiver programs" includes ICF-MR Section 1915(c) waiver programs, home and community-based services, Texas home living waiver services, or another Medicaid program serving persons with mental retardation.

(7) "Section 1915(c) waiver program" means a federally funded Medicaid program of the state that is authorized under Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n(c)).

(8) "Qualified service provider" means an entity that meets requirements for service providers established by the executive commissioner.

SECTION 2. Section 533.035, Health and Safety Code, is amended by amending Subsections (a), (c), and (e) and adding Subsections (b-1) and (e-1) to read as follows:

(a) The executive commissioner shall designate a local mental

health authority and a local mental retardation authority in one or more local service areas. The executive commissioner [~~board~~] may delegate to the local authorities the [~~board's~~] authority and responsibility of the executive commissioner, the commission, or a department of the commission related to [~~for the~~] planning, policy development, coordination, including coordination with criminal justice entities, resource allocation, and resource development for and oversight of mental health and mental retardation services in the most appropriate and available setting to meet individual needs in that service area. The executive commissioner may designate a single entity as the local mental health authority and the local mental retardation authority for a service area.

(b-1) This subsection expires September 1, 2009, and applies only to the determination of payment methodologies for mental health services and not to rate setting or the payment rates for intermediate care facilities for the mentally retarded, Section 1915(c) waiver programs, mental retardation service coordination, and other Medicaid services. Before the Department of State Health Services institutes a change in payment methodology for mental health services, the department shall:

(1) evaluate various forms of payment for services, including fee-for-service, case rate, capitation, and other appropriate payment methods to determine the most cost-effective and efficient form of payment for services;

(2) evaluate the effect of each proposed payment methodology on:

(A) the availability of services in urban and rural service areas;

(B) the availability of services for persons who are indigent;

(C) the cost certainty of the delivery of Medicaid rehabilitation mental health services; and

(D) the ability of the local mental health

authority to meet unique local needs and develop and manage a network of providers;

(3) determine the implementation and ongoing operational costs for the state and local mental health authorities associated with each proposed payment methodology;

(4) develop an implementation plan, with the advice and assistance of the local authority network advisory committee, for any new payment methodology for mental health services that integrates the department's findings under Subdivisions (1), (2), and (3); and

(5) report the department's findings and the implementation plan for any new payment methodology for mental health services to the executive commissioner and the legislature not later than January 1, 2009.

(c) A local mental health and mental retardation authority, with the ~~[department's]~~ approval of the Department of State Health Services or the Department of Aging and Disability Services, or both, as applicable, shall use the funds received under Subsection (b) to ensure mental health, mental retardation, and chemical dependency services are provided in the local service area. The local authority shall consider public input, ultimate cost-benefit, and client care issues to ensure consumer choice and the best use of public money in:

(1) assembling a network of service providers; ~~and~~

(2) making recommendations relating to the most appropriate and available treatment alternatives for individuals in need of mental health or mental retardation services; and

(3) procuring services for a local service area, including a request for proposal or open-enrollment procurement method.

(e) Subject to Section 533.0358, in ~~[in]~~ assembling a network of service providers, a local mental health ~~[and mental retardation]~~ authority may serve as a provider of services only as

a provider of last resort and only if the local authority demonstrates to the department in the local authority's local network development plan that:

(1) the local authority has made every reasonable attempt to solicit the development of an available and appropriate provider base that is sufficient to meet the needs of consumers in its service area; and

(2) there is not a willing provider of the relevant services in the local authority's service area or in the county where the provision of the services is needed.

(e-1) A local mental retardation authority may serve as a provider of ICF-MR and related waiver programs only if:

(1) the local authority complies with the limitations prescribed by Section 533.0355(d); or

(2) the ICF-MR and related waiver programs are necessary to ensure the availability of services and the local authority demonstrates to the commission that there is not a willing ICF-MR and related waiver program qualified service provider in the local authority's service area where the service is needed.

SECTION 3. Section 533.0351, Health and Safety Code, is amended to read as follows:

Sec. 533.0351. LOCAL AUTHORITY NETWORK [~~TECHNICAL~~] ADVISORY COMMITTEE. (a) [~~In this section, "local authority" means a local mental health or mental retardation authority.~~

[~~(b)~~] The executive commissioner shall establish a [~~nine-member~~] local authority network advisory committee to advise the executive commissioner and the Department of State Health Services on technical and administrative issues that directly affect local mental health authority responsibilities.

(b) [(e)] The committee is composed of equal numbers of representatives of local mental health authorities, community mental health service providers, private mental health service providers, local government officials, advocates for individuals

with mental health needs, consumers of mental health services, family members of individuals with mental health needs, and other individuals with expertise in the field of mental health [~~and one member representing the public~~] appointed by the executive commissioner. In addition, the executive commissioner may appoint facilitators to the committee as necessary. In appointing the members, the executive commissioner shall also ensure a balanced representation of:

- (1) different regions of this state;
- (2) rural and urban counties; and
- (3) single-county and multicounty local mental health authorities.

(c) Members [~~(d) Except for the member representing the public, members~~] appointed to the advisory committee must have some knowledge of, familiarity with, or understanding of [~~expertise in~~] the day-to-day operations of a local mental health authority.

(d) [~~(e)~~] The advisory committee shall:

(1) review rules and proposed rules and participate in any negotiated rulemaking process related to local mental health authority operations;

(2) advise the executive commissioner and the Department of State Health Services regarding evaluation and coordination of initiatives related to local mental health authority operations;

(3) advise the executive commissioner and the Department of State Health Services [~~and assist the department~~] in developing a method of contracting with local mental health authorities that will result in contracts that are flexible and responsive to:

(A) the needs and services of local communities;
and

(B) the department's performance expectations;

(4) coordinate with [~~and monitor the activities of~~] work groups whose actions may affect local mental health authority operations;

(5) report to the executive commissioner and the Department of State Health Services [~~board~~] on the committee's activities and recommendations at least once each fiscal quarter; and

(6) work with the executive commissioner or the Department of State Health Services as the executive commissioner directs.

(e) [~~f~~] For any written recommendation the committee makes to the Department of State Health Services [~~department~~], the department shall provide to the committee a written response regarding any action taken on the recommendation or the reasons for the department's inaction on the subject of the recommendation.

(f) The [~~g~~] ~~Except as provided by this subsection, the~~ committee is subject to Chapter 2110, Government Code, except that the committee is not subject to Section 2110.004 or 2110.008, Government Code. The committee is abolished [~~automatically~~] on September 1, 2017 [~~2007~~], unless the executive commissioner [~~board~~] adopts a rule continuing the committee in existence beyond that date.

(g) The Department of State Health Services may reimburse consumers of mental health services and family members of individuals with mental health needs appointed to the committee for travel costs incurred in performing their duties as provided in the General Appropriations Act.

SECTION 4. Subchapter B, Chapter 533, Health and Safety Code, is amended by adding Section 533.03521 to read as follows:

Sec. 533.03521. LOCAL NETWORK DEVELOPMENT PLAN CREATION AND APPROVAL. (a) A local mental health authority shall develop a local network development plan regarding the configuration and development of the local mental health authority's provider network. The plan must reflect local needs and priorities and maximize consumer choice and access to qualified service providers.

(b) The local mental health authority shall submit the local

network development plan to the Department of State Health Services for approval.

(c) On receipt of a local network development plan under this section, the department shall review the plan to ensure that the plan:

(1) complies with the criteria established by Section 533.0358 if the local mental health authority is providing services under that section; and

(2) indicates that the local mental health authority is reasonably attempting to solicit the development of a provider base that is:

(A) available and appropriate; and

(B) sufficient to meet the needs of consumers in the local authority's local service area.

(d) If the department determines that the local network development plan complies with Subsection (c), the department shall approve the plan.

(e) At least biennially, the department shall review a local mental health authority's local network development plan and determine whether the plan complies with Subsection (c).

(f) As part of a local network development plan, a local mental health authority annually shall post on the local authority's website a list of persons with whom the local authority had a contract or agreement in effect during all or part of the previous year, or on the date the list is posted, related to the provision of mental health services.

SECTION 5. Section 533.0355, Health and Safety Code, is amended to read as follows:

Sec. 533.0355. LOCAL MENTAL RETARDATION AUTHORITY RESPONSIBILITIES [~~ALLOCATION OF DUTIES UNDER CERTAIN MEDICAID WAIVER PROGRAMS~~]. (a) The executive commissioner shall adopt rules establishing the roles and responsibilities of local mental retardation authorities [~~In this section, "waiver program" means~~

~~the local mental retardation authority waiver program established under the state Medicaid program].~~

(b) In adopting rules under this section, the executive commissioner must include rules regarding the following local mental retardation authority responsibilities:

- (1) access;
- (2) intake;
- (3) eligibility functions;
- (4) enrollment, initial person-centered assessment, and service authorization;
- (5) utilization management;
- (6) safety net functions, including crisis management services and assistance in accessing facility-based care;
- (7) service coordination functions;
- (8) provision and oversight of state general revenue services;
- (9) local planning functions, including stakeholder involvement, technical assistance and training, and provider complaint and resolution processes; and
- (10) processes to assure accountability in performance, compliance, and monitoring. [A provider of services under the waiver program shall:

~~[(1) develop a person directed plan and an individual program plan for each person who receives services from the provider under the waiver program;~~

~~[(2) perform justification and implementation functions for the plans described by Subdivision (1);~~

~~[(3) conduct case management under the waiver program, other than case management under Subsection (c)(3), in accordance with applicable state and federal laws; and~~

~~[(4) plan, coordinate, and review the provision of services to all persons who receive services from the service provider under the waiver program.]~~

(c) In determining eligibility under Subsection (b)(3), a local mental retardation authority must offer a state school as an option among the residential services and other community living options available to an individual who is eligible for those services and who meets the department's criteria for state school admission, regardless of whether other residential services are available to the individual.

(d) In establishing a local mental retardation authority's role as a qualified service provider of ICF-MR and related waiver programs under Section 533.035(e-1), the executive commissioner shall require the local mental retardation authority to:

(1) base the local authority's provider capacity on the local authority's August 2004 enrollment levels for the waiver programs the local authority operates and, if the local authority's enrollment levels exceed those levels, to reduce the levels by attrition; and

(2) base any increase in the local authority's provider capacity on:

(A) the local authority's state-mandated conversion from an ICF-MR program to a Section 1915(c) waiver program allowing for a permanent increase in the local authority's provider capacity in accordance with the number of persons who choose the local authority as their provider;

(B) the local authority's voluntary conversion from an ICF-MR program to a Section 1915(c) waiver program allowing for a temporary increase in the local authority's provider capacity, to be reduced by attrition, in accordance with the number of persons who choose the local authority as their provider;

(C) the local authority's refinancing from services funded solely by state general revenue to a Medicaid program allowing for a temporary increase in the local authority's provider capacity, to be reduced by attrition, in accordance with the number of persons who choose the local authority as their provider; or

(D) other extenuating circumstances that:

(i) are monitored and approved by the Department of Aging and Disability Services;

(ii) do not include increases that unnecessarily promote the local authority's provider role over its role as a local mental retardation authority; and

(iii) may include increases necessary to accommodate a family-specific or consumer-specific circumstance and choice [~~A local mental retardation authority shall:~~

~~[(1) manage any waiting lists for services under the waiver program;~~

~~[(2) perform functions relating to consumer choice and enrollment for persons who receive services under the waiver program; and~~

~~[(3) conduct case management under the waiver program relating to funding disputes between a service provider and the local mental retardation authority.~~

~~[(d) The department shall perform all administrative functions under the waiver program that are not assigned to a service provider under Subsection (b) or to a local mental retardation authority under Subsection (c). Administrative functions performed by the department include:~~

~~[(1) any surveying, certification, and utilization review functions required under the waiver program; and~~

~~[(2) managing an appeals process relating to decisions that affect a person receiving services under the waiver program].~~

(e) Any increase based on extenuating circumstances under Subsection (d)(2)(D) is considered a temporary increase in the local mental retardation authority's provider capacity, to be reduced by attrition [~~The department shall review:~~

~~[(1) screening and assessment of levels of care;~~

~~[(2) case management fees paid under the waiver program to a community center; and~~

~~[(3) administrative fees paid under the waiver program to a service provider].~~

(f) At least biennially, the Department of Aging and Disability Services shall review and determine the local mental retardation authority's status as a qualified service provider in accordance with criteria that includes the consideration of the local authority's ability to assure the availability of services in its area, including:

(1) program stability and viability;

(2) the number of other qualified service providers in the area; and

(3) the geographical area in which the local authority is located ~~[The department shall perform any function relating to inventory for persons who receive services under the waiver program and agency planning assessments].~~

(g) The Department of Aging and Disability Services shall ensure that local services delivered further the following goals:

(1) to provide individuals with the information, opportunities, and support to make informed decisions regarding the services for which the individual is eligible;

(2) to respect the rights, needs, and preferences of an individual receiving services; and

(3) to integrate individuals with mental retardation and developmental disabilities into the community in accordance with relevant independence initiatives and permanency planning laws.

~~[The review required under Subsection (e) must include a comparison of fees paid before the implementation of this section with fees paid after the implementation of this section. The department may adjust fees paid based on that review.]~~

~~[(h) The department shall allocate the portion of the gross reimbursement funds paid to a local authority and a service provider for client services for the case management function in accordance with this section and to the extent allowed by law.]~~

~~[(i) The department may adopt rules governing the functions of a local mental retardation authority or service provider under this section.]~~

SECTION 6. Subchapter B, Chapter 533, Health and Safety Code, is amended by adding Sections 533.0357, 533.0358, and 533.0359 to read as follows:

Sec. 533.0357. BEST PRACTICES CLEARINGHOUSE FOR LOCAL MENTAL HEALTH AUTHORITIES. (a) In coordination with local mental health authorities, the department shall establish an online clearinghouse of information relating to best practices of local mental health authorities regarding the provision of mental health services, development of a local provider network, and achievement of the best return on public investment in mental health services.

(b) The department shall solicit and collect from local mental health authorities that meet established outcome and performance measures, community centers, consumers and advocates with expertise in mental health or in the provision of mental health services, and other local entities concerned with mental health issues examples of best practices related to:

(1) developing and implementing a local network development plan;

(2) assembling and expanding a local provider network to increase consumer choice;

(3) creating and enforcing performance standards for providers;

(4) managing limited resources;

(5) maximizing available funding;

(6) producing the best client outcomes;

(7) ensuring consumers of mental health services have control over decisions regarding their health;

(8) developing procurement processes to protect public funds;

(9) achieving the best mental health consumer outcomes

possible; and

(10) implementing strategies that effectively incorporate consumer and family involvement to develop and evaluate the provider network.

(c) The department may contract for the services of one or more contractors to develop, implement, and maintain a system of collecting and evaluating the best practices of local mental health authorities as provided by this section.

(d) The department shall encourage local mental health authorities that successfully implement best practices in accordance with this section to mentor local mental health authorities that have service deficiencies.

(e) Before the executive commissioner may remove a local mental health authority's designation under Section 533.035(a) as a local mental health authority, the executive commissioner shall:

(1) assist the local mental health authority in attaining training and mentorship in using the best practices established in accordance with this section; and

(2) track and document the local mental health authority's improvements in the provision of service or continued service deficiencies.

(f) Subsection (e) does not apply to the removal of a local mental health authority's designation initiated at the request of a local government official who has responsibility for the provision of mental health services.

(g) The department shall implement this section using only existing resources.

(h) The Department of State Health Services shall ensure that a local mental health authority providing best practices information to the department or mentoring another local mental health authority complies with Section 533.03521(f).

Sec. 533.0358. LOCAL MENTAL HEALTH AUTHORITY'S PROVISION OF SERVICES AS PROVIDER OF LAST RESORT. (a) A local mental health

authority may serve as a provider of services under Section 533.035(e) only if, through the local network development plan process, the local authority determines that at least one of the following applies:

(1) interested qualified service providers are not available to provide services or no service provider meets the local authority's procurement requirements;

(2) the local authority's network of providers does not provide a minimum level of consumer choice by:

(A) presenting consumers with two or more qualified service providers in the local authority's network for service packages; and

(B) presenting consumers with two or more qualified service providers in the local authority's network for specific services within a service package;

(3) the local authority's provider network does not provide consumers in the local service area with access to services at least equal to the level of access provided as of a date the executive commissioner specifies;

(4) the combined volume of services delivered by qualified service providers in the local network does not meet all of the local authority's service capacity for each service package identified in the local network development plan;

(5) the performance of the services by the local authority is necessary to preserve critical infrastructure and ensure continuous provision of services; or

(6) existing contracts or other agreements restrict the local authority from contracting with qualified service providers for services in the local network development plan.

(b) If a local mental health authority continues to provide services in accordance with this section, the local authority shall identify in the local authority's local network development plan:

(1) the proportion of its local network services that

the local authority will provide; and

(2) the local authority's basis for its determination that the local authority must continue to provide services.

Sec. 533.0359. RULEMAKING FOR LOCAL MENTAL HEALTH AUTHORITIES. (a) In developing rules governing local mental health authorities under Sections 533.035, 533.0351, 533.03521, 533.0357, and 533.0358, the executive commissioner shall use rulemaking procedures under Subchapter B, Chapter 2001, Government Code.

(b) The executive commissioner by rule shall prohibit a trustee or employee of a local mental health authority from soliciting or accepting from another person a benefit, including a security or stock, a gift, or another item of value, that is intended to influence the person's conduct of authority business.

SECTION 7. Sections 533.035(f) and (g), Health and Safety Code, are repealed.

SECTION 8. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 9. Not later than January 1, 2008, the Health and Human Services Commission shall submit a report to the governor, the lieutenant governor, and the speaker of the house of representatives that includes:

(1) whether a waiver from a federal agency is necessary for implementation of any provision of this Act and, if a waiver is necessary, the date the commission applied for that waiver or will apply for the waiver; and

(2) any other information the commission finds relevant regarding the implementation of Sections 533.035, 533.0351, 533.03521, 533.0355, 533.0357, and 533.0358, Health and Safety

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Code, as amended or added by this Act, by local mental health and
mental retardation authorities.

SECTION 10. Not later than November 1, 2007, the executive
commissioner of the Health and Human Services Commission shall re-
create and appoint the members of the local authority network
advisory committee under Section 533.0351, Health and Safety Code,
as amended by this Act.

SECTION 11. This Act takes effect immediately if it receives
a vote of two-thirds of all the members elected to each house, as
provided by Section 39, Article III, Texas Constitution. If this
Act does not receive the vote necessary for immediate effect, this
Act takes effect September 1, 2007.

President of the Senate

Speaker of the House

I certify that H.B. No. 2439 was passed by the House on April 26, 2007, by the following vote: Yeas 142, Nays 0, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2439 on May 17, 2007, by the following vote: Yeas 133, Nays 1, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2439 was passed by the Senate, with amendments, on May 15, 2007, by the following vote: Yeas 30, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor