

## CHAPTER 646

## S.B. No. 160

## AN ACT

relating to the provision of mental health and rehabilitative services.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Section 222.042, Health and Safety Code, is amended to read as follows:

Sec. 222.042. LICENSING OF ICF-MR BEDS AND FACILITIES. The department may not *license* or approve as meeting licensing standards new ICF-MR beds or the expansion of an existing ICF-MR facility unless[

~~[(1)] the new beds or the expansion was included in the plan approved by the *Health and Human Services Commission in accordance with Section 533.062 [Interagency Council on ICF-MR Facilities in accordance with Section 2.43, Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes); and*~~

~~[(2) the Texas Department of Mental Health and Mental Retardation has approved the beds or the expansion for certification in accordance with Section 2.44, Texas Mental Health and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes)].~~

SECTION 2. Subchapter A, Chapter 533, Health and Safety Code, is amended by adding Section 533.0075 to read as follows:

*Sec. 533.0075. EXCHANGE OF EMPLOYMENT RECORDS. The department shall make available to a community center, on request, the employment records of a department employee or former employee who applies for employment at the community center.*

SECTION 3. Subsections (b), (c), and (d), Section 533.014, Health and Safety Code, are amended to read as follows:

(b) The board's first consideration in developing rules under this section must be to satisfy individual patient treatment needs in the most appropriate setting. The board shall also consider reducing patient inconvenience resulting from admissions and transfers between providers. ~~[The rules must be based on the advice and recommendations of the single portal review committee.]~~

(c) ~~[The board may designate a local mental health authority as a single portal authority for a service area if:~~

~~[(1) the board determines that the authority operates or contracts for the licensed inpatient mental health facilities the board determines are necessary;~~

~~[(2) the board determines that all core services required by Section 534.053 are available in the service area; and~~

~~[(3) the single portal review committee:~~

~~[(A) determines that the core services in the service area are of sufficient quality and quantity as measured by criteria established by the committee;~~

~~[(B) determines that the local mental health authority meets the criteria set by the single portal review committee, including receiving the endorsement of the application from the county judges and the appropriate police chiefs who have jurisdiction in the applicant's service area and from the superintendent of the department mental health facility serving the area; and~~

~~[(C) approves the authority's application.~~

~~[(d)] If the board designates a local mental health authority as a single portal authority, the department shall notify each judge who has probate jurisdiction in the service area and any other person the single portal authority considers necessary of the designation and the new procedures required in the area.~~

SECTION 4. Section 533.032, Health and Safety Code, is amended to read as follows:

Sec. 533.032. LONG-RANGE PLAN. ~~[(a)]~~ The department shall have a long-range plan covering at least six years that includes at least the *provisions required by Section 10, Article*

4413(502), Revised Statutes, and Article 6252-31, Revised Statutes, as added by Chapter 384, Acts of the 72nd Legislature, Regular Session, 1991 [following elements:

- ~~(1) a statement of the department's mission, goals, and objectives;~~
- ~~(2) quantifiable indicators of effort and success;~~
- ~~(3) an identification of priority populations and the minimum services necessary for those populations;~~
- ~~(4) a description of the appropriate use of facilities, including the role of state hospitals and schools, considering their size, function, and specialization and the criteria for adding needed beds and phasing out uneconomical and unneeded beds;~~
- ~~(5) a description of the service delivery system while the plan is being implemented, including estimates of the number of persons to be served by department facilities and community-based services and the costs of the services; and~~
- ~~(6) a comprehensive assessment of needs and a statewide inventory of resources.~~
- ~~(b) The department shall revise the plan by January 1 of each even-numbered year.~~
- ~~(c) The department shall identify and project the costs related to implementing the plan.~~
- ~~(d) As part of the department's budget preparation process, the department shall biennially assess its achievement of the goals identified in the plan. The department should make each biennial budget request according to the results of the assessment, with requests for new program funding and continued funding made according to demonstrated need.~~
- ~~(e) The department should develop and maintain a data base appropriate to the planning effort].~~

SECTION 5. Section 533.042, Health and Safety Code, is amended to read as follows:

Sec. 533.042. [ANNUAL] EVALUATION OF ELDERLY RESIDENTS. (a) The department shall evaluate each elderly resident at least annually to determine if the resident can be appropriately served in a less restrictive setting.

(b) The department shall consider the proximity to the resident of family, friends, and advocates concerned with the resident's well-being in determining whether the resident should be moved from a department facility or to a different department facility. The department shall recognize that a nursing home may not be able to meet the special needs of an elderly resident.

(c) In evaluating an elderly resident under this section and to ensure appropriate placement, the department shall identify the special needs of the resident, the types of services that will best meet those needs, and the type of facility that will best provide those services.

(d) The treating physician shall conduct the evaluation of an elderly resident of a department mental health facility. The appropriate interdisciplinary team shall conduct the evaluation of an elderly resident of a department mental retardation facility.

(e) The department shall attempt to place an elderly resident in a less restrictive setting if the department determines that the resident can be appropriately served in that setting. The department shall coordinate the attempt with the local mental health and mental retardation authority.

(f) A local mental health or mental retardation authority shall provide continuing care for an elderly resident placed in the authority's service area under this section.

(g) *The local mental health or mental retardation authority shall have the right of access to all residents and records of residents who request continuing care services.*

SECTION 6. Section 533.062, Health and Safety Code, is amended to read as follows:

Sec. 533.062. PLAN ON LONG-TERM CARE FOR PERSONS WITH MENTAL RETARDATION [ICF-MR FACILITIES]. (a) The department shall *biennially develop a proposed [annually] plan on long-term care for persons with mental retardation [for the creation of new beds in the ICF-MR program].*

(b) *The proposed plan must specify the capacity of the HCS waiver program for persons with mental retardation and the number and levels of new ICF-MR beds to be authorized [created] in each region. In developing the proposed plan, the department shall consider:*

- (1) the needs of the population to be served;
- (2) *projected appropriation amounts for the biennium [the resources of the governmental entities responsible for providing services]; and*
- (3) the requirements of applicable federal law.
- (c) *Each proposed plan shall cover the subsequent fiscal biennium [year]. The department shall conduct a public hearing on the proposed plan. Not later than July 1 of each even-numbered year, the department shall submit the plan to the Health and Human Services Commission [Interagency Council on ICF-MR Facilities] for approval.*
- (d) *The Health and Human Services Commission may modify the proposed plan as necessary before its final approval. In determining the appropriate number of ICF-MR facilities for persons with a related condition, the department and the Health and Human Services Commission shall consult with the Texas Department of Human Services [board by rule shall adopt the plan approved by the Interagency Council on ICF-MR Facilities].*
- (e) *The Health and Human Services Commission shall submit the proposed plan as part of the consolidated health and human services budget recommendation required under Section 13, Article 4413(502), Revised Statutes [department may submit to the Interagency Council on ICF-MR Facilities proposed amendments to a plan in operation that the department considers necessary].*
- (f) *After legislative action on the appropriation for long-term care services for persons with mental retardation, the Health and Human Services Commission shall adjust the plan to ensure that the number of ICF-MR beds licensed or approved as meeting license requirements and the capacity of the HCS waiver program are within appropriated funding amounts.*
- (g) *After any necessary adjustments, the Health and Human Services Commission shall approve the final biennial plan and publish the plan in the Texas Register.*
- (h) *The department may submit proposed amendments to the plan to the Health and Human Services Commission.*
- (i) *In this section, "HCS waiver program" means services under the state Medicaid home and community-based services waiver program for persons with mental retardation adopted in accordance with 42 U.S.C. Section 1396n(c).*

SECTION 7. (a) Section 534.0155, Health and Safety Code, as added by Section 6.21, H.B. No. 947, Acts of the 73rd Legislature, Regular Session, 1993, is amended to read as follows:

Sec. 534.0155. FOR WHOM SERVICES MAY BE PROVIDED. (a) This subtitle does not prevent a community center from providing services to a person with chemical dependency or to a person with a mental disability, as that term is defined by Section 535.001.

(b) A community center may provide those services by contracting with a public or private agency in addition to the department.

~~[(c) A community center may not provide services to a person with a disability that is not listed in the definition of person with a mental disability provided by Section 535.001, except that a community center that, on or before September 1, 1991, has contracted to provide services to a person with a disability that is not listed in that definition may continue to receive funding and provide services to that person for the term of the contract.]~~

(b) This section takes effect only if H.B. No. 947, Acts of the 73rd Legislature, Regular Session, 1993, finally passes and is approved by the governor.

SECTION 8. Section 534.020, Health and Safety Code, is amended to read as follows:

Sec. 534.020. ACQUISITION AND CONSTRUCTION OF PROPERTY AND FACILITIES BY COMMUNITY CENTER. (a) A community center may purchase or lease-purchase [lease] real and personal property and may construct buildings and facilities.

(b) *The board of trustees shall require that an appraiser certified by the Texas Appraiser Licensing and Certification Board conduct an independent appraisal of real estate the community center intends to purchase. The board of trustees may waive this requirement if the purchase price is less than the value listed for the property by the local appraisal district and the property has been appraised by the local appraisal district within the preceding two*

years. A community center may not purchase or lease-purchase property for an amount that is greater than the property's appraised value unless:

- (1) the purchase or lease-purchase of that property at that price is necessary;
  - (2) the board of trustees documents in the official minutes the reasons why the purchase or lease-purchase is necessary at that price; and
  - (3) a majority of the board approves the transaction.
- (c) The board of trustees shall establish in accordance with relevant department rules competitive bidding procedures and practices for capital purchases and for purchases involving department funds or required local matching funds.

SECTION 9. (a) Subsections (a) and (b), Section 534.021, Health and Safety Code, are amended to read as follows:

(a) A community center must receive from the department prior written approval to acquire real property, including a building, if the acquisition involves the use of department funds or local funds required to match department funds. *In addition, for acquisition of nonresidential property, the community center must notify each local agency that appoints members to the board of trustees not later than the 31st day before it enters into a binding obligation to acquire the property.*

(b) A community center must notify the department *and each local agency that appoints members to the board of trustees* not later than the 31st ~~[61st]~~ day before it enters into a binding obligation to acquire real property, including a building, if the acquisition does not involve the use of department funds or local funds required to match department funds. The commissioner, on request, may waive the 30-day ~~[60-day]~~ requirement on a case-by-case basis.

(b) This section takes effect September 1, 1993, and applies only to a binding obligation to acquire real property entered into on or after the effective date of this section.

SECTION 10. (a) Section 534.033, Health and Safety Code, as added by Chapter 76, Acts of the 72nd Legislature, Regular Session, 1991, and as amended by Section 6, Chapter 569, Acts of the 72nd Legislature, Regular Session, 1991, is conformed and amended to read as follows:

Sec. 534.033. LIMITATION ON DEPARTMENT CONTROL AND REVIEW. (a) It is the intent of the legislature that the department limit its control over, and routine reviews of, community center programs to those programs that:

- (1) use *department [state]* funds or use required local funds that are matched with *department [state]* funds;
- (2) provide core or required services;
- (3) provide services to former clients or patients of a department facility; or
- (4) are affected by litigation in which the department is a defendant.

(b) The department may review any community center program if the department has reason to suspect that a violation of a department rule has occurred or if the department receives an allegation of patient or client abuse.

(c) The department may determine whether a particular program uses *department [state]* funds or uses required local matching funds.

(d) This Act does not prevent a community center from providing services to a person with chemical dependency or to a person who is a "mentally disabled person," as that term is defined by Section 535.001 ~~[5.01 of this Act, as added by Chapter 835, Acts of the 70th Legislature, Regular Session, 1987]~~. A community center may provide those services by contracting with a public or private agency in addition to the *department [Department]*. ~~A community center may not provide services to a person with a disability that is not listed in the definition of "mentally disabled person" provided by Section 5.01 of this Act. However, a community center that, on or before September 1, 1991, has contracted to provide services to a person with a disability that is not listed in that definition may continue to receive funding and provide services to that person for the term of the contract.]~~

(b) This section takes effect only if H.B. No. 947, Acts of the 73rd Legislature, Regular Session, 1993, does not finally pass or is not approved by the governor.

SECTION 11. Subchapter B, Chapter 534, Health and Safety Code, is amended by adding Section 534.0675 to read as follows:

*Sec. 534.0675. NOTICE OF DENIAL, REDUCTION, OR TERMINATION OF SERVICES. The board by rule, in cooperation with local mental health and mental retardation authorities, consumers, consumer advocates, and service providers, shall establish a uniform procedure that each local mental health or mental retardation authority shall use to notify consumers in writing of the denial, involuntary reduction, or termination of services and of the right to appeal those decisions.*

SECTION 12. Section 574.081, Health and Safety Code, is amended by amending Subsection (e) and adding Subsection (f) to read as follows:

(e) *The facility administrator or the administrator's designee shall have the right of access to discharged patients and records of patients who request continuing care services.*

(f) A patient who is to be discharged may refuse the continuing care services.

SECTION 13. Section 591.011, Health and Safety Code, is amended by amending Subsection (e) and adding Subsection (f) to read as follows:

(e) *The department shall have the right of access to all residents and records of residents who are placed with residential service providers.*

(f) The department's responsibilities under this subtitle are in addition to all other responsibilities and duties of the department under other law.

SECTION 14. Chapter 123, Human Resources Code, is amended by adding Section 123.010 to read as follows:

*Sec. 123.010. ENSURING THE SAFETY OF RESIDENTS. The Texas Department of Mental Health and Mental Retardation shall make every reasonable effort to ensure the safety of community home residents and the residents of a neighborhood that is affected by the location of a community home.*

SECTION 15. Section 533.013, Health and Safety Code, is repealed.

SECTION 16. Section 533.061, Health and Safety Code, is repealed.

SECTION 17. The Texas Board of Mental Health and Mental Retardation shall adopt the rule required by Section 534.0675, Health and Safety Code, as added by this Act, by September 1, 1993.

SECTION 18. (a) Not later than October 1, 1993, the Texas Department of Mental Health and Mental Retardation shall submit to the Health and Human Services Commission the proposed plan for the 1994-1995 biennium as required by Section 533.062, Health and Safety Code, as amended by this Act.

(b) In addition to the changes in law made by this Act relating to the provision of services to persons with mental retardation, this Act conforms certain provisions of the Health and Safety Code relating to the provision of those services to changes in the law made by Section 1, Chapter 248, Acts of the 72nd Legislature, Regular Session, 1991.

(c) Section 1, Chapter 248, Acts of the 72nd Legislature, Regular Session, 1991, is repealed.

SECTION 19. (a) Except as provided by Subsection (b) of this section, this Act takes effect immediately.

(b) Sections 7, 9, and 10 of this Act take effect as provided by those sections.

SECTION 20. This Act does not affect the transfer of powers, duties, rights, and obligations of the Texas Department of Health to the Texas Department of Human Services or another agency as prescribed by Section 1.11, Chapter 15, Acts of the 72nd Legislature, 1st Called Session, 1991, or by any other law.

SECTION 21. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on March 31, 1993: Yeas 31, Nays 0; the Senate concurred in House amendments on May 23, 1993: Yeas 30, Nays 0; passed the House, with amendments, on May 21, 1993, by a non-record vote.

Approved June 12, 1993.

Effective Aug. 30, 1993, 90 days after date of adjournment, and as provided in §§ 7, 9 and 10.