

CHAPTER 835

H.B. No. 1154

AN ACT

relating to the establishment of support programs to assist mentally or developmentally disabled persons and their families; providing a criminal penalty.

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

SECTION 1. The Texas Mental Health and Mental Retardation Act (Article 5547-201 et seq., Vernon's Texas Civil Statutes) is amended by adding Article 5 to read as follows:

*Art. 5. SUPPORT SERVICES FOR MENTALLY DISABLED PERSONS*

*Sec. 5.01. DEFINITIONS. In this article:*

(1) "Client" means a mentally disabled person who lives independently or a family with a mentally disabled family member.

(2) "Family" means a group of two or more people composed of a mentally disabled person and that person's parent or legal guardian.

(3) "Legal guardian" means a person appointed by a court of competent jurisdiction to exercise powers over a mentally disabled person.

(4) "Mentally disabled person" means a person with mental illness or mental retardation.

(5) "Mental illness" has the meaning assigned by Section 4(8), Texas Mental Health Code (Article 5547-4, Vernon's Texas Civil Statutes).

(6) "Mental retardation" has the meaning assigned by Section 3(5), Mentally Retarded Persons Act of 1977 (Article 5547-300, Vernon's Texas Civil Statutes).

(7) "Parent" means a natural, foster, surrogate, or adoptive parent.

(8) "Other support programs" means:

(A) all forms of local, state, or federal assistance;

(B) contract programs; or

(C) support provided by public or private funds for mentally disabled persons or their families.

(9) "Support" means a subsidy granted by the department to provide support services to a client.

Sec. 5.02. **POWERS AND DUTIES OF DEPARTMENT.** (a) The department shall adopt rules, procedures, guidelines, and standards to implement and administer this article, including:

(1) procedures and guidelines for determining eligibility standards relating to financial qualifications and the need for services and for determining eligibility criteria for the selection of clients;

(2) standards and procedures for approving qualified programs and support services;

(3) procedures for conducting a periodic review of clients;

(4) procedures and guidelines for determining when support is a duplication of support from other support programs or results in excessive support to a client;

(5) rules establishing reasonable payment rates for qualified programs and support services under this article; and

(6) rules establishing a copayment system in accordance with Section 5.06 of this article.

(b) If feasible and cost effective, the department may use local mental health and mental retardation authorities to implement this article. However, the department may not designate those local mental health and mental retardation authorities as the sole providers of services if other providers are available.

Sec. 5.03. **ELIGIBILITY.** (a) Department rules relating to eligibility for support must provide that a family is eligible to receive support under this article if the family:

(1) resides in this state;

(2) has a family member who is determined to be mentally disabled; and

(3) meets the income and need eligibility criteria established by the department.

(b) Department rules providing for eligibility for support must provide that a mentally disabled person in an independent living situation is eligible for support if the person is a resident of this state and meets the income and need eligibility criteria established by the department.

(c) The department shall determine eligibility and the need for support services based on the results of current evaluations, program plans, and medical reports. These documents shall be provided to the department on request, and the department, if it considers necessary, may require additional evaluations. The department shall provide any additional evaluations it requires.

(d) After consulting with the applicant, the department shall determine the needs of the applicant and the support services for which the applicant is eligible.

(e) *In determining eligibility for support services under this article, the department shall determine if the applicant may be eligible to receive the services from other support programs. If the department determines that an applicant may receive the services from another support program and that those services are available from the other program, the department may deny the application. If the department denies the application, the department shall provide to the applicant information on and referral to the appropriate support program.*

(f) *Unless required by federal regulations, a local or state agency may not consider support received under this article in determining eligibility for another support program.*

(g) *If the department denies an application under this section, the department shall provide the applicant an opportunity for a hearing to contest the denial. The hearing must be held in accordance with department rules.*

**Sec. 5.04. SUPPORT SERVICES.** (a) *The department shall provide support to clients to compensate the clients for present and future expenses, including:*

(1) *the purchase or lease of special equipment or architectural modifications of a home to improve or facilitate the care, treatment, therapy, general living conditions, or access of a mentally disabled person;*

(2) *medical, surgical, therapeutic, diagnostic, and other health services related to a person's mental disability or disabilities;*

(3) *counseling or training programs that assist a family in providing proper care for a mentally disabled family member or assist a mentally disabled person in an independent living situation, and that provide for the special needs of the family or mentally disabled person;*

(4) *attendant care, home health aid services, homemaker services, and chore services that provide assistance with training, routine body functions, dressing, preparation and consumption of food, and ambulation;*

(5) *respite assistance for a family, if the family is the client;*

(6) *transportation services for the mentally disabled person; and*

(7) *transportation, room, and board costs incurred by a family or mentally disabled person during evaluation or treatment of a mentally disabled person that has been preapproved by the department.*

(b) *The department by rule may add services and programs for which the department may provide support.*

(c) *The department may contract with the Texas Department of Human Services to provide support services to mentally disabled clients of the Texas Department of Human Services who are eligible to receive support under this article.*

(d) *Notwithstanding any other provision of this article, the duty of the department to provide services under this article is determined and limited by the funds specifically appropriated to administer this article.*

**Sec. 5.05. SUPPORT PAYMENTS.** (a) *Except as provided by Subsection (b) of this section, the department may award support of not more than \$3,600 a year to a client. The department may distribute the support periodically or in a lump sum, according to the needs of the client. The commissioner or the commissioner's designee may grant additional amounts on an individual client basis.*

(b) *In addition to the support authorized by Subsection (a) of this section, the department may award an additional onetime grant of support of not more than \$3,600 to be used for architectural renovation or other capital expenditure to improve or facilitate the care, treatment, therapy, general living conditions, or access of a mentally disabled person.*

(c) *The department shall consult with the client to determine how the support should be distributed. On agreement of the head of the family or the mentally disabled person, as appropriate, the department may distribute the support directly to the client or directly to a qualified program or service serving the client.*

(d) *Each client shall select the program or provider of services that the client will use. However, the client may select only a program or provider that is currently in compliance with department standards relating to the provision of support services. The department shall require each program or provider to comply with department standards and may disapprove further payments to a program or provider that is not in compliance with department rules. The department shall assist each client in locating and selecting qualified programs and services.*

*Sec. 5.06. COPAYMENT SYSTEM. The department shall establish a copayment system with each client using a sliding scale that is based on the client's need for financial assistance to acquire the necessary support services and the client's ability to pay for those services.*

*Sec. 5.07. SUPPORT PAYMENTS. (a) The department shall establish by rule a reasonable payment rate for each authorized support service. The department's liability for the cost of a support service is limited to the payment rate for the service minus any copayment required under the department's copayment system.*

*(b) Each client is responsible for the copayment required under the department's copayment system and any amount that is in excess of the department's payment rate or that is incurred after the department has provided the maximum amount of support authorized by Section 5.05(a) of this article.*

*Sec. 5.08. REVIEW OF NEED AND SERVICES. (a) The department shall review the needs of each client on a regular basis, as established by the department.*

*(b) The department shall also review the needs of each client when there is a change in the circumstances that were considered in determining eligibility or the amount of the required copayment. The department shall require each client to notify the department of such a change in circumstances.*

*Sec. 5.09. PENALTY. (a) A person commits an offense if the person, in obtaining or attempting to obtain support under this article for himself or another person:*

*(1) makes or causes to be made a statement or representation the person knows to be false; or*

*(2) solicits or accepts any support for which the person knows he, or the person for whom the solicitation is made, is not eligible.*

*(b) An offense under this section is a felony of the third degree.*

**SECTION 2. (a)** In this section, "developmental disability" means a severe, chronic disability that:

**(A)** is attributable to a physical impairment or a combination of mental and physical impairments;

**(B)** is manifested before the person reaches 22 years of age;

**(C)** is likely to continue indefinitely;

**(D)** results in substantial functional limitation in three or more of the following areas of life activity:

**(i)** self-care;

**(ii)** receptive and expressive language;

**(iii)** learning;

**(iv)** mobility;

**(v)** self-direction;

**(vi)** capacity for independent living;

**(vii)** work skills or work tolerance; and

**(viii)** economic self-sufficiency; and

**(E)** reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, vocational rehabilitation, or other services that are of lifelong or extended duration and that are individually planned and coordinated.

(b) The Texas Department of Human Services shall establish a pilot program under this Act to provide support services to developmentally disabled persons who are not mentally retarded or mentally ill. In structuring the program, the department shall use as a model the provisions of Article 5, Texas Mental Health and Mental Retardation Act (Article 5547-201 et seq., Vernon's Texas Civil Statutes), which establishes a support program for mentally disabled persons. The department shall attempt to avoid duplicating services provided by other agencies.

(c) Nothing in this section shall be interpreted to affect the eligibility of any disabled person with regard to any other program or service of the Texas Department of Human Services.

(d) This section expires August 31, 1989.

SECTION 3. (a) Before February 1, 1989, the Texas Department of Mental Health and Mental Retardation and the Texas Department of Human Services shall each submit to the 71st Legislature a report for the fiscal year ending August 31, 1988, detailing:

(1) the number of clients who applied to that agency for support during that fiscal year;

(2) the number of clients who received support from that agency during that fiscal year;

(3) the type of support services for which persons applied to that agency during that fiscal year and the type of services provided;

(4) the effects the support services had on clients;

(5) any proposals for amendments to the support programs; and

(6) the need for services for persons who are developmentally disabled but not mentally ill or mentally retarded.

(b) Each agency that is affected by the support program established by this Act and each agency that serves mentally or developmentally disabled persons or their families shall assist the Texas Department of Mental Health and Mental Retardation and the Texas Department of Human Services in assembling the information for the reports required by Subsection (a) of this section.

SECTION 4. This Act takes effect September 1, 1987.

SECTION 5. 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.

Passed by the House on May 14, 1987, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 1154 on May 25, 1987, by a non-record vote. Passed by the Senate, with amendments, on May 22, 1987, by a viva-voce vote.

Approved June 19, 1987.

Effective Sept. 1, 1987.