

CHAPTER 1113

S.B. No. 1163

AN ACT

relating to services for chronically ill and disabled children.

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

SECTION 1. Section 1, Disabled Children's Services Act (Article 4419c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. This Act may be cited as the *Chronically Ill and Disabled Children's Services Act*.

SECTION 2. Subsection (a), Section 2, Disabled Children's Services Act (Article 4419c, Vernon's Texas Civil Statutes), is amended by amending Subdivisions (1), (7), and (11) and adding Subdivisions (13) through (16) to read as follows:

(1) "*Chronically ill and disabled* [~~Disabled~~] child" means a person [~~an individual~~] whose physical function, condition, movement, or sense of hearing is impaired to the

extent that the *person* [~~individual~~] is or may be expected to be partially or totally incapacitated for educational purposes or for acquiring remunerative occupation and who:

- (A) is under 21 years of age and has:
- (i) a joint, bone, ossicular chain, muscle, or neurological defect or deformity, including craniofacial anomaly, neurofibromatosis, and spina bifida;
 - (ii) cancer; or
 - (iii) a disease or condition specified by a rule adopted by the board under Section 8[(b)] of this Act; or

(B) has cystic fibrosis, regardless of the *person's* [~~individual's~~] age.

(7) "Program" means the *chronically ill and disabled children's services program*.

(11) "Other benefit" means a benefit to which a *person* [~~an individual~~] is entitled, other than a benefit provided under this Act, for the payment of the costs of *services provided under the program to eligible persons, including payment for the costs of early identification services, diagnostic and evaluation services, rehabilitation services, and case management services, and includes* [~~rehabilitation services, transportation, subsistence, or burial, including~~]:

- (A) benefits available from:
- (i) an insurance policy, group health plan, *health maintenance organization*, or prepaid medical or dental care plan;
 - (ii) Title XVIII or Title XIX of the Social Security Act;
 - (iii) the Veterans Administration;
 - (iv) the Civilian Health and Medical Program of the Uniformed Services; or
 - (v) workers' compensation or any compulsory employers' insurance program;

(B) a public program created by federal law, state law, or the ordinances or rules of a municipality or political subdivision of the state, except those benefits created by the establishment of a city or county hospital, a joint city-county hospital, a county hospital authority, a hospital district, or the facilities of a publicly supported medical school; or

(C) benefits available from a cause of action for *the cost of care, including medical care, dental care, facility care, and medical supplies required for a person* [~~expenses for rehabilitation services, transportation, subsistence, or burial expenses to a child~~] applying for or receiving services from the department, or a settlement or judgment based on the cause of action, if the expenses are related to the need for services provided by this Act.

(13) "*Person*" means an individual, corporation, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

(14) "*Provider*" means a person approved by the board that delivers services that are purchased by the department for the purposes of this Act.

(15) "*Service*" or "*services*" includes medical care, dental care, facility care, medical supplies, occupational and physical therapy, and other care specified in the program rules that are necessary to provide early identification services, diagnosis and evaluation services, rehabilitation services, case management services, or other services or activities permitted by this Act or the program rules.

(16) "*Support*" means the contribution of money or services necessary for a person's maintenance, including food, clothing, shelter, transportation, and health care.

SECTION 3. Section 3, Disabled Children's Services Act (Article 4419c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. (a) A program is created in the department to provide [~~rehabilitation~~] services to *chronically ill and disabled children* who are eligible for the services. The program shall provide:

- (1) early identification of *chronically ill and disabled children*;

- (2) diagnosis and evaluation of *chronically ill and* disabled children;
- (3) rehabilitation services to *chronically ill and* disabled children; ~~and~~
- (4) development and improvement of standards and services for *chronically ill and* disabled children; *and*
- (5) *case management services, including coordination of medical services, marshalling of available assistance, serving as liaison between the child and the child's family and caregivers, institutional services, insurance services, and other services needed to improve the well-being of the child and the child's family.*

(b) The program created by Subsection (a) of this section may provide transportation and subsistence for an eligible *chronically ill and* disabled child and the child's parent, managing conservator, guardian, or other adult caretaker approved by the program to obtain services provided by the program ~~[children]~~. The program may also provide the following services for eligible *chronically ill and* disabled children who die in an approved facility *not located in the child's city of residence* while receiving program services for a condition covered by the program:

- (1) transportation of the deceased's remains, and a parent or other person accompanying the remains, from the facility to the place of burial within the state designated by the parent or other person legally responsible for interment;
- (2) expense of embalming if embalming is required for transportation;
- (3) cost of a casket purchased at a minimum price, if a casket is required for transportation; and
- (4) other necessary expenses directly related to the care of the deceased's remains and the return of the remains to the place of burial within the state.

(c) ~~[The Texas Commission for the Blind is responsible for providing services to disabled children whose sole or primary handicap is blindness or some other substantial visual handicap.]~~

~~[(d)]~~ The program established by this Act is separate and distinct from the financial or medical assistance program established by Chapters 31 and 32, Human Resources Code.

SECTION 4. Section 4, Disabled Children's Services Act (Article 4419c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4. (a) ~~A [Except as provided by Subsection (b) of this section, a]~~ child is not eligible to receive *rehabilitation* services provided under this Act, unless:

- (1) the child is a resident of the state;
- (2) at least one licensed physician or dentist has certified to the department that he has examined the child and found the child to be a *chronically ill and* disabled child whose disability meets the medical criteria established by the board;
- (3) the physician or dentist has reason to expect that the services provided will improve the child's condition or will extend the child's ability to function independently; ~~and~~
- (4) the department has determined that every person who has a legal obligation to provide services for the child is unable to pay for the entire cost of the services; *and*
- (5) *the child meets all other eligibility criteria established by the board in the program rules.*

(b) *A child is not eligible to receive services, other than rehabilitation services, provided under this Act unless:*

- (1) *the child is a resident of this state; and*
- (2) *the child meets all other eligibility criteria established by the board in the program rules.*

(c) ~~[The program may provide the initial diagnostic examination required under Subdivision (2) of Subsection (a) of Section 4 of this Act to determine if a child who meets the financial, age, and residency requirements is eligible to receive services under this Act.]~~

~~[(c) The board shall adopt rules that clearly define the medical and financial criteria necessary for a person to be eligible to receive services under this Act.~~

~~[(d) The board shall provide a system for verifying the eligibility information submitted by an applicant for services.~~

[(e)] If the department determined at the time of application or at any time *before*, during, or *after* the receipt of services that a child or any person who has a legal obligation to support the child is *or was during the provision of services* able to pay a portion of the cost of the services, the board shall require the child or the person legally obligated to support the child to pay for or reimburse the department for that portion of the cost of the services that the child or the person is able to pay.

SECTION 5. Section 5, Disabled Children's Services Act (Article 4419c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5. (a) A ~~[Except as permitted by the program rules, a]~~ child is not eligible to receive services provided by this Act to the extent that the child or any person who has a legal obligation to support the child is eligible for some other benefit that would pay for all or part of the services provided by this Act. *The board may waive this requirement if its enforcement will deny services to a class of children because of conflicting state and federal laws or rules and regulations.*

(b) An applicant for or a recipient of services provided under this Act shall inform the department at the time of application or at any time *before*, during, or *after* the receipt of services of any other benefit to which the child, the child's parent, the child's managing conservator, or any other person who has a legal obligation to support the child, may be entitled.

(c) *The department may collect the cost of the services that the program has provided directly from Title XVIII or Title XIX of the Social Security Act, any personal insurance, a health maintenance organization, or other third party that has a legal obligation to pay other benefits.* The child, the child's parent, the child's managing conservator, or any other person who has a legal obligation to support a child who has received services that are covered by some other benefit shall reimburse the department to the extent of the services provided when the other benefit is received.

SECTION 6. Section 6, Disabled Children's Services Act (Article 4419c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6. The department may recover the cost of services provided under this Act from a person who does not *pay or reimburse* the department as required by Sections 4(b) and 5(c) of this Act or from any third party who has a legal obligation to pay other benefits. *This section creates a separate and distinct cause of action, and the commissioner of health may [and to whom notice of the department's interest has been given. At the request [of the commissioner of health,] the attorney general to [may] bring suit in the appropriate court of Travis County on behalf of the department. The court may award attorney's fees, court costs, and interest accruing from the date the department provides the service to the date the department is reimbursed in a judgment in favor of the department.*

SECTION 7. Subsection (a), Section 7, Disabled Children's Services Act (Article 4419c, Vernon's Texas Civil Statutes), as amended by Section 1, Article 3, Chapter 931, Acts of the 69th Legislature, Regular Session, 1985, is amended to read as follows:

(a) The department may *deny the application of a child who has applied for services and may modify, suspend, or terminate services to a [disabled] child who has been approved to receive services or who is [eligible for or is] receiving services from the department after notice to the child or the person who is legally obligated to support the child, a preliminary program review, [persons affected] and an opportunity for a fair hearing.*

SECTION 8. Section 8, Disabled Children's Services Act (Article 4419c, Vernon's Texas Civil Statutes), as amended by Section 8, Chapter 928, Acts of the 69th Legislature, Regular Session, 1985, is amended to read as follows:

Sec. 8. (a) The board shall:

(1) adopt rules, *including a rule permitting the payment of insurance premiums for eligible children*, specifying the type, amount, and duration of ~~[rehabilitation] services, transportation, subsistence, and the services~~ to be provided under ~~[Section 3(b) of]~~ this Act *and the diseases and conditions covered by the program*;

(2) adopt rules *that clearly define* ~~[specifying]~~ the medical, financial, and other criteria for eligibility to receive services, *including rules that establish a system for verifying the eligibility information submitted to the program by an applicant for or recipient of services*;

(3) adopt substantive and procedural rules for the selection of physicians, dentists, facilities, and other providers for participation in the program, including rules for the selection of facilities recognized by the board as specialty centers and rules requiring providers to accept program payment as payment in full for services furnished;

(4) adopt substantive and procedural rules for the modification, suspension, or termination of a provider's approval to participate in the program;

(5) adopt substantive and procedural rules for the denial of applications and for the modification, suspension, or termination of services to a person ~~[an individual]~~ who is receiving services provided under this Act; ~~[and]~~

(6) select physicians, dentists, facilities, specialty centers, and other providers to participate in the program; *and*

(7) *if budgetary limitations exist, adopt rules establishing a system of priorities relating to the types of services or the classes of persons eligible for the services.*

(b) The department may:

(1) provide services only for conditions specified in this Act or by the board;

(2) pay only for ~~[rehabilitation]~~ services furnished by a provider approved by the board, except in an emergency situation;

(3) adopt reasonable procedures and standards to govern the determination of fees and charges for program payment;

(4) take census, make surveys, and establish permanent records of *chronically ill and disabled* ~~[crippled]~~ children;

(5) receive and expend gifts and donations for the purposes of this Act;

(6) receive and expend funds appropriated or granted by the state or federal government to provide ~~[rehabilitation]~~ services for ~~[crippled]~~ children; ~~[and]~~

(7) enter into contracts and agreements necessary to carry out this Act, *including interagency agreements to provide for the efficient and uninterrupted provision of necessary services to children who are eligible to receive services from two or more public programs*;

(8) *develop methods to improve the efficiency and effectiveness of the program; and*

(9) *conduct pilot studies.*

(c) Except as specified in the program rules, a recipient of services may select any provider approved by the board to provide *program* ~~[rehabilitation]~~ services. If the recipient is a minor, the person legally authorized to consent to the treatment may select the provider.

SECTION 9. Section 9, Disabled Children's Services Act (Article 4419c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 9. The department shall maintain a record of orthotic and prosthetic devices, durable medical equipment, and medical supplies purchased by the department for *chronically ill and disabled* children. Orthotic and prosthetic devices, durable medical equipment, and medical supplies purchased by the department for *chronically ill and disabled* children may not be considered state owned personal property and are exempt from the personal property inventory requirements of the State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes). The state auditor shall verify the purchase of the items in the records of the department.

SECTION 10. Section 10, Disabled Children's Services Act (Article 4419c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 10. This Act does not entitle an employee, agent, or representative of the department, or other official agent to enter a home over the objection of a [disabled] child or, if the [disabled] child is a minor, over the objection of the child's parent, managing conservator, or guardian. This Act does not limit the authority of a parent, managing conservator, or guardian over the minor.

SECTION 11. Section 11, Disabled Children's Services Act (Article 4419c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 11. The Interagency Cooperation Act (Article 4413(32), Vernon's Texas Civil Statutes) does not apply to a payment made by the department for services provided by a publicly supported medical school facility to an eligible [disabled] child. A publicly supported medical school facility receiving payment under this Act shall deposit the payment in local funds.

SECTION 12. (a) Subsection (a), Section 7, Disabled Children's Services Act (Article 4419c, Vernon's Texas Civil Statutes), as amended by Section 6, Chapter 928, Acts of the 69th Legislature, Regular Session, 1985, is repealed.

(b) Section 8, Disabled Children's Services Act (Article 4419c, Vernon's Texas Civil Statutes), as amended by Section 1, Article 3, Chapter 931, Acts of the 69th Legislature, Regular Session, 1985, is repealed.

SECTION 13. This Act takes effect September 1, 1987.

SECTION 14. 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 the Senate on April 29, 1987, by a viva-voce vote. Passed the House on May 29, 1987, by a non-record vote.

Approved June 19, 1987.

Effective Sept. 1, 1987.