

78th Legislative Session-HB 2292 Key Provisions Relating to MR Services
Author: Wohlgemuth Passed and Signed by the Governor
Effective Date: Unless otherwise noted HB 2292 takes effect September 1, 2003

<p>Section 2.03</p>	<p>Medical Assistance Payments</p> <p>Section 2.03 The commission in its adoption of reasonable rules and standards under Subsection (b) (2) shall include financial performance standards that, in the event of a proposed rate reduction, provide private ICF-MR facilities and home and community-based services providers with flexibility in determining how to use medical assistance payments to provide services in the most cost-effective manner while continuing to meet the state and federal requirements of the Medicaid program.</p> <p>(d) In adopting rules and standards required by Subsection (b) (2), the commission may provide for payment of fees, charges, and rates in accordance with:</p> <p>(1) formulas, procedures, or methodologies prescribed by the commission's rules;</p> <p>(2) applicable state or federal law, policies, rules, regulations, or guidelines;</p> <p>(3) economic conditions that substantially and materially affect provider participation in the Medicaid program, as determined by the commissioner; or</p> <p>(4) available levels of appropriated state and federal funds.</p> <p>(e) Notwithstanding any other provision of Chapter 32, Human Resources Code, Chapter 533, or this chapter, the commission may adjust the fees, charges, and rates paid to Medicaid providers as necessary to achieve the objectives of the Medicaid program in a manner consistent with the considerations described by Subsection (d)</p>
<p>Section 2.55</p>	<p>Exemption from HCSSA Licensure</p> <p>Section 2.55 a) The following persons need not be licensed under this chapter:</p> <p>(19) a person that provides home health, hospice, or personal assistance services only to persons enrolled in a program funded wholly or partly by the Texas Department of Mental Health and Mental Retardation and monitored by the Texas Department of Mental Health and Mental Retardation or its designated local authority in accordance with standards set by the Texas Department of Mental Health and Mental Retardation;</p>
<p>Section 2.56</p>	<p>SECTION 2.56 (j) Except as provided by Subsections (h) [(i)] and (l), an on-site survey must be conducted within 18 months after a survey for an initial license. After that time, an on-site survey must be conducted at least every 36 months.</p>

<p>Section 2.68</p>	<p>SECTION 2.68 VERIFICATION OF EMPLOYABILITY. (a) Before a facility, [or] an agency licensed under Chapter 142, <u>or a person exempt from licensing under Section 142.003(a)(19)</u> may hire an employee, the facility, [or] agency, <u>or person</u> shall search the employee misconduct registry under this chapter and the nurse aide registry maintained under the Omnibus Budget Reconciliation Act of 1987 (Pub. L. No. 100-203) to determine whether the <u>applicant for employment</u> [person] is designated in either registry as having abused, neglected, or exploited a resident or consumer of a facility or an individual receiving services from an agency licensed under Chapter 142 <u>or from a person exempt from licensing under Section 142.003(a)(19)</u>.</p> <p>(b) A facility, [or] agency licensed under Chapter 142, <u>or a person exempt from licensing under Section 142.003(a)(19)</u> may not employ a person who is listed in either registry as having abused, neglected, or exploited a resident or consumer of a facility or an individual receiving services from an agency licensed under Chapter 142 <u>or from a person exempt from licensing under Section 142.003(a)(19)</u>.</p>
<p>Section 2.69</p>	<p>SECTION 2.69 Section 253.009(a), Health and Safety Code, is amended to read as follows:</p> <p>(a) Each facility, [or] each agency licensed under Chapter 142, <u>and each person exempt from licensing under Section 142.003(a)(19)</u> shall notify its employees in a manner prescribed by the department:</p> <ol style="list-style-type: none"> (1) about the employee misconduct registry; and (2) that an employee may not be employed if the employee is listed in the registry.
<p>Section 2.73</p>	<p>Section 2.73- AUTHORITY TO CONTRACT FOR COMMUNITY-BASED SERVICES. (a) The department may cooperate, negotiate, and contract with local agencies, hospitals, private organizations and foundations, community centers, physicians, and other persons to plan, develop, and provide community-based mental health and mental retardation services.</p> <p>(b) The department may adopt a schedule of initial and annual renewal compliance fees for persons that provide services under a home and community-based services waiver program for persons with mental retardation adopted in accordance with Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n), as amended, and that is funded wholly or partly by the department and monitored by the department or by a designated local authority in accordance with standards adopted by the department. This subsection expires September 1, 2005.</p>
<p>Section 2.77</p>	<p>Privatization of a State School.</p> <p>Section 2.77 (a) After August 31, 2004, and before September 1, 2005, the department may contract with a private service provider to operate a state school only if:</p>

<p>Section 2.77 cont'd</p>	<p>(1) the Health and Human Services Commission determines that the private service provider will operate the state school at a cost that is at least 25 percent less than the cost to the department to operate the state school;</p> <p>(2) the Health and Human Services Commission approves the contract;</p> <p>(3) the private service provider is required under the contract to operate the school at a quality level at least equal to the quality level achieved by the department when the department operated the school, as measured by the school's most recent applicable ICF-MR survey; and</p> <p>(4) the state school, when operated under the contract, treats a population with the same characteristics and need levels as the population treated by the state school when operated by the department.</p> <p>(b) On or before April 1, 2004, the department shall report to the commissioner of health and human services whether the department has received a proposal by a private service provider to operate a state school. The report must include an evaluation of the private service provider's qualifications, experience, and financial strength, a determination of whether the provider can operate the state school under the same standard of care as the department, and an analysis of the projected savings under a proposed contract with the provider. The savings analysis must include all department costs to operate the state school, including costs, such as employee benefits, that are not appropriated to the department.</p> <p>(c) If the department contracts with a private service provider to operate a state school, the department, the Governor's Office of Budget and Planning, and the Legislative Budget Board shall identify sources of funding that must be transferred to the department to fund the contract.</p> <p>(d) The department may renew a contract under this section. The conditions listed in Subsections (a) (1)-(3) apply to the renewal of the contract.</p> <p>(b) Section 533.049, Health and Safety Code, as added by this section, takes effect September 1, 2004.</p>
<p>Section 2.78</p>	<p>Privatization of a State Mental Hospital</p> <p>Section 2.78 (a) After August 31, 2004, and before September 1, 2005, the department may contract with a private service provider to operate a state mental hospital owned by the department only if:</p> <p>(1) the Health and Human Services Commission determines that the private service provider will operate the hospital at a cost that is at least 25 percent less than the cost to the department to operate the hospital;</p> <p>(2) the Health and Human Services Commission approves the contract;</p> <p>(3) the hospital, when operated under the contract, treats a population with the same characteristics and acuity levels as the population treated at the hospital when operated by the department; and</p> <p>(4) the private service provider is required under the contract to operate the hospital at a quality level at least</p>

<p>Section 2.78 cont'd</p>	<p>equal to the quality level achieved by the department when the department operated the hospital, as measured by the hospital's most recent applicable accreditation determination from the Joint Commission on Accreditation of Healthcare Organizations (JCAHO).</p> <p>(b) On or before April 1, 2004, the department shall report to the commissioner of health and human services whether the department has received a proposal by a private service provider to operate a state mental hospital. The report must include an evaluation of the private service provider's qualifications, experience, and financial strength, a determination of whether the provider can operate the hospital under the same standard of care as the department, and an analysis of the projected savings under a proposed contract with the provider. The savings analysis must include all department costs to operate the hospital, including costs, such as employee benefits, that are not appropriated to the department.</p> <p>(c) If the department contracts with a private service provider to operate a state mental hospital, the department, the Governor's Office of Budget and Planning, and the Legislative Budget Board shall identify sources of funding that must be transferred to the department to fund the contract.</p> <p>(d) The department may renew a contract under this section. The conditions listed in Subsections (a) (1)-(3) apply to the renewal of the contract.</p> <p>(b) Section 533.050, Health and Safety Code, as added by this section, takes effect September 1, 2004.</p>
<p>Section 2.74</p>	<p>Dual Role of MRA as Authority and Provider</p> <p>SECTION 2.74 c) A local mental health and mental retardation authority, with the department's approval, 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:</p> <p>(1) assembling a network of service providers; <u>and</u> (2) determining whether to become a provider of a service or to contract that service to another organization; and (3) making recommendations relating to the most appropriate and available treatment alternatives for individuals in need of mental health or mental retardation services.</p> <p>(e) 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 authority demonstrates to the department that:</p> <p>(1) the 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</p> <p>(2) there is not a willing provider of the relevant services in the authority's service area or in the county where the provision of the services is needed.</p> <p>(f) The department shall review the appropriateness of a local mental health and mental retardation authority's status as a service provider at least biennially.</p> <p>(g) The department, together with local mental health and</p>

<p>Section 2.74 cont'd</p>	<p>mental retardation authorities and other interested persons, shall develop and implement a plan to privatize all services by intermediate facilities for persons with mental retardation and all related waiver services programs operated by an authority. The transfer of services to private providers may not occur on or before August 31, 2006. The plan must provide criteria that:</p> <ul style="list-style-type: none"> (1) promote the transition of services to private providers in a manner that causes the least disruption practicable to the consumers of those services; (2) ensure the continuation of services at the same level of service provided before the transfer; (3) provide for consumer choice as appropriate and as required by rule; and (4) require local mental health and mental retardation authorities to implement the privatization of services in a fiscally responsible manner.
<p>Section 2.82</p>	<p>SECTION 2.82. Effective September 1, 2006, Section 534.001(b), Health and Safety Code, is amended to read as follows:</p> <p>(b) <u>In accordance with this subtitle, a [A] community center</u> may be:</p> <ul style="list-style-type: none"> (1) a community mental health center that provides mental health services; (2) a community mental retardation center that provides mental retardation services; or (3) a community mental health and mental retardation center that provides mental health and mental retardation services.
<p>Section 2.82 A</p>	<p>SECTION 2.82 A Effective September 1, 2006, Section 535.002(b), Health and Safety Code, is amended to read as follows:</p> <p>(b) If feasible and economical, the department may use local mental health and mental retardation authorities to implement this chapter. However, the department may not designate a <u>[those] local mental health or [and] mental retardation authority [authorities]</u> as <u>a provider [the sole providers]</u> of services if other providers are available.</p>
<p>Section 2.76</p>	<p>Allocation of Duties Under Certain Medicaid Waiver Programs</p> <p>SECTION 2.76 Subchapter B, Chapter 533, Health and Safety Code, is amended by adding Section 533.0355 to read as follows:</p> <p>(a) In this section, "waiver program" means the local mental retardation authority waiver program established under the state Medicaid program.</p> <p>(b) A provider of services under the waiver program shall:</p> <ul style="list-style-type: none"> (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

Section 2.76 cont'd	<p>with applicable state and federal laws; and</p> <p>(4) plan, coordinate, and review the provision of services to all persons who receive services from the service provider under the waiver program.</p> <p>(c) A local mental retardation authority shall:</p> <p>(1) manage any waiting lists for services under the waiver program;</p> <p>(2) perform functions relating to consumer choice and enrollment for persons who receive services under the waiver program; and</p> <p>(3) conduct case management under the waiver program relating to funding disputes between a service provider and the local mental retardation authority.</p> <p>(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:</p> <p>(1) any surveying, certification, and utilization review functions required under the waiver program; and</p> <p>(2) managing an appeals process relating to decisions that affect a person receiving services under the waiver program.</p> <p>(e) The department shall review:</p> <p>(1) screening and assessment of levels of care;</p> <p>(2) case management fees paid under the waiver program to a community center; and</p> <p>(3) administrative fees paid under the waiver program to a service provider.</p> <p>(f) The department shall perform any function relating to inventory for persons who receive services under the waiver program and agency planning assessments.</p> <p>(g) 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.</p> <p>(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.</p> <p>(i) The department may adopt rules governing the functions of a local mental retardation authority or service provider under this section.</p>
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Sections 2.64	<p>QAF for State Schools</p> <p>SECTION 2.64. Section 252.202(a), Health and Safety Code, is amended to read as follows:</p> <p>(a) A quality assurance fee is imposed on each facility for which a license fee must be paid under Section 252.034, and on each facility owned by a community mental health and mental retardation center, as described by Subchapter A, Chapter 534, <u>and on each facility owned by the Texas Department of Mental Health and Mental Retardation.</u> The fee:</p> <p>(1) is an amount established under Subsection (b) multiplied by the number of patient days as determined in accordance with Section 252.203;</p> <p>(2) is payable monthly; and</p>
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	<p>(3) is in addition to other fees imposed under this chapter.</p>
<p>Section 2.65</p>	<p>SECTION 2.65. Section 252.203, Health and Safety Code, is amended to read as follows: Sec. 252.203. PATIENT DAYS. For each calendar day, a facility shall determine the number of patient days by adding the following:</p> <p>(1) the number of patients occupying a facility bed immediately before midnight of that day; and</p> <p>(2) the number of beds that are on hold on that day and that have been placed on hold for a period not to exceed three consecutive calendar days during which a patient is in a hospital; and</p> <p>[+3] the number of beds that are on hold on that day and that have been placed on hold for a period not to exceed three consecutive calendar days during which a patient is on therapeutichome leave.</p>
<p>Section 2.66</p>	<p>SECTION 2.66 Section 252.204(b), Health and Safety Code, is amended to read as follows:</p> <p>(b) Each facility shall:</p> <p>(1) not later than the 20th [10th] day after the last day of a month file a report with the Health and Human Services Commission or the department, as appropriate, stating the total patient days for the month; and</p> <p>(2) not later than the 30th day after the last day of the month pay the quality assurance fee.</p>
<p>Section 2.67</p>	<p>SECTION 2.67. Sections 252.207(a) and (c), Health and Safety Code, are amended to read as follows:</p> <p>(a) <u>Subject to legislative appropriation and state and federal law, the [The] Health and Human Services Commission may [shall] use money in the quality assurance fund, together with any federal money available to match that money[,-to]:</u></p> <p>(1) <u>to offset [allowable] expenses incurred to administer the quality assurance fee under this chapter [under the Medicaid program]; [or]</u></p> <p>(2) <u>to increase reimbursement rates paid under the Medicaid program to facilities or waiver programs for persons with mental retardation operated in accordance with 42 U.S.C. Section 1396n(c) and its subsequent amendments; or</u></p> <p>(3) <u>for any other health and human services purpose approved by the governor and Legislative Budget Board[,-subject to Section 252.206(d)].</u></p> <p>(c) <u>If money in the quality assurance fund is used to increase a reimbursement rate in the Medicaid program, the [The] Health and Human Services Commission shall ensure that the reimbursement methodology used to set that rate describes how the money in the fund will be used to increase the rate and [formula devised under Subsection (b)] provides incentives to increase direct care staffing and direct care wages and benefits.</u></p>