

- SUBJECT:** Continuation of the Health and Human Services Commission
- COMMITTEE:** Public Health — committee substitute recommended
- VOTE:** 7 ayes — Gray, Coleman, Capelo, Delisi, Maxey, McClendon, Uresti
- 1 nay — Hilderbran
- 1 absent — Glaze
- WITNESSES:** For — James D. Donovan, Americaid Community Care; Anne Dunkelberg, Center for Public Policy Priorities; Susan Marshall, The Arc of Texas; Jonas Schwartz, United Cerebral Palsy of Texas; Elizabeth Sjoberg
- Against — Audley Blackburn, Alliance of and for the Visually Impaired; Robert Brown, Blind Industrial Workers of Texas; Norma Crosby, Joe Shaidnagle, James O. Skelton, Jr., National Federation of the Blind of Texas; Deborah Green, Texas Guardianship Advisory Board; Edward Guerra, American Council of the Blind of Texas; Jeff Percy, Texas Association of Blind Entrepreneurs; Zena Percy, Texas Association of Parents of Blind Children; and eight people representing themselves.
- On — Don Gilbert, Health and Human Services Commission; Lisa McGiffert, Consumers Union; Robert Morris, Sunset Advisory Commission; Susan Murphree, Advocacy Inc.; Ted Melina Rabb, Texas State Employees Union; Pam Salinas, Texas Department of Economic Development
- BACKGROUND:** The Legislature established the Health and Human Services Commission (HHSC) in 1991 to oversee and coordinate health and human services (HHS) in Texas. Headed by a commissioner appointed by the governor with Senate approval for a two-year term, HHSC is an umbrella entity charged with developing a six-year continuing strategic plan for health and human services submitted to governor, the lieutenant governor, and the speaker on October 1 of each even-numbered year. HHSC also submits a consolidated health and human services budget recommendation to the Legislature for the agencies under its purview. In addition to its duties coordinating service delivery and maximizing federal funding, HHSC is the federally required single state agency for Medicaid, and has final approval for all Medicaid policies, rules

and programs, but it does not directly deliver any Medicaid services.

The following agencies are under HHSC purview:

- ! Interagency Council on Early Childhood Intervention;
- ! Texas Department on Aging;
- ! Texas Commission on Alcohol and Drug Abuse;
- ! Texas Commission for the Blind;
- ! Texas Commission for the Deaf and Hard of Hearing;
- ! Texas Department of Health (TDH);
- ! Texas Department of Human Services;
- ! Texas Juvenile Probation Commission;
- ! Texas Department of Mental Health and Mental Retardation;
- ! Texas Rehabilitation Commission; and
- ! Texas Department of Protective and Regulatory Services (PRS).

HHSC operates with a budget of almost \$59 million for fiscal 1998-99 and is capped at about 184 full-time employees. Its enabling statute is Chapter 531 of the Government Code.

DIGEST:

CSHB 2641 would continue HHSC until September 1, 2007, and would:

- ! expand the authority of the commission over Texas HHS agencies;
- ! authorize the consolidation of annual or biannual reports;
- ! create a Health and Human Services Legislative Oversight Committee;
- ! expand the Guardianship Advisory Board's membership and duties;
- ! transfer the Empowerment Zone and Enterprise Community programs from HHSC to the Texas Department of Economic Development;
- ! add the Texas Health Care Information Council (HCIC) to the agencies under the commission's purview; and
- ! require other activities for HHSC and related HHS agencies.

CSHB 2641 would take effect September 1, 1999.

**Commission authority.** The bill newly would authorize the commissioner to manage and direct the daily operations of each HHS agency and to supervise and direct the activities of each agency director. Agency directors could not be hired by the agency's policymaking board without the concurrence of the commissioner.

The commissioner's authority would include authority over an agency's allocation of resources; personnel and employment policies; contracting and purchasing policies; location of agency facilities; coordination with other state agencies; and adoption or approval of payment rates. HHSC could transfer funds among HHS agencies within the limits established by the general appropriations act, including to enhance the receipt of federal funds and achieve efficiencies.

The commissioner could delegate powers or duties to HHS agency directors. The commissioner and each agency director would have to enter into a memorandum of understanding (MOU) defining the responsibilities of the agency director and the commissioner and how the director would be evaluated and supervised.

Policymaking bodies of affected agencies would retain their authority to adopt policies and rules governing service delivery and regulation. The commissioner and each policymaking body would have to enter into an MOU that clearly defined the authority of the policymaking body and the operational authority of the commissioner.

In addition to its current duties, HHSC also would become responsible for the following for all HHS agencies under its umbrella:

- ! supervising the administration and operation of the Medicaid program, including Medicaid managed care;
- ! developing strategic plans, security standards, and management policies for information systems and approving each agency's operating plan for information resources;
- ! managing and distributing all federal funds in accordance with the general appropriations act; and
- ! implementing the Texas Integrated Enrollment and Services (TIES) program.

**Federal funding.** The commission's federal funding-related requirements would include:

- ! establishing a management system to coordinate and monitor federal funds in HHS agencies;
- ! establishing federal funding priorities and reviewing and approving all

- federal funding plans for HHS agencies;
- ! ensuring that the state meets federal funding requirements;
- ! ensuring that local governments have access to complete and timely information about all sources of federal money for HHS; and
- ! preparing an annual report to the speaker, the lieutenant governor, and the governor.

**Other related responsibilities.** CSHB 2641 also would require HHSC to:

- ! employ a medical director to provide medical expertise;
- ! evaluate the Medicaid managed care system in conjunction with the HCIC, which would be authorized to collect necessary data from Medicaid managed care organizations, required to develop a plan by December 15, 1999, for evaluating Medicaid managed care, and be required to report biannually to the governor, the lieutenant governor, the speaker, and HHSC;
- ! appoint an information resources advisory committee to advise the commission on overall goals and objectives, coordination of agency management plans, and the recruitment, training, and retention of employees;
- ! cooperate with the Records Management Interagency Council in establishing a single method of categorizing information about HHS to be used by the Texas Information and Referral Network and included in each residential telephone directory for distribution after December 1, 2000;
- ! develop and implement a TIES plan, including a cost-benefit analysis, in consultation with the TIES Legislative Oversight Committee;
- ! assume specified regional management responsibilities;
- ! develop a single statewide risk-analysis procedure to assess fraud, abuse, or waste in contracting, payment, and reimbursement methods, and rates;
- ! publish a contract management handbook for HHS agencies and establish a central database for contract management;
- ! publish an annual report on the compliance of each HHS agency with procurement and contracting policies (HHSC would be authorized to review and disapprove of an agency's procurement and rate-setting procedures);
- ! submit reports to the governor, the lieutenant governor, the speaker, and Health and Human Services Legislative Oversight Committee by December 15, 2000, on the delivery of mental health and substance abuse services and on TDH regulatory programs;

- ! submit a report to the governor, the lieutenant governor, the speaker, and Health and Human Services Legislative Oversight Committee by September 1, 2000, on the benefits of and plans for consolidating support services among HHS agencies;
- ! adopt by August 1, 2000, uniform definitions of “abuse,” “neglect,” and “exploitation” to be used by relevant HHS agencies; and
- ! create a statewide coordinated system of transportation that includes the use of private, nonprofit services when provided at no or little cost.

**Regional management.** CSHB 2641 would authorize HHSC to require an HHS agency to relocate, to ensure that an agency’s location was accessible to the disabled, and to consolidate agency support services with another HHS agency. HHSC would have to develop an annual business plan for each HHS region and assist communities in developing comprehensive, community-based HHS support systems.

HHSC also would have to appoint an advisory committee of representatives of governmental entities to offer advice on establishing flexible and responsive strategies for blending federal, state, and other funding sources to meet local needs and on developing statewide strategic and other plans.

**Guardianship board.** CSHB 2641 would expand the Guardianship Advisory Board to include three public members chosen by the commissioner and one representative chosen by PRS. In addition to its current duties, the board would be required to advise the commission and PRS about a statewide guardianship program, review and comment on the guardianship policies of all HHS agencies, and file an annual report with HHSC, PRS, the governor, the lieutenant governor, and the speaker.

**Health and Human Services Legislative Oversight Committee.** The committee would function until September 1, 2001, and be composed of six members of the Senate appointed by the lieutenant governor and six members of the House appointed by the speaker to monitor HHSC’s activities in consolidating and integrating HHS functions and to recommend adjustments if needed. HHSC would provide staff, resources, and needed information, but the committee also could use staff of standing House and Senate committees, the Department of Information Resources, the state auditor, the Legislative Council, and the Legislative Budget Board (LBB). The committee would have

to report to the governor, the lieutenant governor, and the speaker at the end of each calendar year.

**SUPPORTERS  
SAY:**

CSHB 2641 would continue HHSC and give it the authority it needs to do the job it was created to do eight years ago. Findings by the Sunset Advisory Commission and by the state auditor mirror the findings cited in 1991 when the first Texas Performance Review looked at HHS in Texas and found these services fragmented, uncoordinated, and fostering inefficiencies and ineffectiveness. Most states have an umbrella agency overseeing HHS. CSHB 2641 judiciously would tie HHSC authority to cross-agency business operations only, based on the year-long study and recommendations of the Sunset Advisory Commission.

The authority proposed to be given to the commissioner reflects a carefully crafted balance between HHSC's authority over agency business functions and the policymaking authority of the agencies' appointed governing boards. Giving one person or agency total control over the work of more than 60,000 state employees would not be wise, feasible, or efficient, nor would it be consistent with the Legislature's historical interest in maintaining control over agency functions. The balance struck in CSHB 2641 would make sure that changes in commission leadership would not impose abrupt, wholesale policy shifts on programs and services. HHSC also should not be given additional say over agency rulemaking, as some propose, because such amendments would decrease valuable public input into the policymaking process and could be used by the commission to set policy instead of concentrating on business functions.

CSHB 2641 would safeguard the public's interest and input because the individual agency policy boards still would decide issues relating to service delivery and constituent rights. MOU agreements between the commissioner and the agency directors and policy boards would clarify and limit the commissioner's authority over each agency's business operations. Finally, the creation of a Legislative Oversight Committee would maintain legislative oversight of HHSC activities during the interim and would be another point of access for public input.

Giving the HHSC a governing board, as some suggest, would be inappropriate and would not increase public input because the board would have very little to rule on, since HHSC's focus is on integrating cross-agency business

functions, not policymaking.

CSHB 2641 also would contain HHSC's authority by requiring the commission to follow directions in the general appropriations act regarding program funding and funding transfers. The bill would improve the state's management of federal funds by giving HHSC greater authority over agencies' federal funding plans, but the commission would not be able to make significant funding changes without the approval of LBB and the governor. The Sunset Commission found that federal funding often spans multiple state agencies and that many local entities are not aware of available federal funding. This bill would give HHSC the tools to coordinate and plan effectively for maximized state and local access to available federal dollars.

The HCIC is an appropriate entity to evaluate Medicaid managed care because it already has collected and reported information about managed care performance. Also, being a state agency, it is in position both to analyze data and to evaluate the state's system of collecting data. Without good data, analyses of the Medicaid managed care system are misleading if not falsely based, and recent findings by Consumers Union and others have found weaknesses in the data and the assumptions used by outside entities. Because the HCIC has its own board that broadly represents providers and consumers, there is little potential for conflicts of interest to arise between it and TDH, to which it is attached administratively and which also administers the Medicaid managed care program. The implementation of Medicaid managed care has been a major change in health-care delivery for Texas. The Sunset Commission found that it has posed problems for clients, providers, and state agencies and that the state has not developed adequate information to assess the program's effectiveness in ensuring quality of care and other legislative objectives.

Except for adding the HCIC, this bill would not change the list of agencies under HHSC's purview. The sunset bill for the Children's Trust Fund would add that agency to HHSC's purview, and any other additions or deletions are unwarranted. The Texas Workforce Commission (TWC) is a relatively new agency that has experienced growing pains, and when established by the Legislature in 1995, it was not placed under the purview of HHSC. However, TWC will be up for sunset review next session, at which time it will have had enough time to implement its responsibilities fully, and the Legislature will be

in a better position to consider whether the agency would benefit from HHSC oversight.

Many HHS agencies, among them the Commission on the Blind, claim to serve unique population bases. That does not mean, however, that the state could not realize further efficiencies by granting HHSC greater authority over agency business matters — for example, in areas such as purchasing supplies, contracting with providers, and maximizing funding sources. Under CSHB 2641, the Commission for the Blind, along with all other HHS agencies, would remain responsible for policymaking and delivering appropriate and needed services to their clientele.

The 75th Legislature established the Guardianship Advisory Board to advise HHSC in the development and implementation of a statewide guardianship plan, which was not accomplished due to limited resources. Guardianship is a protective service that attempts to ensure the well-being of individuals who are alone and cannot manage their personal or business affairs. Most of the state's funding for guardianship services is channeled through PRS. CSHB 2641 would strengthen the board's advisory duties and change its composition to include consumer input, which could include disabled individuals. By including a PRS member, it also would facilitate board influence over PRS guardianship-related activities and help provide a single, clear statewide approach to guardianship.

Creating an HHS policy council or division similar to the Criminal Justice Policy Council would not achieve what its proponents advocate. Planning the delivery and administration of HHS requires a far more complex string of assumptions and empirical data than does predicting the growth in prison populations or youth-detention facilities. Also, even empirical data can always be manipulated to support a particular viewpoint.

Because HHSC conducts mostly business functions and not programmatic or policy-based ones, it is not the best place to attach the Traumatic Brain Injury Board administratively. The Traumatic Brain Injury Board, an advisory nonprofit organization under contract with the Council on Developmental Disabilities, probably would be better served by being attached to TDH or the Texas Rehabilitation Commission, where it would operate among similar programs.

CSHB 2641 would ensure that all HHS agencies use standard definitions of “abuse,” “neglect,” and “exploitation” so that individuals would receive the same protections no matter which agency provides services. The bill would not extend these standards to the Texas School for the Deaf or to the Texas School for the Blind and Visually Impaired because they are considered education agencies and are not under the purview of HHSC.

OPPONENTS  
SAY:

HHSC should not be given any more power than it already has. Doing so would create another level of bureaucracy and would decrease accountability in government. The rulemaking authority of agency boards would be undermined seriously if the executive director were not directly accountable to them. Even though the policy boards would retain control over policy, very few administrative decisions are without repercussions to the client.

CSHB 2641 contains no provisions governing situations in which a board’s policy was not carried out because the commissioner disagreed with it. Also, HHSC might decide to change federal funding or might make decisions that affect specialized programs or constituent groups that contradict the intent of the Legislature or the understanding that has been built throughout the years between government and the affected parties.

No mechanism in this bill would ensure formalized ongoing public comment on Medicaid managed care or on any rules proposed by the commission. Routine public input into policy development should be a non-negotiable standard for the operation of every state agency, especially one that would receive this much power. Because HHSC lacks a board, under the Administrative Procedures Act a public hearing on proposed rules will not occur unless enough people request a hearing. HHSC should be given a policy board to govern the commission’s activities and to receive public input, or another mechanism for public input should be put in place.

The HCIC lacks the capacity, experience, and expertise to evaluate Medicaid managed care. The council is in its infancy and has not even begun to fulfill most of its data collection and reporting tasks. Also, the evaluation of Medicaid managed care must be independent of the state if it is to have any value.

The Guardianship Advisory Board’s membership should not be changed, because the board has worked very well with its current membership of one

representative from every public health region. Expanding the board would create additional costs that would eat into funds budgeted to cover board responsibilities. Also, putting a PRS representative on the board would create a conflict of interest.

OTHER  
OPPONENTS  
SAY:

CSHB 2641 would not give the commissioner the authority nor the accountability needed to coordinate HHS adequately in Texas. The authority structure set up in this bill would not create a readily identifiable, direct chain of command with the commissioner at the top. Therefore, it could create confusion, if not conflict, between agency boards, staff, and the commission. Texas either needs to empower the commissioner fully to accomplish HHSC's assigned mission — to coordinate HHS functions — or else get rid of the commission. For example, the commissioner should be able to hire and fire agency directors and should have authority over agency rulemaking and HHS activities.

An alternative would be to move up the commission's sunset date and give the commissioner total authority over HHS agencies for a only few years, then evaluate whether such authority is effective and responsive to the public and the Legislature.

The Traumatic Brain Injury Board should be attached administratively to HHSC because brain injury is the leading cause of death and disability for people up to age 44. Treating and rehabilitating the conditions that arise from brain injuries require services that span all HHS agencies.

HHS functions require a distinct entity charged with formulating public policy oversight and options, as the Criminal Justice Policy Council does for criminal justice. Such an entity would bring the influence of science and hard data to bear on public policy decisions instead of the emotional pleas and professional "turf wars" that often shape legislative and regulatory focus.

The Commission for the Blind should be removed from the list of agencies under HHSC's purview, because it is doing an exceptional job of serving its clients and would be hindered by the interference of a more powerful HHSC. CSHB 2641 also may need to be amended further to *add* to HHSC's purview the HHS-related agencies of the Children's Trust Fund, the Cancer Council, and TWC, and to *remove* the Texas Juvenile Probation Commission, which is more appropriately a criminal justice agency and already is included in

analyses conducted by the Criminal Justice Policy Council.

Definitions of abuse, neglect, and exploitation should be standardized not only among HHS agencies but also among other state agencies, such as the School for the Deaf and the School for the Blind and Visually Impaired, which continue to perform internal investigations of abuse and neglect. This would ensure that individuals would receive the same protections, no matter where they reside or under which agency they receive services.

The guardianship board should be required to have membership from the disabled community, because cognitively or multiply disabled individuals often are threatened with or subject to guardianship proceedings. The HHS system should have protections in place to prevent the unnecessary removal of these people's personal rights.

NOTES:

Major changes made by the committee substitute to the original bill include:

- ! requiring HHSC to manage and distribute federal funds in accordance with the general appropriations act and providing that funds may be transferred only to enhance federal funds;
- ! authorizing HHSC to ensure that an agency's location is accessible to the disabled;
- ! requiring the state auditor to review HHS agencies' compliance with contracting and purchasing requirements;
- ! requiring HHSC to create a statewide coordinated system of transportation for HHS clients; and
- ! changing the proposed membership of the Health and Human Services Legislative Oversight Committee by removing two public members and adding two legislative members.

The companion bill, SB 372 by Brown, has been referred to the Senate Human Services Committee.

SB 351 by Zaffirini, which has passed the House and the Senate and been set to the governor, would add the Children's Trust Fund of Texas Council under HHSC.