

SUBJECT: Private centers providing partial mental health hospitalization services

COMMITTEE: Public Health — committee substitute recommended

VOTE: 6 ayes — Gray, Capelo, Glaze, Hilderbran, McClendon, Uresti
0 nays
3 absent — Coleman, Delisi, Maxey

WITNESSES: For —Johnny Burns, Garland Sandhop Jr., Texas Association for Behavioral Health Care; Karen E. Fitzhugh, Ph.D., Texas Association for Ambulatory Behavioral Healthcare

Against —None

On —Cyndie Schmitt, Texas Council of Community MHMR Centers, Inc.

BACKGROUND: Public mental health-mental retardation centers operating under contract with the Texas Department of Mental Health and Mental Retardation (MHMR) are regulated by the state. Private community mental health centers, which provide partial hospitalization services, are not required to be licensed in Texas. Medicare payments to the centers have more than doubled over the last few years. About 130 private mental health centers that collect Medicare operate in Texas, but seven were expelled from the Medicare system after fraud investigations. Medicare is a federal program, and the state has no jurisdiction to enforce the federal standards.

DIGEST: CSHB 3302 would require private behavioral or mental health care centers providing partial hospitalization to be licensed and inspected by the Texas Department of Health (TDH), starting January 1, 2000. A license could be transferred or assigned only with written approval from the department.

CSHB 3302 would define partial hospitalization services as outpatient psychiatric treatment for less than 24 hours per day, not available in a regular outpatient setting, and administered to clients who otherwise would require inpatient care.

Applicability. The bill would not apply to a community mental health center; a state mental health facility or other program operated by MHMR or a federal agency; a private mental health facility or hospital licensed by MHMR; or an individual provider of behavioral or mental health care services. The board of health would not be authorized either to establish the qualifications of a licensed practitioner or to permit a person to provide behavioral or mental health services if that person was not so authorized in Texas.

Standards. CSHB 3302 would require TDH to adopt minimum standards on:

- rights of clients;
- number, qualifications, and duties of professional staff;
- organizational structure;
- quality assurance program for the care of clients;
- the reporting and investigation of injuries, incidents, and accidents;
- the maintenance, disposal, and destruction of records of care and services provided by the center;
- accommodations, fire prevention, safety, and sanitary conditions; and
- any other aspect of center facilities, staff, or services necessary to protect the center's clients or the public.

License suspension. The bill would authorize TDH to deny, suspend, or revoke a license for a violation of the bill or a department rule, with such actions and appeals to be governed by the procedures for contested case hearings. TDH could, without a hearing, issue an emergency order to suspend a license if the department had reasonable cause to believe there was an immediate danger to the health and safety of a client or the public. License holders could request a hearing to determine whether there was cause to continue the emergency suspension.

Court action. TDH could petition a district court for a temporary restraining order to stop a violation of standards or licensing requirements if the violation created an immediate threat to the health and safety. A district court could, by injunction, prohibit a person from continuing a violation, restrain or prevent a person from establishing or operating a center without a license, or grant any other injunctive relief warranted. HB 3302 would require the attorney general to institute and conduct a suit at the request of TDH.

Penalties. A person violating the bill, a TDH rule, or a MHMR standard would be liable for a civil penalty of between \$100 and \$500 for each day of each violation if TDH determined the violation threatened the health and safety of a client or the public. The bill authorize the attorney general to sue to collect the penalty.

Operating a center without a license would be a Class C misdemeanor, punishable by a maximum fine of \$500. Each day of a continuing violation would be a separate offense.

HB 3302 would authorize the Texas Board of Health to impose an administrative penalty against a person who violated the bill, a TDH rule or a MHMR standard. The penalty imposed could be no more than \$5,000 for each day a violation continued or occurred.

This bill would take effect September 1, 1999.

NOTES:

The original bill would have voided a license that was transferred or assigned. It would have allowed partial hospitalization services to include the administration of drugs and would have allowed a center to provide various other types of outpatient services. The original bill also did not include mental health care standards.

A companion bill, SB 1811 by Nelson, has been referred to the senate committee on Health Services.