

SUBJECT: Revising statutes to reflect current HHS agency functions and practices

COMMITTEE: Human Services — favorable, with amendment

VOTE: 9 ayes — Raymond, Rose, Keough, S. King, Klick, Naishtat, Peña, Price, Spitzer

0 nays

WITNESSES: For — John Davidson, Texas Public Policy Foundation; Russell Graham, Texas Society for Respiratory Care; (*Registered, but did not testify:* Kathy Eckstein, Children's Hospital Association of Texas; Kathryn Lewis, Disability Rights Texas; Eric Woomer, Federation of Texas Psychiatry; Cate Graziani, Mental Health America of Texas; Will Francis, National Association of Social Workers-Texas Chapter; Lisa Hughes, Texas Academy of Nutrition and Dietetics; Diana Martinez, Texas Assisted Living Association; Jose E. Camacho, Texas Association of Community Health Centers; Shannon Noble, Texas Counseling Association; Michelle Romero, Texas Medical Association; Maxcine Tomlinson, Texas New Mexico Hospice Organization; David Reynolds, Texas Osteopathic Medical Association; Bonnie Bruce, Texas Society of Anesthesiologists)

Against — None

On — Steven Ogle, Sunset Advisory Commission; (*Registered, but did not testify:* Audrey Carmical, Department of Family and Protective Services; Lisa Hernandez, Department of State Health Services; Kyle Janek, Health and Human Services Commission; Stuart Bowen, Office of the Inspector General; Ken Levine, Sunset Commission; A.R. Babe Schwartz, Texas Association of Retail Optical Companies; Karen Ray)

BACKGROUND: In 2003, the 78th Legislature enacted HB 2292 by Wohlgemuth, which reorganized and consolidated the state's 12 health and human services agencies into the five that exist today: the Health and Human Services Commission, the Department of Aging and Disability Services, the Department of Assistive and Rehabilitative Services, the Department of

Family and Protective Services, and the Department of State Health Services.

Government Code, ch. 392, the Person First Respectful Language Initiative, directs the Legislature and the Texas Legislative Council to change certain terms and phrases in the process of amending existing statutes. Words and phrases such as “handicapped” and “mentally ill” must be replaced with phrases such as “persons with disabilities” and “persons with mental illness” or appropriate variations.

DIGEST: HB 550, as amended, would revise statutes to reflect current functions and practices of the Health and Human Services (HHS) system and would remove references to boards, agencies, programs, officers, and advisory committees that no longer exist as a result of HB 2292’s enactment in 2003. It would revise various codes relating to HHS, as summarized below.

Agencies and programs. The bill would replace names of abolished agencies, boards, advisory committees, and other nonexistent entities with the names of the entities that now perform their functions. The bill would specify which entity had a particular responsibility or authority based on current statute and practices of current health and human services agencies.

HB 550 would specify the role of the Health and Human Services Commission’s executive commissioner regarding strategic planning, human resources, rate and fee setting, and property management for all health and human services agencies. The bill also would delineate the respective responsibilities of the executive commissioner of the Health and Human Services Commission and the five health and human services agencies regarding contracting, enforcement, grants, and rulemaking in each of the agencies’ enabling statutes.

Terminology. The bill would revise certain terms and phrases to conform with the Person First Respectful Language Initiative. The bill also would make similar language adjustments not required by the Government Code,

such as replacing “epileptic” with “person with epilepsy”

HB 550 would revise terminology to reflect the terms that the HHS system currently uses, such as changing “food stamps” to “supplemental nutrition assistance program” or changing “personal care facility” to “assisted living facility.” The bill also would replace the term “durable power of attorney” with “medical power of attorney” to reflect the current legal term used by state agencies.

Removal of dedicated funds and dedicated account interest. The bill would remove references to certain dedicated funds and dedicated account interest to conform with current statute.

Authority over mental health and intellectual disability services. HB 550 would specify in statute that certain services were transferred from the former Texas Department of Mental Health and Mental Retardation to the Department of State Health Services (DSHS) and the Department of Aging and Disability Services (DADS), as required under HB 2292. The bill would specify that chapters 532, 533, and 534 of the Health and Safety Code give DSHS authority over mental health services and would create new chapters and sections to specify that DADS has authority over intellectual disability services.

HB 550 would specify under Family Code, sec. 262.102(a) the circumstances in which a court may, in certain suits, issue a temporary order for the conservatorship of a child or a temporary restraining order or attachment of a child authorizing a governmental entity to take possession of a child.

Under the bill, references to “individuals with intellectual and developmental disabilities” would be replaced with “individuals with an intellectual or developmental disability” for certain provisions relating to the former Department of Mental Health and Mental Retardation. In addition, the bill would replace references to “individuals with an intellectual disability or a related condition” with “individuals with an intellectual or developmental disability” for certain provisions relating to

surveys of intermediate care facilities.

Authority over rulemaking. The bill would specify the rulemaking authority of the executive commissioner of the Health and Human Services Commission by:

- specifying the executive commissioner's existing rulemaking authority under current statute;
- specifying the relationship between the executive commissioner and the agencies as it relates to rulemaking; and
- replacing the rulemaking authority of abolished boards with that of the executive commissioner.

The bill would replace a reference to the director of the workers' compensation division within the Attorney General's Office with a reference to the State Office of Risk Management to specify that the latter agency has the authority to adopt rules related to testing and counseling for state employees exposed to HIV infection at work. The duties and rulemaking authority of the Health and Human Services Commission executive commissioner would be specified as they relate to the provision of respite care.

Recodification of law. The bill would recodify Health and Safety Code, ch. 461, which addressed the functions of the abolished Texas Commission on Alcohol and Drug Abuse, and Human Resources Code, ch. 101, which addressed the functions of the abolished Department of Aging. The bill would specify that the functions remain in statute even though the agencies no longer exist.

HB 550 would move certain references in statute from the Probate Code to the Estates Code to reflect that the Estates Code replaced the Probate Code in 2014.

Removal of fee caps and setting license renewal periods. The bill would remove all fee caps and set all periods for a license, permit, certificate, or registration at two years under the Occupations Code and

Health and Safety Code as required by HB 2292 and Health and Safety Code, secs. 12.0111 and 12.0112.

Role of the State Office of Administrative Hearings. The bill would specify that the State Office of Administrative Hearings (SOAH) conducts hearings for DSHS as required by Government Code, sec. 2003.021(e) and that the Health and Human Services Commission, by statute, may refer matters to SOAH. The bill also would use the term “administrative law judge” to refer to both SOAH and HHSC judges.

Specifying access to judicial review. To conform with court decisions affirming the constitutional right to judicial review, HB 550 would remove language that requires a person to pay the full administrative penalty before the person is allowed judicial review.

Role of the state ombudsman. The bill would remove references to certain ombudsman offices eliminated by HB 2292 and would specify that the Office of the Ombudsman at the Health and Human Services Commission currently handles HHS-related complaints and issues, as required by HB 2292. The bill also would specify the circumstances under which the state ombudsman or the state ombudsman’s designee would have access to patient care records for elderly residents of long-term care facilities.

Conformity with federal law. The bill would change the definition of “household income,” as it relates to Medicaid, to conform with the definition in the federal Affordable Care Act. Waiting period standards for the Children’s Health Insurance Program would be revised in statute to reflect standards in the Affordable Care Act and current practices at state agencies.

To comply with changes in federal regulations, the bill also would remove certain provisions regarding saccharin.

Effective date. This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it

would take effect September 1, 2015.

**SUPPORTERS
SAY:**

HB 550 would make HHS-related laws clearer, more readable, and more consistent. This bill is neither the HHSC consolidation bill nor the Sunset bill. It is a clarification bill.

The bill is necessary because HHS-related codes have been inaccurate for more than a decade since the enactment of HB 2292, which did not fully revise statutes to reflect the new organizational structure and agencies it created. These problems will only compound in the future if the inconsistencies are left unaddressed. It is important that Texas law accurately reflect current programs, terminology, and practices so that the code is accessible and clear for citizens and lawmakers. The bill would clean up code to reflect what is already law and would remove references to agencies, boards, and advisory committees that have not existed for years. The bill also would prevent outdated code from affecting future Sunset bills related to health and human services.

HB 550 has been extensively reviewed by advocacy groups, who agree that the bill does not contain any policy changes. The bill would clarify the responsibilities that the executive commissioner and HHS agencies already have but would not give these entities new powers. Likewise, the bill would not modify professional licensing requirements and would not change any fee or penalty.

The committee amendment would fully address stakeholder concerns about the bill by clarifying any potentially ambiguous language in the original draft. The committee amendment also would ensure that the bill did not change existing law regarding the ability of judges to issue a temporary order or temporary restraining order.

Given the size of the HHS agencies, it is only natural that the bill would affect a number of different codes, necessarily contributing to its length. However, much of the bill's length comes not from substantive changes but from striking outdated or offensive language to conform with the Person First Respectful Language Initiative and to reflect the language

agencies currently use. Even if HB 550 had been broken into smaller bills, the clarifications in each bill still would need to be reviewed, and each separate bill still would be several hundred pages long. The bill is necessary, no matter its length.

OPPONENTS
SAY:

HB 550 is too long to allow for the close review that it deserves. The size and complexity of the bill make it difficult for lawmakers, advocacy groups, and individuals to review the bill properly and ensure it would not have any unintended consequences. Although many advocacy groups have vetted HB 550 and its Senate companion, SB 219, and found no new policy changes, it would be better to clean up code with several shorter bills than with one long bill.

NOTES:

The committee amendment contains provisions that would specify the authority of a court in certain proceedings to issue temporary orders or temporary restraining orders for the protection of a child.

Among other provisions, the committee amendment also would:

- change terminology to refer to “individuals with an intellectual or developmental disability” under certain circumstances;
- specify the duties and rulemaking authority of the executive commissioner of the Health and Human Services Commission as related to the provision of respite care;
- specify that the State Office of Risk Management has the authority to adopt rules related to testing and counseling for state employees exposed to HIV infection at work; and
- specify the circumstances under which the state ombudsman or the state ombudsman’s designee would have access to patient care records for elderly residents of long-term care facilities.

The companion bill, SB 219 by Schwertner, was passed by the Senate and was reported favorably by the House Human Services Committee on March 23.