SUBJECT: Continuing the Health and Human Services Commission

COMMITTEE: Human Services — favorable, without amendment

VOTE: 6 ayes — Raymond, Keough, Naishtat, Peña, Price, Spitzer

1 nay — Rose

2 absent — S. King, Klick

SENATE VOTE: On final passage, April 15 — 31-0

WITNESSES: (*On House companion bill, HB 2304*)
For — Dennis Borel, Coalition of Texans with Disabilities; John Bracken, Montgomery County Youth Services; John Davidson, Texas Public Policy Foundation; Christine Gendron, Texas Network of Youth Services; Marina Hench, Texas Association for Home Care and Hospice; Richard Singleton, STARRY, Inc.; Susan McDowell; (*Registered, but did not testify:* Ricky Broussard, the Arc of Texas; Susan Ross, Texas Dental Association)

Against — Tom Collins, Green Oaks Hospital; Sherry Cusumano, NAMI Dallas; Harrison Hiner, Texas State Employees Union; Janie Metzinger, Mental Health America of Greater Dallas; Constance Smith, NAMI; and five individuals; (*Registered, but did not testify:* Eileen Garcia, Texans Care for Children; Matt Roberts, Mental Health America of Greater Dallas; Abigail Golden)

On — Louis Appel, Texas Medical Association, Texas Pediatric Society, March of Dimes, Texas Academy of Family Physicians, Texas Association of Ob/Gyn, American Congress of Ob/Gyn-Texas Chapter, Federation of Texas Psychiatry; Sandra Bitter, Texas State Independent Living Council; Alison Collazo, Nurse-Family Partnership; Anne Dunkelberg, Center for Public Policy Priorities; Paul Hunt, American Council of the Blind of Texas; Kyle Janek, Health and Human Services Commission; Amy Kantoff, Texas Association of Centers for Independent

Living; Sarah Kirkle and Ken Levine, Sunset Advisory Commission; Madeline McClure, TexProtects; Bee Moorhead, Texas Impact; Gyl Switzer, Mental Health America of Texas; Sheryl Hunt; (*Registered, but did not testify:* Trey Berndt, AARP; Phyllis Hanvey, the Arc of Texas; Bob Kafka, Adapt of Texas, Personal Attendant Coalition of Texas; Maureen Milligan, Teaching Hospitals of Texas; Sasha Rasco and John Specia, DFPS; Gabriel Sepulveda, Nurse-Family Partnership; Amy Tripp, Sunset Advisory Commission; Matt Wolff, NAMI Dallas)

BACKGROUND: The 78th Legislature enacted HB 2292 by Wohlgemuth in 2003, consolidating 12 health and human services agencies into five agencies under the leadership of the Health and Human Services Commission (HHSC). The mission of HHSC is to maintain and improve the health and human services system in Texas and to administer its programs in accordance with the highest standards of customer service and accountability for the effective use of funds.

Functions. HHSC provides oversight and support for the health and human services agencies, administers the state's Medicaid and other public benefit programs, sets policies, defines covered benefits, and determines client eligibility for major programs.

Governing structure. HHSC is led by an executive commissioner. The agency oversees the health and human services system and provides administrative oversight of the state's health and human services programs.

Funding. For the 2014-15 biennium, HHSC received an appropriation of $48.5 billion, with main expenditures related to Medicaid, the Children's Health Insurance Program, and integrated eligibility and enrollment services.

Staffing. The HHSC system agencies together employed more than 54,000 staff in fiscal 2013, including more than 12,000 staff employed by HHSC and the HHSC Office of Inspector General.

HHSC would be discontinued on September 1, 2015, if not continued in statute.

DIGEST:

SB 200 would continue the Health and Human Services Commission until September 1, 2027. The Department of Family and Protective Services (DFPS) and the Department of State Health Services (DSHS) would be continued with a Sunset date of September 1, 2023.

The functions of the state's health and human services agencies would be consolidated in two phases to be completed in 2017. The functions of the Department of Assistive and Rehabilitative Services (DARS) and the Department of Aging and Disability Services (DADS) would transfer to HHSC and would be abolished, while DFPS and the DSHS would be maintained as separate agencies to perform certain functions.

The bill also would set guidelines for Medicaid managed care organizations.

Phase one. In phase one, the bill would transfer to HHSC all functions, including any remaining administrative support services, of:

- DARS;
- the Health and Human Services Council;
- the Aging and Disability Services Council;
- the Assistive and Rehabilitative Services Council;
- the Family and Protective Services Council;
- the State Health Services Council;
- the Office for the Prevention of Developmental Disabilities; and
- the Texas Council on Autism and Pervasive Developmental Disorders.

These entities would be abolished after all their functions had transferred in this phase. Starting September 1, 2016, the bill would repeal sections of law related to the abolished councils and provisions related to DARS and the DARS commissioner.

Under phase one, all client services of the health and human services system would transfer to HHSC, including those of the DADS, DFPS, and

the DSHS. Prevention and early intervention services also would transition in phase one to DFPS, including the Nurse-Family Partnership Competitive Grant Program, which is currently administered by HHSC.

Phase one transfers would begin once the executive commissioner submitted a transition plan, not later than September 1, 2016.

Phase two. In phase two, all functions of DADS that remained with the agency would transfer to HHSC along with the regulatory functions of DFPS and DSHS and functions related to DSHS' state-operated institutions. DADS would be abolished after all its functions had transferred. Effective September 1, 2017, the bill would repeal provisions related to DADS and the DADS commissioner.

Phase two transfers would take place between September 1, 2016, and September 1, 2017.

Consolidation of administrative support services. The bill would require the executive commissioner of HHSC, after consultation with affected state agencies and divisions, to transfer and consolidate support services functions within HHSC to the extent such consolidation was feasible and contributed to the system's effective performance. The consultation would ensure that client services were minimally affected.

The bill would require HHSC and the affected state agencies and divisions to have an agreement or memorandum of understanding to identify measurable performance goals and how an agency or division could seek permission from the HHSC executive commissioner to find an alternative way to address needs. The agreement also would have to identify steps to ensure that programs of any size would receive adequate administrative support and would specify, if appropriate, that staff providing administrative support would be located with individuals who would require those services to ensure that staff would understand the program and would respond timely to the individuals' needs.

DARS. A power, duty, program, function, or activity at DARS would not

be transferred to HHSC if another bill of the 84th Legislature became law and provided for the transfer of those responsibilities to the Texas Workforce Commission (TWC), subject to any necessary federal approval or authorization. If DARS and TWC did not receive necessary federal approval or authorization by September 1, 2016, the responsibilities of DARS would transfer to HHSC as provided in the bill.

DFPS. The bill would maintain DFPS as a separate agency and would specify the functions retained at DFPS, including the statewide intake of reports and other information related to:

- child protective services and federally required services;
- adult protective services other than investigations of alleged abuse, neglect, or exploitation of an elderly person or person with a disability under certain circumstances; and
- prevention and early intervention services.

The Nurse-Family Partnership Program would transfer from HHSC to DFPS. Prevention and early intervention services would be organizationally separate from DFPS divisions providing child protective services and adult protective services. DFPS could not use the agency's name, logo, or insignia on materials related to the agency's prevention and early intervention services provided by contractors or materials distributed to the agency's clients.

DSHS. The bill would maintain DSHS as a separate state agency with control over its public health functions, including health care data collection and maintenance of the Texas Health Care Information Collection program.

Transition plan. The bill would require the transfers to HHSC to be accomplished according to a transition plan developed by the HHSC executive commissioner that would be submitted to the transition legislative oversight committee, governor, and Legislative Budget Board by March 1, 2016. The executive commissioner would have to review and consider the comments and recommendations of the committee before

finalizing the plan. The transition plan would outline HHSC's reorganized structure and divisions and would include a timeline specifying the date for making the required transfers, the date each state agency or entity would be abolished, and the date each division of HHSC would be created and the division director appointed. The transition plan would be published in the Texas Register.

The plan would contain an evaluation and determination of the feasibility and potential effectiveness of consolidating administrative support services into HHSC. This would include a timeline for their consolidation that would describe which support services would be transferred by the last day of each transfer period and measures HHSC would take to ensure information resources and contracting support services would continue to operate properly.

Divisions within HHSC. The bill would require the HHSC executive commissioner to establish divisions within HHSC along functional lines. The divisions would include the Office of Inspector General, a medical and social services division, a regulatory division, an administrative division, and a facilities division for administering state facilities including state hospitals and state supported living centers. The executive commissioner could establish additional divisions as appropriate.

The HHSC executive commissioner would appoint a director for each division established within HHSC, except the director of the Office of the Inspector General, who would continue to be appointed by the governor. The executive commissioner would define duties and responsibilities of a division director and would develop clear policies for delegating decision-making and budget authority to the directors.

NorthSTAR and behavioral health. The bill would remove references in statute to the NorthSTAR behavioral health program. The bill would require HHSC to ensure that Medicaid managed care organizations would fully integrate recipients' behavioral health services into their primary care coordination. HHSC would give particular attention to managed care organizations that contracted with a third party to provide behavioral

health services in monitoring the compliance of the managed care organizations with integration requirements.

Internal audit. The bill would require HHSC to operate a consolidated internal audit program for HHSC and each health and human services agency.

Websites. HHSC would establish a process to ensure system websites were developed and maintained according to standard criteria for uniformity, efficiency, and technical capabilities. HHSC would ensure the websites met standard criteria and would consolidate websites, if appropriate.

Transition Legislative Oversight Committee. The bill would establish the Health and Human Services Transition Legislative Oversight Committee to facilitate the transfer of agency functions to HHSC and the transfer and consolidation of administrative support services functions with minimal negative effect on the delivery of services. With assistance from HHSC and the transferred agencies and entities, the committee would advise the executive commissioner of HHSC on specified functions to be transferred, related funds and obligations, and the reorganization of HHSC's administrative structure under the law.

The committee's members would include legislators appointed by the lieutenant governor and the speaker of the House in addition to public members appointed by the governor. Appointments would be made by October 1, 2015. The HHSC executive commissioner would serve as an ex-officio, non-voting member. The committee would meet at least quarterly and would be subject to statute regarding open meetings.

The committee would submit a biennial report to provide an update on the progress of and issues related to the transfer of functions to HHSC and DFPS, including the need for any additional changes to statute that were needed to complete the transfer of prevention and early intervention services to DFPS and the reorganization of the commission's administrative structure. The committee would be abolished September 1,

2023.

The HHSC executive commissioner would conduct a study and submit a separate report and recommendation to the Transition Legislative Oversight Committee regarding the need to continue DFPS and DSHS as agencies.

Policy and performance office. The bill would require the executive commissioner to establish an executive-level office to coordinate policy and performance efforts across the health and human services system by October 1, 2015. The office would develop a performance management system, would lead in supporting and overseeing the implementation of major policy changes and managing organizational changes, and would be a centralized body of experts with expertise in program evaluation and process improvement. The office also would assist the Transition Legislative Oversight Committee with the implementation of changes to policy and organization major policy changes and organizational changes related to the consolidation of the health and human services system.

HHSC Executive Council. The bill would establish the HHSC Executive Council to receive public input and advise the executive commissioner on the operation of HHSC. The council would not have the authority to make administrative or policy decisions and would not be subject to statute related to open meetings. The council would seek and receive public comment on proposed rules, recommendations of advisory committees, legislative appropriations requests, program operation, and other items the executive commissioner determined appropriate.

The bill would direct the executive commissioner to make every effort to ensure the appointment of other individuals to result in a balanced representation of a broad range of related industry and consumer interests and broad geographic representation on the council.

Medicaid eligibility. HHSC would develop and implement a statewide effort to assist Medicaid recipients who use Medicaid managed care with maintaining their eligibility for Medicaid and avoiding lapses in coverage.

If cost effective, HHSC would develop specific strategies for Medicaid recipients who received Supplemental Security Income (SSI) benefits with maintaining eligibility. HHSC would ensure information relevant to a recipient's eligibility would be provided to the recipient's managed care organization.

Medicaid data. HHSC would regularly evaluate whether data submitted by Medicaid managed care organizations continued to serve a useful purpose and whether additional data was needed to oversee the contracts or evaluate the effectiveness of Medicaid. The agency would collect Medicaid data that captured the quality of services received by Medicaid recipients and would develop a dashboard by March 1, 2016, to assist agency leadership with overseeing Medicaid. The dashboard would compare the performance of Medicaid managed care organizations by identifying important Medicaid indicators.

Medicaid provider enrollment. The bill would require HHSC to create a single, consolidated Medicaid provider enrollment and credentialing process and to create a centralized Internet portal through which providers could enroll in the program. The bill would require Medicaid managed care organizations to formally re-credential Medicaid providers along the timeline for the single, consolidated Medicaid provider enrollment and credentialing process.

Medicaid providers and the OIG. The bill would require the Office of Inspector General (OIG) and each licensing authority that required fingerprints for a health professional's criminal background check to enter into a memorandum of understanding. The memorandum of understanding would include a process for the OIG to confirm with a licensing authority that a health care professional was licensed and in good standing for purposes of determining eligibility to participate in Medicaid. The licensing authority would immediately notify OIG if a provider's license had been suspended or revoked or if the authority had taken disciplinary action against the professional.

OIG could not conduct a criminal background check for the purpose of

determining a health care provider's eligibility to participate as a Medicaid provider if the provider was already licensed and in good standing.

The OIG also would establish guidelines that the executive commissioner would adopt by rule for the evaluation of a potential Medicaid provider's criminal history information. The guidelines would outline conduct that would result in exclusion of a provider from Medicaid. The OIG's guidelines could not be stricter than those of a licensing authority that conducts fingerprint-based criminal background checks.

Provider enrollment contractors and Medicaid managed care organizations would defer to the OIG when deciding whether a person's criminal history precluded the person from participating as a Medicaid provider. The OIG would routinely check federal databases to ensure a person excluded from participating in Medicaid or Medicare was not a participating Medicaid provider.

The OIG would inform HHSC or the health care professional within 10 days after receiving the person's application of whether the provider should be denied participation in Medicaid. The OIG would determine metrics for measuring the length of time for conducting a determination of a person's Medicaid eligibility.

Section 1115 waiver and DSRIP projects. The bill would specify that when HHSC seeks to renew the Section 1115 Texas Health Care Transformation and Quality Improvement waiver, HHSC would seek to reduce the number of approved project options that could be funded under the waiver using delivery system reform incentive payments (DSRIPs) to include only those projects that would be most critical to improving the quality of health care and were consistent with an operational plan developed by HHSC. HHSC would take into consideration the diversity of local and regional health care needs when reducing the number of approved project options. These provisions would expire September 1, 2017.

Incentive-based payment pilot program. HHSC would develop a pilot project to increase the use and effectiveness of incentive-based provider payments by Medicaid managed care organizations. HHSC and the managed care organizations would work with health care providers and professional associations in at least one managed care service delivery area to develop common payment incentive methodologies for the pilot program. By September 1, 2018, HHSC would identify goals and outcome measures for statewide implementation of the pilot program. Provisions related to the pilot program would expire on that date.

Hotlines and call centers. HHSC would establish a process to ensure all system hotlines and call centers were necessary and appropriate. HHSC would maintain an inventory of all hotlines and call centers and would use the inventory and assessment criteria to periodically consolidate hotlines and call centers along functional lines. The initial assessment and consolidation of hotlines would happen by March 1, 2016. HHSC also would seek to maximize the use and effectiveness of the agency's 211 telephone number.

Ombudsman. The executive commissioner would establish the office of the ombudsman for the health and human services system. The bill would abolish other ombudsman offices for state agencies that were abolished when they transferred their functions into HHSC. The bill would retain the office of independent ombudsman for state supported living centers, office of the state long-term care ombudsman, and any other ombudsman office required by federal law.

The office would not have authority to provide a separate process for resolving complaints or appeals. The executive commissioner would have to develop a standard, centralized process for tracking and reporting received inquiries and complaints from field, regional, or other offices across the system.

Removed advisory committees. The bill would remove certain advisory committees from statute and would make conforming changes. The HHSC executive commissioner would establish and maintain advisory

committees across all major areas of the health and human services system according to issue areas specified in the bill.

HHSC would create a master advisory committee calendar for all advisory committee meetings. The commission would post the master calendar on its website and stream advisory committee meetings on its website.

Drug Utilization Review Board. The bill would abolish the Pharmaceutical and Therapeutics Committee and would transfer its functions to the Drug Utilization Board. The board would review all drug classes included in the preferred drug lists at least every 12 months and could recommend drugs to be included or excluded from the lists. HHSC would publicly disclose each specific drug recommended for or against preferred drug list status for each drug class and would post the disclosure on its website within 10 business days of board deliberations.

Limited Sunset review. HHSC would be subject to a limited-scope Sunset review during the 2022-23 fiscal biennium. The bill would specify the areas on which the review would focus. Provisions related to the limited-scope review would expire in 2023.

The bill would take effect September 1, 2015.

SUPPORTERS SAY:

SB 200 would address problems of accountability, inefficiency, and policy inconsistency among the state's health and human services agencies by consolidating the agencies under HHSC. Consolidating the state's health and human services agencies would strengthen accountability at HHSC by streamlining programs, breaking down institutional and structural barriers, and eliminating fragmentation of services by combining similar functions. The 2003 consolidation of human services agencies was left incomplete and did not fully allow the state's health and human services agencies to work together. The bill would promote government efficiency and reform within the HHSC system.

Both the Sunset Advisory Commission report and the governor's HHSC

Strike Force report reached the conclusion that the state's health and human services system is not working and needs to be realigned. The bill would incorporate many of the Strike Force's recommendations, including taking a more graduated approach to reorganization. The bill would help ensure significant legislative oversight through every step of the transition to see that the restructuring is actually working. The Sunset report and the Strike Force report both recommended abolishing DADS and DARS and consolidating client services and administrative functions. The aim of the bill is less to create a "mega-agency" and more to improve services for clients.

The bill also would address stakeholder concerns by retaining the Department of State Health Services and the Department of Family and Protective Services as separate agencies within the HHSC system. Keeping these agencies separate but still under the consolidated system would ensure that these agencies could continue to effectively fulfill their missions of improving Texans' public health and protecting children and seniors.

The timeline in the bill is long enough to allow for a thoughtful transition and would provide enough time for the transition to take place if HHSC decided to apply for a renewed sec. 1115 Medicaid waiver. A longer timeline might create more problems with implementation and could lead to an incomplete or failed consolidation.

Discontinuing NorthSTAR and moving to a new model would result in significant savings to the state. NorthSTAR represents an outdated model for delivery of behavioral health services and prevents the Dallas area from taking advantage of new federal funding opportunities. The bill would transition behavioral health services for Medicaid clients into managed care across the state. The bill would help ensure continuity of care for clients as they moved from NorthSTAR to behavioral health as part of managed care.

The transition plan process would require the Transition Legislative Oversight Committee to consider input from appropriate stakeholders and

to hold public hearings throughout the state to help ensure that input from all affected parties would be considered.

The bill would make advisory committee meetings public and would require meetings to be streamed online, which would increase access to this important venue for detailed policy discussions and meaningful stakeholder input.

The bill would clarify the role and authority of the HHSC ombudsman's office to resolve complaints throughout the system and to collect standard complaint information. Consolidating the ombudsmen offices at HHSC except for those that are federally required would provide a centralized office for individuals to address their concerns.

By consolidating hotlines and requiring HHSC to develop criteria for assessing the need for all existing hotlines and call centers, the bill would help ensure that the agency's call centers could fully resolve client complaints and that constituents had a quick point of contact with the agency.

The bill also would reduce gaps in Medicaid recipients' eligibility status by requiring the state to assist with maintenance of Medicaid eligibility statewide and to help ensure continuity of Medicaid eligibility for individuals with Social Security income.

OPPONENTS SAY:

SB 200's reorganization and consolidation of the state's health and human services agencies may not be a cure-all for poor coordination or performance. The governor's HHSC Strike Force report found that many of HHSC's current problems resulted from the execution of the 2003 attempt at consolidation. Focusing on improving communication and the institutional culture of health and human services agencies could be more effective than consolidation. The creation of a mega-agency through the bill could make it harder for HHSC to attract and retain well-qualified directors of the newly created divisions within HHSC. In addition, recent contracting issues highlighted problems at HHSC that would not be conducive to consolidation.

The timeline for the bill is still relatively short and may not leave enough time for HHSC to manage oversight of Medicaid managed care for nursing home residents and dual eligibles as well as the renewal of the sec. 1115 Medicaid waiver.

The bill would eliminate a successful behavioral health pilot program by dismantling NorthSTAR. This change could increase waitlists for needed mental health care and would reduce access to mental health providers. Clients in the NorthSTAR program report shorter wait times for appointments with mental health providers, which represents a cost savings to the state in the form of avoided emergency room visits for untreated mental health issues.

There is a lack of clarity in the bill about how the consolidated health and human services enterprise would engage robust and geographically diverse citizen and stakeholder input. The creation of a single council for HHSC, DADS, and DARS issues also may dilute the specific expertise necessary to guide the combined functions of these three agencies.

The required public hearings before the HHSC executive commissioner would finalize a transition plan that is not as robust as it could be. The public should have access to a draft transition plan and the public's comments and concerns should be published and submitted for the consideration of the Transition Legislative Oversight Committee.

Provisions specifying that the ombudsman's office at HHSC would have no authority to provide a separate process for resolving complaints or appeals should be clarified.