

BILL ANALYSIS

Senate Research Center

S.B. 940
By: Nelson
Health & Human Services
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As Filed

DIGEST

Currently, Texas law has established certain contract regulatory responsibilities through the Texas Department of Mental Health and Mental Retardation (department). However, statutory change is necessary to ensure that the department has the authority and appropriate mechanisms to ensure contract compliance and the continued provision of services. This bill creates mechanisms that enable the department to manage and operate a community department center.

PURPOSE

As proposed, S.B. 940 creates mechanisms that enable the Texas Department of Mental Health and Mental Retardation to manage and operate a community Mental Health and Mental Retardation Center.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas Board of Mental Health and Mental Retardation in SECTIONS 5, 6, 13, and 14 (Sections 533.034, 533.035, 534.071 and, 534.092, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 531, Health and Safety Code, by adding Section 531.003, as follows:

Sec. 531.003. DEPARTMENT AS LEAD AGENCY. Provides that the Texas Department of Mental Health and Mental Retardation (department) is the state's lead agency in policy and services related to mental health, mental retardation, and behavioral health. Requires certain agencies having responsibilities related to mental health, mental retardation, or behavioral health policy or services to conform to the department's policies and standards.

SECTION 2. Amends Section 532.003, Health and Safety Code, to require at least two other members of the Texas Board of Mental Health and Mental Retardation (board) to be consumers of services for persons with mental illness or mental retardation or family members of consumers of those services. Makes conforming and nonsubstantive changes.

SECTION 3. Amends Chapter 533A, Health and Safety Code, as follows:

Sec. 533.016. ALLOCATION OF SPACE. Requires the department to conform the department's use of space for departmental activities to the standards adopted under Chapter 2165C, Government Code.

SECTION 4. Amends Chapter 533B, Health and Safety Code, by adding Section 533.0321, as follows:

Sec. 533.0321. LONG-RANGE PLANNING FOR LOCAL AUTHORITIES. Requires each local mental health or mental retardation authority to develop a long-range plan for services. Requires the local mental health or mental retardation authority to amend the plan at least biennially to cover at least six years immediately following the completion date of the most recent plan update. Requires the local mental health or mental retardation authority to ensure

involvement of the public and families of persons served by the local mental health or mental retardation authority in all planning aspects and amendment processes. Requires plans developed under this section to cover all services that are relevant and state-operated or funded by the local mental health or mental retardation authority. Sets forth purposes for the development of plans by the department. Sets forth requirements of plans developed under this section.

SECTION 5. Amends Section 533.034, Health and Safety Code, as follows:

Sec. 533.034. New heading: **COMMUNITY-BASED SERVICES CONTRACTS AND PENALTIES RELATED TO SERVICES**. Requires the board, by rule, to establish guidelines that provide penalties for violations of a service provider contract provision or a department rule. Requires rules to provide for a range of appropriate penalties for certain categories of violations. Provides that the rules may allow for the department to vary from a guideline for particular contracts. Requires rules adopted under Subsection (b) to include the process by which a provider may appeal adverse decisions or actions by the department. Sets forth penalties for a violation of adopted rules. Provides that an administrative penalty imposed by a rule adopted under this section may be assessed and collected as provided by Section 571.025.

SECTION 6. Amends Section 533.035, Health and Safety Code, by adding Subsection (e), to require the board to establish, by rule, a reimbursement system for disbursements under Subsection (b). Requires the system to provide for funding services according to the median expenditures for services in each region if the services are funded with money from the general revenue fund. Requires the rule to provide for a cost report modeled after the report used by providers of Medicaid-funded services.

SECTION 7. Amends Section 534.002, Health and Safety Code, as follows:

Sec. 534.002. **BOARD OF TRUSTEES FOR CENTER ESTABLISHED BY ONE LOCAL AGENCY**. Deletes a provision requiring the board of trustees of a community center established by one local agency to be composed of the members of the local agency's governing body.

SECTION 8. Amends Sections 534.003(b) and (c), Health and Safety Code, to require the governing bodies of the local agencies to appoint the board members from among certain qualified voters, rather than either from among the membership of the governing bodies or certain qualified voters. Requires the governing bodies to enter into a contract that stipulates the number of board members, and not the group from which the members are chosen, when the center is established. Provides that a contract may be renegotiated or amended to change the membership of the board of trustees to more accurately reflect the ethnic and geographic diversity of the local service, rather than to change the method of choosing the members.

SECTION 9. Amends Section 534.004(b), Health and Safety Code, to require the local agency or organizational combination to include at least two persons otherwise qualified under this chapter who are consumers of the types of services the center provides.

SECTION 10. Amends Sections 534.005(a) and (b), Health and Safety Code, to require appointed members of the board of trustees to serve staggered two-year terms, rather than members who are not members of a local agency's governing body. Requires a vacancy, rather than a vacancy composed of qualified voters, on a board of trustees to be filled by appointment for the remainder of the unexpired term.

SECTION 11. Amends Chapter 534A, Health and Safety Code, by adding Section 534.0055, as follows:

Sec. 534.0055. **DEPARTMENTAL TRAINING AND ASSISTANCE**. Requires the department to train each board of trustees of a community center in the board of trustees' roles and responsibilities. Requires the department to provide technical assistance to each

board of trustees of a community center related to certain issues.

SECTION 12. Amends Section 534.060(b), Health and Safety Code, to require the department to conduct a comprehensive review of the program quality and program performance results of each local mental health or mental retardation authority at least once every three, rather than each fiscal year. Authorizes the department to conduct other reviews of a local authority as necessary to ensure quality of services and compliance with contract provisions and department rules, rather than providing the department the authority to determine the scope of each review.

SECTION 13. Amends Chapter 534B, Health and Safety Code, by adding Section 534.071, as follows:

Sec. 534.071. **VOUCHER PROGRAMS.** Requires the department to revise its methods of reimbursing providers of services to incorporate a voucher system to promote consumer choice in obtaining appropriate services that the department finances, including certain other services. Requires the board to establish rules and sets forth required rules.

SECTION 14. Amends Chapter 534, Health and Safety Code, by adding Subchapter C, as follows:

SUBCHAPTER C. DEPARTMENT INTERVENTION OR CONSERVATORSHIP FOR INADEQUATELY PERFORMING PROVIDERS

Sec. 534.091. **FINDINGS AND PURPOSE.** Provides that the legislature finds that the closing of a facility that provides mental health or mental retardation services or the cancellation of a mental health or mental retardation service provider's contract in some circumstances may have adverse effects on certain persons or result in a lack of certain resources. Sets forth purposes of this subchapter.

Sec. 534.092. **CAUSES FOR INTERVENTION OR APPOINTMENT OF CONSERVATOR.** Requires the board, by rule, to describe the causes for intervention with or appointment of a conservator for a provider, including a community center or local mental health or mental retardation authority. Sets forth requirements for which the causes must be related to a pattern of deficient practices of a provider.

Sec. 534.093. **INTERVENTION.** Authorizes the department to intervene in order to protect persons receiving services from the provider or to correct the deficiencies, by assigning an intervention team or a monitor to the provider, if the department has reason to believe that a provider exhibits a cause for intervention described by rules adopted under Section 534.092.

Sec. 534.094. **INTERVENTION TEAM.** Requires an intervention team the department assigns to consist of persons who have the expertise to assist the provider in correcting the deficiencies under Section 534.093. Sets forth the requirements of an intervention team.

Sec. 534.095. **MONITOR.** Requires a monitor assigned to a provider to oversee the provider's activities in correcting deficiencies under Section 534.093. Requires the monitor to give the provider assistance and advice to complete the intervention team's plan for the provider to correct the deficiencies, if an intervention team has been assigned to the provider. Authorizes the monitor to amend the plan in order to facilitate correcting the deficiencies. Requires the monitor to consult with the intervention team before amending the plan if the team is still assigned to work with the provider. Requires the monitor to carry out the duties of an intervention team provided by Section 534.094 and work closely with the provider to assist and advise the provider in completing the plan, if an intervention team has not been assigned to the provider. Authorizes the monitor to recommend to the department actions the department should take.

Sec. 534.096. **APPOINTMENT OF CONSERVATOR BY AGREEMENT.** Authorizes the department to appoint a conservator to direct the provision of the provider's services, at the

request of a provider, if the department determines the appointment of a conservator is desirable and consistent with the purposes of this subchapter. Requires an agreement under this section to preserve all rights granted by law to the persons receiving the services. Provides that an agreement under this section terminates as specified by the agreement or when the provider or the department notifies the other party in writing that the party wishes to terminate the agreement.

Sec. 534.097. INVOLUNTARY APPOINTMENT. Authorizes the department to request that the attorney general bring suit on behalf of the state for the appointment of a conservator to take charge of the provision of a provider's services, if certain conditions are met. Requires a court to appoint a conservator to take charge of the provision of services if the court finds that the appointment is warranted, after a hearing. Requires the court to consider a person the department recommends for the appointment. Requires the court to appoint a conservator who has experience in providing services of the type the conservator is appointed to provide. Requires an action under this section to be brought in Travis County or the county where the provider provides services.

Sec. 534.098. COSTS AND FEES OF CONSERVATOR. Requires the department to pay the conservator's fee and reasonable expenses promptly. Provides that a provider is liable to the department if the provider meets certain requirements. Prohibits a provider from using state money to reimburse the department under this section. Authorizes the department to withhold contract payments to a provider for whom a conservator has been appointed, to ensure that state money is not used for reimbursement under this section.

Sec. 534.099. POWERS AND DUTIES OF CONSERVATOR. Sets forth actions a conservator appointed under this subchapter is authorized to take. Requires a conservator appointed under this subchapter to undertake to rehabilitate the practices of the provider so that the provider may continue to operate in accordance with law, department rules, and contracts. Requires the conservator to administrate the closure of the provider's facility or business, to protect the health, safety, or welfare of persons receiving the provider's services. Requires a conservator appointed under this subchapter to report any practices to the department that indicate other deficiencies described by rules adopted under Section 534.092. Authorizes a conservator to recommend to the department at any time that the conservatorship be ended. Provides that a conservator is under the direction and supervision of the department and is required to comply with orders of the board in fulfilling the conservator's duties. Requires the department to train conservators to ensure that a conservator will carry out responsibilities under this chapter appropriately.

Sec. 534.100. EXPIRATION OF CONSERVATORSHIP. Requires a conservator to serve unless the board makes certain determinations. Authorizes a provider to petition the board for an order modifying the conservator's duties, or relief from certain actions of the conservator. Authorizes the provider to petition the court that appointed the conservator for relief or for the conservatorship to end, if the board does not satisfy the provider under Subsection (b).

SECTION 15. Requires each local mental health or mental retardation authority to develop the first long-range plan for services as required by Section 533.0321, Health and Safety Code, as added by this Act, during the authority's first fiscal year that begins after this Act becomes law.

SECTION 16. (a) Provides that changes in law made by this Act to the requirements for membership on the board do not affect the entitlement of a member serving on the board on August 31, 1997, to continue to hold office for the remainder of the term for which the person was appointed. Requires the governor to appoint persons to fill vacancies on the board.

(b) Requires a local agency or organizational combination of local agencies that appoints a board of trustees that is serving under Section 534.002 or 534.003, Health and Safety Code, to appoint a new board as provided by the appropriate section of that code, as amended by this Act. Sets forth provisions for the establishment of staggered terms to be served by the board members.

(c) Authorizes members of local governmental bodies who are serving as members of a board of trustees under Section 534.002(1) or 534.003(b), Health and Safety Code, to continue to serve, notwithstanding the changes made by this Act, until the newly appointed board members have qualified for and taken office.

SECTION 17. Emergency clause.
 Effective date: upon passage.