

BILL ANALYSIS

Senate Research Center
76R3374 SMJ-D

S.B. 542
By: Madla
Health Services
3/7/1999
As Filed

DIGEST

During the 75th Legislature, H.B. 1734 repealed the statutory preference for designation of community mental health and mental retardation centers as local authorities. Further, the bill required the Department of Mental Health and Retardation to appoint a committee to develop a plan for a system of local mental health and mental retardation authorities in Texas. S.B. 542 clarifies the authority and relationship between the Department of Mental Health and Mental Retardation local authorities and community mental health centers.

PURPOSE

As proposed, S.B. 542 regulates the operation and management of local mental health and mental retardation authorities and community centers.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas Department of Mental Health and Mental Retardation in SECTION 8 (Section 534.035(a), Health and Safety Code) and the Texas Board of Mental Health and Mental Retardation in SECTION 9 (Section 534.059(c), Health and Safety Code) in this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 411.115, Government Code, as follows:

Sec. 411.115. New heading: ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION; LOCAL AUTHORITIES; COMMUNITY CENTERS. Defines "local mental health authority," and "local mental retardation authority" and redefines "community centers." Entitles the Texas Department of Mental Health and Mental Retardation (department), a local mental health or mental retardation authority, or a community center to obtain from the department criminal history record information maintained by the department that relates to a certain person. Requires the department, a local mental health or mental retardation authority or community center to collect and destroy conviction information that relates to a person immediately after making, rather than the department or a contractor makes, an employment decision or taking a personnel action relating to the person who is the subject of the criminal history record information. Deletes text regarding an applicant for employment, employee, and volunteer with a community center. Makes conforming changes.

SECTION 2. Amends Section 250.001(3), Health and Safety Code, to redefine "facility." Makes conforming changes.

SECTION 3. Amends Section 533.003, Health and Safety Code, as follows:

Sec. 533.003. New heading: USE OF FUNDS FOR VOLUNTEER PROGRAMS IN LOCAL AUTHORITIES AND COMMUNITY CENTERS. Authorizes the department to allocate available funds appropriated for providing volunteer services, to develop or expand a volunteer program, rather than programs, in a local mental health or mental retardation authority or a community center, rather than centers. Requires the department to develop formal policies that encourage the growth and development of volunteer services in local mental health or mental retardation authorities and community centers.

SECTION 4. Amends Sections 533.007(d), and (i), Health and Safety Code, redesignated as Sections 533.007(a) and (b). to authorize the department, a local mental health or mental retardation authority, or a community center to deny employment or volunteer status to an applicant if the department, authority, or community center determines that the applicant's criminal history record information indicates that the person is not qualified or suitable. Makes conforming changes.

SECTION 5. Amends Section 533.0075, Health and Safety Code, to authorize the department, a local mental health or mental retardation authority or a community center to exchange with one another the employment records of an employee or former employee who applies for employment at the department, authority, or community center.

SECTION 6. Amends Section 533.009(a), Health and Safety Code, to make a conforming change.

SECTION 7. Amends Sections 533.0355(c) and (d), Health and Safety Code, to require the department to submit a report to the 77th Legislature, rather than the 75th Legislature and 76th Legislature, on January 15, 2001, rather than January 15, 1997 and January 15, 1999, respectively. Provides that this section expires September 1, 2001, rather than 1999.

SECTION 8. Amends Section 534.035, Health and Safety Code, as follows:

Sec. 534.035. New heading: REVIEW, AUDIT, AND APPEAL PROCEDURES. Requires the department, by rule, to establish review, audit, and appeal procedures for community centers. Requires the procedures to ensure that reviews and audits are conducted in sufficient quantity and type to provide reasonable assurance that a community center has adequate and appropriate fiscal controls. Requires the center, in a community center plan approved under Section 534.001, to agree to comply with the review and audit procedures established under this section. Authorizes the department to sanction the center in accordance with board rules, if by a date prescribed by the commissioner of mental health and mental retardation, the community center fails to respond to a deficiency identified in a review or audit to the satisfaction of the commissioner. Deletes existing Subsections (b)-(f) and (h)-(i) regarding the establishment of contract requirements, periodic program reviews, periodic management audits and written reports by the department and response from the board of trustees; deletes the transfer of related department funds to the community center and hearing procedure; deletes the withholding of funds during the pendency of an appeal to court; and requiring the department to incorporate the community center's response into the official management audit report. Makes conforming and nonsubstantive changes.

SECTION 9. Amends Section 534.059, Health and Safety Code, as follows:

Sec. 534.059. New heading: CONTRACT COMPLIANCE FOR LOCAL AUTHORITIES. Requires the department to evaluate a local mental health or mental retardation authority's compliance with its contract to ensure the provision of specific services to priority populations. Authorizes the department to impose a sanction as provided by the applicable contract rule until the dispute is resolved if, by a date set by the commissioner, a local mental health or mental retardation authority fails to comply with its contract to ensure the provision of services to the satisfaction of the commissioner. Requires the department to notify the authority in writing of the department's decision to impose a sanction. Authorizes a local mental health or mental retardation authority to appeal the department's decision to impose a sanction on the authority. Requires the Texas Board of Mental Health and Mental Retardation (board), by rule, to prescribe the appeal procedure. Provides that the filing of a notice of appeal stays the imposition of the department's decision to impose a sanction except when an act or omission by a local mental health or mental retardation authority is endangering or may endanger the life, health, welfare, or safety of a person. Authorizes the department to limit general revenue allocations to a local mental health or mental retardation authority to monthly distributions.

SECTION 10. Amends Section 534.060, Health and Safety Code, as follows:

Sec. 534.060. New heading: PROGRAM AND SERVICE MONITORING AND REVIEW OF LOCAL AUTHORITIES. Requires the department to review the program quality and program performance results of each local mental health or mental retardation authority in accordance with a risk assessment and evaluation system appropriate to the authority's contract requirements. Makes conforming and nonsubstantive changes.

SECTION 11. Amends Chapter 534B, Health and Safety Code, by adding Sections 534.0601, 534.0602, and 534.0603, as follows:

Sec. 534.0601. COORDINATION PROGRAM AUDITS OF LOCAL AUTHORITIES. Requires the department to coordinate with each agency or department of the state that contracts with a local mental health or mental retardation authority to prescribe procedures for a coordinated program audit of the authority. Sets forth requirements of the procedures. Requires a program audit to evaluate certain items. Requires a program audit of a local mental health or mental retardation authority to be performed in accordance with the procedures prescribed under this section. Prohibits the department from implementing a procedure for a program audit under this section without the approval of the Health and Human Services Commission. Provides that this section does not prohibit an agency, department, or other entity providing funding to a local mental health or mental retardation authority investigating a complaint against the authority or performing additional contract monitoring of the authority.

Sec. 534.0602. FINANCIAL AUDITS OF LOCAL AUTHORITIES. Requires the department to prescribe procedures for a financial audit of a local mental health or mental retardation authority. Requires the procedures to be consistent with requirements for the receipt of federal funding by the authority. Requires the department to develop the procedures with the assistance of each agency or department of the state that contracts with a local mental health or mental retardation authority. Requires the department to incorporate each agency or department's financial or compliance requirements for an authority into a single audit that meets the requirements of Section 534.068. Requires the department to set a deadline for agencies and departments of the state that contract with local mental health and mental retardation authorities to submit proposals relating to the procedure, before prescribing or amending a procedure under this section. Requires an agency or department of the state that contracts with a local mental health or mental retardation authority to comply with a procedure developed under this section. Prohibits the department from implementing a procedure under this section without the approval of the Health and Human Services Commission.

Sec. 534.0603. ADDITIONAL FINANCIAL AUDIT ACTIVITY. Requires the department to develop protocols for an agency or department of the state to conduct additional financial audit activities of a local mental health or mental retardation authority. Prohibits an agency or department of the state from conducting additional financial audit activities relating to a local mental health or mental retardation authority without the approval of the Health and Human Services Commission.

SECTION 12. Amends Section 534.061, Health and Safety Code, as follows:

Sec. 534.061. PROGRAM AND SERVICE MONITORING AND REVIEW OF CERTAIN COMMUNITY SERVICES. Requires the department to develop mechanisms for periodically monitoring the services of a provider who contracts with a local mental health or mental retardation authority. Requires the local mental health or mental retardation authority, rather than department, to monitor the services to ensure that the provider is delivering the services in a manner consistent with the provider's contract. Requires each provider contract involving the use of state funds or funds for which the state has oversight responsibility to authorize the local mental health or mental retardation authority or the authority's designee and the department's designee to have unrestricted access to all facilities, records, data, and other information under the control of the provider. Authorizes the department to withdraw funding from a local mental health or mental retardation authority that fails to cancel a contract with a provider involving the use of state funds or funds for which the state has oversight responsibility. Makes conforming and nonsubstantive changes.

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

Sec. 534.071. LOCAL AUTHORITY ADVISORY COMMITTEES. Authorizes a local mental health or mental retardation authority to appoint a committee to advise its governing board on a matter relating to the oversight and provision of mental health and mental retardation services. Provides that the appointment of a committee does not relieve the authority's governing board of a responsibility prescribed by this subtitle.

SECTION 14. Repealer: Section 532.008, Health and Safety Code (Prohibited Activities by Former Officer or Employees); Section 533.035(e), Health and Safety Code (requires the board to direct the commissioner to appoint a committee); Section 533.035(f), Health and Safety Code (requires the commissioner to make certain assurances); Section 533.035(g), Health and Safety Code (requires the plan approved by the committee to be submitted to the board for approval); Section 532.035(h), Health and Safety Code (requires the board to submit the approved plan to the Senate Health and Human Services Committee and the House Public Health by a certain date).

SECTION 15. Effective date: September 1, 1999.

SECTION 16. Emergency clause.