

As Overview of HB 2292 of the 78th Texas Legislative Session

Background Information

HB 2292 is a reorganization bill that outlines ways to consolidate and streamline the delivery of health and human services in Texas in order to create a more efficient network and save the state money. House Bill 2292 (Representative Arlene Wohlegemuth -R-Burleson) was initially filed on 3/11/03 and passed both Chambers on June 1, 2003. The Governor signed it on June 10, 2003.

While the bill stipulates many reforms and changes within the system, one of the most salient provisions pertains to the reorganization of the Texas Health and Human Services System and the resultant power extended to the Commissioner. In brief, the Commissioner is given total authority over the rulemaking and policy direction of HHS agencies, while individual agency directors and boards are stripped of these responsibilities. The consolidation of power with the Commissioner raises the concern that HHSC policy decisions will become less open to the public-in particular, the advocates who look out for the interests of the people these programs serve-more subject to the priorities of the Governor, over those of the legislature, and more susceptible to political considerations.

The Comptroller provided the impetus for the consolidation of the Commission through *the E-Texas Report*. This report indicated that the consolidation was initially designed to:

- Bring together similar services and activities and simplify the bureaucracy to channel more funding to direct services for vulnerable populations;
- Consolidate the support structures of each HHS agency, eliminating duplication and improving their cost-effectiveness; and
- Challenge each consolidated agency to make its primary organizational goal the efficient and effective delivery of services to all Texans, rather than simple compliance with federal mandates and ill-planned responses to the demands of various interest groups.

Summary of Systems Reorganization

Currently, the Health and Human Services system consists of 11 agencies and the Commission. HB 2292 reduces the number to 4 agencies plus the Commission which are listed below.

The “Commissioner” becomes the “Executive Commissioner” (EC) and the title “agency director” replaces the title “commissioner” at each of the 4 newly created agencies. The EC will appoint each agency director.

A transition plan for transfer/consolidation is to be developed by the EC of the HHSC and submitted to the Governor and the Legislative Budget Board not later than December 1, 2003. It is anticipated that implementation dates will be addressed in the plan. Other than the aforementioned dates, HB 2292 does not specify timelines for the consolidation.

The Health and Human Services Transition Legislative Oversight Committee is created to facilitate the transfer of powers, duties, functions, programs, and activities between the state's health and human services agencies and HHSC with a minimal negative effect on the delivery of services. **The Committee is composed of 7 members as follows: two members of the Senate, 2 members of the House, 3 members of the public, all to be appointed by October 1, 2003.**

A public hearing and public comments regarding the transition plan must be held not later than November 1, 2003.

Below is a list of the four newly created agencies and those agencies that will be "absorbed" into the new organizations. Each agency will have its own Commissioner and its own "Council" which will replace the existing policy Boards. Each Council shall consist of 9 members from the public appointed by the Governor with the advice and consent of the Senate. The Governor shall designate 3 members for terms expiring February 1, 2005, three members for terms expiring February 1, 2007, and three members for terms expiring February 2009.

HHSC New Agencies

I. Department of Aging and Disability Services

All powers and duties of the following entities shall be transferred to the Department of Aging and Disability Services:

- Texas Department of Human Services, related to providing long-term care services and community-based support and services.
- TDMHMR related to providing mental retardation services, including state school administration and services and community residential services.
- Texas Department on Aging.

II. State Health Services

All powers and duties of the following entities shall be transferred to the Department of State Health Services:

- Texas Department of Health
- TDMHMR, relating to providing mental health services
- Texas Commission on Alcohol and Drug Abuse
- Texas Health Care Information Council

III. Department of Assistance and Rehabilitation Services

All powers and duties of the following entities shall be transferred to the Department of Assistance and Rehabilitation Services:

- Texas Rehabilitation Commission
- Interagency Council on Early Childhood Intervention
- Texas Commission of the Blind
- Texas Commission for the Deaf and Hard of Hearing

IV. Department of Family and Protective Services

- Department of Protective and Regulatory Services

Note: This is a name change only. There is no reallocation of other agencies.

Key Regulatory Provisions of HB 2292

Exemption from HCSSA Licensure Sections 2.55, 2.56, 2.68, 2.69, & 2.73

These sections exempt HCS/MRLA providers from compliance with HCSSA licensure, continue current licensure fee, renaming it as a compliance fee so there is no change in incoming revenues to the state, and allow for HCS/MRLA providers to continue access to the misconduct registry.

Medical Assistance Payments Section 2.03

This section allows private provider flexibility in the spending of reimbursement rates in the event of a rate reduction. It does not eliminate current financial performance standards (i.e., fiscal accountability), but provides for provider determination, during times of state fiscal constraint, in how best funds are spent by providers in maintaining quality service delivery. This section further allows the Commission to adjust the fees, charges, and rates paid to Medicaid providers as necessary to achieve the objectives of the Medicaid program in a manner consistent with the considerations for payments, fees, charges and rates in accordance with formulas and methodologies prescribed by the Commissioner's rules.

Dual Role of MRA as Authority and Provider Sections 2.74, 2.82 & 2.82 A

This section requires the authority to serve as a provider of services only as a provider of last resort and only if it can demonstrate to the department that it has made every reasonable attempt to solicit development of an available provider base and there is no

willing provider of the relevant services in the service area. According to the provisions in this section, if feasible and economical, the department may use local mental health and mental retardation authorities to implement this chapter; however, the department may not designate a local mental health or mental retardation authority as a provider of services if other providers are available. This section further requires that a plan be developed to privatize all ICF/MR and related waiver services operated by an authority and that the transfer of these services to the private sector may not occur on or before August 1, 2006.

Allocation of Duties Under Certain Medicaid Waiver Programs
Section 2.76

This section requires the department to restructure the MRLA program allocating current duties of the Local Authority (LA) to the provider and the state authority as well as re-examining the rate paid to the local authority and that paid to the provider for the duties that they each perform. Duties are allocated as follows:

Provider: Develop PDP and IPC, complete service justifications and implement the IPCs, serve as case manager except for those functions performed by the LA.

Local Authority: Manage the waiting list, complete choice process; provide case management as such relates to funding disputes.

State Authority: Performs all other administrative functions to include survey and certification and Utilization Review. The department shall allocate the portion of the gross reimbursement funds paid to a local authority and a service provider for client services for the case management function in accordance with section 2.76 and to the extent allowed by law.

QAF for State Schools
Sections 2.64-2.67

A quality assurance fee will be applied on each facility owned by TDMHMR. HHSC may use the money in the quality assurance fund, together with any federal money available to, among other things, 1) match that money to increase reimbursement rates paid under the Medicaid program to facilities or waiver programs for persons with mental retardation, 2) use for any other purpose approved by the Governor and the Legislative Budget Board, and 3) if used to increase a reimbursement rate in the Medicaid program, ensure that the reimbursement methodology used to set that rate describes how the money in the fund will be used to increase the rate and provides incentives to increase direct care wages and benefits.

Privatization of a State School & a State Hospital
Sections 2.77 & 2.78

These sections allow for the privatization of one state school and one state hospital providing the private service entity can demonstrate that it can operate the state school or

state hospital at a cost that is 25% less than the cost to the department to operate the same facilities. On or before April 1, 2004, the department shall report to the Commissioner whether the department has received a proposal from a private service provider to operate a state school or state hospital. The timelines regarding these sections are as follows: After August 31, 2004 and before September 1, 2005, the department may contract with a private service provider to operate either a state school or a state hospital.

Note: An earlier provision of HB 2292 to eliminate the ICF/MR Sanction Team was removed from the final engrossed version by an amendment by Senator Todd Staples, - R- Palestine.

Implementation Timelines

Unless specified elsewhere in the text of the summaries provided and with the exception of the following, all HB 2292 provisions become effective on September 1, 2003:

Section 1.29(b, which reads as follows, becomes effective September 1, 2006: The Department of State Health Services, the Department of Assistive and Rehabilitative Services, and the Department of Aging and Disability Services are created on the date the executive commissioner of HHSC appoints the commissioner of the respective agency.

Sections 2.82 and 2.82 A, which read as follows, become effective September 1, 2006:

2.82 – Section 534.001(b), Health and Safety Code, is amended to read as follows:
(b) In accordance with this subtitle, a [A] community center may be: (1) a community mental health center that provides mental health services; (2) a community mental retardation center that provides mental retardation services; or (3) a community mental health and mental retardation center that provides mental health and mental retardation services.

Section 2.82 A - Section 535.002(b), Health and Safety Code, is amended to read as follows: (b) If feasible and economical, the department may use local mental health and mental retardation authorities to implement this chapter. However, the department may not designate a [those] local mental health or [and] mental retardation authority [authorities] as a provider [the sole providers] of services if other providers are available.

Sections 2.77 and 2.78 (as detailed on pages 4 & 5 of this document) which allow for the privatization of a state school and state hospital take effect September 1, 2004.

A detailed copy of HB 2292 can be accessed at www.house.state.tx.us under Bill Search or by calling the PPAT office.