

SUBJECT: Delegation of authority over the Medicaid program

COMMITTEE: Human Services - favorable, without amendment

VOTE: 8 ayes — Hilderbran, Naishtat, Davila, Denny, J. Jones, Krusee, Maxey,
Wohlgemuth

0 nays

1 absent — Park

SENATE VOTE: On final passage, February 20 - 30-0

WITNESSES: (On House companion, HB 1202)

For — Pamela M. Brown, Texas Legal Services Center, Austin, for
Houston Welfare Rights Organization.

Against — None

On — DeAnn Friedholm, Health and Human Services Commission.

BACKGROUND: In 1991 the Legislature reorganized Texas health and human service programs, placing many state agencies under a new umbrella department called the Health and Human Services Commission (HHSC). HHSC is the state agency designated to administer Medicaid, a state-federal health care program for the poor.

In September 1994 HHSC transferred Intermediate Care Facilities for the Mentally Retarded (ICF-MR) from the Department of Human Services (DHS) to the Department of Mental Health and Mental Retardation (TxMHMR). TxMHMR was given power to promulgate reimbursement rates for ICF-MR providers.

After authority was transferred to TxMHMR, private providers of residential care programs added the agency as a defendant in a suit they had filed against DHS over rate-setting issues. The providers claimed that HHSC lacked statutory authority to transfer rate-setting authority to a state agency and that TxMHMR lacked authority to promulgate reimbursement rates. In January State District Judge Scott McCown of Austin concurred

with the providers, and ruled that the agencies lacked the needed statutory authority.

DIGEST: SB 509 would explicitly state that the Legislature intended to give HHSC the authority to delegate to any health and human services agency the authority to operate or assist in the operation of any Medicaid program.

The bill would validate previous transfers of programs made by HHSC to various state agencies and specifically validate the transfer of the ICF-MR program from HHSC to TxMHMR. The bill would also validate all actions taken in reliance on the transfers.

Agencies designated by HHSC would have all of the powers and duties that relate to the operation of the Medicaid program, including the power and duty to set rates. The bill would clarify that HHSC, not DHS, is charged with authorizing and supervising the delivery of voucher payments to vendors.

The bill would add definitions to the Human Resources Code to clarify that HHSC or its designated agencies have authority over the state's medical assistance program. The bill would designate HHSC as the department charged with working in consultation with the Medicaid Analysis and Cost Control Unit of the Legislative Budget Board to initiate the planning for a Medicaid managed care demonstration project. The bill would designate HHSC, rather than DHS, as the receiver of funds from public hospitals for the use as state share under the Medicaid disproportionate share program.

The bill would require public hospitals to comply with the Minimum Licensing Standards as mandated by Chapter 242, Health and Safety Code and the Medicaid standards for nursing home certification, as promulgated by HHSC rather than DHS.

SB 509 would take effect immediately, if approved by a two-thirds vote of the membership of each house.

SUPPORTERS SAY: SB 509 was drafted in response to Judge McCown's ruling to clarify for him and others that the Legislature's intent when creating HHSC in 1991 was to authorize the commission to transfer programs among agencies in order to construct an effective and efficient human services delivery system. Otherwise, many of the provisions in the Human Resources Code make

little sense. This legislation is not retroactive; it only clarifies what was always the Legislature's intent.

To run a more effective and efficient human services delivery system TxMHMR should be fully responsible for the ICF-MR program. The agency already directs the policy, employs the workers, has been appropriated the funding and runs the institutions for mentally retarded citizens.

As the single state agency designated to administer Medicaid, HHSC must have the flexibility to transfer programs among state agencies to promote the most efficient and effective delivery of Medicaid services.

Quick action on this legislation is needed to comply with the state's Medicaid plan and to allow TxMHMR to adopt 1995 rates for the ICF-MR program at its March meeting.

**OPPONENTS
SAY:**

Judge McCown has already ruled as invalid HHSC's attempt to move the rate-setting function from one agency to another. He invalidated TxMHMR's authority to set rates and upheld the authority of DHS to set them. For the Legislature to attempt to belatedly reinterpret these statutes and validate retroactively actions already ruled invalid by the courts would be an invasion of the court's authority and a possible violation of the constitutional separation of powers doctrine.

Case law holds that one legislature does not have the power to construe the acts or declare the intent of a previous legislature and make such interpretation retroactive.