

SUBJECT: TxMHMR contract authority with local providers

COMMITTEE: Public Health — committee substitute recommended

VOTE: 5 ayes — Berlanga, Hirschi, Davila, Delisi, Glaze

0 nays

4 absent — Coleman, Janek, Maxey, Rodriguez

WITNESSES: For — Joe Lovelace, Charles Locklin, Texas Alliance for the Mentally Ill; Spencer McClure, Texas Council of Community Mental Health and Mental Retardation Centers

Against — None

On — Cindy Alexander, Office of the Comptroller; Don Gilbert, Texas Department of Mental Health and Mental Retardation

BACKGROUND : The Texas Department of Mental Health and Mental Retardation contracts with community mental health and mental retardation centers for the local delivery of services. Community centers are run by local boards and receive some local funding; they also contract with other state agencies to provide services.

The department requires program review and management audits to assure that contracted community centers have in place reasonable and appropriate fiscal controls, and specifies performance standards to ensure the provision of specific services to priority populations.

Mental health authorities and mental retardation authorities are entities to which the board has delegated its authority and responsibility within a specified region for planning, policy development, coordination and provision of mental health or mental retardation services. Such authorities may contract with private providers for the delivery of services. The department is required to periodically monitor services provided by a private provider to ensure services are being delivered in a manner consistent with the contract.

**DIGEST:** CSHB 2226 would authorize the department to withhold funding to a community center or authority if the center or authority has failed to deliver services to the satisfaction of the commissioner.

The center or authority could appeal the department's decision to withhold funds, under appeal procedures prescribed by the board of mental health and mental retardation. Filing of an appeal would stay the imposition of the department's decision to withhold funds. However, the department could limit general revenue funding during the appeal or could withhold all funding if the board approved.

The department also could appoint a management team to manage and operate a community center if the center had wilfully or negligently failed to discharge contract duties; misused state or federal funding; engaged in fraud; endangered a client's safety; failed to keep required fiscal records or maintain proper fiscal controls; or failed to respond to other applicable law and rules. The management team would report monthly to the commissioner and local board. The commissioner would have to evaluate monthly whether to restore center management to the local board. All costs of the management team would be paid by the center. The center could appeal an appointment of the management team.

CSHB 2226 would require the local mental health or mental retardation authority, instead of the department, to monitor contracted provider services. All providers, not just private providers, would be monitored. Each provider contract would have to authorize unrestricted access to all facilities and records to the authority as well as to the department.

The bill would take effect September 1, 1997.

**SUPPORTERS SAY:** CSHB 2226 would give the Texas Department of Mental Health and Mental Retardation (TxMHMR) much needed authority and flexibility to adequately oversee the spending of state and federal funding allocations to local providers. In rare cases of gross mismanagement by local authorities or centers, as happened recently in South Texas, the only option now available to the department to protect state and federal funds is to terminate contracts, which is extremely disruptive to the individuals dependent upon TxMHMR services.

An intervention by an appointed management team is a reasonable course of action that has been successfully used by the Texas Education Agency when handling gross mismanagement in school districts. It would only be applied in cases of severe problems, as specifically described by this bill. Problems of this nature require on-site monitoring and administration because they are usually the result of an entity's unwillingness or inability to take necessary governance, management and fiscal actions.

State intervention would be further limited, and local authority oversight maintained, by the following provisions:

- a center could appeal the commissioner's decision to appoint a management team;
- the management team would be required to report on a monthly basis to both the commissioner and the local board; and
- the commissioner would have to terminate the activities of the management team when the specified problems of gross management no longer exist.

OPPONENTS  
SAY:

CSHB 2226 should be more narrowly written to limit the commissioner's and board's discretion in withholding funding to local entities and to limit the commissioner's latitude in intervening in local affairs with a management team. Some areas, especially large urban counties, provide a substantial amount of funding and oversight to their local authorities, which should not be easily usurped by state intervention.

OTHER  
OPPONENTS  
SAY:

The bill should be amended to also improve consumer representation on the local mental health and mental retardation authority boards. Due to local political pressures, consumers are often under-represented or inappropriately represented by individuals with interests that conflict with true consumer concerns.

NOTES:

The committee substitute addresses issues similar to those in the original version but contains virtually none of the original provisions. The original version of the bill would have added two other consumer members to the board's composition; would have directed the department's use of space; required mental health or mental retardation authorities to develop a long-range plan for services; authorized the board to establish penalties for

contract violations by providers of community-based services; required the department to institute a voucher system to promote consumer choice in services; and established authority for state conservatorship of substandard local provider facilities under contract with the state.

The companion bill, SB 940 by Nelson, passed the Senate on May 5 and has been referred to the House Public Health Committee. It was amended on the Senate floor to exempt mental health and mental retardation authorities and community centers in counties with populations more than 2.8 million people (Harris County).