

BILL ANALYSIS

Senate Research Center

C.S.S.B. 369
By: Zaffirini
Human Services
4/22/1999
Committee Report (Substituted)

DIGEST

The Department of Human Services (department) was created by the legislature in 1939 and is primarily responsible for determining eligibility and certifying that clients are eligible to receive long term care and public assistance benefits. The department administers more than 30 state and federally-funded programs designed to benefit low-income families and children, people who are elderly or disabled, and victims of family violence. The department has approximately 15,840 employees and a budget of \$3.5 billion for fiscal year 1999 and is governed by a six-member Board of Human Services. The department is subject to the Sunset Act and will be abolished on September 1, 1999 unless continued by the legislature. As a result of its review of the Department of Human Services, the Sunset Advisory Commission recommended continuation of the department and several statutory modifications.

PURPOSE

As proposed, C.S.S.B. 369 sets forth provisions for the continuation and functions of the Texas Department of Human Services.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas Department of Human Services in SECTIONS 5, 12, 13, and 22 (Sections 22.0071(a), 32.0212(a) and (c), and 32.0251(b), Human Resources Code, and Section 242.0611, Health and Safety Code).

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 21.002, Human Resources Code, to provide that the Texas Department of Human Resources (department) is abolished and that this title, excluding any chapter that relates to a state agency other than the department, expires on September 1, 2011, unless continued as provided by Chapter 325, Government Code.

SECTION 2. Amends Sections 21.003(b) and (d), Human Resources Code, to add standard language developed by the Sunset Advisory Commission requiring the governor to designate the presiding officer of the Texas Board of Human Services (board). Requires one member of the board to be a licensed physician with expertise in geriatric care and another member must be a health care professional who is licensed, certified, or regulated by a health care regulatory agency.

SECTION 3. Amends Chapter 21, Human Resources Code, by adding Section 21.0033, to add standard language developed by the Sunset Advisory Commission requiring the members of the board to complete training before assuming their duties.

SECTION 4. Amends Chapter 21, Human Resources Code, by adding Section 21.0061, as follows:

Sec. 21.0061. REGIONAL PERFORMANCE AGREEMENTS WITH LOCAL ADMINISTRATIVE UNITS. Requires the Commissioner of Human Services (commissioner) and the administrator of each local administrative unit of the department to enter into a regional performance agreement that includes goals, objectives, and performance criteria established by the commissioner under Subsection (b) of the unit. Requires the commissioner to establish and biennially update goals, objectives, and performance criteria for each local administrative unit of the department. Sets forth the objectives of the goals, objectives, and performance criteria. Sets forth, in developing the goals, objectives, and performance criteria under Subsection (b), that there be certain parties the commissioner is required to seek input from. Requires the commissioner to

assess the performance of each local administrative unit based on the goals, objectives, and performance criteria in the regional performance agreement between the commissioner and the administrator of that unit. Requires the commissioner to include the results of each assessment in the report on the operation and administration of the department required under Section 21.011. Requires the commissioner to consider the goals, objectives, and performance criteria in each regional performance agreement and the performance of each local administrative unit based on those standards when evaluating and establishing regional funding allocations. Requires the department to inform health and human services agencies, as defined by Section 531.001, Government Code, and the general public in each region of the contents of the regional performance agreement for that region.

SECTION 5. Amends Chapter 22, Human Resources Code, by adding Section 22.0071, as follows:

Sec. 22.0071. **CONTRACTS FOR COMMUNITY CARE SERVICES.** Requires the department, by rule, to develop and implement a system to limit the number of direct providers of department community care services. Sets forth the department's required assurances that a sufficient number of direct providers are available to meet certain service needs. Sets forth the required information to be included in a contract for the delivery of community care services under a department program. Requires the department to monitor a community care provider's performance under a contract for the delivery of community care services. Sets forth the required performance monitoring techniques of the department.

SECTION 6. Amends Section 22.018, Human Resources Code, as follows:

Sec. 22.018. New heading. **COOPERATION WITH STATE OFFICE OF ADMINISTRATIVE HEARINGS.** Requires the department and the chief administrative law judge of the State Office of Administrative Hearings (SOAH) to adopt a memorandum of understanding under which SOAH, on behalf of the department, conducts all contested case hearings authorized or required by law to be conducted by the department under the administrative procedure law, Chapter 2001, Government Code. Requires the memorandum of understanding to require the chief administrative law judge, the department, and the commissioner to cooperate in connection with a contested case hearing and may authorize SOAH to perform any administrative act, including giving of notice, that is required to be performed by the department or commissioner. Requires the administrative law judge who conducts a contested case hearing for SOAH on behalf of the department to take certain actions. Requires the department by interagency contract to reimburse SOAH for the costs incurred in conducting contested case hearings by the department. Authorizes the department to pay an hourly fee for the costs of conducting those hearings or a fixed annual fee negotiated biennially by the department and SOAH to coincide with the department's legislative appropriations request. Provides that a reference in law to the hearings division of the department is considered to be a reference to SOAH when used in relation to a contested case hearing under the administrative procedure law, Chapter 2001, Government Code.

SECTION 7. Amends Section 31.0032, Human Resources Code, by adding Subsection (d), to require the department to give the highest priority to the administrative processing of sanctions or penalties applied under this section so that the department's records of the affected person promptly reflect application of the sanctions or penalties.

SECTION 8. Amends the heading to Section 31.0095, Human Resources Code, as follows:

Sec. 31.0095. New heading: **EMPLOYABILITY NEEDS ASSESSMENT.**

SECTION 9. Amends the heading to Section 31.010, Human Resources Code, as follows:

Sec. 31.010. New heading: **SUPPORT SERVICES RELATED TO EMPLOYABILITY OF A RECIPIENT.**

SECTION 10. Amends Chapter 31A, Human Resources Code, by adding Section 31.011, as follows:

Sec. 31.011. **PERSONAL AND FAMILIAL NEEDS ASSESSMENT AND SUPPORT SERVICES.** Requires the department to assist a recipient of financial assistance in assessing the

needs, other than employability needs assessed under Section 31.0095, of the recipient and the recipient's family that, if addressed, would help the recipient and the recipient's family to attain and retain the capability of independence and self-care. Requires the department, based on the needs assessment under this section, to refer a recipient and a recipient's family to appropriate preventive and support services provided by the department or any other public or private entity. Sets forth the preventive and support services to which the department is authorized to refer a recipient and a recipient's family under this section.

SECTION 11. Amends Chapter 31A, Human Resources Code, by adding Section 31.0127, as follows:

Sec. 31.0127. COORDINATION OF SERVICES TO TANF CLIENTS. Provides that in order to ensure efficient delivery of appropriate programs and services, the Health and Human Services Commission (commission) is the state agency designated to coordinate between the department and any other state agency which provides programs or services to a Temporary Assistance for Needy Families (TANF) client who is receiving a cash grant and who has been referred by the department to another state agency. Requires any state agency providing programs or services to TANF clients who are receiving a cash grant and who have been referred by the department to comply with Chapter 531, Government Code, with regard to those programs and services. Provides that if implementation of this section with regard to any program or service conflicts with federal law, the state agency is not required to comply with this section with regard to that program or service.

SECTION 12. Amends Chapter 32B, Human Resources Code, by adding Section 32.0212, as follows:

Sec. 32.0212. CONTRACTS FOR NURSING FACILITY CARE; QUALITY ASSESSMENT. Requires the department, by rule, to develop minimum performance standards for a nursing facility that contracts with the department for the delivery of medical assistance. Sets forth the required appropriate performance data collected by the department or another agency to be used in developing the minimum performance standards. Requires a contract with the department for the delivery of medical assistance by a nursing facility to include the performance standards developed under Subsection (a). Requires the department, by rule, to develop and implement a quality assessment process to evaluate the performance of a nursing facility that contracts with the department for the delivery of medical assistance. Sets forth the required appropriate performance data collected by the department or any other agency to be used in developing the process. Sets forth the ways in which the department is required to address a nursing facility's failure to meet minimum performance standards.

SECTION 13. Amends Chapter 32B, Human Resources Code, by adding Section 32.0251, as follows:

Sec. 32.0251. COMMUNITY CARE SERVICES FOR THE ELDERLY AND DISABLED. Requires the department to inform an applicant for medical assistance seeking nursing facility care of any community care services that may be available to the applicant as an alternative to nursing facility care. Requires the department, by rule, to develop and implement a process of presumptive eligibility determination for appropriate elderly or disabled applicants for community care services. Requires the department to design a plan of care for an applicant for community care services based on needs of the applicant identified by the department. Requires the plan of care to be adjusted promptly as necessary based on any change in the applicant's physical condition or need for service, whether identified by the department during a periodic reassessment of the applicant's condition or at any other time. Requires the department to maintain a waiting list for the services, if community care services are not readily available for an elderly or disabled applicant because of a high demand for services. Requires the department to collect from each applicant who is placed on the waiting list appropriate information to facilitate contacting the applicant when the services become available and to allow efficient enrollment of the applicant in those services.

SECTION 14. Amends the heading to Chapter 51, Human Resources Code, as follows:

Chapter 51. New heading: FAMILY VIOLENCE CENTERS.

SECTION 15. Amends Section 51.002, Human Resources Code, to define "family violence center," "family violence nonresidential center," and "family violence." Redefines "family violence shelter center." Makes conforming changes.

SECTION 16. Amends Section 51.003, Human Resources Code, to require the department to contract for services with family violence centers with consideration given to geographic distribution and need. Requires activities contracted for under this subsection to include, rather than to require, the provision of technical assistance and training for family violence centers. Authorizes the department, to contract for certain provisions. Requires the department to award all contracts made under Subsection (b) through a competitive bidding process unless that process would not be cost-effective. Makes conforming changes.

SECTION 17. Amends Section 51.004, Human Resources Code, to require, to be eligible for a contract under Section 51.003(a), a family violence shelter center to: provide temporary lodging and social services for adults and their children who have left or have been removed from the family home because of family violence; have been in actual operation offering shelter services 24 hours a day with a capacity for not less than five persons for at least nine months before the date on which the contract is awarded; and submit contract application on forms prescribed by the department. Sets forth certain actions a family violence nonresidential center is required to provide to be eligible for a contract under Section 51.003(a). Sets forth the department's required considerations of certain factors in awarding contracts under Section 51.003(a). Requires the department to include a family violence nonresidential center in the noncompetitive procurement procedure under Subsection (d), if a family violence nonresidential center provides services that would not be otherwise available in the service area. Requires the department to include the family violence nonresidential center in the noncompetitive procurement procedure under Subsection (d), if the department determines that a family violence nonresidential center provides services that would not be otherwise available in the service area. Deletes text requiring a contract application to be submitted on forms prescribed by the department. Makes conforming changes. Deletes text requiring, to be eligible for a contract under Section 51.003(a) of this code, public or private nonprofit organization to operate a family violence center that provides certain lodging and social services for adults and their children.

SECTION 18. Amends Section 51.005, Human Resources Code, to make conforming changes.

SECTION 19. Amends Section 51.006, Human Resources Code, to make a conforming change.

SECTION 20. Amends Section 51.007, Human Resources Code, to make a conforming change.

SECTION 21. Amends Chapter 51, Human Resources Code, by adding Section 51.012, as follows:

Sec. 51.012. COORDINATION OF SERVICES. Requires the department and the Department of Protective and Regulatory Services to coordinate the provision of violence prevention services for children and youth.

SECTION 22. Amends Chapter 242C, Health and Safety Code, by adding Section 242.0611, as follows:

Sec. 242.0611. RULE-BASED CRITERIA FOR ENFORCEMENT REMEDIES. Requires the department to develop criteria, published in rules, regarding circumstances that trigger the imposition of each of the remedies available to the department.

SECTION 23. Amends Chapter 242C, Health and Safety Code, by adding Section 242.074, as follows:

Sec. 242.074. USE OF REGULATORY REPORTS AND DOCUMENTS. Provides that, except as otherwise provided by this section, a report or other document prepared by the department that relates to regulation of an institution is not admissible as evidence in a civil action to prove that the institution violated a standard prescribed under this chapter. Sets forth information Subsection (a) does not apply to or prohibit.

SECTION 24. Amends Section 242.309, Health and Safety Code, as added by Section 1.01, Chapter 1280, 75th Legislature, Regular Session, 1997 (effective until federal determination of failure to comply with federal regulations), to add standard language developed by the Sunset Advisory Commission regarding provisional license.

SECTION 25. Amends Section 242.310, Health and Safety Code, as added by Section 1.01, Chapter 1280, 75th Legislature, Regular Session, 1997 (effective until federal determination of failure to comply with federal regulations), to add standard language developed by the Sunset Advisory Commission regarding license renewal.

SECTION 26. Amends Section 242.314, Health and Safety Code, as added by Section 2.01, Chapter 1280, 75th Legislature, Regular Session, 1997 (effective until federal determination of failure to comply with federal regulations), to add standard language developed by the Sunset Advisory Commission regarding a provisional license.

SECTION 27. Amends Section 242.315, Health and Safety Code, as added by Section 2.01, Chapter 1280, 75th Legislature, Regular Session, 1997 (effective until federal determination of failure to comply with federal regulations), to add standard language developed by the Sunset Advisory Commission regarding license renewal.

SECTION 28. Amends Chapter 242, Health and Safety Code, by adding Subchapter Q, as follows:

SUBCHAPTER Q. PUBLIC ACCESS TO QUALITY OF SERVICE INFORMATION

Sec. 242.901. COMPILATION OF QUALITY OF SERVICE INFORMATION. Requires the department to compile and periodically update regulatory and service quality information regarding nursing facilities licensed under this chapter for review by the public. Requires the department to consult with nursing facility residents, their families, nursing facility providers, and advocacy groups in determine the types of information to compile. Provides that this subsection applies only to regulatory and service quality information that is public information subject to public disclosure under Chapter 552, Government Code. Requires the department to compile the compilation required under Subsection (a) in a format that is readily accessible to and understandable by a member of the general public. Sets forth the required information to be included in information in the compilation required under Subsection (a) which is useful to a member of the general public in selecting a nursing facility. Provides that the cost incurred by a nursing facility in maintaining and reporting regulatory and service quality information required under this section is an allowable cost for retirement under the state Medicaid program.

Sec. 242.902. ACCESS TO QUALITY OF SERVICE INFORMATION. Requires the department to make copies of the information compiled under Section 242.901 available to the public on request. Sets forth the required manner in which the department will provide access to the information.

SECTION 29. Amends Section 30.05(b)(3), Penal Code, to redefine “shelter center.”

SECTION 30. Repealer: Section 32.025(c), Human Resources Code (Requires the department to inform applicants of certain information).

SECTION 31. Makes application of this Act prospective.

SECTION 32. (a) Makes application of this Act prospective; however, this Act does not prohibit a person who is a member of the board on September 1, 1999, from being reappointed to the board.

(b) Requires the governor, in filling the first two vacancies on the board that occur after the effective date of this Act, to ensure that the composition of the board after those vacancies are filled complies with the requirements of Section 21.003(b), Human Resources Code, as amended by this Act.

SECTION 33. (a) Requires the department, not later than January 1, 2000, to develop and implement the system required by Section 22.0071(a), Human Resources Code, as added by this Act.

(b) Makes application of this Act prospective.

SECTION 34. Makes application of contested case hearings under Section 22.018, Human Resources Code, prospective to January 1, 2000. Authorizes the commission and the chief administrative law judge of SOAH to agree to transfer contested cases pending before the department to SOAH before January 1, 2000.

SECTION 35. Makes application of this Act prospective.

SECTION 36. Requires an agency affected by a provision, if, before implementing any provision of this Act, a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, to request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 37. (a) Effective date:: September 1, 1999, except as provided by Subsection (b) of this section.

(b) Effective date of SECTIONS 27 and 31: January 1, 2000.

SECTION 38. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 1.

Amends Section 21.002, Human Resources Code, to provide that the department is abolished and that this title, excluding any chapter that relates to a state agency other than the department, expires on September 1, 2011, rather than the proposed September 1, 2007 unless continued as provided by Chapter 325, Government Code.

SECTION 5.

Amends Section 22.0071, Chapter 22, Human Resources Code, by deleting proposed Subsection (a), and replacing it with text requiring the department, by rule, to develop and implement a system to limit the number of direct providers of department community care services. Sets forth the department's required assurances that a sufficient number of direct providers are available to meet certain business needs.

SECTION 6.

Amends Section 22.018, Human Resources Code, to delete a provision that Subsection (a) is subject to the provisions of Subsection (e).

SECTION 7.

Amends Section 31.0032, Human Resources Code, by deleting proposed text regarding amending Subsection (a).

SECTION 10.

Amends Section 31.011, Chapter 31A, Human Resources Code, to set forth the preventive and support services to which the department is authorized to refer a recipient and a recipient's family under this section, including any other program or service determined by the department as appropriate.

SECTION 11.

Amends Chapter 31A, Human Resources Code, by adding Section 31.0127, regarding coordination of services to TANF clients.

SECTION 12.

Adds a new heading. Amends Section 32.0212, Chapter 32B, Human Resources Code, to set forth the required appropriate performance data collected by the department or another agency to be used in developing the minimum performance standards. Deletes proposed Subsection (c) and replaces with text requiring the department, by rule, to develop and implement a quality assessment process to evaluate the performance of a nursing facility that contracts with the department for the delivery of medical assistance. Sets forth the required appropriate performance data collected by the department or any other agency to be used in developing the process.

Deletes text requiring the department to promptly address a nursing facility's failure to meet minimum performance standards by issuing a corrective action plan detailing the actions required of the nursing facility to comply with the minimum performance standards.

SECTION 13.

Redesignated from proposed SECTION 12. Amends Section 32.0251, Chapter 32B, Human Resources Code, deleting proposed Subsections (c) and (d) and replacing them with text requiring the department to design a plan of care for an applicant for community care services based on needs of the applicant identified by the department. Requires the plan of care to be adjusted promptly as necessary based on any change in the applicant's physical condition or need for service, whether identified by the department during a periodic reassessment of the applicant's condition or at any other time. Requires the department to maintain a waiting list for the services, if community care services are not readily available for an elderly or disabled applicant because of a high demand for services. Requires the department to collect from each applicant who is placed on the waiting list appropriate information to facilitate contacting the applicant when the services become available and to allow efficient enrollment of the applicant in those services.

SECTION 14.

Redesignated from proposed SECTION 13.

SECTION 15.

Redesignated from proposed SECTION 14. Amends Section 51.002, Human Resources Code, by deleting the proposed definition of "victim of family violence," and replacing it with text defining "family violence." Redefines "family violence center" and "family violence shelter center."

SECTION 16.

Redesignated from proposed SECTION 15. Amends Section 51.003, Human Resources Code, to require the department to award all contracts made under Subsection (b) through a competitive bidding process unless that process would not be cost-effective.

SECTION 17.

Redesignated from proposed SECTION 16. Amends Section 51.004, Human Resources Code, to set forth certain actions a family violence nonresidential center is required to provide to be eligible for a contract under Section 51.003(a), including providing, as its primary purpose, direct delivery of services to victims of family violence that, at a minimum, include assistance and support in accessing legal services, including accompanying victims in appropriate circumstances; having been providing comprehensive services, including services described by Subdivision (1), to victims of family violence for at least two years before the date on which the contract is awarded; and demonstrating that the center, through the services it provides, is addressing an otherwise unmet need in the community. Replaces proposed Subsection (e) with text requiring the department to include the family violence nonresidential center in the noncompetitive procurement procedure under Subsection (d), if the department determines that a family violence nonresidential center provides services that would not be otherwise available in the service area.

SECTION 18-20

Redesignated from proposed SECTIONS 17-19.

SECTION 21.

Redesignated from proposed SECTION 20. Amends Section 51.012, Chapter 51, Human Resources Code, by deleting the proposed text for it, and replacing it with text requiring the department and the Department of Protective and Regulatory Services to coordinate the provision of violence prevention services for children and youth.

SECTION 22.

Amends Chapter 242C, Health and Safety Code, by adding Section 242.0611, regarding rule-based criteria for enforcement remedies.

SECTION 23.

Amends Chapter 242C, Health and Safety Code, by adding Section 242.074, regarding the use of regulatory reports and documents.

SECTION 24.

Redesignated from proposed SECTION 21. Amends Section 242.309, Health and Safety Code, as added by Section 1.01, Chapter 1280, 75th Legislature, Regular Session, 1997 (effective until federal determination of failure to comply with federal regulations), to require the board, rather than authorize the board, to issue a provisional license to a certain applicant.

SECTION 25.

Redesignated from proposed SECTION 22.

SECTION 26.

Redesignated from proposed SECTION 23. Amends Section 242.314, Health and Safety Code, as added by Section 2.01, Chapter 1280, 75th Legislature, Regular Session, 1997 (effective until federal determination of failure to comply with federal regulations), to require the board, rather than authorize the board, to issue a provisional license to a certain applicant. Requires the board to issue a license under this subchapter to the provisional license holder if the provisional license holder is eligible to be licensed under Section 242.311, rather than 242.311(c).

SECTION 27.

Redesignated from proposed SECTION 24.

SECTION 28.

Redesignated from proposed SECTION 25. Amends Chapter 242Q, Health and Safety Code, to require the department to consult with nursing facility residents, their families, nursing facility providers, and advocacy groups in determine the types of information to compile. Sets forth the required information to be included in information in the compilation required under Subsection (a) which is useful to a member of the general public in selecting a nursing facility, including complaint information, including the number of complaints received, outcomes of investigations of the complaints, final sanction information, and percentage of complaints that were unsubstantiated; and violations or deficiencies cited by a validation survey that were dismissed or overturned, resident outcome improvements; and the amount of volunteer activity and involvement. Provides that the cost incurred by a nursing facility in maintaining and reporting regulatory and service quality information required under this section is an allowable cost for retirement under the state Medicaid program.

SECTION 29.

Redesignated from proposed SECTION 28. Deletes proposed SECTIONS 26-27, and 29.

SECTION 31.

Redesignated from proposed SECTION 33. Deletes proposed SECTIONS 31-32.

SECTION 32.

Redesignated from proposed SECTION 34.

SECTION 33.

Redesignated from proposed SECTION 35. Deletes text requiring the department, not later than January 1, 2000, to develop and implement the system of selective contracting required by Section 22.0071(a), Human Resources Code, as added by this Act. Deletes proposed Subsections (b) and (c) and replaces Subsection (b) with proposed Subsection (c).

SECTION 34.

Redesignated from proposed SECTION 36. Makes a nonsubstantive change.

SECTIONS 35-38.

Redesignated from proposed SECTIONS 37-40.