

**SUBJECT:** Creating mental health/mental retardation service HMOs

**COMMITTEE:** Public Health — favorable, with amendment

**VOTE:** 5 ayes — Berlanga, Hirschi, Davila, Glaze, Maxey  
0 nays  
3 absent — Coleman, Delisi, Janek

**SENATE VOTE:** On final passage, May 1 — voice vote

**WITNESSES:** (*On House companion, HB 1459*)  
For — David Evans, ED Consortium; Michelle Brinkman, Austin/Travis County MHMR/Texas Council of Community MHMR Centers; Spencer McClure, Texas Council of Community MHMR Centers  
  
Against — None  
  
On — Chris Cavazos, Value Behavioral Health

**BACKGROUND :** The Texas Department of Mental Health and Mental Retardation (MHMR) contracts with 37 community mental health and mental retardation centers for the local delivery of services. Community centers are run by local boards and receive local, federal and state funding, including Medicaid funds. They also contract with other state agencies to provide services.

**DIGEST:** SB 276 would authorize one or more mental health and mental retardation community centers to create a nonprofit corporation to accept capitated or other at-risk payment arrangements. The corporation would have to obtain an HMO certificate of authority from the Texas Department of Insurance, and would be subject to the same laws and rules applying to other HMOs.  
  
The bill would specify that none of its provisions would preclude one or more centers from forming a nonprofit physician corporation under sec. 501 of the Medical Practice Act.

SB 276 would take effect September 1, 1997. The Department of Insurance would have to adopt rules by September 1, 1997, describing procedures for entities to follow to obtain a certificate of authority as a single health care service plan.

**Formation procedures.** The nonprofit corporation would have to disclose to MHMR the services to be provided through any capitated or at-risk payment arrangement before submitting bids to provide those services through a community center. The corporation would first have to provide public notice and opportunity for public comment on its intent to provide capitated or prepaid services, and would have to publish summaries of all relevant information concerning community center services arranged through the nonprofit corporation.

The department would have to verify that the services were within the scope of services approved in each community center's plan and provide public notice and comment on the corporation's intent to operate a mental health HMO by placing the announcement on the board's meeting agenda. The department would have to give equal consideration to bids submitted by a for-profit entity and a nonprofit entity for the provision of services through capitated or at-risk payment arrangement.

**Corporation power and duties.** The nonprofit corporation could exercise the powers and authority of an HMO and would be subject to the Texas HMO Act and the Texas Nonprofit Corporation Act. The HMO would be considered a governmental unit and unit of local government for tort liability protections under the Civil Practice and Remedies Code.

The nonprofit corporation would be subject to open meetings and open records laws. It also would have to solicit public input on its operations and allow public access to records unless disclosure was expressly prohibited by law or was confidential.

The corporation would have to publish an annual report detailing the services, administration, governance, revenues and expenses of the corporation, including the disposition of any excess revenues.

**SUPPORTERS  
SAY:**

SB 276 would allow community MHMR centers to utilize the cost-containing features of managed care in providing mental health and mental retardation services, and by doing so free up funds to reallocate to expand or improve patient care. Current law does not specifically authorize the formation or regulation of mental health/mental retardation, also known as “behavioral service,” HMOs, even though HMOs in general are assuming an increasingly large share of the health care market.

The bill would protect the public and dependent client base by requiring the centers to organize and operate as HMOs and comply with all patient protection provisions enacted this session and by making the nonprofit corporations subject to open meetings laws and other disclosure requirements.

Formation of nonprofit HMO corporations for mental health services would not encroach on private, for-profit behavioral health provider networks and HMOs because the corporation could only compete to provide services to publicly funded MHMR clients. Furthermore, the Texas Department of Mental Health and Mental Retardation would have to give equal consideration to bids submitted by nonprofit and for-profit entities.

Current insurance law allows only for HMOs to be licensed as basic health services plans or single service plans, and behavioral services HMOs should not have to conform with the solvency and service requirements imposed on HMOs designed to cover a comprehensive spectrum of medically related services.

**OPPONENTS  
SAY:**

Behavioral service HMOs should be licensed under a category other than as a single service HMO because of the wide array of services, and therefore more expansive risk, that such an HMO would be agreeing to assume. Behavioral service HMOs, as well as long-term care HMOs, would be better regulated by creating a mid-level HMO-type, similar to the limited-service HMO plan proposed in the Senate version of SB 382. Although the limited-service HMO license was removed by the House Insurance Committee from the Senate version of SB 382, it was restored to the bill by an amendment on the House floor on second reading.

NOTES:           The committee amendment would require MHMR to give equal consideration to bids submitted by a for-profit entity and a nonprofit entity for services provided through a capitated or at-risk payment arrangement.