SUBJECT: Continuing the Correctional Managed Health Care Committee

COMMITTEE: Corrections — favorable, with amendments

VOTE: 9 ayes — Haggerty, Staples, Allen, Culberson, Ellis, Farrar, Gray, Lengefeld, Longoria

0 nays

SENATE VOTE: On final passage, April 16 — voice vote

WITNESSES: For — Craig Alan Walker, Texas Organization of Rural and Community Hospitals

Against — None

On — Allen Hightower, Correctional Managed Health Care; Lannette Linthicum, Texas Department of Criminal Justice, Correctional Managed Health Care Committee; David R. Smith, Criminal Justice Managed Care Advisory Committee

BACKGROUND: In 1993, the 73rd Legislature created the Correctional Managed Health Care Advisory Committee and charged it with developing a managed health-care system for prison inmates. The Texas Department of Criminal Justice (TDCJ) contracts through the committee with the University of Texas Medical Branch at Galveston (UTMB) and the Texas Tech University Health Sciences Center (TTUHSC) to provide a statewide managed health-care network. UTMB's contract covers about 80 percent of prison inmates and TTUHSC's contract, about 20 percent. In general, UTMB uses its own staff to provide health-care services in the prisons, while TTUHSC uses contracts with local health-care providers for about 70 percent of the care it provides.

The committee includes six members:

- two employed full-time by TDCJ, appointed by the TDCJ executive director;
- two employed full-time by UTMB, at least one of whom is a physician, appointed by the president of the medical branch; and

- two employed full-time by TTUHSC, at least one of whom is a physician, appointed by the president of the university.

The committee is charged with developing a managed health-care plan for TDCJ inmates that includes the establishment of a managed care network of physicians and hospitals to serve TDCJ as the exclusive health-care provider for persons confined by TDCJ.

In fiscal 1998-99, TDCJ was appropriated $486.6 million for inmate managed health care. The money is paid to UTMB and TTUHSC according to a specified capitation rate per inmate. For more information on the debate concerning the funding of managed health care for fiscal 2000-01, see HRO State Finance Report Number 76-2, *CSHB 1 – The House Appropriations Committee's Proposed Fiscal 2000-01 Budget*, April 8, 1999.

Under the Texas Sunset Act, the Correctional Managed Health Care Advisory Committee is scheduled to be abolished September 1, 1999, unless continued by the Legislature.

DIGEST:

SB 371 would continue the basic functions of the committee by repealing the current provisions and replacing them in their entirety. It would rename the committee the Correctional Managed Health Care Committee.

The bill would expand the committee and change its composition, delineate its duties, and prescribe a procedure to monitor the quality of care. The bill also would apply standard sunset recommendations to the committee.

SB 371 would continue the Correctional Managed Health Care Committee until September 1, 2005.

Committee membership. The new committee would include nine members:

- two employed full-time by TDCJ, at least one of whom was physician, appointed by the TDCJ executive director;
- two employed full-time by UTMB, at least one of whom was a physician, appointed by the president of the medical branch;
- two employed full-time by TTUHSC, at least one of whom was a physician, appointed by the president of the university; and
- three public members appointed by the governor who were not affiliated

with TDCJ, at least one of whom was a practicing physician in a rural area and one of whom was a rural hospital administrator.

Committee members appointed by the governor would serve staggered six-year terms, with the term of one member expiring on February 1 of each odd-numbered year. Other members would serve at the will of the appointing official or until termination of their employment with the entity that they represented. The governor would designate a physician member of the committee to be presiding officer.

Members would serve without compensation but could be reimbursed for actual and necessary expenses incurred in performing their duties.

Administration. The committee could hire a managed care administrator who could employ personnel necessary to administer the committee's duties. The committee would have to pay the costs of its operations from funds appropriated by the Legislature to TDCJ for correctional health care.

SB 371 would retain existing law dealing with the frequency of meetings and employee benefits.

The committee would retain authority to contract on behalf of TDCJ to implement the plan and could contract with other governmental entities for health-care services and integrate those services into the managed health-care provider network. To the extent possible, the committee would have to integrate the provider network with the public medical schools. For services that the schools could not provide, the committee would have to initiate a competitive bidding process for contracts with other providers.

Committee duties. As under current law, the committee would have to develop a managed health-care plan for all persons confined by TDCJ.

SB 371 would establish duties for the committee that would include:

- developing contracts for health-care services in consultation with TDCJ and the health-care providers;
- determining a capitation rate that reflected the true cost of correctional health care, including necessary catastrophic reserves; and

- acting as an independent third party for dispute resolution in the event of a disagreement between TDCJ and the health-care providers.

The committee could contract with financial consulting services to help determine the capitation rate and for actuarial consulting services to help determine trends in the health of the inmate population and the impact of those trends.

In conjunction with UTMB and TTUHSC, the committee would have to develop and implement a comprehensive plan for expanding the use of rural hospital contracts for inmate care. The plan would have to include measures to reduce inmate health-care and transportation costs, including security costs related to transportation. UTMB, TTUHSC, and the committee would have to begin implementing the plan by January 1, 2000.

The committee would have to report to the 77th Legislature on the progress made in expanding the use of rural hospital contracts and include an analysis of costs incurred and savings realized through expanding the use of rural hospital contracts.

Quality-of-care monitoring. The committee would have to establish a procedure to monitor the quality of care delivered by the providers. TDCJ's monitoring activities would have to be limited to investigating medical grievances, ensuring access to medical care, and conducting periodic operational reviews of medical care provided at its units.

TDCJ and the medical care providers would have to cooperate in monitoring the quality of care, and the resources of the providers would have to be used to the greatest extent feasible for clinical oversight of the quality of care. TDCJ and the providers would have to report the results of their monitoring to the committee.

Across-the-board recommendations. SB 371 would apply to the committee standard sunset recommendations on appointment of members, public member eligibility, conflicts of interest, grounds for removal of committee members, board member training, separate functions for policy making and administration, committee members' standards of conduct, equal employment opportunity policy, complaint processes, and public participation.

SUPPORTERS SAY:

The Correctional Managed Health Care Committee should be continued because it fills a necessary role in providing inmate health care. However, SB 371 would continue the committee for only six years instead of the standard 12, so that the Legislature could review the committee again after it had operated for a sufficient time with its new responsibilities. In six years, the Legislature could decide whether to continue with this arrangement.

SB 371 would change the name of the committee to reflect its responsibilities more accurately and to remove the impression that its role was only advisory.

Committee membership. SB 371 would expand the committee to provide a broader perspective and additional expertise and to address concerns about the perception of an existing conflict of interest. Currently, the contractors that provide the care compose a majority of the body charged with developing and administering the health-care contracts. This presents the perception of a conflict of interest since it allows contractors to oversee the awarding and execution of their own contracts. While the committee needs to retain the expertise of UTMB and TTHSC, SB 371 would expand the committee so that the providers no longer made up a majority. In addition, the bill would add public members to the board to broaden public representation.

It is important to require that one of the public members be a rural doctor and one a rural hospital administrator. Roughly two-thirds of the state's prisons are in rural areas, and the committee should reflect this. The committee needs the expertise of a rural hospital administrator because the universities contract with the rural hospitals, not just physicians. These public members would be subject to the Sunset Advisory Commission's standard eligibility and conflict-of-interest provisions for public members, so there would be no need to place additional restrictions on them.

Committee duties. SB 371 clearly would delineate the committee's duties in statute to ensure that the committee performed those functions. Currently, many of these functions are laid out only in the contracts with providers.

The bill would require the committee to determine an appropriate capitation rate and to identify health-care trends in the inmate population. This would be an appropriate duty for the committee because it is the body with the most expertise and first-hand knowledge in these areas. The Legislature would

continue its oversight of the capitation rate when it decided what rate to use to fund the health-care program.

SB 371 also would allow the committee to serve as an arbiter between TDCJ and the providers, a role that currently is not assigned to any entity. Neither the providers nor TDCJ would have a majority on the board, and the board would have three public members so it could arbitrate any disputes fairly.

SB 371 would ensure optimal use of the state's rural health-care network by requiring the committee to develop and implement a plan for the use of rural hospital contracts for inmate care. The majority of prisons are in rural areas, which often have available health-care resources. Currently, prisoners sometimes are transported to distant health-care facilities when they might be served more efficiently in the rural area. SB 371 would ensure that these options were explored and that available resources were used.

Quality-of-care monitoring. SB 371 would specify TDCJ's responsibilities regarding monitoring the quality of health care. It would give TDCJ the authority to monitor all the things it now monitors, including investigating grievances, ensuring access to care, and conducting periodic operational reviews of the care. The bill's language is broad enough to encompass everything that TDCJ needs to do to ensure that inmate care is up to par.

OPPONENTS SAY:

Committee membership. Even with the changes proposed by SB 371, the committee would not have the breadth of experience it needs. The committee should include a person who is a physician not affiliated with the contracting entities and not restricted to practicing in a certain area. In addition, it should include someone with experience in health-care administration, not affiliated with the contracting entities. A member of the Board of Criminal Justice also should be included as an ex-officio member to improve the link between the contractors and TDCJ. To completely remove any conflict of interest, it might be best to remove the universities from the committee altogether.

SB 371 would place inflexible restrictions on appointment of two-thirds of the public membership by requiring that they be a rural doctor and rural hospital administrator. The governor's appointments should not be limited by the geographic area of the appointee. Also, SB 371 could result in a conflict

of interest because it would not require that the appointments be unaffiliated any entity with which the committee contracted for health-care services.

Duties. Some of the duties assigned to the committee could be inappropriate. For example, it is unclear whether the committee could act as an independent third party for dispute resolution if there were a disagreement between TDCJ and the health-care providers, since the committee would issue the contracts with the providers and would include some providers.

The committee should not be charged with developing and implementing a comprehensive plan to expand the use of rural hospital contracts for inmate care. This would change the mission of the committee, which is to provide health care for inmates. Requiring the committee to expand the use of rural hospital contracts could result in care being purchased at a higher cost than necessary.

Quality-of-care monitoring. SB 371 would be too restrictive on TDCJ by limiting the agency's monitoring activities to specified tasks. Instead, TDCJ should be given broad authority to do what is necessary to monitor the quality of care, since ultimately TDCJ is responsible for the welfare of inmates.

NOTES: The committee amendments would require that of the three public members on the committee, at least one must be a practicing physician in a rural area and one a rural hospital administrator; would require a plan to expand the use of rural hospital contracts for inmate care and a report on the progress made in expanding the use of rural hospital contracts; and would require UTMB, TTUHSC, and the committee to develop and implement the comprehensive plan by January 1, 2000.

Rep. Staples plans to offer floor amendments that would:

- require that two of the three public members be practicing physicians, one of whom must be from a rural area, and that one public member be a rural hospital administrator;
- require TDCJ and the committee to report to the Board of Criminal Justice the results of their monitoring activities; and
- delete the original committee amendment calling for the development and implementation of a plan to expand the use of rural hospital contracts and instead require UTMB and TTUHSC, in conjunction with the committee,

to develop and implement a plan for the review of the use of hospital contracts in rural areas. The plan would have to include measures to reduce inmate transportation costs, including transportation-related security costs and health-care costs, and help preserve the local health-care delivery infrastructure. The plan would have to be developed and implemented by January 1, 2000. The committee would have to report to the Legislature, Board of Criminal Justice, and state auditor on the use of rural hospital contracts and include recommendations concerning the best use of contracts with rural hospitals.