SUBJECT: Continuation of the Texas Commission on Alcohol and Drug Abuse

COMMITTEE: Public Health — favorable, with amendments

VOTE: 5 ayes — Berlanga, Davila, Glaze, Janek, Maxey

0 nays

4 absent — Hirschi, Coleman, Delisi, Rodriguez

WITNESSES: For — Cynthia Humphrey, Association of Substance Abuse Service Providers; Joe McCullough, Texas Association of Alcoholism and Drug Abuse Counselors

Against — None

On — Jim Oberwetter, Terry Bleier and Dorthy Gratsky, Texas Commission on Alcohol and Drug Abuse; John Hawkins, Sunset Commission

BACKGROUND: The Texas Commission on Alcohol and Drug Abuse (TCADA) is responsible for developing, funding and evaluating chemical dependency prevention, intervention and treatment programs. In addition, the agency licenses all chemical dependency facilities and counselors.

In April 1995, TCADA was placed in conservatorship due to allegations of gross fiscal mismanagement of federal and state dollars. Continuing reports of inappropriate and excessive expenditures and other accounting practices by providers also led to the appointment of a special audit task force and a joint investigation by the House and Senate Investigating Committees.

Abuses cited by task force investigators included funding to providers in excess of their requests, billing by providers of other government programs for expenses paid by TCADA, excessive provider bonuses and salaries, and other possible compliance problems, including instances of criminal activity.

The conservators reorganized the agency and developed new fiscal controls, procedures and systems to establish fiscal accountability. By October 1995 the conservators determined that the conditions of gross fiscal

mismanagement no longer existed. Control of the agency was returned to a newly appointed commission in February 1996.

DIGEST:

HB 2119 would continue TCADA until September 1, 2009, and amend provisions relating to board operations, statewide planning, contract standards and monitoring, services funding, facility and counselor licensing, administrative penalties, and alcohol awareness programs for minors convicted of alcohol offenses.

This bill would take effect September 1, 1997.

### Administration

Board members would serve staggered six-year, instead of two-year, terms. Commission members would have to complete at least one course in a specified commission member training program prior to confirmation by the Senate.

TCADA's intra-agency career ladder program would have to address opportunities for employee mobility and advancement, and its policy statement on equal employment opportunity would have to include personnel policies in compliance with employment discrimination provisions of the Texas Labor Code. The required comprehensive analysis of the commission workforce would have to meet federal and state laws, rules, regulations and instructions directly promulgated from those laws, rules and regulations, rather than state and federal guidelines. The policy statements also would have to be reviewed annually by the Texas Commission on Human Rights.

### Statewide service delivery plan

The commission would have to develop and adopt a statewide service delivery plan based on nine specified items, including the agency’s mission and goals, statements about how chemical dependency services and case management should be organized and delivered, and an assessment of available services. The commission also would have to analyze potential state and provider costs of implementing plan proposals. The plan would have to be adopted by February 1, 1998, and updated every two years.

## Contract standards and monitoring

In contracting for client service related to chemical dependency programs, TCADA would have to set out clearly defined contract goals, outputs and measurable outcomes, sanctions and penalties, and accounting, reporting and auditing requirements.

The commission would have to establish a formal program for contract monitoring that used a risk assessment methodology and evaluated cost information to ensure each cost was reasonable and necessary to achieve program objectives.

Technical assistance policies and procedures would have to be separated from contract monitoring activities and include explicit response time frames.

## Services funding

The commission would have to adopt regulations for a system of services funding that would include competitive and noncompetitive procedures to maximize the range of available treatment services and provide reasonable access to services in each region and local public participation in regional funding decisions.

The system would have to award funding to the applicant determined to have made the bid providing the best value. Best value would be determined by reference to at least twelve specified considerations, including quality of services; cost; applicant's ability to perform the contract; applicant's history of contract performance and compliance with related laws; applicant's financial resources; degree of community support; and other factors.

The commission would have to publish an annual funding policy manual that explained the commission's funding priorities and the methods the commission used to develop funding policies.

The commission would have to study the payment for chemical dependency treatment services on a unit rate reimbursement basis and would have to

adopt such a system if it would produce the highest quality services at the best price and lowest administrative cost. "Unit rate reimbursement" would be defined as reimbursement for a service paid at a specified rate for a unit of the service provided to a client multiplied by the number of units provided. The study would have to be completed by August 31, 1998; if the results of the study were positive, the commission would have to implement a unit rate reimbursement system for fiscal 1999.

## Licensing

**Facility licensing**. The commission would be required, instead of permitted, to deny, revoke, suspend or refuse to renew a license if the applicant, license holder, facility owner, or employee had a documented history of client abuse or neglect or had violated statutory or regulatory provisions governing chemical dependency treatment centers. The commission also would be newly authorized to place on probation a person whose license was suspended and to reprimand a license holder for licensing infractions.

The bill would remove provisions allowing postponement of commission decisions to revoke, deny or suspend a license during the appeals process, and would place appeals of commission decisions under the State Office of Administrative Hearings.

**Counselor licensing**. License applicants would no longer have to be Texas citizens. Two-tiered renewal fees would be established according to the length of time the license was expired. A license could not be renewed if it had been expired longer than one year, instead of two years. A person whose license had been expired for longer than two years could obtain a new license by submitting to reexamination and original application procedures.

The commission would be required, instead of permitted, to revoke, suspend, or refuse to issue or renew a license for violations under the Licensed Chemical Dependency Counselor Act (VACS, art. 4512o). Persons whose license was subject to disciplinary action would be entitled to a hearing conducted by the State Office of Administrative Hearings, instead of by the commission, and the procedures for disciplinary action would be

governed by the administrative procedure law codified in Chapter 2001 of the Government Code.

HB 2119 also would enact standard complaint processing, provisional licensing and administrative penalty procedures. Administrative penalties could not exceed $1,000 per violation. Each day of a continuing violation would constitute a separate violation.

### Alcohol awareness programs

HB 2119 would explicitly make TCADA responsible for administering the certification of approved alcohol awareness programs for minors and adopt appropriate rules and allow it to charge nonrefundable application fees and monitor, coordinate and provide training to a person providing an alcohol awareness program.

TCADA could also charge nonrefundable application fees for certification of educational programs on the dangers of drug abuse.

SUPPORTERS SAY:

HB 2119 would continue the sole state agency focused on addressing the alcohol and drug abuse problems in this state. By directing the agency to enact procedures and policies that would standardize and improve provider contracts, assistance and payments, it also would improve provider compliance, agency oversight and allocation of agency funds around the state to meet service needs. HB 2119 would enact many provisions to address problems uncovered during the recent audits and investigations by the special task force and interim legislative oversight committee.

HB 2119 would enact standard contract provisions that would improve provider compliance and accountability. It would also require technical assistance procedures to be improved and the division to be completely separate from compliance monitoring. These provisions would prevent problems that surfaced in 1995, when providers allegedly engaged in questionable billing practices or accounting methods or made excessive purchases and claimed immunity under vaguely worded contact provisions. They also said that TCADA staff often gave faulty or misleading guidance and assistance.

Improved and standardized state contracts were recommended by a special audit task force and the interim legislative oversight committee to clearly define state expectations and hold providers accountable for performance as well as expenditures. Separating technical assistance from enforcement activities would promote honest communication between staff and providers and prevent biases from inhibiting or intensifying appropriate enforcement actions.

HB 2119 would eliminate confusion over provider expenditures and high administrative budget costs by directing the agency to study, and implement if appropriate, an alternative payment system called unit rate reimbursement. A pure unit rate system reimburses a provider for a service on a per client, per day rate, in contrast to the cost reimbursement system, which pays providers on the basis of actual costs of the service. Both systems have their benefits. However, TCADA currently operates under a hybrid system that contains features of both unit rate and cost reimbursement; they award contracts on a unit rate basis but then reimburse only for actual costs up to the unit rate amount. Reconciling the unit rate with the actual costs spent by the provider is costly and confusing for both TCADA and providers, and accounting for every provider expenditure results in high administrative costs and detracts from a focus on quality of service.

Unit rate reimbursement systems avoid this problem and give providers incentives to provide cost-efficient services and help to contain costs. Cost containment occurs because the service provider has an incentive to keep its costs under the unit rate amount so that it can keep the difference, just as any for-profit business would do. Also, prudent providers will fold any savings back into improved services for clients, and thereby improve their advantage in the next competitive bidding process. Medicare diagnosis-related group payments and capitated payments to managed care doctors operate under similar principles. In contrast, cost reimbursement systems provide little incentive for providers to contain costs, since they will be reimbursed for whatever they spend, up to a specified ceiling.

HB 2119 would only require a unit rate system to be implemented if the commission determined that the system would result in obtaining the highest quality treatment services at the best price and lowest administrative cost. Quality of care and provider accountability would be ensured by mandates

that the system also include features to prevent unallowable provider expenditures and require competitive procurement and cost verification.

Best value, not just low cost, would be considered in competitive bids. This requirement also would inherently give special consideration to providers that historically have provided quality care to a community. Equitable distribution of services and improved client access would be ensured by the mandate that the commission adopt a system of funding for each region that maximized the range of services available and provided reasonable service access.

Problems associated with nursing home unit rate reimbursements may not exist for substance abuse service providers, due to the difference in client population, service mix, and market competition. Substance abuse clients, unlike most nursing home residents, are mobile and can "vote with their feet" if service quality is poor or inappropriate. They are also less dependent on providers for comprehensive care. Also, state contracts with substance abuse providers are competitively bid and have only a one- to two-year duration. The state can more quickly drop a substandard substance abuse provider than it can a substandard nursing home provider.

HB 2119 would also improve fairness in fund allocation and target service delivery development around the state by directing TCADA to develop an annual statewide plan. Clients, interest groups, policy makers, providers, and even TCADA staff have raised concerns about the substance abuse service delivery system, saying there is no clear blueprint for how substance abuse services should be organized and delivered, no consistency in service availability around the state, little community input allowed, inadequate evaluation of service quality and a lack of coordination between TCADA and other state and local services.

A good statewide plan would preclude the need for legislative spending directives responsible in the past for gaps in adult treatment services. Specially directed fund allocations favoring one provider or community over another have resulted in unintended problems for TCADA and its providers and clients by limiting available funding for allocation to other parts of the state. For example, the Sunset Commission found that during the last legislative session the agency was unable to effectively communicate its

strategies and level of effort in its services to youth, so the Legislature placed a rider in the appropriations bill directing the agency to spend 50 percent of funds for youth services, leaving many adult service providers with inadequate funding to meet the demand for treatment that they had traditionally served.

OPPONENTS SAY:

TCADA needs clearer direction on provider payments and allocations. The commission should be specifically directed to give special consideration to substance abuse recovery providers who are well established in their communities and who often have historically cared for populations with poor access to care. Competitive bidding does not always ensure that such providers retain TCADA contracts; newcomers who do not have the trust or experience in the community can offer lower cost, but not necessarily better quality, care. Legislation enacted last session required Medicaid managed care organizations to give special consideration to "traditional providers," and similar provisions could be used here.

In lieu of traditional provider considerations, TCADA could be directed to allocate specified levels of funding to providers or areas in high need of services that have few available funding sources and local resources.

Unit rate reimbursement system requirements should be amended to remove the provision requiring TCADA to "prevent unallowable provider expenditures." This provision goes against the whole concept of unit rate reimbursement and could serve to complicate and make more expensive the administration of a unit rate system.

OTHER OPPONENTS SAY:

A unit rate reimbursement system may not be a panacea to provider reimbursement and oversight problems. Nursing homes are now paid on a unit rate basis, and many nursing home and consumer representatives are advocating a change to a cost reimbursement system that also caps certain expenditures. Incentives to contain costs in a unit rate system lead unscrupulous providers to provide lowest cost services to reap the greatest profits. Nursing homes that want to spend more on client services are limited by the unit rate. Because it is an average statewide rate, the unit rate may provide little leeway for additional expenditures or profits in areas in which labor or other costs are higher than average.

NOTES:

The committee amendments would stipulate that costs incurred by the commission be deposited to the state treasury, that venue for any suit to collect fees, fines and other obligations owed to the commission be conferred exclusively to the Travis County district courts, and that personnel polices would be evaluated for their conformance to state and federal laws, rules, regulations and instructions instead of only state and federal guidelines.