SUBJECT: Continuation of the Texas Department of Health

COMMITTEE: Public Health — committee substitute recommended

VOTE: 8 ayes — Gray, Coleman, Capelo, Delisi, Glaze, Hilderbran, Maxey, Uresti

0 nays

1 absent — McClendon

WITNESSES: For — Lynn Bizzel, Texas Fire Chief's Association; Helen Campbell, State Firemen's and Fire Marshals' Association of Texas; Mike Higgins, Texas State Association of Firefighters; Susan Murphree, Advocacy, Inc.

Against — John Holtermann; Steve Janda, RN, PA; Ronald C. Redus, DDS, MD; Gaylen Tips, RN, MSN, CEN, Emergency Nurses Association, Austin Chapter

On — Reyn Archer, MD, Texas Department of Health

BACKGROUND: The Texas Department of Health (TDH) is responsible for protecting and promoting the health of all Texans. To do this, TDH administers a wide variety of programs that generally fall into three categories: population-based public health programs, regulation of health professions and facilities, and delivery of acute health-care services. The office was created in 1879, and its growth has paralleled the growth of medical technology, new interventions in disease prevention and control, health risks from environmental contaminants, and emerging infectious diseases. TDH has a fiscal 1998-99 budget of almost $13 billion, including about $10.5 billion in state and federal funds to pay for acute health-care services for low-income Texans through the Medicaid program. TDH operates within a fiscal 1999 employee cap of 5,782.5 full-time equivalent positions.

DIGEST: CSHB 2085 would continue TDH until September 1, 2011, and amend the Health and Safety Code and relevant civil statutes to modify the department's functions in the following ways:

- develop and publish a comprehensive strategic and operational plan;

- develop a checklist of methods for soliciting public input during the early stages of rule development;
- integrate health-care delivery programs;
- contract to perform an annual independent audit of any fiscal agent used by TDH in the Medicaid program;
- reimburse Medicaid providers through electronic funds transfer;
- publish and provide, in ways that include the Internet and a toll-free number, information on each final enforcement action taken by the department, commissioner, or board, except to the extent the information is legally confidential;
- annually publish an analysis of trends in TDH enforcement actions;
- maintain the Toxic Substances Coordinating Committee by deleting its statutory repeal date;
- make TDH the only authority for regulating narcotic treatment programs by deleting provisions in current law that allow TDH to share authority with the Texas Commission on Alcohol and Drug Abuse;
- study the impact of Medicaid managed care on all populations served by TDH and report findings to the Legislature by November 1, 2000;
- with the assistance of the state auditor, conduct a comprehensive examination of all TDH regulatory programs and report to the Legislature by November 1, 2000;
- amend fees for licensure of hospital outpatient facilities and for hospital plan reviews;
- amend licensure fees for mental health facilities and hospitals;
- establish a statutory advisory council on emergency medical services (EMS); and
- require EMS certification exams to be held at locations around the state over the course of a year.

The bill also would amend the Government Code to require the State Office of Administrative Hearings to conduct all hearings in contested cases that are before TDH.

CSHB 2085 also would add standard provisions that would increase the range of administrative penalties and actions for the Advisory Board of Athletic Trainers and the Board of Licensure for Professional Medical Physicists, and for the Board of Health in regulating ambulatory surgical centers, birthing centers, special care facilities, abusable glues and aerosol paints, hazardous substances, and massage therapy.

CSHB 2085 also would add standard sunset provisions covering board membership qualifications, training and removal, complaint processing, advertising, examinations, licensure, and certification for the Radiation Advisory Board, Council on Alzheimer's Disease, Statewide Health Coordinating Council, Texas Diabetes Council, Advisory Board of Athletic Trainers, and Board of Licensure for Professional Medical Physicists. The bill also would add these standard provisions for the Board of Health and for board regulation of respiratory care, registration of dispensing opticians, medical radiological technologists, massage therapy, asbestos-related activity, and lead-based paint activity.

Comprehensive plan. The board would have to develop and publish a comprehensive strategic and operational plan by September 1, 2000, and by the same date of each subsequent even-numbered year. The plan at a minimum would have to:

- state the purpose of each of the department's seven major missions;
- analyze how the department's missions would relate to each other and how its programs would integrate with each other;
- determine the necessity for and efficiency of data-collection efforts;
- assess future service needs;
- present a method for soliciting the advice and opinions of local health departments and of service providers and recipients;
- present a comprehensive inventory of health-related information resources;
- describe the department's efforts to coordinate with federal, state, local, and private programs that provide similar services;
- list other plans the department is required to prepare; and
- assess the effectiveness of the previous plans.

Integration of health-care delivery programs. CSHB 2085 would require TDH to integrate the functions of its programs for primary health care, maternal and infant health, chronically ill and disabled children, acute Medicaid services, and other health-care programs to the maximum extent possible in developing health policy, delivering services, and administering contracts with providers. The bill would specify the goals and other features of integrating contract administration. TDH also would have to examine the extent to which it could integrate all or part of the health-care delivery

programs into a single delivery system. The bill also would permit TDH to seek federal waivers for integrating such programs if necessary.

CSHB 2085 also would require TDH to implement a pilot project that integrated all appropriate health-care delivery programs. TDH would have to begin the pilot project by September 1, 2000, and end it by September 1, 2001, except for successful elements of the project. TDH would have to report its analysis of the project and of the benefits and problems in integrating health-care delivery programs in its comprehensive plans in 2000 and 2002.

EMS advisory council. CSHB 2085 would require the governor to appoint a 15-member council to advise the Board of Health on emergency medical services. The council would include an emergency physician, an EMS medical director, a municipal fire chief, a representative of a fire department that provides EMS, a private EMS provider, an EMS volunteer, an EMS educator, a member of an EMS air medical team, a hospital representative, a county EMS provider, and five members of the general public. Standard sunset provisions regarding council membership, conflict of interest, and Board of Health EMS certification and other administrative actions also would apply to EMS regulation.

SUPPORTERS SAY:

CSHB 2085 would increase the effectiveness of TDH's service delivery and health regulation by improving service integration, public input in rulemaking, the range of regulatory enforcement tools, contractor monitoring and performance, and other administrative procedures.

Currently, TDH is required to issue more than 50 planning documents but not to coordinate or integrate approaches to improving health care or public health. The Sunset Advisory Commission found that the lack of cohesive planning results in program and service overlap and a system that is hard to navigate both for service providers and recipients. The commission also found that TDH does not provide enough current, useable data needed for effective statewide and local planning.

The comprehensive strategic plan required by CSHB 2085 would provide a blueprint for TDH, the development of which would require the agency to ask why it must provide each service and how it can integrate related activities to provide a higher and more efficient level of service without overlap. Such

integration is critical in the changing world of federal financing and managed health care.

CSHB 2085 would provide TDH clear legislative direction to undertake the integration of health-care delivery services — a task made especially difficult by the array of differing target populations, eligibility requirements, and federal funding mandates. Requiring the pilot consolidation of health-care delivery programs, where possible, would help TDH find ways to reduce duplication in staffing, administrative activities, and costs, and to make appropriate services more readily available to Texans in need. This undertaking also could help streamline paperwork and compliance efforts for providers, improving their participation and reducing their costs.

CSHB 2085 would improve TDH regulatory activities by directing the agency to maximize input from stakeholders and other experts during rulemaking and by giving its boards the necessary administrative tools to respond thoroughly and appropriately to complaints and infractions. Although TDH complies with the state's Administrative Procedures Act (APA), the Sunset Advisory Commission recommended that the agency go beyond the minimum APA standards when it contemplates a major or controversial change. The commission also found regulatory performance to be uneven across programs, indicating questionable effectiveness in some areas.

CSHB 2085 also would help ensure accountability by requiring an annual external audit of TDH's highest-risk contract, its $70 million contract with National Heritage Insurance Co. (NHIC) as the fiscal agent for the Medicaid program. The Sunset Advisory Commission found NHIC's Medicaid audits to be three years behind and not required to be audited by an independent firm, putting TDH at risk of contractor abuses and financial inaccuracies.

Changing the now board-appointed EMS advisory committee to a governor-appointed EMS council would give the advisory body more accountability to the professionals and services it now presumes to represent and regulate. Some allege that the TDH board-appointed advisory committee has not consulted adequately with professionals in the field. Establishing the council in statute also would ensure that the development of trauma-care services would continue to be overseen by an advisory body of relevant experts and not disbanded or changed at the will of the Board of Health.

Issues surrounding the administration of the Medicaid program, including its managed care aspects, will be addressed in legislation based on the Sunset Advisory Commission's recommendations for the Health and Human Services Commission (HHSC), which would give the HHSC greater control over Medicaid operations (HB 2641 by Gray and SB 372 by Brown). However, if the HHSC sunset legislation is not enacted, TDH would be the appropriate agency to administer acute care-related Medicaid services because of its expertise in health care and finance.

OPPONENTS SAY:

A governor-appointed EMS advisory council is not needed. The current board-appointed Emergency Health Care Advisory Committee (EHCAC) has done a good job and should not be replaced. The continued existence of this committee is essential to the current and future development of the statewide trauma-care system, which has shown substantial progress due to the focus of EHCAC and its related subcommittees. The sunset recommendation to replace the board-appointed committee with a governor-appointed council was based on the input of a dissatisfied few and does not reflect the esteem in which the committee is held by the Board of Health and many trauma-care professionals.

TDH should get out of the business of administering the Medicaid managed care program. The demands that managed care places on state contracting, delivery of comprehensive services, enrollee help and education, and oversight of quality assurance extend beyond the expertise of TDH staff and cross state agency lines that include the Texas Department of Human Services and Texas Department of Mental Health and Mental Retardation.

OTHER OPPONENTS SAY:

The governor-appointed EMS advisory council should include members representing pediatricians, trauma surgeons, and trauma nurses to ensure comprehensive oversight of trauma policy.

NOTES:

The committee substitute reflects mostly technical changes to the original bill, except for adding provisions relating to the licensure of hospital outpatient facilities and to fees for mental health facilities.

The companion bill, SB 367 by Brown, has been referred to the Senate Health Services Committee.