

SUBJECT: Continuing the Texas Department on Aging

COMMITTEE: Human Services — favorable, without amendment

VOTE: 6 ayes — Naishtat, Chavez, Ehrhardt, Noriega, Raymond, Villarreal
1 nay — Wohlgemuth
1 present not voting — J. Davis
1 absent — Telford

SENATE VOTE: On final passage, April 26 — voice vote

WITNESSES: None

BACKGROUND: The two main client groups who receive long-term care services are elderly people and people of all ages with disabilities — mental or physical impairments that result in functional limitations in three or more life activities, such as self-care, language, and economic self-sufficiency.

At least seven different agencies deliver long-term care services to Texas clients or are involved with advocacy for the elderly and the disabled. These include the Texas Department on Aging (TDoA), which manages programs and services for people 60 years of age and older; the Texas Department of Human Services (DHS), which provides Medicaid services for the aged and disabled and regulates nursing homes; and the Texas Rehabilitation Commission (TRC), which administers rehabilitation programs for disabled people, such as the Personal Attendant Services program. Many services for elderly people are authorized and funded at the federal level by the Older Americans Act of 1965, as amended.

In 1999, the 76th Legislature enacted SB 374 by Zaffirini, which continued TDoA until September 1, 2004, at which time it is to cease operations. The transition time was provided to enable programs from TDoA and TRC to be transferred to DHS.

TDoA is scheduled to be abolished September 1, 2003, when DHS is to be renamed the Department of Aging and Disability Services and will assume the duties of TDoA.

The Legislature established the Health and Human Services Commission (HHSC) in 1991 to oversee and coordinate health and human services (HHS) programs in Texas. Headed by a commissioner appointed by the governor with Senate approval for a two-year term, HHSC is an umbrella entity charged with developing an ongoing six-year strategic HHS plan submitted to the governor, lieutenant governor, and House speaker on October 1 of each even-numbered year. HHSC also submits a consolidated HHS budget recommendation to the Legislature for the agencies under its purview. In addition to its duties coordinating service delivery and maximizing federal funding, HHSC is the federally required single state agency for Medicaid and has final approval for all Medicaid policies, rules, and programs, but it does not deliver Medicaid services directly.

The 76th Legislature also enacted HB 2641 by Gray, et al., continuing HHSC until September 1, 2007. It expanded the commission's oversight of HHS agencies by authorizing the commissioner to manage and direct the daily operations of each agency and to supervise and direct the activities of each agency director. The commissioner's authority includes resource allocation, personnel and employment policies, contracting and purchasing policies, location of agency facilities, coordination with other state agencies, and adoption or approval of payment rates.

DIGEST: SB 535 would postpone the merger of TDoA and DHS until September 1, 2005, and would postpone TDoA's abolition until September 1, 2006. Not later than September 1, 2003, the HHS commissioner would have to:

- ! identify the function of each TDoA service and decide whether it related to long-term care services or to other services for the elderly;
- ! recommend functions involving the direct provision of long-term care services that could be transferred to DHS, as long as the transfer would not conflict with the Older Americans Act;
- ! evaluate coordination between TDoA and DHS; and
- ! submit a report to the Legislature, including a list of all TDoA functions, a list of services that could be transferred to DHS, a description of the

TDoA's recommended role after a merger with DHS, and a description of the coordination between TDoA and DHS.

The bill would take effect September 1, 2001.

**SUPPORTERS
SAY:**

SB 535 would prevent TDoA's extinction until all relevant factors had been considered. Serious concerns that have not been addressed by DHS or HHSC need to be decided before the scheduled DHS/TDoA merger. These concerns range from philosophical to practical differences about how programs for the elderly in Texas should be administered. This bill would direct HHSC to study the key elements that have raised concerns about the merger. The 79th Legislature in 2005 would have the final say about whether or how the merger should go forward, with more comprehensive information on which to base its decision.

TDoA is a small agency that enjoys the widespread support of elderly Texans and has done an outstanding job with limited staff and resources. Its focus and services would have to compete against other priorities in the new agency, which most likely would mean that the needs of the elderly — especially the healthy elderly — would receive less attention.

Under current law, the Aging Policy Council will be only an advisory committee, eliminating the special overall focus it has provided for 40 years on statewide issues related to both healthy and frail elderly people. The council would be a more independent and influential watchdog if it were attached to and appointed by the governor or HHSC rather than attached to and appointed by the proposed Department of Aging and Disability Services. The elderly need a significant state-agency council just as the disabled have councils such as the Planning Council for Developmental Disabilities.

The merger would cause a conflict of interest. The TDoA ombudsman program should not be transferred to DHS, the same agency that regulates nursing homes. A separate ombudsman program would retain its federally required objectivity. The ombudsman program, largely composed of volunteer advocates who oversee care in nursing homes, is not compatible with the goals and objectives of DHS. Also, elderly people use the benefits counseling program as representation in benefits hearings that DHS conducts for the Medicaid program.

Moving programs around would be unnecessary and disruptive and would not necessarily result in greater coordination. With the new powers granted in the HHSC sunset bill last session, the commission can coordinate long-term care services and make rate setting and provider contracting more consistent without the expense and disruption of forming a new agency.

Requiring programs to locate in closer physical proximity and under the direction of one board would not ensure coordination and communication. Since the proposed Department of Aging and Disability Services still would be responsible for administering cash assistance and other welfare or emergency assistance programs, its focus would be divided.

OPPONENTS
SAY:

Texas should not undo the good decisions made by the 76th Legislature about the future of HHS services. The legislation enacted last session moved the state closer to a more comprehensive, less duplicative, and easier-to-access system of providing long-term care services. It was a first step, not the final step, in better organizing and delivering long-term care services. Such an undertaking needs to occur in stages over several years to address effectively the wide-ranging concerns of multiple providers, regulators, and interest groups. SB 535 would be a step backward.

Consolidating long-term care programs into a single state agency is necessary to create an identifiable agency that is responsible for and can coordinate more effectively the complex range of services required by aging and disabled people. This consolidation of long-term care services is especially important because Texas' population is growing in age as well as in number. Fragmentation of services is a long-standing problem in Texas, and consolidation has been recommended as far back as 1993 by the Task Force on Long-Term Care.

Program fragmentation among state agencies is confusing to clients and administratively expensive and drains available resources. Consumers have no single access point. HHSC has found among HHS agencies 46 long-term care programs with varying eligibility requirements that often provide similar services, such as home-delivered meals, nursing, transportation, physical therapy, adaptive aids, and respite care. Some programs offer choices among an array of services, whereas others offer the clients no choice.

Combining the administration of long-term services would not alter program eligibility but would maximize the use of available funding in agency contracts with providers and would improve public access by providing a single point of entry for all programs. Clients' medical and support needs often change as they age, and the consolidation of programs would provide a continuum of services to help disabled people obtain needed services from birth through death without having to reapply to program after program.

When TDoA's functions are transferred to DHS, TDoA's outstanding characteristics and programs will be maintained through continued use of the area agencies on aging (AAAs) and by the establishment of a special Aging Policy Council. The special focus of the TDoA board on *healthy* as well as infirm elderly people would be enhanced by converting it into an Aging Policy Council, because the board would be freed from the daily concerns of program administration and could advise on overall direction and policy regarding the aging. Also, its influence would be strengthened by attaching it administratively to the new Department of Aging and Disability Services, where it would have a direct line to board decisions and department information.

The ombudsman program would not lose its objectivity on nursing home oversight by being placed in the same agency that regulates nursing homes. The program operates with a very small central staff, which would be located in a different division of the agency from nursing home regulation, and the program largely depends on the work of the AAAs, which are outside of the agency. Other states run their ombudsman programs this way, and there is no reason to think that it would not work for Texas as well.