

BILL ANALYSIS

Senate Research Center

H.B. 2119
By: Bosse (Madla)
Health & Human Services
5-8-97
Committee Report (Amended)

DIGEST

Currently, the Texas Commission on Alcohol and Drug Abuse (TCADA) is subject to the Sunset Act and, unless continued by the legislature, will be abolished on September 1, 1997. The Sunset Commission's (commission) review indicated that TCADA's service delivery system has grown incrementally over time, and as a result, lacks a clear, strategic framework. The commission found that TCADA's funding system does not ensure that a range of accessible treatment services are available to those most in need. The commission concluded that the provider selection procedures favored cost over quality consideration, and thus, did not necessarily result in best value services for the state. In these areas, TCADA's enabling statute does not give the agency clear direction. As a result of these findings, the commission recommended continuation of TCADA and several statutory modifications to legislation pertaining to TCADA. This bill would extend TCADA's enabling statute for 12 more years and sets forth the statutory modifications recommended by the commission.

PURPOSE

As proposed, H.B. 2119 extends the Texas Commission on Alcohol and Drug Abuse enabling statute for 12 more years and sets forth statutory modifications recommended by the Sunset Commission.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas Commission on Alcohol and Drug Abuse (TCADA) in SECTIONS 7, 11, 14, and 17 (Sections 461.0127, 461.0141(a) and (d), 461.0143(b), and 464.0145(c), Health and Safety Code; Section 17(b), Article 4512o, V.T.C.S.; and Section 106.115(a), Alcoholic Beverage Code); and to the executive director of TCADA or the executive director's designee in SECTION 16 (Sections 18A(g) and (j), Article 4512o, V.T.C.S.) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 461.003(c), Health and Safety Code, to update standard language developed by the Sunset Commission regarding qualifications for appointment to the Texas Commission on Alcohol and Drug Abuse (TCADA).

SECTION 2. Amends Sections 461.004 and 461.006, Health and Safety Code, as follows:

Sec. 461.004. APPLICATION OF SUNSET ACT. Provides that unless continued in existence as provided by Chapter 325, Government Code, the Texas Sunset Act, TCADA is abolished and this chapter expires September 1, 2009, rather than September 1, 1997.

Sec. 461.006. TERMS. Provides that TCADA members serve staggered six-year terms, with the terms of two members expiring February 1 of each odd-numbered year, rather than for two-year terms.

SECTION 3. Amends Sections 461.011(b), (c), (e), (f), and (g), Health and Safety Code, as follows:

(b) Requires the executive director of TCADA (executive director) or the executive director's designee to develop an intra-agency career ladder program that addresses opportunities for mobility and advancement for employees within TCADA. Requires the program to require intra-agency posting of all positions, rather than all nonentry positions, currently with any public posting.

(c) Requires the executive director or the executive director's designee to develop a system of annual performance evaluations that are based on documented employee performance, rather than on measurable job tasks.

(e)-(g) Updates standard language developed by the Sunset Commission regarding the equal employment opportunity program. Makes conforming and nonsubstantive changes.

SECTION 4. Amends Sections 461.014(b) and (c), Health and Safety Code, as follows:

(b) Updates standard language developed by the Sunset Commission regarding TCADA funds being managed in accordance with the State Funds Reform Act.

(c) Updates standard language developed by the Sunset Commission regarding TCADA's required annual financial report.

SECTION 5. Amends Sections 461.015(c) and (d), Health and Safety Code, as follows:

(c) Requires TCADA to keep a file about each written complaint filed with TCADA that TCADA has authority to resolve. Requires TCADA to provide to the person filing the complaint and to the persons or entities complained about TCADA's policies and procedures pertaining to complaint investigation and resolution. Requires TCADA, at least quarterly and until final disposition of the complaint, to notify the complainant and each person or entity complained about of the status of the complaint unless notice would jeopardize an undercover investigation. Makes conforming changes.

(d) Requires TCADA to keep information about each complaint filed with TCADA. Requires the information to include the date the complaint is received; the name of the complainant; the subject matter of the complaint; a record of all persons contacted in relation to the complaint; a summary of the results of the review or investigation of the complaint; and an explanation of the reason the complaint was closed without action, for complaints on which TCADA took no action. Makes conforming changes.

SECTION 6. Amends Section 461.012, Health and Safety Code, by amending Subsections (a) and (b), and by adding Subsections (d) and (e), to authorize TCADA to establish regional alcohol advisory committees consistent with the regions established under Section 531.024, Government Code, rather than with the 24 state planning regions. Requires TCADA to comply with federal and state laws related to program and facility accessibility. Requires the executive director to prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to TCADA's programs and services. Makes nonsubstantive changes.

SECTION 7. Amends Chapter 461, Health and Safety Code, by adding Sections 461.0051, 461.0124, 461.0125, 461.0126, 461.0127, 461.0141, 461.0142, and 461.0143, as follows:

Sec. 461.0051. COMMISSION MEMBER TRAINING. Requires a person appointed to TCADA, to be eligible to take office as a member of TCADA, to complete at least one course of a training program that complies with Subsection (b). Requires the training program required by Subsection (a) to provide information to the person regarding the enabling legislation that created TCADA and its policymaking body to which the member is appointed to serve; the programs operated by TCADA; the role and functions of TCADA; the rules of TCADA, with an emphasis on the rules that relate to disciplinary and investigatory authority; the current budget for TCADA; the results of the most recent formal audit of TCADA; the requirements of the open meetings law, Chapter 551, Government Code; open records law, Chapter 552, Government Code; and administrative procedure law, Chapter 2001, Government Code; the requirements of the conflict-of-interest laws and other laws relating to public officials; and any applicable ethics policies adopted by TCADA or the Texas Ethics Commission. Provides that a person appointed to TCADA is entitled to reimbursement for travel expenses incurred in attending the training program required by Subsection (a) as provided by the General Appropriations Act and as if the person were a member of TCADA.

Sec. 461.0124. STATEWIDE SERVICE DELIVERY PLAN. Requires TCADA to develop and to adopt a statewide service delivery plan. Requires TCADA to update the plan no later than February 1 of each even-numbered year. Requires the plan to include certain information. Requires TCADA to gather information needed for the development of the plan through systematic methods designed to include local, regional, and statewide perspectives. Requires TCADA, in developing the plan, to analyze the costs of implementation of proposed features of the plan by both TCADA and service providers. Requires TCADA to use the analysis to maximize the efficiency of service delivery under the final plan.

Sec. 461.0125. CLIENT SERVICE CONTRACT STANDARDS. Requires TCADA to include certain terms and conditions in each contract for the purchase of chemical dependency program-related client services. Requires contract goals to include a standard developed by TCADA that is based on a percentage of program clients who maintain long term recovery for an extended period as defined by TCADA.

Sec. 461.0126. CONTRACT MONITORING. Requires TCADA to establish a formal program to monitor program-related client services contracts made by TCADA. Requires TCADA to monitor compliance with financial and performance requirements using a risk assessment methodology; and to obtain and evaluate program cost information to ensure that each cost is reasonable and necessary to achieve program objectives.

Sec. 461.0127. TECHNICAL ASSISTANCE PROGRAM. Requires TCADA to adopt technical assistance policies and procedures for a technical assistance program that is clearly separate from TCADA's contract monitoring activities; has a single office for technical assistance requests; and includes explicit response time frames.

Sec. 461.0141. SERVICES FUNDING. Requires TCADA, by rule, to adopt a system of funding the provision of chemical dependency services that includes certain competitive and noncompetitive procedures. Requires the system to require that TCADA award each proposed chemical dependency services contract to the applicant that TCADA determines has made the bid that provides the best value. Requires TCADA to consider certain factors in determining the best value bid for a contract under this section. Requires rules adopted under this section to set out TCADA's provider selection processes.

Sec. 461.0142. FUNDING POLICY MANUAL. Requires TCADA to publish a funding policy manual that explains TCADA's funding priorities and provider selection criteria; and the methods TCADA used to develop funding policies. Requires TCADA to update the manual annually.

Sec. 461.0143. UNIT RATE REIMBURSEMENT. Requires TCADA to study the procurement of and payment for chemical dependency treatment services on a unit rate reimbursement basis. Requires TCADA, if TCADA determines, after consideration of the study, that procurement of and payment for chemical dependency treatment services on a unit rate reimbursement basis in appropriate areas of the state would result in obtaining the highest quality treatment services at the best price and the lowest administrative cost to TCADA, to adopt a unit rate reimbursement system for those services. Requires the system to include competitive procurement; monitor provider performance; monitor the reasonableness of provider costs and expenditures; verify provider costs before and after a contract term to ensure rates are set appropriately; ensure accountability of providers; and contain costs. Authorizes TCADA to procure and pay for chemical dependency prevention and intervention services under a unit rate reimbursement system when TCADA determines it is appropriate. Defines "unit rate reimbursement."

SECTION 8. Amends Sections 464.003 and 464.008, Health and Safety Code, as follows:

Sec. 464.003. EXEMPTIONS. Provides that this subchapter does not apply to, among other facilities, individuals, and program, a facility licensed by the Texas Department of Health

(TDH), rather than a facility licensed by the Texas Department of Mental Health and Mental Retardation (MHMR).

Sec. 464.008. ALCOHOL AND DRUG ABUSE TREATMENT LICENSURE FUND. Updates standard language developed by the Sunset Commission regarding all application and inspection fees collected by TCADA under this subchapter.

SECTION 9. Amends Section 464.014, Health and Safety Code, to require TCADA, rather than authorizes the executive director, to deny, revoke, suspend, or refuse to renew a license, place on probation a person whose license has been suspended, or reprimand a license holder if the applicant or license holder or the owner, director, administrator, or a clinical staff member of the facility, among other actions, violates, rather than fails to comply with, this subchapter or a rule of TCADA. Deletes text in regard to a rule of TCADA adopted under this subchapter. Authorizes TCADA, if a license suspension is probated, to establish the conditions for completion or violation of the probation. Sets forth the date the probation, among other penalties, takes effect. Deletes existing Subsections (c)-(e), (g), and (i). Deletes text in regard to an order denying, revoking, suspending, or refusing to renew a license. Makes conforming and nonsubstantive changes.

SECTION 10. Amends Section 464.017(f), Health and Safety Code, to require penalties collected under this section by the attorney general to be deposited to the credit of the alcohol and drug abuse treatment licensure fund account, rather than licensure fund.

SECTION 11. Amends Chapter 464A, Health and Safety Code, by adding Section 464.0145, as follows:

Sec. 464.0145. DISCIPLINARY ACTION HEARING. Provides that if TCADA proposes to suspend, revoke, or refuse to renew a person's license, the person is entitled to a hearing conducted by the State Office of Administrative Hearings (SOAH). Provides that procedures for a disciplinary action are governed by the administrative procedure law, Chapter 2001, Government Code. Prohibits the rules of practice adopted by TCADA under Section 2001.004, Government Code, applicable to the proceedings for a disciplinary action from conflicting with rules adopted by SOAH.

SECTION 12. Amends Section 10(b), Article 4512o, V.T.C.S., to delete text requiring a person to be eligible for a chemical dependency counselor license to be a citizen of the State of Texas, among other requirements. Requires a person, in order to be eligible for a chemical dependency counselor license, to submit a case presentation to the test administrator, rather than to TCADA. Makes conforming changes.

SECTION 13. Amends Section 13, Article 4512o, V.T.C.S., by amending Subsections (b), (c), (d), and (e), and by adding Subsections (f) and (g), to authorize a person who is otherwise eligible to renew a license to renew an unexpired license by paying the required renewal fee to TCADA before the expiration of the license. Prohibits a person whose license has expired from engaging in activities that require a license until the license has been renewed under the provisions of this section. Authorizes a person, if the person's license has been expired for 90 days or less, to renew the license by paying to TCADA one and one-half times the required renewal fee, rather than the required renewal fee and a fee that is one-half of the examination fee for the license. Authorizes a person, if a license has been expired for longer than 90 days but less than one year, rather than two years, to renew the license by paying TCADA two times the required renewal fee, rather than all unpaid renewal fees and a fee that is equal to the examination fee for the license. Prohibits a person, if the person's license has been expired for one year or longer, from renewing the license. Authorizes the person from obtaining a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license. Authorizes a person, if the person was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding application, to renew an expired license without reexamination. Requires the person to pay to TCADA a fee that is equal to two times the required renewal fee for the license. Deletes existing Subsection (e). Makes conforming and nonsubstantive changes.

SECTION 14. Amends Sections 15, 16, 17, Article 4512o, V.T.C.S., as follows:

Sec. 15. CONTINUING EDUCATION. Updates standard language developed by the Sunset Commission regarding continuing education programs for licensed chemical dependency counselors. Provides that participation by chemical dependency counselors in certain programs is mandatory for licensure.

Sec. 16. LICENSE REFUSAL; DISCIPLINARY ACTIONS. Updates standard language developed by the Sunset Commission regarding disciplinary actions by TCADA. Requires, rather than authorizes, TCADA to refuse to issue a license, revoke, suspend, or refuse to renew a license, place on probation a license holder whose license has been suspended, or reprimand a license holder under certain conditions. Authorizes TCADA to require the license holder to perform certain actions if a license suspension is probated. Makes conforming changes.

Sec. 17. DISCIPLINARY PROCEEDINGS. Authorizes a person to file a complaint with TCADA alleging a violation of this Act. Requires the complaint to be in writing and under oath. Deletes existing Subsection (b). Provides that if TCADA proposes to suspend, revoke, or refuse to renew a person's license, the person is entitled to a hearing conducted by SOAH. Deletes existing Subsection (c). Provides that procedures for disciplinary actions are governed by the administrative procedure law, Chapter 2001, Government Code. Prohibits rules of practice adopted by TCADA under Section 2001.004, Government Code, applicable to the proceedings for a disciplinary action from conflicting with rules adopted by SOAH. Deletes existing Subsection (d). Requires TCADA to keep a file about each complaint filed with TCADA that TCADA has authority to resolve. Requires TCADA to provide to the person filing the complaint and the persons or entities complained about the commission's policies and procedures pertaining to complaint investigation and resolution. Requires TCADA, at least quarterly and until final disposition of the complaint, to notify the person filing the complaint and the persons or entities complained about of the status of the complaint unless the notice would jeopardize an undercover investigation. Requires TCADA to keep information about each complaint filed with TCADA. Sets forth the required information to be included about each complaint filed with TCADA.

SECTION 15. Amends Section 19, Article 4512o, V.T.C.S., to provide that the licensed chemical dependency counselors fund account is created in the state treasury. Makes conforming changes.

SECTION 16. Amends Article 4512o, V.T.C.S., by adding Sections 10A and 18A, as follows:

Sec. 10A. PROVISIONAL LICENSE. Authorizes TCADA to issue a provisional license to an applicant currently licensed in another state who seeks a license in Texas. Sets forth the requirements for an applicant for a provisional license under this section. Authorizes TCADA to waive the requirement of Subsection (a)(3) of this section for an applicant if TCADA determines that compliance with that subsection would constitute a hardship to the applicant. Provides that a provisional license is valid until the date TCADA approves or denies the provisional license holder's application for a license. Requires TCADA to issue a license to the provisional license holder if the provisional license holder is eligible to be licensed under Section 10. Authorizes TCADA, for purposes of this subsection, to waive the requirements prescribed by Sections 10(b)(8), (9), and (11). Requires TCADA to complete the processing of a provisional license holder's application for a license no later than the 180th day after the date the provisional license is issued. Authorizes TCADA to extend the 190-day limit if TCADA has not received information necessary to determine whether the applicant is eligible for a permanent license. Authorizes TCADA to establish a fee for a provisional license in an amount reasonable and necessary to cover the cost of issuing the license.

Sec. 18A. ADMINISTRATIVE PENALTY. (a) Authorizes TCADA to assess an administrative penalty against a person who violates this Act or a rule adopted under this Act.

- (b) Prohibits the penalty from exceeding \$1,000 for each violation. Provides that each day of a continuing violation constitutes a separate violation.
- (c) Sets forth the factors TCADA is required to consider in determining the amount of an administrative penalty assessed under this section.
- (d) Provides that all proceedings for the assessment of an administrative penalty under this Act are subject to Chapter 2001, Government Code.
- (e) Requires TCADA, if, after investigation of a possible violation and the facts surrounding that possible violation, TCADA determines that a violation has occurred, to give written notice of the violation to the person alleged to have committed the violation. Sets forth the required contents of the notice.
- (f) Authorizes the person, no later than the 20th day after the date on which the notice is received, to accept the determination of TCADA made under this section, or make a written request for a hearing on that determination.
- (g) Requires the executive director or the executive director's designee, if the person notified of the violation accepts the determination of TCADA, to issue an order approving the determination and ordering that the person pay the proposed penalty.
- (h) Requires TCADA to perform certain actions if the person notified under Subsection (d) of this section timely requests a hearing.
- (i) Requires the hearings examiner to make findings of fact and conclusions of law and to promptly issue to the executive director or the executive director's designee a proposal for decision as to the occurrence of the violation and a recommendation as to the amount of the proposed penalty if a penalty is determined to be warranted.
- (j) Authorizes the executive director or the executive director's designee, based on the findings of fact and conclusions of law and the recommendations of the hearings examiner, by order, to find that a violation has occurred and to assess a penalty or to find that no violation has occurred.
- (k) Requires TCADA to give notice of the order under Subsection (j) to the person notified. Sets forth the required contents of the notice.
- (l) Requires the person, no later than the 30th day after the date on which the decision is final as provided by Chapter 2001, Government Code, to pay the penalty; pay the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or without paying the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.
- (m) Authorizes a person who acts under Subsection (l)(3), within the 30-day period, to stay enforcement of the penalty or to request the court to stay enforcement of the penalty.
- (n) Authorizes TCADA, if TCADA receives a copy of an affidavit under Subsection (m)(2), to file with the court a contest to the affidavit. Requires the court to hold a hearing on the facts alleged in the affidavit as soon as practicable and to stay the enforcement of the penalty on finding that the alleged facts are true. Provides that the person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.
- (o) Authorizes TCADA, if the person does not pay the penalty and the enforcement of the penalty is not stayed, to refer the matter to the attorney general for collection of the penalty.

(p) Provides that judicial review of the order is instituted by filing a petition as provided by Chapter 2001G, Government Code; and is under the substantial evidence rule.

(q) Authorizes the court, if the court sustains the occurrence of the violation, to uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. Requires the court, if the court does not sustain the occurrence of the violation, to order that no penalty is owed.

(r) Sets forth the guidelines for a court to follow when the judgment of the court becomes final.

(s) Requires an administrative penalty collected under this section to be deposited in the state treasury to the credit of the general revenue fund.

(t) Sets forth guidelines relating to the assessment of reasonable expenses and costs by TCADA against a person in an administrative hearing.

(u) Authorizes the attorney general, under certain conditions, to recover reasonable expenses and costs for actions performed pursuant to this section.

(v) Defines "reasonable expenses and costs."

(w) Requires costs and expenses incurred by TCADA that are collected under this section to be deposited in the state treasury to the credit of a special account that may be appropriated only to TCADA.

(x) Sets forth venue for certain suits exclusively upon the district courts in Travis County.

SECTION 17. Amends Sections 106.115(a), (b), (c), and (d), Alcoholic Beverage Code, as follows:

(a) Requires a court, under certain conditions, to require a defendant to attend an alcohol awareness program, rather than an alcohol awareness course, approved by TCADA. Provides that TCADA is responsible for the administration of the certification of approved alcohol awareness programs. Authorizes TCADA to charge a nonrefundable application fee for certification. Requires TCADA to adopt rules regarding alcohol awareness programs approved under this section. Requires TCADA to monitor, coordinate, and provide training to a person who provides an alcohol awareness program. Makes a conforming change.

(b)-(d) Makes conforming changes.

SECTION 18. Amends Section 13(j), Article 42.12, Code of Criminal Procedure, to make a conforming change.

SECTION 19. Amends Section 521.376, Transportation Code, as follows:

Sec. 521.376. New heading: DUTIES OF TEXAS COMMISSION ON ALCOHOL AND DRUG ABUSE; APPLICATION AND RENEWAL FEES. Makes conforming and nonsubstantive changes.

SECTION 20. (a) Requires TCADA to adopt the first statewide service delivery plan required by Section 461.0124, Health and Safety Code, as added by this Act, by February 1, 1998.

(b) Requires TCADA to conduct the study required by Section 461.0143, Health and Safety Code, as added by this Act, from the effective date of this Act, until August 31, 1998. Requires TCADA, if the results of the study are positive, under the criteria provided by Subsection 461.0143(b), to implement a unit rate reimbursement system as provided by that subsection for the fiscal year 1999 chemical dependency service contracts.

(c) Requires the governor, as soon as practicable after the effective date of this Act, to appoint six members to TCADA as provided by Section 461.003, Health and Safety Code, as amended by this Act. Requires the governor to determine the terms of each appointed member so that two members' terms expire February 1, 1999; two members' terms expire February 1, 2001; and two members' terms expire February 1, 2003.

SECTION 21. Requires the Sunset Commission (commission), in conjunction with its review of health and human service agencies for presentation to the 76th Legislature, to study whether the treatment programs of TCADA should be transferred to MHMR and TDH. Requires the commission to consider the results of the study in developing its recommendations prior to the 76th Legislature.

SECTION 22. Effective date: September 1, 1997.

SECTION 23. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

Amendment 1.

Page 14, lines 5-20, strikes proposed Section 461.0143(b), Health and Safety Code, and replaces it with a new proposed Subsection (b).

Amendment 2.

Page 8, line 9 - page 9, line 9, strikes proposed Sections 461.0051(a) and (b), Health and Safety Code, and replaces those subsections with new proposed Subsections (a)-(c).

Amendment 3.

Page 37, line 22, strikes proposed SECTION 21 and replaces it with a new proposed SECTION 21.

Amendment 4.

Page 11, lines 9-12, strikes proposed Section 461.0125(b), Health and Safety Code, and replaces it with a new proposed Subsection (b).