

BILL ANALYSIS

Senate Research Center

C.S.S.B. 940
By: Nelson
Health & Human Services
4-18-97
Committee Report (Substituted)

DIGEST

Currently, Texas law has established certain contract regulatory responsibilities through the Texas Department of Mental Health and Mental Retardation (department). However, statutory change is necessary to ensure that the department has the authority and appropriate mechanisms to ensure contract compliance and the continued provision of services. This bill creates mechanisms that enable the department to manage and operate a community department center.

PURPOSE

As proposed, C.S.S.B. 940 creates mechanisms that enable the Texas Department of Mental Health and Mental Retardation to manage and operate a community department center.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas Board of Mental Health and Mental Retardation in SECTION 3 (Section 534.059(c), Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 534.035(g)-(i), Health and Safety Code, to authorize the Texas Department of Mental Health and Mental Retardation (department) to withhold, rather than discontinue the transfer of, related department funds to the community center until the dispute is resolved in accordance with Section 534.059. Deletes a provision providing that the community center is entitled to notice and an opportunity for a hearing. Deletes a provision requiring the Texas Board of Mental Health and Mental Retardation (board) by rule to prescribe the hearings procedure. Deletes Subsection (h). Makes a conforming change.

SECTION 2. Amends Chapter 534A, Health and Safety Code, by adding Section 534.036, as follows:

Sec. 534.036. MANAGEMENT IN CERTAIN CIRCUMSTANCES. (a) Authorizes the commissioner of mental health and mental retardation (commissioner) to appoint a management team or an individual to manage and operate a community center if the commissioner makes certain findings.

(b) Requires the department, in writing, to notify the community center and local agency or organizational combination of local agencies responsible for making appointments to the local board of trustees of the appointment of the management team or individual and the circumstances on which the appointment is based.

(c) Authorizes the management team or individual to perform any or all of certain functions as defined by the commissioner.

(d) Requires the management team or individual to report the activities of the team or individual to the commissioner and the local board of trustees monthly.

(e) Requires the commissioner to review and evaluate the performance of the community center each month to determine the feasibility of restoring the management and operation

of the community center to local control.

(f) Requires the powers and duties of the board of trustees to be exercised under the supervision of the management team or individual.

(g) Authorizes the commissioner to direct that all costs of the management team or individual are to be paid by the community center.

(h) Provides that the appointment of a management team or individual under this section continues until the commissioner determines that circumstances that would support a finding under Subsection (a) no longer exist or the department cancels the contract with the community center.

(i) Requires the commissioner to terminate the powers and appointment of the team or individual, and after the termination, the community center's authorized officers and employees to manage and operate the community center, when the commissioner finds that circumstances that would support a finding under Subsection (a) no longer exist.

(j) Authorizes the community center to appeal an appointment made under Subsection (a) as prescribed by board rule. Provides that the filing of a notice of appeal does not stay the appointment of a management team or individual if the appointment is made on a finding made under Subsection (a)(4).

(k) Provides that a member of the management team or individual appointed under this section is immune from suit or liability arising from the good faith performance of any functions described in this section.

SECTION 3. Amends Section 534.059, Health and Safety Code, as follows:

Sec. 534.059. PERFORMANCE STANDARDS. Requires the department to specify performance standards in evaluating the compliance of a local mental health or mental retardation authority with its obligation or contract to ensure the provision of, rather than provide, specific services to priority populations. Authorizes the department to withhold related department money to the authority until the dispute is resolved, if, by the date prescribed by the commissioner, a mental health or mental retardation authority fails to comply with its obligation or contract to ensure provision of services to the satisfaction of the commissioner. Requires the department to notify the local mental health and mental retardation authority in writing of the department's decision to withhold money under this section. Authorizes the local mental health or mental retardation authority to appeal the department's decision to withhold money under this section. Requires the board, by rule, to prescribe the appeal procedure. Provides that the filing of a notice of appeal under this subsection stays the imposition of the department's decision to withhold money. Authorizes the department to limit general revenue allocations to the local mental health and mental retardation authority to monthly distributions during the appeal. Authorizes the department to withhold money during an appeal to a court if the decision to withhold money is finally affirmed in the appeal filed under Subsection (c).

SECTION 4. Amends Section 534.060(b), Health and Safety Code, to require the department to review the program quality and program performance results of each local mental health or mental retardation authority in accordance with a risk assessment and evaluation system appropriate to contract requirements. Deletes the requirement for the department to review program quality at least once each fiscal year.

SECTION 5. Amends Sections 534.061(a)-(c), Health and Safety Code, to require the department to develop mechanisms for periodically monitoring services provided by a provider, rather than a private provider. Requires the local mental health or mental retardation authority, rather than the department, to monitor provider services. Deletes a provision requiring the department to also provide for periodic fiscal audits of those private providers. Requires certain provider contracts to authorize the local mental health or mental retardation authority or the authority's designee, and the

department or the department's designee to have unrestricted access to certain matters.

SECTION 6. Effective date: September 1, 1997.

SECTION 7. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

Deletes SECTIONS 1-16 to add new bill text.

Amendment 1.

Page 6, line 9, deletes "to the board".

Page 6, line 18, replace "board finally affirms the withholding of money after an" with "decision to withhold money is finally affirmed in the".