

BILL ANALYSIS

Senate Research Center
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S.B. 369
By: Zaffirini
Human Services
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DIGEST

The Department of Human Services (department) was created by the Legislature in 1939 and is primarily responsible for determining eligibility and certifying that clients are eligible to receive long term care and public assistance benefits. The department administers more than 30 state and federally-funded programs designed to benefit low-income families and children, people who are elderly or disabled, and victims of family violence. The department has approximately 15,840 employees and a budget of \$3.5 billion for fiscal year 1999 and is governed by a six-member Board of Human Services. The department is subject to the Sunset Act and will be abolished on September 1, 1999 unless continued by the Legislature. As a result of its review of the Department of Human Services, the Sunset Advisory Commission recommended continuation of the department and several statutory modifications.

PURPOSE

As proposed, S.B. 369 sets forth provisions for the continuation and functions of the Texas Department of Human Services.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas Department of Human Services in SECTIONS 5, 11, and 12 (Section 22.0071, Chapter 22, Human Resources Code; and Sections 32.0212 and 32.0251, Chapter 32B, Human Resources Code) and the secretary of the state in SECTION 29(b) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 21.002, Human Resources Code, to provide that the Texas Department of Human Resources (department) is abolished and that this title, excluding any chapter that relates to a state agency other than the department, expires on September 1, 2007, unless continued as provided by Chapter 325, Government Code.

SECTION 2. Amends Sections 21.003(b) and (c), Human Resources Code, to add standard language developed by the Sunset Advisory Commission requiring the governor to designate the presiding officer of the Texas Board of Human Services (board). Requires one member of the board to be a licensed physician with expertise in geriatric care and another member must be a health care professional who is licensed, certified, or regulated by a health care regulatory agency.

SECTION 3. Amends Chapter 21, Human Resources Code, by adding Section 21.0033, to add standard language developed by the Sunset Advisory Commission requiring the members of the board to complete training before assuming their duties.

SECTION 4. Amends Chapter 21, Human Resources Code, by adding Section 21.0061, as follows:

Sec. 21.0061. REGIONAL PERFORMANCE AGREEMENTS WITH LOCAL ADMINISTRATIVE UNITS. Requires the Commissioner of Human Services (commissioner) and the administrator of each local administrative unit of the department to enter into a regional performance agreement that includes goals, objectives, and performance criteria established by the commissioner under Subsection (b) of the unit. Requires the commissioner to establish and periodically update goals, objectives, and performance criteria for each local administrative unit of the department. Sets forth the what the goals, objectives, and performance criteria must provide. Sets forth, in developing the goals, objectives, and performance criteria under Subsection (b), that there be certain parties the commissioner is required to seek input from. Requires the

commissioner to assess the performance of each local administrative unit based on the goals, objectives, and performance criteria in the regional performance agreement between the commissioner and the administrator of that unit. Requires the commissioner to include the results of each assessment in the report on the operation and administration of the department required under Section 21.011. Requires the commissioner to consider the goals, objectives, and performance criteria in each regional performance agreement and the performance of each local administrative unit based on those standards when evaluating and establishing regional funding allocations. Requires the department to inform health and human services agencies, as defined by Section 531.001, Government Code, and the general public in each region of the contents of the regional performance agreement for that region.

SECTION 5. Amends Chapter 22, Human Resources Code, by adding Section 22.0071, as follows:

Sec. 22.0071. **CONTRACTS FOR COMMUNITY CARE SERVICES.** Requires the department, by rule, to develop and implement a system of selective contracting with providers for the delivery of department community care services. Requires the department to ensure that more than one provider is available in each region of the state. Prohibits the department from using an open-enrollment contracting system under which any provider who meets department criteria is entitled to contract with the department. Sets forth the required information to be included in a contract for the delivery of community care services under a department program. Requires the department to monitor a community care provider's performance under a contract for the delivery of community care services. Sets forth the required performance monitoring techniques of the department.

SECTION 6. Amends Section 22.018, Human Resources Code, as follows:

Sec. 22.018. **New heading. COOPERATION WITH STATE OFFICE OF ADMINISTRATIVE HEARINGS.** Requires, except as provided by Subsection (e), the department and the chief administrative law judge of the State Office of Administrative Hearings (SOAH) to adopt a memorandum of understanding under which SOAH, on behalf of the department, conducts all contested case hearings authorized or required by law to be conducted by the department under the administrative procedure law, Chapter 2001, Government Code. Requires the memorandum of understanding to require the chief administrative law judge, the department, and the commissioner to cooperate in connection with a contested case hearing and may authorize SOAH to perform any administrative act, including giving of notice, that is required to be performed by the department or commissioner. Requires the administrative law judge who conducts a contested case hearing for SOAH on behalf of the department to take certain actions. Requires the department by interagency contract to reimburse SOAH for the costs incurred in conducting contested case hearings by the department. Authorizes the department to pay an hourly fee for the costs of conducting those hearings or a fixed annual fee negotiated biennially by the department and SOAH to coincide with the department's legislative appropriations request. Provides that a reference in law to the hearings division of the department is considered to be a reference to SOAH when used in relation to a contested case hearing under the administrative procedure law, Chapter 2001, Government Code.

SECTION 7. Amends Section 31.0032, Human Resources Code, by amending Subsection (a) and adding Subsection (d), to require the department to immediately apply appropriate sanctions or penalties regarding the assistance provided to or for a person under this chapter, if, after an investigation, the department determines that a person is not complying with a requirement of the responsibility agreement required under Section 31.0031. Requires the department to give the highest priority to the administrative processing of sanctions or penalties applied under this section so that the department's records of the affected person promptly reflect application of the sanctions or penalties.

SECTION 8. Amends Section 31.0095, Human Resources Code, as follows:

Sec. 31.0095. **New heading: EMPLOYABILITY NEEDS ASSESSMENT.**

SECTION 9. Amends Section 31.010, Human Resources Code, as follows:

Sec. 31.010. **New heading: SUPPORT SERVICES RELATED TO EMPLOYABILITY OF A RECIPIENT.**

SECTION 10. Amends Chapter 31A, Human Resources Code, by adding Section 31.011, as follows:

Sec. 31.011. PERSONAL AND FAMILIAL NEEDS ASSESSMENT AND SUPPORT SERVICES. Requires the department to assist a recipient of financial assistance in assessing the needs, other than employability needs assessed under Section 31.0095, of the recipient and the recipient's family that, if addressed, would help the recipient and the recipient's family to attain and retain the capability of independence and self-care. Requires the department, based on the needs assessment under this section, to refer a recipient and a recipient's family to appropriate preventive and support services provided by the department or any other public or private entity. Sets forth the preventive and support services to which the department is authorized to refer a recipient and a recipient's family under this section.

SECTION 11. Amends Chapter 32B, Human Resources Code, by adding Section 32.0212, as follows:

Sec. 32.0212. CONTRACTS FOR NURSING FACILITY CARE. Requires the department, by rule, to develop minimum performance standards for a nursing facility that contracts with the department for the delivery of medical assistance. Sets forth the required performance data collected by the department to be used in developing the minimum performance standards. Requires a contract with the department for the delivery of medical assistance by a nursing facility to include the performance standards developed under Subsection (a). Sets forth the ways in which the department is required to address a nursing facility's failure to meet minimum performance standards.

SECTION 12. Amends Chapter 32B, Human Resources Code, by adding Section 32.0251, as follows:

Sec. 32.0251. COMMUNITY CARE SERVICES FOR THE ELDERLY AND DISABLED. Requires the department to inform an applicant for medical assistance seeking nursing facility care of any community care services that may be available to the applicant as an alternative to nursing facility care. Requires the department, by rule, to develop and implement a process of presumptive eligibility determination for appropriate elderly or disabled applicants for community care services. Requires the department to conduct an initial assessment of an elderly or disabled applicant for community care services to determine the degree and type of services needed by the applicant. Requires the department, based on the assessment, to design a plan of care for the applicant. Requires the plan of care to be adjusted promptly as necessary based on any change in the applicant's physical condition or need for services, whether identified by the department during a periodic reassessment of the applicant's condition or at any other time. Requires the department to maintain a waiting list prioritized by the level and degree of need of each applicant who is eligible for the services, if community care services are not readily available for an elderly or disabled applicant because of a high demand for services. Sets forth the required assignment of a priority level criteria to be used by the department in placing an applicant on a waiting list.

SECTION 13. Amends Chapter 51, Human Resources Code, as follows:

Chapter 51. New heading. FAMILY VIOLENCE CENTERS.

SECTION 14. Amends Section 51.002, Human Resources Code, to define "family violence nonresidential center," and "family violence nonresidential center." Makes conforming changes.

SECTION 15. Amends Section 51.003, Human Resources Code, to require the department to contract for services with family violence centers with consideration given to geographic distribution and need. Requires activities contracted for under this subsection to include, rather than to require, the provision of technical assistance and training for family violence centers. Authorizes the department, to contract for certain provisions. Requires the department to award a contract made under Subsection (b) through a competitive bidding process. Makes conforming changes.

SECTION 16. Amends Section 51.004, Human Resources Code, to require to be eligible for a contract under Section 51.003(a), a family violence shelter center to: provide temporary lodging and social services for adults and their children who have left or have been removed from the family home because of family violence; have been in actual operation offering shelter services 24 hours a day with a capacity for not less than five persons for at least nine months before the date on which the contract is awarded; and submit contract application on forms prescribed by the department. Sets forth certain actions a family violence

nonresidential center is required to provide to be eligible for a contract under Section 51.003(a). Sets forth the department's required considerations of certain factors in awarding contracts under Section 51.003(a). Requires the department to include a family violence nonresidential center in the noncompetitive procurement procedure under Subsection (d), if a family violence nonresidential center provides services that would not be otherwise available in the service area. Deletes text requiring, to be eligible for a contract under Section 51.003(a) of this code, a public or private nonprofit organization to operate a family violence center that provides certain lodging and social services for adults and their children. Deletes text requiring a contract application to be submitted on forms prescribed by the department. Makes conforming changes.

SECTION 17. Amends Section 51.005, Human Resources Code, to make conforming changes.

SECTION 18. Amends Section 51.006, Human Resources Code, to make a conforming change.

SECTION 19. Amends Section 51.007, Human Resources Code, to make a conforming change.

SECTION 20. Amends Chapter 51, Human Resources Code, by adding Section 51.012, as follows:

Sec. 51.012. COORDINATION OF SERVICES. Requires the department to coordinate the services provided under this chapter with other services for victims of family violence provided by the Department of Protective and Regulatory Services.

SECTION 21. Amends Section 242.309, Health and Safety Code, as added by Section 1.01, Chapter 1280, 75th Legislature, Regular Session, 1997 (effective until federal determination of failure to comply with federal regulations), to add standard language developed by the Sunset Advisory Commission regarding provisional license.

SECTION 22. Amends Section 242.310, Health and Safety Code, as added by Section 1.01, Chapter 1280, 75th Legislature, Regular Session, 1997 (effective until federal determination of failure to comply with federal regulations), to add standard language developed by the Sunset Advisory Commission regarding license renewal.

SECTION 23. Amends Section 242.314, Health and Safety Code, as added by Section 2.01, Chapter 1280, 75th Legislature, Regular Session, 1997 (effective until federal determination of failure to comply with federal regulations), to add standard language developed by the Sunset Advisory Commission regarding provisional license.

SECTION 24. Amends Section 242.315, Health and Safety Code, as added by Section 2.01, Chapter 1280, 75th Legislature, Regular Session, 1997 (effective until federal determination of failure to comply with federal regulations), to add standard language developed by the Sunset Advisory Commission regarding license renewal.

SECTION 25. Amends Chapter 242, Health and Safety Code, by adding Subchapter Q, as follows:

SUBCHAPTER Q. PUBLIC ACCESS TO QUALITY OF SERVICE INFORMATION

Sec. 242.901. COMPILATION OF QUALITY OF SERVICE INFORMATION. Requires the department to compile and periodically update regulatory and service quality information regarding nursing facilities licensed under this chapter for review by the public. Provides that this subsection applies only to regulatory and service quality information that is public information subject to public disclosure under Chapter 552, Government Code. Requires the department to compile the compilation required under Subsection (a) in a format that is readily accessible to and understandable by a member of the general public. Sets forth the required information to be included in information in the compilation required under Subsection (a) which is useful to a member of the general public in selecting a nursing facility.

Sec. 242.902. ACCESS TO QUALITY OF SERVICE INFORMATION. Requires the department to make copies of the information compiled under Section 242.901 available to the public on request. Sets forth the required manner in which the department will provide access to the information.

SECTION 26. Amends Section 7.021, Education Code, by adding Subsection (d), to require the Texas Education Agency (agency) to administer federal nutrition programs as otherwise required by law.

SECTION 27. Amends Chapter 7B, Education Code, by adding Section 7.025, as follows:

Sec. 7.025. SUMMER FOOD SERVICE PROGRAM. Requires the agency to ensure that children residing in school districts in which 60 percent or more of the children are educationally disadvantaged have access to meals provided through the federal Summer Food Service Program. Requires the commissioner of education (commissioner) to designate an agency employee to coordinate activities necessary to comply with this subsection. Requires the agency to annually identify each school district described by Subsection (a). Requires the agency, not later than November 30 of each year, to notify each identified district without a program sponsor of the district's responsibility to provide or arrange for the provision of a program during the following summer. Requires each notified school district, not later than January 31 of the following year, to respond to the agency and indicate the district's intent to operate a program during the following summer or request a waiver under Subsection (d). Sets forth certain conditions in which the commissioner is authorized to waive the requirement that a school district operate a program. Requires the agency to publish rules and procedures for obtaining a waiver under Subsection (d). Provides that a waiver is valid for a one-year period. Requires the agency to continue efforts to locate an alternative sponsor for the program, if a school district has requested a waiver under Subsection (d) and has been unable to provide a list of possible sponsors to the agency. Sets forth the excepted conditions under which school district facilities are to be used for the program. Sets forth certain information to be included in a report, which is required to be provided by the agency to the governor's office of budget and planning, the legislative budget board, and the state auditor, not later than November 1 of each even-numbered year. Requires the agency to notify members of the legislature and the standing committees of the senate and house of representatives having primary jurisdiction over the agency of the filing of the report.

SECTION 28. Amends Section 30.05(b) (3), Penal Code, to redefine "shelter center."

SECTION 29. (a) Provides that on January 1, 2000, or an earlier date provided by an interagency agreement between the department and the agency: all powers, duties, functions, and activities relating to certain programs assigned to or performed by the department immediately before January 1, 2000, are transferred to the agency; all funds, obligations, and contracts of the department related to a program listed in Subdivision (1) of this subsection are transferred to the agency; all property and records in the custody of the department related to a program listed in Subdivision (1) of this subsection and all funds appropriated by the legislature for a program listed in Subdivision (1) of this subsection are transferred to the agency; and all employees of the department who primarily perform duties related to a program listed in Subdivision (1) of this subsection become employees of the agency, to be assigned duties by the commissioner.

(b) Provides that a rule or form adopted by the department that relates to a program listed in Subsection (a) of this section is a rule or form of the agency and remains in effect until altered by the agency. Authorizes the secretary of state to adopt rules as necessary to expedite the implementation of this subsection.

(c) Provides that a reference in law to the department that relates to a program listed in Subsection (a) of this section means the agency.

SECTION 30. Repealer: Section 32.025(c), Human Resources Code (Requires the department to inform applicants of certain information).

SECTION 31. Repealer: Section 32.024, Human Resources Code (Summer Food Service Program).

SECTION 32. (a) Provides that the transfer of powers, duties, functions, programs, and activities from the department to the agency under Section 29 of this Act does not affect or impair any act done, any obligation, right, order, license, permit, rule, criterion, standard, or requirement existing, any investigation begun, or any penalty accrued under former law, and that law remains in effect for any action concerning those matters.

(b) Provides that an action brought or proceeding commenced before the effective date of this Act

in connection with a power, duty, function, program, or activity transferred under Section 29 of this Act, including a contested case or a remand of an action or proceeding by a reviewing court, is governed by the law and rules applicable to the action or proceeding before the effective date of this Act.

SECTION 33. Makes application of this Act prospective.

SECTION 34.(a) Makes application of this Act prospective, however, this Act does not prohibit a person who is a member of the board on September 1, 1999, from being reappointed to the board.

(b) Requires the governor, in filling the first two vacancies on the board that occur after the effective date of this Act, to ensure that the composition of the board after those vacancies are filled complies with the requirements of Section 21.003(b), Human Resources Code, as amended by this Act.

SECTION 35. (a) Requires the department, not later than January 1, 2000, to develop and implement the system of selective contracting required by Section 22.0071(a), Human Resources Code, as added by this Act.

(b) Authorizes the department, notwithstanding Section 22.0071(a), Human Resources Code, to continue to use an open enrollment contracting system with providers for the delivery of department community care services until the system of selective contracting is implemented. Authorizes, a provider of community care services under a contract executed before the effective date of this Act, notwithstanding Section 22.0071(a), Human Resources Code, to continue to provide services in accordance with the contract until the contract expires or is lawfully terminated.

(c) Makes application of this Act prospective.

SECTION 36. Makes application of this Act prospective.

SECTION 37. Makes application of this Act prospective.

SECTION 38. Requires an agency affected by a provision, if, before implementing any provision of this Act, a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, to request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 39. (a) Effective date, except as provided by Subsection (b) of this section: September 1, 1999.

(b) Effective date, of SECTIONS 27 and 31: January 1, 2000.

SECTION 40. Emergency clause.