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Texas Adapts to Requirements of No Child Left Behind Act

Three years after the enactment of the federal No Child Left Behind Act of 2001 (NCLB), states and school districts still are struggling to comply with the landmark legislation and to evaluate its costs. Texas, which served as a model for many provisions of NCLB, initially was expected to face fewer hurdles in implementing the law because it had testing and accountability systems already in place. But conflicts between Texas' statutory testing and accountability systems and the new federal requirements have created confusion and led to problems in the implementation of key provisions of NCLB. In addition, many of NCLB's most costly sanctions have just begun to be imposed in Texas, and concerns have arisen about whether the federal government will commit sufficient funding to enforce these penalties.

NCLB is the new name given to an existing body of federal law known as the Elementary and Secondary Education Act, originally enacted in 1965 when the federal government first assumed a significant role in public education. Over the years, the act has been reauthorized and expanded to include a variety of grant programs aimed at increasing educational opportunities for poor and minority children. Federal requirements are tied to grant programs, the largest of which is Title I, which distributes formula grants to states based on the number of children in poverty.

NCLB builds on this body of law, including accountability requirements established in the mid-1990s, but imposes new requirements as well as stiff sanctions for states, districts, and schools that fail to meet particular goals. In exchange for these stricter requirements, NCLB gives school districts greater flexibility in using federal funds to meet the new standards.

A variety of federal grant programs fall under NCLB, but the one that is having the most immediate impact on

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HHS Reorganization: Changes to the Delivery of Mental Health Services

This article is the fourth in a series about the changes made during the 78th Legislature in HB 2292 by Wohlgemuth, the omnibus health and human services reorganization bill.

The reorganization of health and human services made significant changes to the delivery of mental health services in Texas. Previously administered by the Texas Department of Mental Health and Mental Retardation (MHMR), mental health services have moved to the new Department of Health Services, which became operational September 1, 2004. (Mental retardation services moved to the new Department of Aging and Disability Services.) While the oversight agency has changed, the basic structure of the delivery system has not. The central office contracts with local mental health authorities to deliver services. In the past, the allocation of services largely was determined by functionality – a patient's ability to function – and level of impairment,

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states and school districts is included in a section of the law known as Title I, Part A, which includes the following major components:

- **Assessments:** States are required to develop and implement achievement tests in reading/language arts and mathematics that are aligned with state academic content and achievement standards. Beginning in 2005, students must be tested annually in grades 3-8 and once in high school. By 2007-08, state science standards must be in place and students must be tested in science once in elementary school, middle school, and high school. Test results must be "disaggregated" – broken down – to show test performance of certain student groups, including minority, low-income, special education, and students with limited English proficiency (LEP).

- **Accountability:** States are required to develop measurements of "adequate yearly progress" (AYP) toward achieving educational goals (see page 3). NCLB outlines a progressive series of stages of improvement requirements for Title I schools or districts showing insufficient progress toward these goals.

- **Qualifications for teachers and paraprofessionals:** NCLB creates standards for defining "highly qualified" teachers in all core academic subject areas and paraprofessionals working in Title I programs and requires states to develop plans for ensuring that teachers meet these standards by the end of the 2005-06 school year.

Assessments

NCLB requires states to develop and implement annual assessments, using tests designed or chosen by each state. The assessments must be aligned with state academic content and achievement standards.

Texas Education Code, sec. 39.023 requires the Texas Education Agency (TEA) to adopt or develop tests designed to assess the extent to which a student has gained essential knowledge and skills in reading, writing, mathematics, social studies, and science.

Most Texas students now take the Texas Assessment of Knowledge and Skills (TAKS), which replaced the Texas Assessment of Academic Skills (TAAS) when it was introduced in 2003. Special education students for whom the TAKS is not an appropriate test take the State Developed Alternative Assessment (SDAA) or a locally designed assessment instrument. The SDAA measures student achievement and growth in reading, mathematics, and writing. LEP students take the Reading Proficiency Tests in English (RPTE), designed specifically for second language learners, as well as TAKS. (Spanish versions of the TAKS are available for grades 3-6.)

While Texas did not have to develop new reporting systems to comply with NCLB, the federal law requires that test results be disaggregated for additional student groups. Under Texas Education Code, sec. 39.051, test performance must be disaggregated by race, ethnicity, gender, and socioeconomic status. NCLB requires that test results also be disaggregated to show the performance of special education, LEP, and migrant students. Although state law does not require it, Texas already was reporting results for the additional student groups required under NCLB.

The state is, however, adopting new tests to comply with NCLB requirements. TEA is developing a grade 8 TAKS science test to meet the NCLB requirement to test in science at the elementary, middle, and high school levels by 2007-08. Additional English language proficiency assessments also are being developed for LEP students. Under NCLB, LEP students must be tested for English proficiency in reading, writing, listening, and speaking beginning at kindergarten.

Accountability

NCLB requires states to develop and implement a single, statewide accountability system that evaluates test results for student groups and measures progress in test results from one year to the next. Texas has had an accountability system in place for more than a decade. Texas Education Code, sec. 39.072, enacted in 1993, requires TEA to issue accountability ratings for every district and school in the state.

On September 30, 2004, TEA released its first annual performance ratings under a new state accountability system, which ranks districts and schools based on student performance on the TAKS test as well as other criteria, such as high school completion rates and dropout rates for students in grades 7-8. Under the new rating system, there were fewer "Exemplary" and more "Academically Unacceptable" districts and schools, primarily because more students had trouble passing the more rigorous TAKS test, and, for the first time, districts and campuses were rated on more performance measures, including science and student performance on the SDAA.

Also in 2004, TEA released a separate list identifying schools that had failed to make adequate yearly progress for the same indicator – reading, mathematics, graduation rate, or attendance rate – in two consecutive years, as required by NCLB. The release of two separate lists one day apart created confusion among the public and illustrated some of the difficulties TEA has faced in implementing NCLB under tight federal timelines. In future years, however, AYP ratings will be included as part of state rankings in one annual performance report.

Measuring AYP

NCLB requires states to establish criteria to measure whether schools and districts are making progress from one year to the next for all students tested, including subgroups of minority students, special education students, and LEP students. TEA must measure progress in all schools, including those that do not receive Title I funds, as well as alternative education and charter schools. Districts and schools that receive Title I funds are subject to increasingly rigorous sanctions if they do not meet AYP standards. (See *Lack of progress leads to stiff sanctions*, page 5.)

In Texas, districts and campuses must meet up to 29 criteria established by TEA and approved by the U.S. Department of Education (USDE). For all students in a campus or district as well as those in six different subgroups, 47 percent of students must pass the reading/language arts section of the TAKS, and 33 percent must pass the mathematics section. These required pass rates will rise over time until the 2013-14 school year, when 100 percent of students, including students in every subgroup, will be expected to achieve passing scores in reading/language arts, mathematics, and science. Other criteria include test participation, high school graduation rates, and attendance rates in elementary school and middle school.

If a school or district fails to meet even one of the 29 criteria, it is identified as "needing improvement" and may be subject to sanctions.

Supporters say this system will provide a transparent measure of how all children are performing and will encourage schools and districts to focus resources where they are needed most to ensure that all children meet increasingly rigorous academic standards. Opponents say these standards will be more and more difficult, if not impossible, to achieve. Title I schools, which already are struggling to educate low-income and LEP students, should be allowed more time to improve, rather than being subjected to such immediate and severe consequences, opponents say.

In Texas, the first district and campus AYP designations under NCLB were released in September 2003. In September 2004, TEA released a list of 199 Title I schools, including 29 charter schools, that did not meet AYP standards in the same indicator for a second year. Schools that fail to "make AYP" for two years in a row are required to offer students the choice of transferring to another higher-performing school in the district. Schools will have the option of appealing these preliminary ratings, and final AYP ratings for all schools in the state are expected to be released in February 2005.

While the USDE has approved most of the state criteria for evaluating adequate yearly progress, questions remain regarding the use of SDAA results for special education students to meet federal accountability requirements. TEA has requested that the USDE conduct a review of the Texas assessment program in 2004 so that the following unresolved issues can be addressed, if necessary, during the 2005 legislative session:

- **Instructional level testing (federal 1-percent cap).** A maximum of 1 percent of students can be counted as "Proficient" in the AYP performance rate calculation based on results of alternative assessments that test the students at their

instructional level rather than enrolled grade level. The SDAA assesses special education students at their appropriate instructional level rather than their assigned grade level. However, the SDAA was not designed with the intent that its use would be limited to only 1 percent of the student population.

- **Significantly cognitively disabled.** The federal regulations implementing AYP define the population of students with disabilities under the 1-percent cap as "significantly cognitively disabled." This definition does not correspond to any of the existing Texas disability categories.

- **Uniform passing standard.** The lack of a uniform state passing standard for the SDAA has been an issue with the USDE. As required by state law – TEC §39.024(a) and 39.023(b); TAC §101.5(b) – the SDAA is designed to measure annual growth based on appropriate expectations for each student as determined by the student's local admission review and dismissal (ARD) committee. A new version of the SDAA (SDAA II) will be administered statewide for the first time in 2005. SDAA II is aligned more closely with the TAKS and adds assessments at grades 9 and 10. TEA is conducting a special study this autumn to ascertain the relationship between SDAA and TAKS and examine the feasibility of setting a grade-level-equivalent uniform passing standard. Use of a uniform passing standard, either instead of or in addition to locally set ARD expectations, would require a change in statute.

- **Functional assessments.** Use of functional assessments for students with disabilities (versus assessments based on the state curriculum) may not meet the assessment requirements in NCLB. If this is the case, students with disabilities tested on a functional-based locally determined alternate assessment (LDAA) may be considered non-participants for purposes of AYP. The LDAA is used for the small number of students with disabilities for whom neither TAKS nor SDAA is an appropriate test. If NCLB requires that students currently tested on LDAA be tested on a curriculum-based assessment, or if the lack of a uniform passing standard on LDAAs is an issue, one alternative may be to extend the SDAA II to provide an appropriate assessment for students currently tested on LDAA. This alternative is predicated on the USDE approving the SDAA II in its peer review process.

Highly qualified teachers and paraprofessionals

By the end of the 2005-06 school year, all teachers of core academic subjects must meet the NCLB definition of "highly qualified": teachers must hold at least a bachelor's degree, have current state certification (including alternative certification), and be able to demonstrate subject-matter competency in each of the core academic subjects they teach. Teachers who are using temporary credentials or emergency permits, as authorized by state law, for the most part do not meet the NCLB definition of highly qualified. The certification provision does not apply to charter schools.

Core academic subjects include English, reading/language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

School districts must use at least 5 percent of their Title I funds for professional development to help teachers become highly qualified, unless they document a need to spend less. All new hires in Title I programs must meet the definition of highly qualified. Title I schools are required to notify parents if their child's teacher does not meet the highly qualified criteria.

In Texas, the State Board of Educator Certification (SBEC) establishes requirements for teacher certification. Teachers must have a bachelor's degree that includes courses in education or receive alternative certification from an approved certification program, and pass subject and grade-level tests.

According to TEA, preliminary data for the 2003-04 school year indicates that about 95 percent of Texas teachers meet the NCLB definition of "highly qualified" in their primary assignment. Concerns have been raised about having 100 percent of teachers meet this standard in all districts, especially in subject areas where teacher shortages are particularly acute, such as mathematics, science and bilingual education.

Lack of progress leads to stiff sanctions

Determinations of whether a district or campus has made adequate yearly progress (AYP) are of particular concern to districts that receive Title I funds because they are subject to sanctions if they fail to meet up to 29 specific criteria designed to measure school improvement. These criteria, or measures, include student participation (at least 95 percent of students must be tested), pass rates for all students as well as those in six subgroups, and high school completion rates.

A school that fails to meet even one of these measures for two or more consecutive years is identified as "in need of improvement" and is subject to increasingly severe sanctions. Sanctions for schools that fail to meet AYP standards include:

Stage 1 (*Failure to achieve the same measure for two or more consecutive years*): Parents must be notified of the school's status and students must be offered the option of transferring to another public or charter school that has not been identified as needing improvement. The district must provide transportation, using up to 20 percent of its Title I funds. At least 10 percent of the school's Title I funds must be used for professional development for teachers and the principal to directly address the academic achievement problems that caused the school to be identified as needing improvement.

Stage 2 (*Failure to achieve the same measure for three or more consecutive years*): In addition to Stage 1 options, the school must offer students free after-school tutoring in the areas in which it did not meet the standards. Tutoring can be offered by public or private providers, including for-profit tutoring companies, nonprofit organizations, and religious institutions that have been approved by TEA and signed a contract with the district. The district must notify parents of the tutoring options and must use up to 20 percent of its Title I funds to pay for the tutoring services. These funds cannot be used to pay the failing school itself to provide free tutoring.

Stage 3 (*Failure to achieve the same measure for four or more consecutive years*): In addition to provisions of Stage 1 and Stage 2, schools must take such corrective actions as replacing staff, implementing a new curriculum, appointing an outside expert to advise the school, extending the school day or year, or reorganizing the school internally.

Stage 4 (*Failure to achieve the same measure for five or more consecutive years*): At this point, the district must initiate plans to fundamentally restructure the school. This can include reopening as a charter school, replacing the principal and staff, or turning operation of the school over to the state or to a private management company.

In March 2004, in response to some of these concerns, the USDE relaxed certain standards for teacher certification. Rural teachers now have three years to satisfy the requirement for demonstrating proficiency in additional subjects if they meet the standard for one subject they teach. States will be able to use their own certification standards to determine subject matter competency in science, rather than requiring teachers to pass separate tests for each subject they teach. States also have been allowed to streamline the method for enabling current teachers of multiple subjects to meet the new standards by demonstrating subject matter competence without taking a test.

In April 2004, SBEC approved a plan to allow college graduates who could pass subject tests in their teaching areas to teach grades 8-12 for two years without formal certification. After this initial period, the district has the option of issuing a permanent certificate. The plan was intended to address teacher shortage problems, although critics said it would dilute education standards for teachers, devalue teacher training, and create greater classroom instability. Teachers who receive this certification meet the NCLB definition of "highly qualified."

Is No Child Left Behind an unfunded mandate?

Critics of NCLB complain that the law is an "unfunded mandate" because the federal government has not provided sufficient funding to cover the cost of implementing the law. But a recent report by the Government Accountability Office (GAO) argues that the law is not an unfunded mandate, but rather a federal grant program that states and school districts are free to reject if they do not wish to comply with the conditions of grant funding.

Disagreement has arisen about whether the federal government has provided the level of funding that was promised when the law was enacted in 2001. Supporters of NCLB say federal funding for education has increased 37.5 percent since the 2000-01 school year, which they argue is more than sufficient to cover the cost of implementing the law. Further, the law authorizes districts to use a portion of their Title I funds to cover the cost of sanctions, such as after-school tutoring and transportation for students who opt to transfer out of a school that has been identified as needing improvement.

Opponents say that while funding has increased, it is not sufficient to cover the full cost of complying with the law. Districts and schools are having to divert funds from other efforts to cover these additional costs. NCLB-related costs are expected to include transportation for transferring students, tutoring, and teacher training.

NCLB also establishes new requirements for "paraprofessionals" who work in Title I programs and who provide instructional support. Paraprofessionals must have at least two years of postsecondary education or be able to demonstrate necessary skills on a state or local academic assessment. The law does not require that districts use Title I funds to provide additional training for paraprofessionals.

Supporters say the NCLB standards will ensure that all students are taught by teachers who know their subject matter and how to teach it and that paraprofessionals who provide instruction have basic subject knowledge. The need for highly qualified teachers is especially great in low-income communities, which traditionally have had trouble attracting the best teachers and paraprofessionals.

Opponents argue that the new requirements will exacerbate teacher shortage problems, particularly in rural districts that already have difficulty attracting and training teachers. They also point out that the new standards emphasize content knowledge but do not take into account teaching ability and other elements that contribute to teacher quality.

Policymakers respond to concerns about NCLB

The relaxed requirements for rural teachers is one of four NCLB policy changes that the USDE has announced since December 2003. Testing standards were adjusted for severely disabled and LEP students, and a requirement that schools test 95 percent of students was allowed to be averaged over two to three years. These changes, which the USDE made in response to specific concerns about elements of the new law, reflect some of the difficulties that other states have faced in implementing NCLB.

Soon after the enactment of NCLB, many states began to raise objections to elements of the law. According to the National Conference of State Legislatures, 29 states are considering resolutions requesting waivers or other means of flexibility and/or asking for more money to cover NCLB mandates. School districts in Connecticut, Illinois, and Vermont have chosen to refuse federal funds rather than comply with the law. The state of Utah considered opting out of NCLB but chose instead to study the cost of the federal mandate.

Some districts have faced difficulties in complying with the requirement that students in schools that do not meet AYP standards be allowed to transfer to another high-performing school. Many rural districts have been unable to offer the transfer option because there are no other schools within a reasonable distance. According to an article in the August 18, 2004, edition of The New York Times, in Chicago, 19,000 of the 270,000 students eligible to transfer applied to do so. Through a lottery, nearly 1,100 won the right to transfer, and half of these students ultimately did. New York City, in which 7,000 students transferred last year, this year allowed only 1,000 students to transfer.

More than 30 bills have been introduced in the U.S. Congress to address these problems. NCLB supporters have expressed concerns that a series of significant changes to the law could undermine its effectiveness.

Funding

The cost of implementing NCLB continues to be the subject of debate and a source of confusion for states and school districts alike. While federal funding for education has risen significantly over the past three years, critics contend that the increase is not sufficient to cover the full cost of implementing NCLB. Some studies have suggested that NCLB creates substantial additional expenses for states and school districts, while others point out that most states, including Texas, already were anticipating many of these costs as part of accountability requirements states have been putting in place since the mid-1990s.

Federal spending for Title I, the largest NCLB program, rose from $7.9 billion in fiscal 2000 to $12.3 billion in 2004. Texas received $1.1 billion in Title I funds in 2005, nearly $445 million more than the state received in 2001.

For fiscal 2005, federal Title I funding is expected to increase to about $13.3 billion under the appropriations bill currently making its way through the U.S. Congress. The House and Senate versions of the bill contain additional funding ($30 million in the House version and $40 million in the Senate version) to support statewide data systems.

NCLB directs states and school districts to use a portion of their Title I funds to meet the requirements of the law. For example, school districts must use up to 20 percent of their Title I funds to provide transportation for students who have the option of transferring to other schools and districts because the school has failed to meet federal standards for adequate yearly progress (see *Lack of progress leads to stiff sanctions*, page 5). Since this is the first year Texas schools that did not meet federal standards have had to offer the transfer option, many Texas school districts are just beginning to determine the cost of complying with this requirement.

A study released by the Ohio Department of Education estimates that the state of Ohio would have to spend about $1.5 billion per year – more than twice the amount the state receives in federal education funding – to meet the administrative and achievement costs of NCLB. But some school finance experts point out that the Ohio report and others like it attribute to NCLB many costs related to student achievement that the state would have assumed even if NCLB had not been enacted.

As is the case in other states, Texas is making progress in complying with the law, but uncertainty about NCLB remains. There continues to be disagreement about the actual cost of the law and whether sufficient new funds will be available to cover these costs. The consequences of failing to meet particular requirements are unclear, and TEA is continuing to negotiate with USDE about particular elements related to the definition of "adequate yearly progress."

– by Betsy Blair

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and the types of service provided were based on individual decisions by the treatment center. Under HB 2292, Texas' mental health system now treats patients based on type of diagnosis, rather than level of functionality, and employs a disease management model for treatment. HB 2292 also mandated some changes to the service delivery model for children, which currently are under development, but did not target specific diagnoses.

Priority population: who gets served

Given limited resources, the state establishes a priority population for receipt of mental health services to ensure that resources first go toward those deemed neediest. Prior to HB 2292, MHMR's adult priority population consisted of people with severe and persistent mental illnesses that require crisis intervention or long-term treatment. Through what was known as a "functional-needs" model, the state purchased services from local mental health centers based on the individual's level of functioning, the needs of the individual, and the services available. Critics of this system said that it was biased toward certain groups: those who demanded the greatest attention and those who were easiest to treat. They said that it spread resources too thinly to offer adequate treatment. Supporters of the functional-needs model said that it may not have matched needs perfectly to services, but that the state's policy should be to treat the sickest of the sick, which can be accomplished only by treating individuals with the greatest functional impairment first, not assigning priority to certain diagnostic codes or other criteria.

The 78th Legislature changed the selection criteria for the priority population from a functional-needs model to a diagnosis-based model. As of September 1, 2004, local mental health organizations are directed to prioritize services to people diagnosed with schizophrenia, bipolar disorder, and major depression first. In addition, anyone who requires crisis intervention is authorized to receive those services, whether or not they have a diagnosis that falls within the priority population. Because the state-run mental hospitals treat patients in crisis, the policy change has no effect on their intake criteria. Local mental health authorities retain some control over who they wish to serve first by issuing "clinical overrides" – decisions to treat patients outside the priority population. Overrides are not automatically reviewed at the state level unless the total in a local authority's caseload is more than 15 percent.

Supporters of this change say that the pool of resources is finite and that mental health dollars should be focused more sharply on the people who need it the most. Instead of trying to treat everyone inadequately, the state should treat the most serious mental illnesses with some degree of adequacy. They say that schizophrenia, bipolar disorder, and major depression are the "big three," accounting for most mental illnesses treated by the mental health system. Basing admission for services on diagnoses ensures that the disease management resources are available for those clients because there are established evidence-based methods for treating people with those diagnoses. According to mental health authorities, the new priority population covers about 85 percent of the clients who received services in fiscal 2004.

Local mental health authorities with caseloads that include patients not under the priority population can retain some of them through "overrides" or transition those clients into other community-based services, say supporters of the new priority-population model. Local authorities have not lost all control over whom they serve, and individuals will not be denied services they need. Instead, its supporters say, this new policy allows the state to concentrate its resources better.

Opponents of the change in priority population say that it does not focus resources on those who need them the most and may lead to wide misdiagnoses of clients. They say the priority-designation used previously, based on the severity of the mental illness, more accurately targeted the population that needs services the most. Allegations that local mental health authorities skewed their client populations toward individuals who were easier to serve better would be addressed by improved monitoring, not by the change in priority population. Critics also question whether the new priority-population model will have a deleterious effect on the diagnostic process as clinicians may deliberately misdiagnose clients to assure treatment for patients who otherwise would fall outside the priority population. Patients with post-traumatic stress disorder, severe anxiety, or obsessive-compulsive disorder may not suffer from one of the "big three" illnesses, but they also may need long-term treatment. Supporters respond that misdiagnosis to create eligibility can be performed under any system, not just the new priority population system.

Reorganization updates

The state's reorganization efforts, directed in HB 2292 by Wohlgemuth and implemented by the Health and Human Service Commission's transition plan, have been the subject of four Interim News articles by the House Research Organization. Since these articles appeared, the reorganization process has continued, including the establishment of new agencies, a request for vendor proposals to implement call centers, indefinite delay in implementing some provisions relating to the Children's Health Insurance Program (CHIP), and continued delays in the federal reauthorization of the Temporary Assistance to Needy Families (TANF).

All new agencies now operational. HB 2292 consolidated the 10 health and human service agencies into four under the umbrella HHSC. Prior to the consolidation, the health and human services agencies constituted Texas' second largest budget function after education. The consolidation process grouped functions and services into four new agencies that became operational in 2004. The new Department of Family and Protective Services, formerly the Texas Department of Protective Services, was launched in February 2004, followed on March 1 by the new Department of Assistive and Rehabilitative Services. The Department of Aging and Disability Services and the Department of State Health Services both began operations in September 2004. As of September 1, 2004, the health and human services agencies have 45,000 employees, about 3,000 fewer than in August 2003.

Call centers request for proposal deadline recently passed. One of the more controversial elements of HB 2292 requires HHSC to establish, if cost-effective, one or more eligibility-determination call centers where the public would apply over the phone, rather than in person, for services, such as Medicaid and cash assistance. Earlier this year, HHSC conducted a business case analysis and concluded that using call centers would be cost-effective. Consequently, the commission issued a request for proposals to manage the call centers that set a September 30, 2004, deadline. HHSC has not yet set a date by which the contract will be awarded. Critics of the call center policy say that it will result in poor service delivery and significant agency job losses. Proponents maintain that it is a more efficient model for determining eligibility for state assistance programs.

CHIP changes indefinitely delayed. CHIP is a health insurance program for children in low-income families who do not qualify for Medicaid. It is modeled on private health insurance in that it includes some cost-sharing and provider networks. HB 2292 maintained the income eligibility level for CHIP, but made a series of policy changes: establishing an asset test for eligibility; requiring families to become recertified every six months, rather than every year; expanding the 90-day waiting period to all applicants; and increasing cost sharing, including monthly premiums. HHSC also announced that families who were delinquent in paying their monthly premiums by three months would be terminated from the program.

In August, the governor directed HHSC to delay implementation of the deadline for removing families from CHIP for failure to pay premiums and to explore alternative premiums or incentives to ensure that qualified families retain access to the program. On September 29, 2004, HHSC announced that it temporarily will suspend enforcement of the cost-sharing requirements, beginning November 1, 2004, and later announced that it will suspend the collection of all premiums, including those that were in place prior to HB 2292, as it studies how to equitably collect premiums.

Delayed reauthorization for TANF. Reauthorization for TANF again was postponed when both the U.S. House and Senate passed H.R. 5149 extending current funding levels through March 31, 2005. The federal legislation authorizing TANF expired September 1, 2002, and Congress since has extended funding on a temporary basis. Some changes that could appear in a final reauthorization bill include: increased funding for the Child Care and Development Fund; stricter work requirements; full-family sanctions; and more flexibility for states in administering programs for low-income families.

Opponents also question whether limiting the diagnoses for which the state will offer services actually can free up sufficient funding to offer more comprehensive services to the clients who remain under the mental health system's care. Given that the new, more limited, group of clients who are eligible for services accounts for about 85 percent of the previous group and that some migration of clients into the new diagnostic groups is likely to occur, opponents question whether the new allocation system will cost any less than the one it replaced. If no funds are freed up by the new allocation system, then the patients who remain will not have access to any more comprehensive services and the system will be in the same situation it was before the change, opponents say.

The expectation that clients who no longer are part of the priority population can obtain services elsewhere is unrealistic, opponents say. They claim that many areas simply lack alternate resources for mental health services, and even those areas in which private or charity organizations offer some services may not have the capacity or the breadth of services that these clients need.

Evidenced-based outcomes

A second fundamental change to the delivery of mental health services made by HB 2292 was the shift toward "disease management." This term refers to a system of practices that are linked by evidence to improved outcomes. For example, a study could show that most patients in a given diagnostic group responded best when they received medication and cognitive-behavioral therapy but showed no comparable improvement in outcomes when provided other types of therapy, such as psychoanalysis. Supporters of disease management say this approach brings science and services together in a rational delivery system. Critics of the practice say it forces clinicians to treat all patients in the same manner, when the prescribed treatment pattern may be more appropriate for some individuals than others. The system shifts decision-making power from the educated opinions of the clinicians, who know the patient, to the payer, who is more focused on overall outcomes.

In fiscal 2003, the state mental health agency (then-MHMR) initiated a pilot project to investigate the efficacy of disease management practices in mental health. The agency selected four sites and established utilization management guidelines for their programs. The following fiscal year, the agency amended the contracts with those four local mental health authorities to substitute performance measure requirements for ones that permitted pilot sites to implement innovative disease management programs. One of the pilot sites, Hill Country MHMR, developed the disease management program that was the basis for the new treatment models introduced by the state in September 2004. This work on disease management and focus on outcomes followed MHMR's earlier change in prescribing protocols for medications. In 1999, MHMR implemented the Texas Implementation of Medical Algorithms (TIMA), a tool that assists clinicians in deciding which medications to prescribe. At that time, the use of the TIMA was a way to ensure maximum efficacy for the new-generation medications provided by new spending authorized by the 75th and 76th Legislatures. Patient advocates and mental health authorities generally agree that the TIMA works well in the mental health system, although both say that consistency in using symptom assessment tools would better match medications to patients.

Children's mental health services

While the new law made many changes to the adult mental health delivery model, children's services remained largely unchanged after September 1, 2004. HB 2292 directed mental health authorities to treat "children with serious emotional illnesses," which encompasses the priority population targeted before the bill became law. It also directed the state (then-MHMR) to require by contract that local mental health authorities implement a disease management program for children's services as well as those for adults.

– by Kelli Soika

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