



CSHB 2292 ANALYSIS

CSHB 2292 is scheduled for debate by the House on Thursday, April 24

On Thursday, April 24, the full House is expected to take up the committee substitute for House Bill 2292 by Representative Wohlgemuth, a 172-page bill that provides for the eventual consolidation of all health and human services (HHS) agencies into four agencies, eliminates agency boards, centralizes all policy and rulemaking authority for HHS programs and services with the commissioner of the Health and Human Services Commission (HHSC), and makes sweeping policy and programmatic changes in CHIP, Medicaid- and Medicare-funded programs and services, the Temporary Assistance for Needy Families (TANF) program, and Food Stamps. This Policy Page provides a short analysis of CSHB 2292 (with a link to a more detailed section-by-section analysis on our web site) with a summary of our major concerns and recommendations for improving the bill—or, in many cases, limiting the negative impact to the health and human services infrastructure in Texas.

CSHB 2292: WHAT LIES BENEATH?

On the surface, the committee substitute for HB 2292 is a “reorganization” bill that represents ways to consolidate and streamline the delivery of health and human services in Texas to create a more efficient network and save the state a bundle of money—\$963 million in General Revenue (GR) to be precise.

This reorganization is accompanied by a massive centralization of power at HHSC, whose commissioner is given total authority over rulemaking and the policy direction of HHS agencies, while individual agency directors and boards are stripped of these responsibilities. The consolidation of power with the commissioner raises the concern that HHS policy decisions will become less open to the public—in particular, the advocates who look out for the interests of the people these programs serve—more subject to the priorities of the governor, over those of the legislature, and more susceptible to political considerations.

Explicit in the streamlining of HHS programs and services is the intent to privatize—to the extent that it is cost-effective—many of the services state employees now perform. Privatization raises concerns about client access; the loss of state employee jobs, particularly in rural areas; and the state’s ability to protect client rights and hold private companies accountable for their performance in operating these programs.

The makeover of HHS agencies is complete by Page 62 or so of HB 2292, leaving roughly 90 pages filled with program cuts and policy changes. Many of these provisions limit access to HHS programs, ranging from placing a statutory cap on CHIP eligibility at 150% of poverty, to denying TANF to

parents who don’t apply for the Earned Income Tax Credit, to the use of a single call center to determine eligibility for the major health and human services programs in the state. Although more CPPP concerns with the bill are addressed in a section-by-section analysis on our web site (www.cppp.org/...), we want to highlight the most critical of these concerns up front.

But first, the answer to our initial question: what lies beneath? This bill is a vehicle to downsize the safety net under the banner of fiscal responsibility and avoiding new taxes—a banner with widespread appeal to legislators, who feel the pressure to cut the state budget regardless of their ideology. Because the underlying policy goal of substantially reducing the state’s role in operating the programs that serve our most vulnerable citizens meshes neatly with the goal of writing a budget within available revenue, many lawmakers may be less willing to voice their opposition.

For this reason, a public outcry on the more drastic components of this legislation is critical (see below for how to contact your representative and senator). Should this legislation become law, it will affect millions of Texans: the clients who benefit from these programs and services, thousands of state workers, and virtually every community in this state. Yet, the only public input received thus far on the changes envisioned in CSHB 2292 occurred over the course of several hearings on the bill, during which public testimony and debate was limited.

CPPP'S MAJOR CONCERNS AND RECOMMENDATIONS FOR CSHB 2292

- **Rulemaking authority:** The consolidation of authority with the commissioner and the elimination of agency boards will limit public input. We recommend investing the new agency “councils” (which replace the boards) with rulemaking authority or, at a minimum, creating a clear process for them to hold public hearings on substantive policy changes.
- **Transition council:** The transition council is created to assist the commissioner in completing the consolidation of HHS agencies, but is not subject to open meetings and records laws. We recommend that the council hold regular public hearings and be open at all times to public input.
- **Call centers:** If call centers replace eligibility offices and eliminate the face-to-face contact between state workers and clients, the state needs to maintain current standards for the administration of these programs. We recommend including in the bill customer service and performance standards for call centers to protect client and worker rights, ensure program integrity, and keep these services as accessible as possible to *all* Texans who qualify for them.
- **Medicaid fraud pilot program:** This pilot would involve the use of finger imaging and smart card technology to verify the identify of providers and recipients and reduce fraud in the Medicaid program. We recommend requiring an independent evaluation of the pilot program prior to its expansion; language protecting the misuse of these finger images; exemptions from finger imaging for children, seniors, and persons with disabilities and a finger printing process that takes into consideration any work or transportation barriers faced by recipients; and stricter requirements regarding a cost-benefit analysis to ensure that expanding the pilot program would result in state savings.
- **CHIP income limit at 150% of poverty:** A fixed cap is not needed, as the statute already allows HHSC the flexibility to suspend enrollment or create a waiting list if appropriations are inadequate. A fixed cap could also turn out to be too high, depending on changes in inflation or utilization. A better alternative (assuming the legislature does not maintain the current 200% limit, for which the Senate budget provides) would be temporarily fixing the limit at 150% of poverty in a rider to HB 1 (the General Appropriations Act). This would ensure reconsideration of the income limit by the 2005 Legislature.
- **Reduction in CHIP continuous eligibility period to 6 months (from current 12).** As drafted, the bill would make this change permanent. State law already allows a shorter period than 12 months. If the legislature fails to maintain the 12-month coverage, a better alternative would be temporarily limiting continuous eligibility to 6 months in a rider to HB 1. This would ensure reconsideration of the length by the 2005 Legislature.
- **Medicaid continuous eligibility period maintained at 6 months until June 2002.** This replaces language in the first committee substitute that repealed mail-in application and continuous eligibility and required renewal every 3 months. We recommend an amendment to postpone child Medicaid 12-month continuous eligibility until June 2005, which would make CSHB 2292 consistent with HB 728 (Delisi) and SB 1522 (Zaffirini).
- **Optional CHIP coverage for recent legal immigrant children.** Currently, this coverage is mandated by state law. These children are covered with state funds ONLY during their first five years in the United States. After five years, federal law mandates that Texas include them in the regular CHIP program. The rationale for this change is unclear, since HB 1 includes funding for the legal immigrant children’s coverage.
- **New 90-day waiting period for CHIP coverage to take effect.** Rather than requiring children to have been uninsured for 90 days prior to being eligible (current law), the new policy would delay the effective date of coverage for 90 days after the child is found eligible. Current exceptions to the delay would still apply (e.g., leaving Medicaid, end of COBRA coverage), plus a new exception would be created for families opting into health insurance premium payment reimbursement programs (see Section 2.05 of the bill). (NOTE: federal law requires that a child be uninsured before he or she is enrolled in CHIP.) Although this saves the state money, because it will avoid paying the initial costs for the medical treatment that may have prompted a parent to seek coverage for a child, we recommend removing the waiting period because of the increase in uncompensated care for providers that will obviously result.
- **Federal waiver to “opt into” CHIP coverage instead of Medicaid.** Directs HHSC to request a waiver from the U.S. Department of Health and Human Services to allow parents of children on Medicaid to “opt into” CHIP coverage instead of Medicaid. The state would still only get the Medicaid match rate. This concept is not as problematic provided that Medicaid simplification is reasonably preserved. That is, if we don’t make children’s Medicaid a horrendous hassle—thereby forcing parents onto CHIP—this concept would be palatable. We recommend several ways to improve this section of the bill: (1) ensure that if a waiver IS requested and approved, that parents who choose CHIP over Medicaid will be able to change their mind later and return to Medicaid (important if CHIP benefits are stripped down as proposed in the House budget); and (2) ensure that under such a waiver, neither the child nor the state of Texas will lose entitlement to federal matching funds for children’s Medicaid (important because CHIP federal block grant funds are facing a 2007 shortfall). In other words, Texas should avoid converting children’s Medicaid entitlement coverage to a block grant.
- **New TANF-related federal Earned Income Tax Credit (EITC) requirements.** These sections (2.62 and 2.67) of

the bill require a TANF recipient to apply for the EITC in each tax year the recipient qualifies for the credit. Also, the bill **denies TANF if the parent failed to apply for the Earned Income Tax Credit** (if they qualified) in the year preceding the TANF application, regardless of whether the parent knew that claiming the EITC was a TANF requirement. We recommend adding language to 1) clarify the state's responsibility to assist clients with understanding and applying for the EITC; and 2) require TANF clients to apply for the EITC only after a person is determined eligible for assistance.

- **TANF "Pay after Performance,"** under which a family eligible for TANF assistance would be denied any assistance until it "complies" with every program requirement for at least 30 days. For every month thereafter the family's assistance would effectively be "on-hold" until the family again complies with every program requirement. During each month, any infraction, "failure to cooperate" with program requirements, or other "noncompliance" would result in the family receiving no assistance at all at the end of the month. After two consecutive months of failure to meet all requirements, the person and their family will be terminated entirely from the program. Unlike current rules, which continue assistance to a family while they challenge a ruling and await a hearing, a parent must challenge any ruling that they "failed to cooperate" within 13 days and then await a hearing (which historically has averaged 45 days and can be as long as 90 days). Only after their challenge has been upheld, would they receive the assistance—a **potential wait of up to four months**. This would create administrative problems, such as coordinating information from the Texas Workforce Commission, local school districts, the Office of the Attorney General (OAG) and others, about whether the client had complied with all the requirements, as well as the need to constantly re-adjust the family's Food Stamp allotment. We recommend, *as a lesser of two evils*, **full-family sanctions**, particularly if applied only to work and child support requirements and with a reasonable case review and compliance plan.

See [www.cppp.org/...](http://www.cppp.org/) for a section-by-section analysis of CSHB 2292 and more CPPP recommendations. For a copy of the full bill, go to www.capitol.state.tx.us, enter HB 2292, and select Committee Report from the text options.

THE FISCAL NOTE & FTE REDUCTIONS
CSHB 2292 would have the following fiscal impacts in 2004-05 (some of which are already assumed in the House budget):

- A **\$963 million biennial reduction in General Revenue** (GR) spending; for All Funds, the reduction would be \$2.5 billion.
- The single largest GR reduction—almost one-fourth of the total GR cuts in HB 2292—would be \$221.4 million achieved through capping income eligibility for CHIP at 150% of poverty and giving the HHSC

commissioner the authority to halt new enrollment (Section 2.36).

- The proposal for Medicaid continuous eligibility would reduce GR spending by \$175.9 million (Section 2.72).
- Medicaid preferred drug lists would reduce GR spending by \$174.2 million GR (Section 2.11).
- Use of third-party information to verify assets would reduce GR spending by \$107 million, but would cost almost \$9 million in GR to implement, for a net GR reduction of \$98.7 million.
- The proposals regarding consolidation of HHS agency central and indirect administration and the Eligibility Determination Bureau would reduce GR spending by \$79.2 million.

A revenue gain of \$145.5 million (GR; same as All Funds) is also estimated from HB 2292 provisions, including:

- \$61.7 million from a premium tax on Medicaid/CHIP HMOs (25% of this tax revenue would go to the Foundation School Program; the other 75% would be GR).
- \$54.6 million from a quality assurance fee on MHMR facilities.

Most of the staffing changes required by HB 2292 are contained in two provisions:

- Section 1.00 would reduce the number of state workers by 1,102.1 in 2004, and 2,162.5 in 2005.
- Section 2.61 would add 190 employees to DHS by 2004 (196 by 2005) to implement the use of third-party information for asset verification
- The net combined effect of FTE changes would be 939 fewer state workers in 2004, and 1,994 fewer workers by 2005.

WHAT YOU CAN DO

Get on the horn now! Call your representative and tell them you have serious concerns with CSHB 2292. Ask them to support the amendments that improve the bill. After the House votes on the bill, call your senator and urge him/her to consider ways to amend the bill when it reaches the senate for consideration.

You can find out who represents you at www.capitol.state.tx.us.

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