



81st Texas Legislature

Legislative Wrap Up



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Legislative Wrap Up for Mental Health

The 81st Legislature convened on Tuesday, January 13th and adjourned on Monday, June 1st after 140 action-packed days that yielded significant victories for people with mental illness. These included securing additional funding for mental health services and passing legislation that will promote mental health and ensure greater access to needed mental health services.

An update on Mental Health America of Greater Houston's (MHA) priority issues, as well as other notable issues and missed opportunities is as follows:

Mental Health America of Greater Houston's Platform Issues

Funding for Community Mental Health Services

MHA's top priority for the session was **maintaining** funding for crisis mental health services and **increasing** funds for community mental health services. In 2007, the Legislature appropriated \$27.3 million for crisis services in the first year and \$54.7 million in the second year, for a total of \$82 million over the biennium. For the upcoming biennium, the Legislature appropriated \$109.4 million for the maintenance of crisis mental health services. This maintains crisis funding at the second-year, \$54.7 million level and ensures that crisis services that were built out in the past year will continue to be funded. The \$109.4 million will be distributed based upon a formula that allocates a portion to achieve equity, a portion on a per capita basis, and a portion using a competitive process.

The Legislature also appropriated \$55 million in new funding for transitional and ongoing community mental health services. These services will ensure that people leaving the mental health crisis system have access to services that will keep them stable and prevent the reoccurrence of expensive crisis episodes. MHA Houston and the Texas Council of Community Mental Health and Mental Retardation Centers also worked with Senator Tommy Williams and Rep. Larry Phillips to add a rider to the appropriations bill that will require that one half of the \$55 million be distributed to community mental health centers that are below the state per capita funding average (including Harris County MHMRA). The remaining one half will be distributed based upon the regular per capita funding formula.

Other mental health community funding items of interest include:

- An additional \$7.98 million (above the Legislative Budget Board recommended appropriation) in the adult Resiliency and Disease Management line item to help maintain critical services;
- An additional \$5.7 million over the biennium to address children's waiting lists at local community mental health centers;
- A new appropriation of \$7.5 million for the provision of mental health services at a soon-to-be constructed 100-bed mental health hospital in Montgomery County;
- An additional \$8.5 million over the biennium for the UT Harris County Psychiatric Center to open 24 additional beds, bringing the institution extremely close to filling its entire 250-bed capacity; and
- An additional \$3.4 million over the biennium to allow the Gulf Coast Center to expand their indigent psychiatric inpatient bed capacity by contracting with St. Joseph's Hospital and other crisis respite facilities and hospitals in the Gulf Coast area. This should relieve some of the pressure on Harris County inpatient providers who have been providing indigent care to many residents of Galveston County.

Funding to Divert Youths From the Juvenile Justice System

MHA supported a \$6.5 million exceptional item for the Texas Juvenile Probation Commission (TJPC) to develop a statewide automated assessment tool to screen youths for mental illness upon entry to the juvenile justice system (similar to the one used in Harris County) and to place additional clinicians in every pre- and post-adjudication facility across the state. The House version of the appropriations bill included funding for the assessment tool, but unfortunately, the conference committee stripped this funding out of the bill. MHA Houston plans to work with TJPC to develop creative ways to implement the assessment tool without a specifically earmarked appropriation.

MHA Houston also supported a \$4.8 million, 5-county legislative appropriations rider for staff positions and community-based services that will help divert youths with mental illness from the juvenile justice system. While the specific rider was not adopted, the Legislature did appropriate \$50 million to divert juveniles from the Texas Youth Commission (TYC). \$4.3 million out of these funds will be dedicated to the development of a system to share information between juvenile probation departments, TJPC and TYC. With the remaining funds, local juvenile probation departments will be funded on a competitive basis to implement diversionary programs that will keep youths in their local communities rather than in TYC facilities. TJPC will also be required to contract with the Texas Correctional Office on Offenders with Medical or Mental Impairments for the provision of needed mental health services. These diversionary programs will have significant future budgetary and policy implications, especially for dealing with juveniles with mental illness.

Finally in juvenile justice appropriations, the Legislature appropriated \$1 million for the operation of the Peavy Switch Behavioral Health Center in Lufkin for juveniles with serious mental illness.

Funding to Increase Qualified Mental Health Professionals

Another issue MHA supported was the Department of State Health Services' exceptional item request to increase psychiatric residency positions, as well as the creation of loan repayment programs for mental health professionals who agree to work a certain number of years in mental health shortage areas. The Legislature appropriated \$850,000 over the biennium for the Department of State Health Services to provide placement options and stipends for up to 14 psychiatric residents who are "sponsored" by independent residency programs. Adding these new residency positions is a crucial step toward increasing the number of psychiatrists practicing in Texas.

Regarding the loan repayment program, MHA supported and testified in favor HB 1876 by Rep. Warren Chisum, which would have created a health care loan repayment program for all health care professionals, including mental health professionals. While this bill ultimately failed, Rep. Chisum was able to amend portions of his bill onto HB 2154 by Rep. Al Edwards, which creates a steady funding source for the Physician Education Loan Repayment Program. This bill would cover psychiatrists who work in health professional shortage areas (including mental health shortage areas). See summary of HB 2154 below for more information.

Expanding Access to Equal Mental Health Coverage

MHA also supported legislation that would have expanded mental health coverage options under employer-sponsored health plans. MHA Houston testified in support of HB 2969 by Representative Garnet Coleman, which would have required health plans to provide coverage for all mental illnesses at parity. The bill was left pending in the House Insurance Committee. HB 2967 (also by Coleman), which would have required large employers to provide coverage for bulimia and anorexia nervosa, was voted out of the House Insurance Committee but died in the Calendars Committee. MHA Houston is committed to continue working on expanding coverage for mental health issues in private health insurance plans in future legislative sessions.

Funding for an Intermediate Care Facility

Finally, MHA supported funding to create an intermediate care facility for mental health consumers who consistently cycle through various crisis and acute care facilities in Harris County. During House debate on the appropriations bill, Rep. Alma Allen attached an amendment to the wish list that would have provided funding for a 16-bed residential treatment facility in Harris County. Unfortunately, the conference committee did not include this item in the final bill.

Other Noteworthy Mental Health-Related Legislation

In addition to the aforementioned issues in which MHA Houston played a significant role, several other pieces of legislation were passed that will have an impact upon mental health consumers, providers, and the public and private mental health systems. They include (in numerical order by bill number):

HB 216 by Menendez/Shapleigh

Relating to the regulation of certain boarding home facilities and assisted living facilities; providing penalties

Currently, state law does not require licensure for the operation of group homes that provide non-medical and non-therapeutic services for people with disabilities. As a result, many people with mental illness who reside in these homes have been financially exploited, exposed to hazardous conditions, and do not receive appropriate services. While not all boarding homes operate in this manner, the lack of standard regulations has made the proliferation of unsafe boarding homes all too common.

HB 216 seeks to address this problem by requiring regulations for boarding homes that house 3 or more elderly people or people with disabilities and provide non medical services, including: 1) community meals and meal preparation; 2) light housework; 3) transportation; 4) grocery shopping; 5) money management; 6) laundry services; or 7) assistance with self-administration of medication.

The bill requires the Executive Commissioner of the Health and Human Services Commission (HHSC) to develop standards for the operation of a boarding home related to: 1) construction and remodeling to ensure the residents' health, safety, comfort and protection; 2) sanitation; 3) the reporting and investigation of injuries; 4) assistance with self-administering medication; 5) in-service education requirements for staff; 6) criminal background checks; and 7) assessment and monitoring to ensure that residents do not need personal care services and are able to self-administer their medication.

The bill allows a county or municipality to require a permit for a boarding home to operate and may require the boarding home to comply with the standards adopted by HHSC. The county or municipality may impose fees for issuance and renewals of the permits, inspections, and noncompliance. If a boarding home meets the requirements established by the county or municipality, the county or municipality may not pass an ordinance or regulation to keep it out of a residential area.

The following items must be prominently displayed in a boarding home that has received a permit from a county or municipality: 1) the permit; 2) a sign that details how complaints may be registered with the county or municipality; 3) a notice regarding the availability of inspection and other reports at the boarding home facility and a telephone number people can call to obtain information about the facility; 4) a summary of the most recent inspection report; and 5) a notice listing the name and contact information for the closest public health services agency, as well as a local organization that advocates for, represents or serves people with disabilities or elderly people.

The bill also requires that suspected abuse, neglect, and exploitation be reported to the Department of Family and Protective Services for investigation. As a condition of employment, employees of boarding home facilities must sign a statement acknowledging potential criminal liability for failure to report abuse, neglect, or exploitation. An employee who makes a report of abuse, neglect, or exploitation or makes a complaint to the inspector general of HHSC may not be retaliated against.

A county or municipality that requires a permit for operation of a boarding home must submit a report to HHSC by September 30th of each year that includes information on: 1) the total number of boarding homes permitted in the last state fiscal year; 2) the total number denied and the cause for denial; 3) the total number of permits active on August 31st of the last state fiscal year; 4) the total number of residents housed in each facility; 5) the total number of inspections conducted at each facility; and 6) the total number of permits revoked or suspended as a result of an inspection and the subsequent outcome of the residents who were displaced by the revocation or suspension. HHSC must compile the information and submit it to the Legislature by January 1st of each odd-numbered year.

This act is effective September 1, 2009. However, HHSC has until September 1, 2010 to adopt the standards for the boarding homes, after which time a municipality or county can begin requiring permits for these facilities.

HB 888 by Naishtat/Uresti

Relating to the detention and examination of certain persons accepted for a preliminary mental health examination

Current law requires a person who is being detained in a mental health facility for a preliminary mental health examination to be released within 48 hours unless an order for protective custody is obtained. If the 48-hour period ends before 4:00 p.m. on a business day, the person can only be held until 12:00 p.m.

HB 888 extends this period to 4:00 p.m.

This act is effective immediately.

HB 1067 by Naishtat/Nelson

Relating to a memorandum of understanding between certain authorized entities to share suicide data that does not identify a deceased individual

It oftentimes takes several years before suicide data is made public, which can hamper suicide prevention efforts.

HB 1067 allows authorized entities—the medical examiner, the local registrar, the local health authority, a local mental health authority, a community mental health center, and an entity that acts as a suicide collection hub for a mental health center or political subdivision—to enter into memoranda of understanding to share suicide data that does not identify a deceased individual. The information may include the deceased

individual's date of birth, race, gender, zip code, any school or college the individual was attending at the time of death, the suicide method utilized, the individual's status as a veteran or member of the armed forces, and the date of the individual's death. An entity that receives the suicide information may periodically release suicide data to an organization with recognized expertise in suicide prevention, but the data may be used only for the purposes of suicide prevention.

This act is effective immediately.

HB 1233 by Menendez/Van de Putte

Relating to the court-ordered administration of psychoactive medication to certain criminal defendants

Prior to the 81st Legislature, Texas law did not allow the forced administration of psychotropic medications to people with mental illness who were confined in a correctional facility while awaiting transfer for competency restoration.

HB 1233 allows a court to compel the administration of psychotropic medications if it is in the best interest of the person and the person: 1) was ordered by a criminal court to receive inpatient mental health services; 2) has been confined in a correctional facility for more than 72 hours awaiting transfer for competency restoration; and 3) presents a danger to him/herself or others in the correctional facility.

If a person who is: 1) confined in a correctional facility for more than 72 hours awaiting transfer to an inpatient mental health facility, residential care facility or outpatient program; 2) committed to a facility for competency restoration; 3) confined in a correctional facility after competency restoration; or 4) is in an outpatient competency program, refuses to take psychotropic medications contrary to his/her continuity of care plan, the attorney representing the state may file a motion to compel medication. The court may issue an order compelling the administration of psychotropic medication if the order is supported by at least 2 physicians and the court finds that: 1) the medication is medically appropriate and does not cause side effects that are worse than the medical benefit; 2) the State has a compelling interest that the defendant obtain and maintain competency; 3) no less invasive way to obtain competency exists, and 4) the medication will not "unduly prejudice" the defendant's rights.

This act is effective immediately.

HB 1630 by Naishtat/Watson

Relating to the eligibility of certain individuals for child health plan coverage or medical assistance on release from certain facilities or other settings

In Texas, children who are enrolled in Medicaid or the Children's Health Insurance Program (CHIP) will have their benefits terminated if they are placed in a juvenile detention or other secure facility. Upon release, these youths must go through the application process once again, resulting in a lapse in coverage which oftentimes forces them to forego needed healthcare services. For children with behavioral health issues—

who comprise the majority of those in juvenile detention facilities—lack of access to care can compromise their successful reintegration into the community, potentially causing them to end back up in the juvenile justice system.

HB 1630 requires the Health and Human Services Commission to enter into memoranda of understanding with the Texas Youth Commission and Texas Juvenile Probation Commission to ensure that every juvenile who is detained in one of their facilities is assessed for eligibility for Medicaid and CHIP prior to release. The memoranda must be tailored in such a way to ensure that eligible juveniles will be enrolled in the appropriate program and begin receiving services as soon as possible after their release—to the extent possible, the day of their release.

This act is effective immediately.

HB 1711 by Turner/Whitmire

Relating to requiring the Texas Department of Criminal Justice to establish a comprehensive reentry and reintegration plan for offenders released or discharged from a correctional facility

Tens of thousands of inmates leave the Texas Department of Criminal Justice (TDCJ) each year and return to local communities. Many of these inmates, particularly those with mental illness, lack the skills, supports and other resources necessary to successfully reintegrate into the community. This has been a key contributor to Texas' high prison recidivism rate.

HB 1711 requires TDCJ to develop a comprehensive reentry and reintegration plan to reduce recidivism and ensure that offenders who are discharged from TDCJ can successfully reenter the community. The plan must include: 1) an assessment of offenders upon entry to TDCJ to determine which skills they need to develop in order to reintegrate back into the community; 2) programs that address offender needs; 3) transition programs to address offender needs when they are released; 4) identification of existing local providers with whom TDCJ may contract to implement the plan; and 5) information sharing between local coordinators, contractors and other providers in order to appropriately address offender needs. Personal health information may only be shared if the offender consents and if it is in accordance with HIPAA and other applicable state and federal privacy laws.

The programs that are developed must be administered by highly skilled staff and provide case management and other services within a full continuum of care, life-skills training, education (including special education for offenders with learning disabilities), job training, mental health and substance abuse and other treatment programs, and parenting classes.

TDCJ may contract with private vendors, units of local government or other entities in order to implement the comprehensive reentry and reintegration plan.

The bill also requires TDCJ to enter into a memorandum of understanding with the following agencies to create a reentry task force: 1) Texas Youth Commission; 2) Texas Workforce Commission; 3) Department of Public Safety; 4) Texas Department of

Housing and Community Affairs; 5) Texas Correctional Office on Offenders with Medical or Mental Impairments; 6) the Health and Human Services Commission; 7) the Texas Judicial Council; and 8) an organization selected by TDCJ that advocates for or provides reentry services for offenders. The task force may identify gaps in services for offenders seeking to return to communities and coordinate with providers of local reentry programs to make recommendations regarding appropriate services provided to offenders upon their release.

The bill also requires TDCJ to adopt and implement policies that encourage family participation in the offender's reintegration into the community, as well as to consider the impact that certain policies have on an offender's ability to maintain contact with his or her child. TDCJ shall also consider the best interests of the offender's family when determining which correctional facility in which to house the offender and make an effort to house him or her in, or close to, the county where his or family resides. TDCJ shall also conduct research into the impact of the offender's confinement on his or her child.

Finally, the bill requires TDCJ to conduct a study regarding the impact of the comprehensive reentry and reintegration plan and the family participation policies on reducing recidivism. TDCJ must deliver a report of the results to the Lt. Governor, Speaker of the House, and the House and Senate committees with jurisdiction over criminal justice and correction issues by September 1st of every even-numbered year.

This act is effective September 1, 2009. TDCJ must enter into an MOU with the agencies that will comprise the Reentry Task Force as soon as practicable after the effective date. The agency must implement the comprehensive reentry and reintegration plan and establish the family participation policies and procedures by January 1, 2010.

HB 2154 by Edwards/Hinojosa

Relating to the physician education loan repayment program

Texas is facing a critical shortage of psychiatrists, ranking 40th in the nation in the number of psychiatrists per 100,000 population. A key issue that has contributed to this shortage is the lack of financial aid options for individuals seeking to enter the field and the difficulty in paying off student loans.

HB 2154 seeks to address this issue for physicians (including psychiatrists) by modifying the current physician education loan repayment program and establishing a consistent funding stream for the repayment grants.

The bill requires that eligible participants apply to the Texas Higher Education Coordinating Board and: 1) be licensed to practice medicine in the state; 2) have completed at least one year of practice in a designated Health Professional Shortage area (includes Mental Health Professional Shortage Areas); and 3) serve Medicaid and CHIP recipients. The physicians may receive repayment assistance grants for up to four years, with a maximum award of \$25,000 in the first year, \$35,000 in the second year, \$45,000 in the third year, and \$55,000 in the fourth year.

HB 2154 also establishes the Physician Education Loan Repayment Program (PELRP) Account as a steady source of funding for the program, which will include: 1) gifts and grants contributed to the account; 2) earnings on the principal of the account; and 3) any other amounts deposited to the account, including the current medical school tuition set aside, legislative appropriations, and the remaining funds collected by changing the tax methodology on smokeless tobacco products from ad valorem to weight-based (funds will first be deposited to the property tax relief fund and the general revenue fund before being deposited to the PELRP Account).

This act is effective September 1, 2009.

HB 2163 by Sylvester Turner/Uresti

Relating to a study regarding the provision of certain medications through the Medicaid vendor drug program to children younger than 16 years of age

The propriety and safety of “off-label” medication use (e.g., use of a medication for a purpose or age group other than what was approved by the Federal Drug Administration) has become a major topic of discussion nationally, especially regarding the off-label prescription of psychotropic medications to children.

HB 2163 directs the Health and Human Services Commission (HHSC) to study the propriety and safety of antipsychotic and neuroleptic medications prescribed to children under age 16 through the Medicaid program. The study must consider the following factors: 1) the physical and psychological diagnosis of the child; 2) whether the medication is FDA-approved for use by a child of a certain age; 3) whether the child has successfully taken a medication previously; 4) a child’s access to quality medical care; 5) the standard of care in the medical profession regarding prescription of medications to the child; and 6) other factors as deemed appropriate by HHSC. The bill requires the Executive Commissioner of HHSC to submit a final report of its study to the Governor, Lt. Governor, Speaker of the House and Chairs of the Senate Health and Human Services Committee and House Public Health Committee by November 10, 2010.

This act is effective immediately.

HB 2196 by Truitt/Deuell

Relating to the establishment of a workgroup to study and make recommendations on the integration of health and behavioral health services

People with serious mental illness on average die 25 years younger than people without serious mental illness, largely due to preventable medical conditions such as heart disease and diabetes. Studies have proven that healthcare that integrates treatment of medical and psychiatric conditions can greatly improve outcomes for people with mental illness.

HB 2196 directs the Executive Commissioner of the Health and Human Services Commission (HHSC) to establish a workgroup to recommend best practices in policy, training and service delivery to promote integrated health care in Texas. The workgroup must include representatives from: 1) the Department of State Health Services; 2) the

Department of Aging and Disability Services; 3) the Department of Family and Protective Services; 4) the Health and Human Services Commission; 5) the Texas Department of Insurance; 6) a state organization that represent community mental health/mental retardation centers; 7) a state organization that represents federally qualified health centers; 8) a state organization that represents substance abuse providers; 9) a state association that represents medical and behavioral health professionals; 10) a statewide organization that promotes mental health and advocates and educates to improve care for people with mental illness; 11) an organization that represents mental health consumers; 12) an organization that represents families of mental health consumers; 13) a mental health philanthropy that is an administrative unit of a public institution of higher education; and 14) any other recognized experts in integrated healthcare in the state.

HB 2196 requires that the workgroup be established by October 1, 2009 and that it file a report with the appropriate House and Senate committees regarding best practices for integrated healthcare, barriers to implementation in the state, and policy considerations to improve the implementation of integrated healthcare by August 1, 2010. The workgroup will be abolished on August 31, 2010.

HB 2196 also establishes a statewide task force for children with special needs (see SB 1824 summary).

This act is effective immediately.

HB 3352 by Naishtat/Ellis

Relating to the collection, dissemination, and correction of certain judicial determinations for a federal firearm background check

Current federal law prohibits the transfer of firearms to certain groups, including individuals who have been adjudicated as a person with a mental impairment or committed to a hospital. This information is collected and maintained by the Federal Bureau of Investigation's National Instant Criminal Background Check System (NICS), but currently Texas does not report this information to NICS.

HB 3352 would require a clerk of a court to forward information to the Department of Public Safety (DPS) regarding persons who, in the last 30 days, were: 1) court ordered to receive inpatient mental health services; 2) acquitted Not Guilty by Reason of Insanity; 3) determined to have an intellectual and developmental disability and committed to a long-term residential facility; 4) appointed a guardian; or 5) found incompetent to stand trial. The clerk must also report to DPS any reversal of a previous order within 30 days of receiving the mandate from the appellate court. DPS must in turn forward this information to the FBI for use in the NICS. The information is confidential except that DPS must grant access to the person who is the subject of the information.

A person who is furloughed or discharged from court-ordered mental health services may petition in a court for relief from federal firearms disability. The court may consider and hear evidence regarding: 1) the circumstances that led to the federal firearms disability; 2) the person's mental health history; 3) the person's criminal background; and 4) the

person's reputation. A court may only grant federal firearms disability if it finds that the person is no longer likely to act in a manner dangerous to public safety and that it is in the public's interest for the person to be released from federal firearms disability. The clerk of a court must report notice of this finding to the DPS within 30 days.

DPS must also establish a procedure for correcting records in the NICS when it receives judicial proof that a person is no longer incapacitated or that the person has been removed from federal firearms disability under state or federal law.

This act is effective September 1, 2009. The clerk of a court has until September 1, 2010 to report to DPS all court orders requiring federal firearm disability issued between September 1, 1989 and August 31, 2009.

HB 3389 by Brown/Deuell

Relating to the continuation and functions of the Texas Commission on Law Enforcement Officer Standards and Education; providing civil and administrative penalties

In 2005, the Legislature passed the Bob Meadors Act, requiring every peace officer to complete a crisis intervention and de-escalation training program by September 1, 2009.

HB 3389 continues the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) and makes some modifications to the agency. Rep. Garnet Coleman also added an amendment to the bill that would require continuing crisis intervention and de-escalation training for peace officers with a basic proficiency certificate every 48 months.

This act is effective September 1, 2009. TCLEOSE is required to ensure that the new crisis intervention and de-escalation training program is available by January 1, 2010.

HB 3689 by McClendon/Hinojosa

Relating to the functions and continuation of the Texas Youth Commission and the Texas Juvenile Probation Commission and to the functions of the Office of Independent Ombudsman for the Texas Youth Commission

In 2007, the Legislature passed a number of reforms to address serious problems that were uncovered in Texas Youth Commission (TYC) facilities. The Legislature also called for the sunset review of TYC and the Texas Juvenile Probation Commission (TJPC) during the 2007-2008 interim. The sunset staff review cited continuing problems at TYC, lack of collaboration between TYC and TJPC, and recommended the abolition of both agencies and creation of a new juvenile justice entity. The Sunset Commission concurred with the staff recommendation, but the Legislature ultimately decided to allow TYC and TJPC to remain as stand-alone agencies.

HB 3689 continues TYC and TJPC for another 2 years, makes a number of modifications to their operations, and includes some important reforms that should bode well for youths with mental illness who are detained in these facilities.

HB 3689 requires TYC to develop a comprehensive plan to reduce recidivism and ensure the successful reintegration of youths back into the community upon release. The plan must include 1) an assessment of each child's skills and a determination of those that need to be developed; 2) programs that address the needs of each child; 3) comprehensive transition programs to address the needs of released children; 4) identification of current providers of these programs with whom TYC can contract; and 5) information sharing among local coordinators, contractors, and other providers to the extent allowable by state and federal law.

The programs that are developed must be administered by highly skilled staff and provide case management and other services within a full continuum of care, life-skills training, education (including special education for offenders with learning disabilities), job training, mental health and substance abuse and other treatment programs, and parenting and relationship-building classes. TYC may contract with private vendors, units of local government or other entities in order to implement this plan. TYC must conduct research to determine the effectiveness of the plan in reducing recidivism and report the results to the Lt. Governor, Speaker of the House, and the standing committees of each chamber with jurisdiction over juvenile justice and corrections by December 1st of each even-numbered year.

HB 3689 also requires TJPC to adopt rules to ensure that youths in local juvenile probation departments receive appropriate clinical and risk and needs assessments.

Finally related to mental health, HB 3689 requires TJPC, TYC, the Department of Public Safety, the Department of State Health Services, the Department of Aging and Disability Services, the Department of Family and Protective Services, the Texas Education Agency, and local juvenile probation departments to enter into a memorandum of understanding regarding development of a continuity of care plan for youths with mental impairments in the juvenile justice system. The Texas Correctional Office on Offenders with Medical and Mental Impairments (TCOOMMI) will oversee the development of the MOU. The MOU must establish procedures for: 1) identifying youths with mental impairments and collecting and reporting data; 2) developing policies for the exchange of information on youths with mental impairments that are served by the agencies, as well as by school districts and local mental health and mental retardation authorities; and 3) identifying the service needs of these youths. By February 1st of each odd-numbered year, TCOOMMI must present to the Texas Board of Criminal Justice and file a report to the Governor, Lt. Governor, and Speaker of the House regarding the continuity of care plan established for youths with mental impairments.

This act is effective immediately (some portions will be effective at a later date).

HB 4276 by Menendez/Uresti

Relating to a transportation plan for persons furloughed or discharged from certain mental health facilities

Currently, Texas state mental health hospitals may discharge consumers without notifying their family members or otherwise ensuring their safe transport to their place of residence.

HB 4276 requires the state hospital administrator, in conjunction with the local mental health authority, to create a written transportation plan for mental health consumers who are released from the facility. The plan must specify who is responsible for transporting the person, when the person will be transported and where the person will arrive. If the consumer consents, the plan also must be forwarded to a family member of the consumer.

This act is effective September 1, 2009.

HB 4451 by McReynolds/Hinojosa

Relating to continuity of care services or mental health commitment proceedings for youth with mental illness or mental retardation who are transferred, discharged, or paroled from the Texas Youth Commission

Some children with mental illness who are 17 or older and are paroled from the Texas Youth Commission are not able to access needed mental health services because they are no longer eligible for services provided through the Texas Council on Offenders with Medical and Mental Impairments (TCOOMMI) or the local mental health authority. Other children with mental illness who are unable to complete a required TYC rehabilitation program for parole are simply released from TYC, making them ineligible to receive services provided through TCOOMMI. These youths' inability to access services can hinder their successful reintegration into the community, potentially causing them to end back up in the juvenile justice system.

HB 4451 allows children who are paroled from TYC to receive continuity of care services through TCOOMMI beyond their 17th birthday until their parole has been completed. It also allows children who are released from TYC without successfully completing the rehabilitation program to receive needed services through TCOOMMI.

This act is effective immediately.

SB 187 by Deuell/Lucio III

Relating to a Medicaid buy-in program for certain children with disabilities

Oftentimes families with children with disabilities—including those with serious mental illness—have incomes too high to qualify for Medicaid or other public health insurance programs but still have difficulties paying for medical care. The federal Deficit Reduction Act of 2005 authorized states to implement Medicaid buy-in programs for children with disabilities, but Texas has yet to take advantage of such an opportunity.

SB 187 directs the Health and Human Services Commission (HHSC) to develop and implement a Medicaid buy-in program for children with disabilities whose family income does not exceed 300% of the Federal Poverty Level. It requires that the participants pay a monthly premium based upon a sliding scale determined by family income.

This act requires that the program be implemented no later than December 1, 2009 unless a waiver is required, in which case the implementation can be delayed until the waiver is obtained.

SB 1291 by Van de Putte/Martinez Fisher

Relating to access to certain counselors and therapists

Currently, health plans are able to limit a person's direct access to licensed professional counselors and licensed marriage and family therapists by requiring that the person first obtain a recommendation from his or her physician. This limitation not only has hindered people from accessing the therapy services they may need but also is discriminatory, as health plans are not able to limit direct access to any other class of mental health professionals.

SB 1291 removes a health plan's ability to limit direct access to licensed professional counselors and licensed marriage and family therapists.

This act takes effect September 1, 2009 but applies only to policies that are delivered, issued for delivery, or renewed, on or after January 1, 2010.

SB 1325 by Nelson/Corte

Relating to the creation of a mental health intervention program for military veterans

Many veterans fail to access needed mental health care due to stigma and concerns about the impact that receiving mental health services will have on their military record. Peer-based services, however, represent a less stigmatizing and highly effective alternative to veterans who are in need of behavioral health services.

SB 1325 directs the Department of State Health Services to develop a mental health intervention program for honorably discharged military veterans that makes use of military volunteers to provide peer-based counseling to other veterans.

This act is effective immediately.

SB 1557 by Duncan/Gallego

Relating to the early identification of criminal defendants who are or may be persons with mental illness or mental retardation

Currently, a sheriff must notify a magistrate within 72 hours if he or she receives evidence or a statement that establishes reasonable cause to believe that a defendant in the sheriff's custody has a mental illness or an intellectual and developmental disability. The magistrate may then order an evaluation of the person and use that information to make a determination about competency proceedings or other court ordered mental health/mental retardation services.

SB 1557 would allow the use of additional information—including a person’s behavior before, during and after arrest and previous assessments—to establish reasonable cause that a defendant has a mental illness or intellectual and developmental disability. The bill requires that written or electronic notification of this belief be sent to the magistrate. It also would allow the court to use this information: 1) as part of a pre-sentence investigation report; 2) during the punishment phase of a trial after a conviction; or 3) in connection with the imposition of conditions following placement on community supervision.

This act is effective September 1, 2009 and only applies to defendants charged with an offense committed on or after that date.

SB 1824 by Lucio/Lucio III

Relating to the Interagency Task Force for Children with Special Needs

Funding and services provided to children with special needs are spread across many different state agencies, but the coordination of these services is minimal, resulting in possible inefficiencies and duplication of services.

SB 1824 creates the Interagency Task Force for Children with Special Needs to improve coordination, quality and efficiency of services for children under the age of 22 who have been diagnosed with a chronic illness, an intellectual or other developmental disability, or serious mental illness.

The task force will be comprised of either the commissioner, executive director or deputy or assistant commissioner of the following state agencies: 1) the Health and Human Services Commission; 2) Department of Aging and Disability Services; 3) Department of Assistive and Rehabilitative Services (DARS); 4) the division of early childhood intervention of DARS; 5) the Department of Family and Protective Services; 6) the Department of State Health Services; 7) the Texas Education Agency; 8) the Texas Youth Commission; 9) the Texas Juvenile Probation Commission; and 10) the Texas Correctional Office on Offenders with Medical or Mental Impairments. Eight non-voting members, including: 1) a representative of a local mental health or mental retardation authority appointed by the Governor; 2) two state representatives appointed by the Speaker of the House; 3) two senators appointed by the Lt. Governor; and 4) three parents or consumer advocates, one each appointed by HHSC, TEA and TYC.

The task force will be charged with: 1) compiling opportunities to increase flexible funding for services for children with special needs by September 1, 2010; 2) reviewing state agency policies and procedures related to delivering services to children with special needs; 3) performing a needs assessment to identify service gaps, entry points, and obstacles; and 4) developing a 5-year plan to improve coordination, quality, and efficiency of services for children with special needs. The plan must be submitted to the 82nd Legislature by September 1, 2011.

The task force must report biennially to the Governor, Lt. Governor and Speaker of the House regarding the progress of each agency in meeting the aforementioned goals.

The task force must also establish subcommittees to address the following areas: 1) early childhood detection and intervention; 2) education; 3) health care; 4) transitioning youth; 5) crisis prevention and intervention; 6) juvenile justice; 7) long-term community-based services and supports; and 8) mental health. The subcommittees must consult with relevant experts, advocacy organizations, agency staff and parents and consumers to develop findings and recommendations to address these issues.

This act takes effect September 1, 2009. The task force members and interagency coordinator of the task force must be appointed as soon as practicable after the effective date of the bill. An organizational meeting of the task force shall be held by September 30, 2009.

SB 1940 by Van de Putte/Ortiz, Jr.

Relating to the fund for veterans' assistance and to the establishment of pretrial veterans court programs

Due to a number of different factors, many veterans have found themselves involved in the criminal justice system. Many of them have mental health issues that contributed to the commission of their crimes, yet there are no specialized pretrial diversion programs that are geared toward handling these unique cases.

SB 1940 authorizes the commissioners court in a county to establish a veterans court for those charged with a felony or misdemeanor. Two or more counties may join together to create a regional veterans court. Among other things, the court must provide access to a continuum of behavioral health and rehabilitative services, keep ongoing judicial interaction with participants, and monitor and evaluate program goals and effectiveness.

Participation in the court is dependent upon the consent of the district attorney and the charged individual and requires that: 1) the individual is a veteran or current member of the US armed forces, including the reserve national guard or state guard and 2) the individual has a brain injury or mental illness that resulted from military service in a combat zone or other dangerous area and affected the individual's criminal conduct.

The court program must continue for no less than 6 months but may not continue beyond the period of community supervision for the offense for which the individual was charged. Upon a participant's successful completion of the program, notification of the district attorney, and a hearing in which the court determines that a dismissal is in the best interest of justice, the criminal court must dismiss the criminal action against the participant.

SB 1940 authorizes a veterans court program to charge participants a program fee not to exceed \$1,000 and a fee to cover the cost of testing, counseling and treatment services. The fees must be based upon the participant's ability to pay and used solely for the purposes of the program.

The Lt. Governor and Speaker of the House may assign veterans court oversight duties to appropriate legislative committees, and legislative committees or the Governor may request that the State Auditor perform a management, operations or accounting audit of a

veterans court program. Before or upon implementation of a veterans court, the program shall notify the Governor's Criminal Justice Division and must also provide performance information to the division upon request.

This act is effective immediately.

Other Missed Opportunities

While the 81st Legislature passed a number of pieces of legislation that will promote mental health and improve the delivery of, and access to, needed mental health services, there were other bills that it failed to pass that advocates should begin working on now to advance in the next legislative session. A brief synopsis of these bills is as follows:

HB 620 by Davis

Relating to behavioral health services for children and establishment of the Children's Behavioral Health Council

This bill would have created the Children's Behavioral Health Council comprised of 9 state agencies to develop a comprehensive and coordinated approach to providing behavioral health services to Texas children. The bill was left pending in the House Public Health Committee but was amended onto SB 1646 by Van de Putte (Relating to the creation of the Council on Children and Families) in the Senate Health and Human Services Committee. However, the amendment was stripped off in the House Public Health Committee.

SB 750 by Zaffirini/Herrero

Relating to the administration of psychoactive medications to persons receiving services in a residential care facility

This bill would have prohibited the administration of psychotropic medication to clients residing in residential care facilities upon his or her refusal unless a medical emergency exists, the client's representative consents for him or her, or the administration of the medication is court-ordered. SB 750 passed the Senate and was set on the House General Calendar but ran out of time in the waning days of session.

SB 841 by Averitt/Coleman

Relating to the child health plan program

Several bills were filed that would have expanded access to the Medicaid and CHIP programs. In particular, SB 841 by Averitt/Coleman would have increased the maximum family income eligible for enrollment in the program from 200% to 300% of the Federal Poverty Level. The bill passed the Senate overwhelmingly but, despite broad-based, bipartisan support among legislators and statewide organizations, died in the House in end-of-session political wrangling.

SB 861 by Wentworth/Dutton

Relating to the exchange of information among certain governmental entities concerning at-risk youth

This bill would have allowed certain local and state agencies to share a juvenile's information, excluding education records, in order to identify "at risk" behaviors in these youths and deliver targeted services to those who are at risk of delinquency. SB 861 passed the Senate but was withdrawn from the House Local and Consent Calendar in the waning days of session.

SB 1648 by Van de Putte/Pickett

Relating to providing outreach services, service coordination for behavioral health services and other health care services related to mental health, and related information to members and veterans of the armed forces and their families, creating a pilot program for provision of related behavioral health services, and providing for the creation of related clinical practice guidelines

This bill would have required the Department of State Health Services (DSHS) to develop a program that would promote behavioral health among veterans and their family members by distributing information on evidence-based clinical practice guidelines and information on the effective treatment of behavioral health disorders. It also would have required DSHS to help connect veterans and their family members to available behavioral health services. SB 1648 passed the Senate but died in the House Calendars Committee.

Conclusion

All in all, at the conclusion of the 81st Legislature, mental health advocates, consumers, family members, providers, and other stakeholders had much to cheer about. As a result of our collective efforts over the past few years, legislators are undoubtedly much more aware of the tremendous impact that untreated mental health issues have on public systems such as the child welfare and juvenile and adult criminal justice systems. Their understanding of, and willingness to address, these issues was evidenced by the many victories we achieved in funding, as well as statutorily. The more that mental health stakeholders speak with one, united voice, the better our chances will be in future sessions as we continue working together to promote mental health and improve access to needed mental healthcare. Let's keep up the advocacy!

Contact

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