BILL ANALYSIS

C.S.H.B. 2292
By: Wohlgemuth
Appropriations
Committee Report (Substituted)

BACKGROUND AND PURPOSE

To achieve the cost savings and revenue necessary to finance certain health and human services, C.S.H.B. 2292 implements changes in health and human service policy necessary to ensure that Texas continues to serve its citizens who are most in need of health and human service assistance. C.S.H.B. 2292 reorganizes and consolidates the health and human service agencies, requires additional rebates for drug manufacturers purchasing drugs under health and human service programs, increases fraud detection and recovery, reforms the regulatory burden on providers of health and human services, consolidates certain transportation services and enacts many other measures that are necessary to deal with the current budget crisis.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Health and Human Services Commissioner in SECTIONS 1.03 (Section 531.0055, Government Code), 1.06 (Section 531.0163, Government Code), 1.08 (Section 531.409, Government Code), 1.09 (Sections 1001.028, 1001.052, and 1001.075, Health and Safety Code), 1.13 (Sections 161.028, 161.052, and 161.073, Human Resources Code), and 2.20 (Section 531.113, Government Code) of this bill. Rulemaking authority granted to the Health and Human Services Commissioner by other law is modified by SECTION 1.03 (Section 531.0055, Government Code) of this bill. Rulemaking authority is transferred to the Health and Human Services Commissioner in SECTIONS 1.03 (Section 531.0055, Government Code) and 1.11 (Section 40.002, Human Resources Code) of this bill.

It is the committee's opinion that rulemaking authority is expressly granted to the Health and Human Services Commission in SECTIONS 1.07 (Section 531.0224, Government Code), 2.04 (Section 531.063, Government Code), 2.13 (Section 531.074, Government Code), and 2.21 (Section 531.114, Government Code) of this bill. Rulemaking authority granted to the Health and Human Services Commission by other law is modified by SECTIONS 2.12 (Section 531.073, Government Code) and 2.73 (Section 32.028, Human Resources Code) of this bill. Rulemaking authority is transferred to the Health and Human Services Commission in SECTIONS 1.18 and 2.105 of this bill.

It is the committee's opinion that rulemaking authority is expressly granted to the Health and Human Services Commission (or another agency operating part of the medical assistance program) in SECTIONS 2.76 (Section 32.0321, Human Resources Code) and 2.78 (Section 32.0462, Human Resources Code) of this bill. Rulemaking authority granted to the Health and Human Services Commission (or another agency operating part of the medical assistance program) by other law is modified by SECTIONS 2.70 (Section 32.024, Human Resources Code) and 2.75 (Section 32.032, Human Resources Code) of this bill.

It is the committee's opinion that rulemaking authority is expressly granted to the Department of Human Services in SECTIONS 2.48 (Section 242.406, Health and Safety Code), 2.63 (Section 31.0032, Human Resources Code), 2.66 (Section 31.015, Human Resources Code), and 2.67 (Section 31.032, Human Resources Code) of this bill. Rulemaking authority granted to the Department of Human Services by other law is modified by SECTIONS 2.63 (Section 31.0033, Human Resources Code) and 2.65 (Section 31.012, Human Resources Code) of this bill.

It is the committee's opinion that rulemaking authority is expressly granted to the Interagency Council on Early Childhood Intervention in SECTION 2.84 (Section 73.0051, Human Resources Code) of this bill.

It is the committee's opinion that rulemaking authority is transferred to the Texas Education Agency and the Commissioner of Education in SECTION 2.88 of this bill.

It is the committee's opinion that rulemaking authority is expressly granted to the Secretary of State in SECTION 2.88 of this bill.

SUMMARY ANALYSIS

ARTICLE I

C.S.H.B. 2292 defines existing Health and Human Services Agencies, then adds certain agencies to the list, and abolishes certain existing agencies. The sunset provision for the Health and Human Services Commission is extended. The definition of policymaking body is eliminated, certain plans and programs are required to be centralized with the commission, performance of administrative support services is placed with the commission, the commission is required to adopt rules and policies for the operation and provision of health and human services by health and human services agencies, the commissioner is responsible for certain duties presently under the operational authority of the commissioner, the agency director is required to act on behalf of and report to the commissioner in performing a delegated function, new requirements are added to the required memorandum of understanding related to the responsibilities of the agency director, and strengthens the commission's ability to adopt policies and rules governing certain delivery of services.

C.S.H.B. 2292 requires the governor to appoint an agency director for each health and human services agency for a term of one year. The substitute modifies the requirements related to the memorandum of understanding, eliminates the role of the policymaking body in defining specific performance objectives, and eliminates the requirement that the agency director serves at the pleasure of the commissioner and may be discharged by the commissioner and the policymaking body.

C.S.H.B. 2292 requires the commission to establish an eligibility services division, investigations and enforcement division, office of ombudsman, and a purchasing division.

C.S.H.B. 2292 requires the commission to develop and implement policy to encourage the use of negotiated rulemaking and alternative dispute resolution, to require the agency directors and employees to research and propose appropriate technological solutions to improve functions, and to adopt a memorandum of understanding according to statutory procedure, with the exception of the internal management, organization, and personnel practices portions of the memorandum, which this section exempts from certain statutory requirements.

C.S.H.B. 2292 requires the commission to plan and direct the financial assistance program, to adopt rules governing the financial assistance program, and to establish requirements for and define the scope of the ongoing evaluation of the financial assistance program.

C.S.H.B. 2292 creates the Health and Human Services Council to assist the commissioner in developing rules and policies for the commission. The council is composed of nine members, who are appointed by the governor for staggered six-year terms. The substitute specifies which statutory provisions apply to the council. In order to vote, deliberate, or be counted as a member in attendance at a meeting of the council, council members are required to complete a training program. C.S.H.B. 2292 sets council terms and restricts the number of consecutive terms that may be served. It also enables the governor to fill vacancies by appointment and designate the council's presiding officer; members elect other officers. The substitute sets meetings at least quarterly, or at the discretion of the presiding officer, and meetings may be held in different areas of the state. Members may not receive compensation, but are entitled to reimbursement for travel expenses. The commissioner, in conjunction with the council, is responsible for preparing certain

information for the public. C.S.H.B. 2292 requires the commissioner to develop and implement methods for notifying the public of where to direct complaints. Policies must also be implemented that provide the public opportunity to appear before the council. The commissioner and council are required to implement policies that clearly delineate the responsibilities of the commissioner.

C.S.H.B. 2292 creates the Department of Health Services; provides for definitions; applies sunset provision, establishes a Health Services Council of nine members appointed by governor. The committee substitute specifies which chapters are and are not applicable; requires that each geographical region of the state be represented; establishes council member qualifications; specifies duties; requires council member training; establishes staggered six year terms; requires governor to designate presiding officer and fill vacancies; allows council to elect other officers as needed; allows reimbursement of council member expenses; provides for a complaint system; requires commission to adopt policies to provide public opportunity for input to the council; requires the commissioner to implement policies with advice of the council; requires the executive director to file report annually with governor, presiding officer of each house of the legislature, and the commissioner a complete and detailed written report accounting for all funds disbursed by the department during the preceding fiscal year; requires the agency central office be maintained in Austin, allows for other offices as necessary; requires the governor to appoint an executive director of the department; provides that executive director serves for a term of one year; requires the executive director to serve as the chief administrative officer subject to the control of the commissioner; allows the department to employ individuals to administer functions under this chapter; provides for the distribution of information related to standards of conduct; requires development of a merit pay system by the executive director subject to rules adopted by the commissioner; requires a career ladder; requires, subject to rules adopted by the commissioner, the executive director to maintain an equal opportunity policy; provides for policies regarding complaints; requires employees be provided information about the benefits and participation in the state employee incentive program; allows rulemaking to administer this chapter; establishes certain powers and duties for the department related to health care, mental health, and substance abuse.

C.S.H.B. 2292 defines "commissioner" as the health and human service commissioner and "council" as the protective and regulatory council in the enabling statute for the Department of Protective and Regulatory Services.

C.S.H.B. 2292 requires certain conforming changes, and requires the Department of Protective and Regulatory Services to license, register, and enforce regulations applicable to child-care facilities and child-care administrators; implement programs to prevent family violence and provide services to victims of family violence; perform all licensing and enforcement activities related to long-term care facilities, including licensing and enforcement activities. It also allows the commissioner rather than department to adopt certain policies and rules.

C.S.H.B. 2292 creates the protective and regulatory council to assist the commissioner in developing rules and policies for the Department of Protective and Regulatory Services; provides for the composition and appointment of the council; requires that each geographical region of the state be represented. The committee substitute specifies which chapters are and are not applicable; requires council member training; establishes staggered six-year terms; requires the governor to designate the presiding officer and fill vacancies; allows the council to elect other officers as needed; allows reimbursement of council member expenses; provides that executive director is appointed by the governor and serves for a term of one year and requires the executive director to serve as the chief administrative officer subject to the control of the commissioner.

C.S.H.B. 2292 creates the Department of Aging, Community, Disability, and Long-Term Care Services; provides for definitions; applies sunset provision, establishes an Aging, Community, Disability, and Long-Term Care Council of nine members appointed by governor; and requires that each geographical region of the state be represented. The substitute specifies which chapters are and are not applicable; establishes council member qualifications and specifies duties, requires council member training; establishes staggered six-year terms; requires governor to designate presiding officer and fill vacancies; allows council to elect other officers as needed; allows reimbursement of council member expenses; provides for a

complaint system; requires commission to adopt policies to provide public opportunity for input to the council; requires the commissioner to implement policies with advice of the council; requires the executive director to file annually with governor, presiding officer of each house of the legislature, and the commissioner a report accounting for all funds disbursed by the department during the preceding fiscal year; requires that the agency central office be maintained in Austin; allows for other offices as necessary; requires the governor to appoint an executive director of the department; provides that the executive director serves for a term of one year; requires the executive director to serve as the chief administrative officer subject to the control of the commissioner; allows the department to employ individuals to administer functions under this chapter; provides for the distribution of information related to standards of conduct; requires development of a merit pay system by the executive director subject to rules adopted by the commissioner; requires a career ladder; requires, subject to rules adopted by the commissioner, the executive director to maintain an equal opportunity policy; provides for policies regarding complaints; requires employees be provided information about the benefits and participation in the state employee incentive program; allows rulemaking to administer this chapter; and establishes certain powers and duties for the department.

C.S.H.B. 2292 requires the governor to appoint executive directors for the Department of Health Services; Department of Aging, Community, Disability, and Long-Term Care Services; and Department of Protective and Regulatory Services.

C.S.H.B. 2292 requires the appointment of council members by the governor for the Health Services; Protective and Regulatory; and Aging, Community, Disability, and Long-Term Care Councils.

C.S.H.B. 2292 limits the activities of an agency created under this article, before the date specified in the transition plan, to preparing to assume powers, duties, functions, programs, and activities specified under this article.

C.S.H.B. 2292 requires that the presiding officer of each council created under this article shall call an initial meeting as soon as possible after the council members are appointed.

C.S.H.B. 2292 transfers various powers, duties, functions, programs, and activities currently under health and human services agencies to the revised Health and Human Services Commission (administrative support services for all health and human services agencies, duties of Department of Human Services related to eligibility determination for long-term care and community-based support services; TANF, food stamps, any duties of an agency being abolished relating to Medicaid and CHIP, duties of the Texas Rehabilitation Commission relating to determination of SSI eligibility, and all rulemaking and policymaking authority for health and human services agencies).

C.S.H.B. 2292 transfers various powers, duties, functions, programs, and activities currently under health and human services agencies to the new Department of Health Services (current duties of the Texas Department of Health, mental health services currently provided by the Department of Mental Health and Mental Retardation, and all current duties of the Texas Commission on Alcohol and Drug Abuse, Texas Cancer Council, Commission for the Deaf and Hard of Hearing, Interagency Council on Early Childhood Intervention, and Texas Health Care Information Council).

C.S.H.B. 2292 transfers various powers, duties, functions, programs, and activities currently under health and human services agencies to the revised Department of Protective and Regulatory Services; (current duties of the Department of Protective and Regulatory Services, duties and functions related to licensing of long-term care facilities, and duties of the Department of Human Services related to family violence prevention and victim services).

C.S.H.B. 2292 transfers various powers, duties, functions, programs, and activities currently under health and human services agencies to the new Department of Aging, Community, Disability, and Long-Term Care Services (current duties of the Department on Aging, current duties of the Department of Human Services related to providing long-term care and community-based support services, current duties of Texas Rehabilitation Commission (except for determination of SSI eligibility), current duties of the Texas

Commission for the Blind, and current duties of the Department of Mental Health and Mental Retardation related to providing mental retardation services, including state school administration and community residential services).

C.S.H.B. 2292 creates a transition council to facilitate the transfer of powers, duties, functions, programs, and activities among the state health and human services agencies and commission. It also specifies the makeup of the council and designates the presiding officer.

C.S.H.B. 2292 requires creation of a transition plan to guide the transition of powers, duties, functions, programs, and activities to the Health and Human Services Commission, the Department of Health Services, Department of Protective Regulatory Services, and the Department of Aging, Community, Disability, and Long-Term Care Services. The plan must include a schedule and be submitted to the governor and the legislative budget board by December 1, 2003.

C.S.H.B. 2292 provides that former law governs for actions brought or proceeding commenced before the effective date of a transfer prescribed under this article.

C.S.H.B. 2292 abolishes the Interagency Council for Early Childhood Intervention, Texas Cancer Council, Commission for the Blind, Commission for the Deaf and Hard of Hearing, Commission on Alcohol and Drug Abuse, Department of Health, Department of Mental Health and Mental Retardation, Department on Aging, Texas Health Care Information Council, and Texas Rehabilitation Commission; provides that abolition or transfer does not impair an act done, any obligation, right, order, permit, certificate, rule, criterion, standard, or requirement existing, or any penalty accrued under former law and that law remains in effect for any action concerning those matters.

C.S.H.B. 2292 repeals certain sections of the Government Code, certain sections of the Human Resources Code, and certain Acts of the 76th Legislature.

ARTICLE II

C.S.H.B. 2292 defines "child health plan program;" requires the commission to create a purchasing division for all health and human services agencies; requires the commission to obtain Medicaid reimbursement from Medicare fiscal intermediaries for clients eligible for Medicaid and Medicare, and requires the commission to request waivers as appropriate.

C.S.H.B. 2292 requires the commission to establish a call center to establish eligibility and allows the commission to contract with a private entity, if cost-effective.

C.S.H.B. 2292 requires the commission to consolidate and coordinate health insurance premium payment reimbursement programs for CHIP and Medicaid and allows the commission to contract with a private entity if cost-effective.

C.S.H.B. 2292 requires the commission to appoint a public assistance health benefit review and design committee and allows the commission to consider committee recommendations.

C.S.H.B. 2292 requires the commission to periodically review all purchases made under the vendor drug program.

C.S.H.B. 2292 requires the commission to negotiate for supplemental rebates for prescription drugs, provides for contracting and reporting procedures and establishes confidentiality of information.

C.S.H.B. 2292 requires adoption of preferred drug list (PDL) for certain programs, establishes procedures for implementation, establishes prior authorization for drugs not on the PDL, and allows the commission to implement applicable procedures.

C.S.H.B. 2292 creates a Pharmaceutical and Therapeutics Committee and sets procedures for

implementation.

C.S.H.B. 2292 allows the commission to implement prior authorization for high cost medical services and to contract with qualified providers for that function.

C.S.H.B. 2292 expands the commission's responsibility to investigate fraud to abuse and requires the commission to develop and implement a cross reference system with list of fugitive felons. The substitute provides requirements related to: seizure of assets; referral of cases to the Attorney General, U.S. Attorney, or local prosecutors; development of a fraud reduction pilot program; expansion of the Medicaid and Public Assistance Fraud Oversight Task Force; fraud and abuse prevention by managed care organizations; and the commission's authority with regard to TANF fraud.

C.S.H.B. 2292 requires medical assistance to be provided in the most cost-effective model of managed care and allows exceptions if a managed care model is determined by the commissioner to not be cost-effective.

C.S.H.B. 2292 specifies method of calculation for Medicaid experience rebate or profit sharing.

C.S.H.B. 2292 expands the scope of the Permanent Fund for Tobacco Education and Enforcement.

C.S.H.B. 2292 expands the scope of the Permanent Fund for Children and Public Health to the Interagency Council on Early Childhood Intervention.

C.S.H.B. 2292 expands the scope of the Rural Health Facility Capital Improvement Permanent Fund and the Community Hospital Capital Improvements Fund.

C.S.H.B. 2292 reduces from $40 million to $25 million the amount of unclaimed lottery funds per biennium distributed to the state-owned multi-categorical teaching hospital account.

C.S.H.B. 2292 allows TDH to charge a fee for issuing or renewing certain licenses and creates a renewal period of three years.

C.S.H.B. 2292 removes references to the Texas Healthy Kids Corporation.

C.S.H.B. 2292 requires third party billing vendors to enroll in CHIP under the same requirements and restrictions as a CHIP provider, including completion of a contract that emphasizes the prevention of fraud and abuse.

C.S.H.B. 2292 changes CHIP income eligibility from 200% to 150% of the federal poverty level, provides additional enrollment guidelines, changes the eligibility period for coverage, addresses coverage of qualified aliens, addresses development of CHIP benefits, and applies CHIP requirements to SKIP enrollees.

C.S.H.B. 2292 allows for certain determinations of cost-sharing provisions.

C.S.H.B. 2292 removes, modifies, and adds certain CHIP requirements.

C.S.H.B. 2292 specifies certain requirements involving nursing home violations and restricts the State from imposing more than one monetary penalty for the same nursing home care violation.

C.S.H.B. 2292 requires the State to implement a grant program designed to encourage quality nursing home environments.

C.S.H.B. 2292 eliminates specific requirements for administering medications in nursing facilities but continues the general requirement that nursing facilities establish drug administration procedures and eliminates specific security requirements related to the storage of poisons and medications in nursing homes.

C.S.H.B. 2292 adds TDMHMR-owned facilities to the group of facilities subject to the quality assurance fee and changes the methods for calculating and reporting the number of patient days that would be subject to the quality assurance fee.

C.S.H.B. 2292 expands authorized purposes for use of the quality assurance fund subject to legislative appropriations.

C.S.H.B. 2292 eliminates TCADA's requirement to provide a toll-free number for compulsive gambling.

C.S.H.B. 2292 requires local mental authorities to use disease management practices for adults with bipolar disorder, schizophrenia, or clinically severe depression.

C.S.H.B. 2292 requires termination of a contract with an ICF-MR if a vendor hold on Medicaid payments to the facility has been imposed three times during an 18-month period.

C.S.H.B. 2292 states that proceeds from the disposal of TDMHMR's surplus real property, if it occurs before September 1, 2005, do not have to be deposited in the Capital Trust Fund.

C.S.H.B. 2292 establishes a Mental Health Community Services Trust Fund and a Mental Retardation Community Services Trust Fund.

C.S.H.B. 2292 allows DHS to use information obtained from a third party to verify the assets and resources of a person in determining the person's eligibility and need for medical assistance, financial assistance, or nutritional assistance.

C.S.H.B. 2292 adds a requirement to the TANF personal responsibility agreement that each recipient must claim the federal earned income tax credit on the recipient's federal income tax return and requires that caretakers also sign a personal responsibility agreement.

C.S.H.B. 2292 institutes a Payment of Assistance After Performance method for TANF recipients and requires a person determined to be eligible for TANF to cooperate with the requirements of the personal responsibility agreement for one month before the person receives a TANF payment. An eligible person cannot receive a check if the person did not cooperate with the responsibility agreement during the previous month. The substitute also requires the department to immediately notify the caretaker relative, second parent, or payee if a monthly payment will not be made due to failure to cooperate with the agreement. A person is not prohibited from receiving Medicaid, child care services, or other social or support services for failure to cooperate.

C.S.H.B. 2292 allows the disregard of income earned by the new spouse of a person receiving TANF for the first six months of marriage, as long as the combined income of the recipient and a new spouse does not exceed 200% of the federal poverty level.

C.S.H.B. 2292 removes the phased-in provisions relating to exemption from the work requirements for persons receiving financial assistance.

C.S.H.B. 2292 creates health, abstinence and marital development programs for TANF cash recipients and provides for additional assistance of not more than $20 for the recipient's participation, up to a maximum payment of $60 a month.

C.S.H.B. 2292 requires all TANF applicants to apply for the earned income tax credit and claim the credit on their federal income tax return.

C.S.H.B. 2292 allows for more input into the development of nursing home standards by the nursing facilities, requires DHS to have in each contract specific performance measures by which the department may evaluate the extent to which a nursing facility is meeting standards, allows DHS to terminate the contract if a facility is not meeting the standards, and requires DHS to submit a report regarding nursing

facilities every even-numbered year.

C.S.H.B. 2292 directs the department to provide medical assistance through Medicaid managed care system.

C.S.H.B. 2292 prohibits the exclusion of Medicaid nursing home residents from receiving Medicaid transportation services, based on their nursing facility status and allows the commission to limit Medicaid prescription drug benefits under certain circumstances.

C.S.H.B. 2292 allows for recertification for medical assistance of a child under 19 by a phone interview or a combination of a phone interview and mail correspondence.

C.S.H.B. 2292 delays the implementation of 12-month continuous eligibility until June 1, 2004.

C.S.H.B. 2292 removes the current spending requirement on nursing facilities not participating in enhanced rates and requires that non-participating facilities receive the same base rate as participants. The substitute also allows for an incentive program for increased direct care staffing only to the extent that appropriated funds were available after funds were allocated according to the commission's base rate reimbursement methodology.

C.S.H.B. 2292 authorizes prepayment reviews and postpayment holds on claims for Medicaid reimbursement and grants the commission additional authority to prevent fraudulent, abusive, wasteful, or erroneous payments.

C.S.H.B. 2292 requires medical assistance providers to file a surety bond if the state identifies irregularities related to the provider's services.

C.S.H.B. 2292 directs a provider, to extent allowable by federal law, to seek reimbursement from third party coverage or insurance before billing the medical assistance program.

C.S.H.B. 2292 allows the commission to adopt rules for the purchase and distribution of over-the-counter medications and medical supplies previously provided via prescription, if the commission determines it is more cost-effective to do so.

C.S.H.B. 2292, with regard to nursing home residents eligible for both Medicare and Medicaid, allows the state to pay Medicare deductibles and coinsurance up to the Medicaid reimbursement rate. If the Medicare reimbursement rate exceeds the Medicaid rate, the Medicaid program is prohibited from paying Medicare deductibles and coinsurance.

C.S.H.B. 2292 establishes the nursing facility quality assurance team to make recommendations for promoting high-quality care for nursing home residents and requires DHS to implement these recommendations no later than September 1, 2004.

C.S.H.B. 2292 redesignates the "Frail and Elderly program" as the "Community Attendant Services program."

C.S.H.B. 2292 requires third party billing vendors to enroll in the Medicaid program under the same requirements and restrictions as a Medicaid provider, including completion of a contract that emphasizes the prevention of fraud and abuse.

C.S.H.B. 2292 establishes cost-sharing requirements for Medicaid recipients.

C.S.H.B. 2292 allows for the establishment of a system of payments on a sliding scale fee schedule by families of children receiving services through the Interagency Council on Early Childhood Development.

C.S.H.B. 2292 allows the Texas Commission for the Blind to provide prevention and transition services

to blind disabled individuals eligible for vocational rehabilitation services, subject to the availability of funds generated though optional fees assessed on drivers' licenses and personal identification cards.

C.S.H.B. 2292 repeals the authority for the Texas Rehabilitation Commission to operate an extended rehabilitation services program and moves the transitional planning program into vocational rehabilitation services.

C.S.H.B. 2292, allows money in the comprehensive rehabilitation fund to be used for general governmental purposes if the comptroller certifies that appropriations exceed available revenue for the current biennium, if the revenue estimate for the next biennium is less than the revenue estimate for the current biennium, or if LBB determines that a fiscal emergency exists.

C.S.H.B. 2292 transfers the Communities in Schools program from the Department of Protective and Regulatory Services to the Texas Education Agency.

C.S.H.B. 2292 eliminates the current exemption from the premium tax for Medicaid HMOs.

C.S.H.B. 2292 requires group health plans to enroll persons who lose Medicaid or CHIP eligibility without subjecting them to open enrollment restrictions.

C.S.H.B. 2292 requires an issuer of a health benefit plan to offer coverage for therapies for children with developmental delays.

C.S.H.B. 2292 requires certain health and human services agencies that provide transportation services to contract with TxDOT to provide those services.

C.S.H.B. 2292 allows the Telecommunications Infrastructure Fund Board to award grants from the qualifying entities account in the Telecommunications Infrastructure Fund to the commission for technology initiatives.

C.S.H.B. 2292 requires the Medicaid and Public Assistance Fraud Oversight Task Force and other agencies to conduct a study of the procedures and documentation requirement used to establish identity for the Medicaid program and other health and human services programs.

C.S.H.B. 2292 requires the transfer of medical transportation services from TDH to the commission by September 1, 2004.

C.S.H.B. 2292 requires the commission to consolidate the post-payment third-party recovery divisions for TDH, vendor drug and the Medicaid claims administrator with the Medicaid TPR functions.

C.S.H.B. 2292 abolishes certain advisory committees.

C.S.H.B. 2292 requires the commission to request waivers necessary to allow families enrolled in Medicaid to opt into the child health plan program.

C.S.H.B. 2292 requires the commission to submit a state plan amendment requesting federal matching funds for the employers' share of required premiums for CHIP-eligible children and Medicaid eligible clients enrolled in a group health plan.

C.S.H.B. 2292 repeals Sections 62.055(b) and (c), 62.056, 62.057, 252.206(d), and 252.207(b), Health and Safety Code.

C.S.H.B. 2292 repeals Section 32.0315, Human Resources Code.

C.S.H.B. 2292 provides that in the event of any conflict between a provision of this Act and another Act passed during the 78th Legislature, Regular Session, that becomes law, this act prevails and controls,

regardless of the relative dates of enactment.

C.S.H.B.2292 allows an agency to delay implementation of any provision that requires a waiver or other federal authorization until the waiver or authorization is granted.

EFFECTIVE DATES

ARTICLE I

September 1, 2003, except that the Department of Health Services and the Department of Aging, Community, Disability, and Long-Term Care Services are created on the date the governor appoints the executive director of the respective agency.

ARTICLE II

September 1, 2003, except that Section 62.0582, Health and Safety Code, as added by this Act, and Section 32.063, Human Resources Code, as added by this Act, take effect January 1, 2004.

COMPARISON OF ORIGINAL TO SUBSTITUTE

ARTICLE I

C.S.H.B. 2292 modifies the original to add Article I relating to the consolidation of health and human services agencies.

ARTICLE II

C.S.H.B. 2292 adds new language to authorize the commission to establish a purchasing division for all health and human services agencies and directs the purchasing division to improve efficiencies and increase cost reductions.

C.S.H.B. 2292 modifies the original by adding language that requires the commission to request and actively pursue any necessary waivers from a federal agency or other appropriate entity to enable the commission to combine Medicaid and Medicare services for persons who are eligible for both programs when cost-effective for the state.

C.S.H.B. 2292 adds new language to require the commission to establish a call center for determination and certification of eligibility and need for services and to contract with a private entity for the operation of a call center required by this section, unless not cost-effective to do so.

C.S.H.B. 2292 adds new language to require the commission to develop and implement a plan to consolidate and coordinate the administration of the health insurance premium payment reimbursement programs by January 1, 2004, and, if cost-effective, to contract with a private entity to assist in the development and implementation.

C.S.H.B. 2292 adds new language to require the commission to establish a public health assistance health benefit review and design committee. The substitute also adds new language to set forth the committee guidelines and to require the committee to review and provide recommendations regarding benefits coverage provided under the income-based care programs administered by the commission or a health and human services agency.

C.S.H.B. 2292 adds new language to require the commission to take into consideration recommendations made by the public assistance health benefit review and design committee with respect to health benefits coverage for a program administered by the commission or a health and human services agency.

C.S.H.B. 2292 adds new language to require the commission to periodically review all purchases made under the vendor drug program to determine the cost-effectiveness of including a component for prescription drug benefits in any capitation rate paid by the state and to consider the value of any prescription drug rebates.

C.S.H.B. 2292 modifies original by authorizing the commission to contract with private entity to negotiate with manufacturers and labelers for supplemental rebates on its behalf. The substitute also adds new language to allow voluntary negotiations with a manufacturer or labeler to provide supplemental rebates under any state program administered by the commission. The substitute also adds new language to require the commission to provide a yearly written report on the state prescription drug benefit programs to the governor and legislature.

C.S.H.B. 2292 modifies the original by extending the confidentiality provisions to cover prescription drug rebate negotiations as well as supplemental medical assistance rebate negotiations and agreements. The substitute also adds new language to extend the confidentiality provisions to information from the above reference negotiations and agreements that is obtained or maintained in connection with the Medicaid vendor drug program, the child health plan program, the kidney health care program, or the children with special health care needs program.

C.S.H.B. 2292 modifies the original by expressly requiring the adoption of preferred drug lists occurs in a manner that complies with applicable state and federal law. The substitute also adds new language to require that the lists contain only drugs provided by a manufacturer or labeler that has reached an agreement with the commission on supplemental rebates. The substitute also adds new language to require distribution of current copies of the lists to all appropriate providers before changes go into effect. The substitute also adds new language to allow manufacturers and labelers to submit written evidence supporting the inclusion of a drug on the lists before a supplemental rebate agreement is reached with the commission. The substitute modifies language to provide for use of the Medicaid Fair Hearing Process to appeal a denial of prior authorization of a covered drug or dosage, rather than to appeal a preferred drug list decision.

C.S.H.B. 2292 modifies the original by setting forth requirements for the procedures the commission is required to establish for prior authorization. The substitute also adds new language to require the commission to ensure that a prescription prescribed to a recipient under a program administered by the commission, or for a person who becomes eligible, shall not be subject to any requirement for prior authorization unless the recipient has exhausted the prescription or a time period prescribed by the commission has expired. The substitute also adds new language to require the commission to implement procedures to ensure that the aforementioned recipients receive continuity of care in relation to certain prescriptions identified by the commission and to allow the commission to contract with a private entity to administer the required prior authorization requirements.

C.S.H.B. 2292 modifies the original by amending guidelines on the composition and activities of the committee, changing the composition of the committee to six physicians and five pharmacists, rather than five physicians, five pharmacists, and one public member. The substitute requires the governor to appoint a physician to chair the committee, rather than allowing the committee to elect a chair. The substitute also requires the committee to meet monthly, rather than quarterly, during the first six months.

C.S.H.B. 2292 adds new language to authorize the commission to require prior authorization for high-cost medical services and procedures and to contract with qualified service providers or organizations to perform these functions.

C.S.H.B. 2292 adds new language to increase the commission's responsibility to investigate to include abuse and to authorize the commission to obtain any information or technology necessary to enable it to meet its responsibility. The substitute also adds new language to establish the commission's office of investigations and enforcement as a law enforcement agency for the purposes of obtaining information relevant to the office's duties from a law enforcement agency, prosecutor, or governmental entity and to authorize the office to issue a subpoena under certain circumstances to compel the attendance and

testimony of a witness or production of records.

C.S.H.B. 2292 adds new language to authorize the seizure of assets by the commission if the listed criteria are met and to provide for a hearing at which a seizure may be contested. The substitute also adds new language to prohibit disposal of seized assets until fraud or abuse is established and the commission's entitlement to the assets is confirmed in accordance with due process.

C.S.H.B. 2292 adds new language to set forth certain provisions that must be included in the memorandum of understanding between the commission and the office of the attorney general. The substitute also adds new language to require the office of the attorney general to submit a yearly report to the governor, legislature, and comptroller, specifically addressing the activities of the attorney general's Medicaid fraud control unit and civil Medicaid fraud section. The substitute also adds new language to authorize the referral of a case of suspected fraud or abuse to a United States Attorney. The substitute also requires that the above-referenced memorandum of understanding be amended by December 1, 2003.

C.S.H.B. 2292 adds new language to require the commission to implement a pilot program in one or more counties in Texas to reduce Medicaid provider fraud and third-party and recipient fraud and to set forth guidelines and requirements for the design of the project. The substitute also adds new language to authorize the commission to extend the program to other counties if it is found to be cost-effective. The substitute also adds new language to require that implementation of the program begin by January 1, 2004 and that evaluation reports on the program be sent to the governor, lieutenant governor, and speaker of the house by February 1, 2005.

C.S.H.B. 2292 adds new language to require placement of a representative of the Texas Department of Health, appointed by the commissioner of public health, to serve on the Medicaid and Public Assistance Fraud Oversight Task Force.

C.S.H.B. 2292 adds new language to require each managed care organization providing services under government programs to adopt a plan and engage in activities to prevent or reduce fraud or abuse, including the establishment of special investigative units.

C.S.H.B. 2292 adds new language to set forth the guidelines and provides consequences for prohibited actions, such as misrepresentation of facts, in establishing or maintaining eligibility for financial assistance.

C.S.H.B. 2292 adds new language to require the commission to develop and implement a system to cross-reference certain data with the list of fugitive felons maintained by the federal government.

C.S.H.B. 2292 adds specific language outlining the manner in which the commission must provide medical assistance through the most cost-effective model of Medicaid managed care.

C.S.H.B. 2292 adds new language to require the commissioner to ensure that any experience rebate or profit sharing for Medicaid managed care organizations is calculated by treating taxes as allowable expenses.

C.S.H.B. 2292 adds new language to expand the scope of the Permanent Fund for Tobacco Education and Enforcement to include essential public health services administered by TDH.

C.S.H.B. 2292 adds new language to expand the scope of the Permanent Fund for Children and Public Health to provide intervention services for children who have or have a high probability of developmental disabilities and their families through the Interagency Council on Early Childhood Intervention.

C.S.H.B. 2292 adds new language to expand the scope of the Permanent Fund for Rural Health Facility Capital Improvement for the promotion, construction, or operation of federally qualified health centers in rural areas of the state based on medically underserved need.

C.S.H.B. 2292 adds new language to expand the scope of the Community Hospital Capital Improvement

Fund for the promotion, construction, or operation of federally qualified health centers in urban areas of the state based on medically underserved need.

C.S.H.B. 2292 adds new language to reduce from $40 million to $25 million the amount of unclaimed lottery funds per biennium distributed to state-owned multi-categorical teaching hospital account.

C.S.H.B. 2292 adds new language to require TDH to charge a fee for issuing or renewing a license to recover all direct and indirect costs associated with administering and enforcing the applicable licensing program. The substitute also adds new language to require such licenses to be issues for a period of three years.

C.S.H.B. 2292 adds new language to remove references to the Texas Healthy Kids Corporation.

C.S.H.B. 2292 adds new language to require third party billing vendors for CHIP to contract with the commission under the same requirements and restrictions emphasizing fraud and abuse as a health care provider before submitting a claim.

C.S.H.B. 2292 modifies the original by requiring the commissioner to suspend enrollment in CHIP if enrollment exceeds the number authorized in the General Appropriations Act.

C.S.H.B. 2292 adds new language to require children of school district employees to meet the same requirements as any other child enrolled in the child health plan.

C.S.H.B. 2292 adds new language to change the eligibility period for coverage under the child health plan from 12 months to a period not to exceed 180 days.

C.S.H.B. 2292 adds new language to make it permissive, rather than mandatory, for the commission to cover a child who is a qualified alien.

C.S.H.B. 2292 modifies the original by keeping existing language that requires the child health plan, when first implemented, to be actuarially equivalent to the basic plan offered to active state employees. The substitute also adds new language to require the commission to seek input from the Public Assistance Benefit Review and Design Committee in developing CHIP benefits and to allow the commission to limit CHIP prescription benefits if cost-effective.

C.S.H.B. 2292 adds new language to allow CHIP cost-sharing provisions to be determined based on the maximum amount allowed by federal law and applied to income levels in a manner that minimizes administrative costs.

C.S.H.B. 2292 adds new language to remove the requirement that the 90-day waiting period apply only to CHIP applicants who were covered by a health benefits plan during the 90 days prior to application for coverage and to add a new exception to the 90-day waiting period for a child who has access to group health insurance and is required to participate in the health insurance premium payment reimbursement program.

C.S.H.B. 2292 adds new language to restrict the number of health plans in each service area to no more than two, unless the commissioner determines it is more cost-effective to grant an exception to this limit.

C.S.H.B. 2292 adds new language to require the commissioner to ensure that any experience rebate or profit sharing for CHIP managed care organizations is calculated by treating taxes as allowable expenses.

C.S.H.B. 2292 adds new language to require that a suit for a temporary restraining order or other injunctive relief relating to nursing home violations to be brought in the county in which the alleged violation occurred.

C.S.H.B. 2292 adds new language to change the description of factors that must be considered when trying

a person who has allegedly threatened the health and safety of a nursing home resident.

C.S.H.B. 2292 adds new language to prohibit the State from imposing more than one monetary penalty for the same nursing home care violation.

C.S.H.B. 2292 adds new language to eliminate specific requirements for medication administration in nursing facilities and to eliminate specific security requirements related to the storage of poisons and medications in nursing homes.

C.S.H.B. 2292 adds new language to expand the quality assurance fee to facilities owned by TDMHMR.

C.S.H.B. 2292 adds new language to change the method for calculating and reporting the number of patient days that would be subject to the quality assurance fee.

C.S.H.B. 2292 adds new language to expand the authorized purposes for use of the quality assurance fund.

C.S.H.B. 2292 adds new language to eliminates TCADA's requirement to provide and maintain a toll-free "800" number to provide counseling and referral services for compulsive gambling.

C.S.H.B. 2292 adds new language to require local mental health authorities to use strategies for disease management practices for adults with bipolar disorder, schizophrenia or severe depression and children with serious emotional illnesses. The substitute also adds new language to require TDMHMR to study and report to the governor, lieutenant governor, and the speaker of the house on the implementation of jail diversion measures and the effect of regional funding disparities.

C.S.H.B. 2292 adds new language regarding guidelines, terminations, and sanctions on ICF-MR program provider contracts.

C.S.H.B. 2292 adds new language to allow the proceeds from the disposal of TDMHMR's surplus real property to be appropriated for any governmental purpose.

C.S.H.B. 2292 adds new language to establish a Mental Health Community Services Trust Fund and a Mental Retardation Community Services Trust Fund.

C.S.H.B. 2292 adds new language to allow the DHS to obtain and use information from a third party to verify assets and resources of a person applying for medical, financial, or nutritional assistance.

C.S.H.B. 2292 adds new language to amend the TANF personal responsibility agreement to include a requirement that each recipient claim the federal earned income tax credit.

C.S.H.B. 2292 adds new language to amend guidelines for TANF eligibility and cooperation with personal responsibility agreements by instituting a Payment of Assistance after Performance method for TANF recipients.

C.S.H.B. 2292 adds new language to allow the disregard of income earned by the new spouse of a person receiving TANF for the first six months of marriage, as long as their combined income does not exceed 200% of the federal poverty level.

C.S.H.B. 2292 adds new language to remove phased-in provisions relating to exemption from the work requirements for persons receiving financial assistance.

C.S.H.B. 2292 adds new language to create health, abstinence and marital development programs and additional assistance for TANF cash recipients.

C.S.H.B. 2292 adds new language that requires all TANF applicants to apply for the Earned Income Tax Credit and claim the credit on their federal income tax return.

C.S.H.B. 2292 adds new language to require consideration of the Nursing Facility Quality Assurance Team's recommendations in establishing care standards and to expand the scope of the long-term care facility report to the Legislature.

C.S.H.B. 2292 adds new language to prohibit the exclusion of Medicaid nursing home recipients from receiving Medicaid transportation services based on their nursing facility status.

C.S.H.B. 2292 adds new language to limit prescription drug benefits to the extent allowed, if it is determined to be cost effective.

C.S.H.B. 2292 adds new language to allow for recertification for services via telephone or a combination of telephone and correspondence.

C.S.H.B. 2292 adds new language to delay the implementation of 12-month continuous eligibility.

C.S.H.B. 2292 adds new language to remove the current spending requirement on nursing facilities not participating in enhanced rates and to require that non-participating facilities receive the same base rate as participants. The substitute also adds language that would allow for an incentive program for increased direct care staffing only to the extent that appropriated funds were available after funds were allocated according to the commission's base rate reimbursement methodology.

C.S.H.B. 2292 adds new language to grant additional authority to prevent and detect fraud in the Medicaid program through the use of prepayment reviews and postpayment holds.

C.S.H.B. 2292 adds new language to allow the commission to establish procedures for purchase and distribution of over-the-counter medications and medical supplies, if the commission determines it is more cost effective, and to require the commission to report on cost savings to certain legislative committees.

C.S.H.B. 2292 modifies the original by limiting the prohibition on payment of Medicare deductibles and coinsurance by the state when payment exceeds the Medicaid reimbursement rate.

C.S.H.B. 2292 adds new language to establish the Nursing Facility Quality Assurance Team to make recommendations for promoting high-quality care for nursing home residents and to require DHS to implement the recommendations of the team.

C.S.H.B. 2292 adds new language to redesignate the "Frail and Elderly program" as the "Community Attendant Services program."

C.S.H.B. 2292 adds new language to establish and evaluate the impact of cost sharing requirements for Medicaid recipients.

C.S.H.B. 2292 adds new language that allows the establishment of a system of payments on a sliding fee schedule by families of children receiving services through ECI.

C.S.H.B. 2292 adds new language to allow the Texas Commission for the Blind to provide prevention and transition services to blind disabled individuals if funds generated through optional fees are available.

C.S.H.B. 2292 adds new language to repeal authority for the Texas Rehabilitation Commission to operate an extended rehabilitation services program and to move the transitional planning program into vocational rehabilitation services.

C.S.H.B. 2292 adds new language to allow money in the comprehensive rehabilitation fund to be used for general governmental purposes if the comptroller certifies that appropriations exceed available revenue for the current biennium, if the revenue estimate for the next biennium is less than the revenue estimate for the current biennium, or if the LBB determines that a fiscal emergency exists.

C.S.H.B. 2292 adds new language to transfer the Communities in Schools program from the Department of Protective and Regulatory Services to the Texas Education Agency.

C.S.H.B. 2292 adds new language to eliminate the current exemption from the premium tax for Medicaid HMOs.

C.S.H.B. 2292 adds new language to require group health plans to enroll people who lose Medicaid or CHIP eligibility without subjecting them to open enrollment restrictions; however, this does not apply to self-funded ERISA plans.

C.S.H.B. 2292 adds new language to require an issuer of a health benefit plan to offer coverage for therapies for children with developmental delays.

C.S.H.B. 2292 adds new language to require certain health and human services agencies that provide transportation services to contract with TxDOT to provide those services and removes provisions requiring the commission to contract with a single statewide or appropriate number of regional transportation brokers for providing medical transportation services.

C.S.H.B. 2292 adds new language to apply any requirements and restrictions relating to income eligibility, continuous coverage, and enrollment in CHIP to children enrolled under SKIP.

C.S.H.B. 2292 adds new language to require the Medicaid and Public Assistance Fraud Oversight Task Force and other agencies to conduct a study of the procedures and documentation requirements used to establish identity for the Medicaid program and other health and human services programs and to report to the Legislature on the findings.

C.S.H.B. 2292 adds new language to abolish advisory committees unless required by federal law or related to licensing or regulation of entities providing health and human services or the implementation of a duty as determined by the commissioner.

C.S.H.B. 2292 modifies the original to amend the date by which the commission must request waivers necessary to allow families enrolled in Medicaid to opt into CHIP.

C.S.H.B. 2292 adds new language to require the commission to submit a state plan amendment requesting federal matching funds for the employers' share of required premiums for CHIP-eligible children enrolled in a group health plan.

C.S.H.B. 2292 adds new language to require the commission to submit a state plan amendment requesting federal matching funds for the employers' share of required premiums for Medicaid-eligible clients enrolled in a group health plan.

C.S.H.B. 2292 adds new language to repeal Section 62.055(b) and (c), Health and Safety Code; Section 62.056, Health and Safety Code; Section 62.057, Health and Safety Code; Section 252.206(d), Health and Safety Code; and Section 252.207(b), Health and Safety Code.

C.S.H.B. 2292 adds new language to provide that in the event of any conflict between a provision of this Act and another Act passed during the 78th Legislature, Regular Session, that becomes law, this Act prevails and controls, regardless of the relative dates of enactment.

C.S.H.B. 2292 removes the provision in the original which eliminated transitional TANF benefits.

C.S.H.B. 2292 removes the provision in the original which defined "pharmacy benefit manager" and directed the commission to contract with a pharmacy benefit manager to administer prescription benefits for Medicaid and CHIP.

C.S.H.B. 2292 removes the provision in the original which directed the commission to contract with

providers of disease management services for Medicaid recipients and set forth guidelines for such contracts.

C.S.H.B. 2292 removes the provision in the original which repealed Sections 31.0035, 32.0255, 32.027, and 32.028, Human Resources Code.

C.S.H.B. 2292 removes the provision in the original which set forth a January 1, 2004, effective date for providing medical assistance through managed care.