

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. FAMILY CODE

9 SECTION 1.001. The heading to Chapter 55, Family Code, is
10 amended to read as follows:

11 CHAPTER 55. PROCEEDINGS CONCERNING CHILDREN WITH MENTAL ILLNESS
12 OR INTELLECTUAL DISABILITY [~~MENTAL RETARDATION~~]

13 SECTION 1.002. Section 55.01, Family Code, is amended to
14 read as follows:

15 Sec. 55.01. MEANING OF "HAVING A MENTAL ILLNESS". For
16 purposes of this chapter, a child who is described as having a
17 mental illness means a child with a [who suffers from] mental
18 illness as defined by Section 571.003, Health and Safety Code.

19 SECTION 1.003. Section 55.02, Family Code, is amended to
20 read as follows:

21 Sec. 55.02. MENTAL HEALTH AND INTELLECTUAL DISABILITY
22 [MENTAL RETARDATION] JURISDICTION. For the purpose of initiating
23 proceedings to order mental health or intellectual disability
24 [mental retardation] services for a child or for commitment of a

1 child as provided by this chapter, the juvenile court has
2 jurisdiction of proceedings under Subtitle C or D, Title 7, Health
3 and Safety Code.

4 SECTION 1.004. Section 55.03(b), Family Code, is amended to
5 read as follows:

6 (b) Except as provided by this chapter, a child who is
7 committed by a court to a residential care facility due to an
8 intellectual disability [~~for mental retardation~~] shall be cared for
9 as provided by Subtitle D, Title 7, Health and Safety Code.

10 SECTION 1.005. The heading to Subchapter C, Chapter 55,
11 Family Code, is amended to read as follows:

12 SUBCHAPTER C. CHILD UNFIT TO PROCEED AS A RESULT OF MENTAL ILLNESS
13 OR INTELLECTUAL DISABILITY [~~MENTAL RETARDATION~~]

14 SECTION 1.006. Sections 55.31(a), (b), and (c), Family
15 Code, are amended to read as follows:

16 (a) A child alleged by petition or found to have engaged in
17 delinquent conduct or conduct indicating a need for supervision who
18 as a result of mental illness or an intellectual disability [~~mental~~
19 ~~retardation~~] lacks capacity to understand the proceedings in
20 juvenile court or to assist in the child's own defense is unfit to
21 proceed and shall not be subjected to discretionary transfer to
22 criminal court, adjudication, disposition, or modification of
23 disposition as long as such incapacity endures.

24 (b) On a motion by a party, the juvenile court shall
25 determine whether probable cause exists to believe that a child who
26 is alleged by petition or who is found to have engaged in delinquent
27 conduct or conduct indicating a need for supervision is unfit to

1 proceed as a result of mental illness or an intellectual disability
2 [mental retardation]. In making its determination, the court may:

3 (1) consider the motion, supporting documents,
4 professional statements of counsel, and witness testimony; and
5 (2) make its own observation of the child.

6 (c) If the court determines that probable cause exists to
7 believe that the child is unfit to proceed, the court shall
8 temporarily stay the juvenile court proceedings and immediately
9 order the child to be examined under Section 51.20. The information
10 obtained from the examination must include expert opinion as to
11 whether the child is unfit to proceed as a result of mental illness
12 or an intellectual disability [mental retardation].

13 SECTION 1.007. Sections 55.32(a), (b), (d), (f), and (g),
14 Family Code, are amended to read as follows:

15 (a) If the juvenile court determines that evidence exists to
16 support a finding that a child is unfit to proceed as a result of
17 mental illness or an intellectual disability [mental retardation],
18 the court shall set the case for a hearing on that issue.

19 (b) The issue of whether the child is unfit to proceed as a
20 result of mental illness or an intellectual disability [mental
21 retardation] shall be determined at a hearing separate from any
22 other hearing.

23 (d) Unfitness to proceed as a result of mental illness or an
24 intellectual disability [mental retardation] must be proved by a
25 preponderance of the evidence.

26 (f) If the court or jury determines that the child is unfit
27 to proceed as a result of mental illness or an intellectual

1 disability [~~mental retardation~~], the court shall:

2 (1) stay the juvenile court proceedings for as long as
3 that incapacity endures; and
4 (2) proceed under Section 55.33.

5 (g) The fact that the child is unfit to proceed as a result
6 of mental illness or an intellectual disability [~~mental~~
7 ~~retardation~~] does not preclude any legal objection to the juvenile
8 court proceedings which is susceptible of fair determination prior
9 to the adjudication hearing and without the personal participation
10 of the child.

11 SECTION 1.008. Section 55.33(a), Family Code, is amended to
12 read as follows:

13 (a) If the juvenile court or jury determines under Section
14 55.32 that a child is unfit to proceed with the juvenile court
15 proceedings for delinquent conduct, the court shall:

16 (1) if the unfitness to proceed is a result of mental
17 illness or an intellectual disability [~~mental retardation~~]:

18 (A) provided that the child meets the commitment
19 criteria under Subtitle C or D, Title 7, Health and Safety Code,
20 order the child placed with the [~~Texas~~] Department of State Health
21 Services or the Department of Aging and Disability Services, as
22 appropriate, [~~Mental Health and Mental Retardation~~] for a period of
23 not more than 90 days, which order may not specify a shorter period,
24 for placement in a facility designated by the department; or

25 (B) on application by the child's parent,
26 guardian, or guardian ad litem, order the child placed in a private
27 psychiatric inpatient facility for a period of not more than 90

1 days, which order may not specify a shorter period, but only if the
2 placement is agreed to in writing by the administrator of the
3 facility; or

4 (2) if the unfitness to proceed is a result of mental
5 illness and the court determines that the child may be adequately
6 treated in an alternative setting, order the child to receive
7 treatment for mental illness on an outpatient basis for a period of
8 not more than 90 days, which order may not specify a shorter period.

9 SECTION 1.009. Section 55.35(a), Family Code, is amended to
10 read as follows:

11 (a) If the juvenile court issues a placement order under
12 Section 55.33(a), the court shall order the probation department to
13 send copies of any information in the possession of the department
14 and relevant to the issue of the child's mental illness or
15 intellectual disability [~~mental retardation~~] to the public or
16 private facility or outpatient center, as appropriate.

17 SECTION 1.010. Section 55.40, Family Code, is amended to
18 read as follows:

19 Sec. 55.40. REPORT THAT CHILD IS UNFIT TO PROCEED AS A
20 RESULT OF INTELLECTUAL DISABILITY [~~MENTAL RETARDATION~~]. If a
21 report submitted under Section 55.35(b) states that a child is
22 unfit to proceed as a result of an intellectual disability [~~mental~~
23 ~~retardation~~] and that the child meets the commitment criteria for
24 civil commitment under Subtitle D, Title 7, Health and Safety Code,
25 the director of the residential care facility shall submit to the
26 court an affidavit stating the conclusions reached as a result of
27 the diagnosis. On receipt of the affidavit, the court shall:

1 (1) initiate proceedings as provided by Section 55.41
2 in the juvenile court for commitment of the child under Subtitle D,
3 Title 7, Health and Safety Code; or

4 (2) refer the child's case as provided by Section 55.42
5 to the appropriate court for the initiation of proceedings in that
6 court for commitment of the child under Subtitle D, Title 7, Health
7 and Safety Code.

8 SECTION 1.011. The heading to Section 55.41, Family Code,
9 is amended to read as follows:

10 Sec. 55.41. COMMITMENT PROCEEDINGS IN JUVENILE COURT FOR
11 CHILDREN WITH INTELLECTUAL DISABILITY [~~MENTAL RETARDATION~~].

12 SECTION 1.012. Section 55.41(c), Family Code, is amended to
13 read as follows:

14 (c) On receipt of the court's order, the [~~Texas~~] Department
15 of Aging and Disability Services [~~Mental Health and Mental~~
16 ~~Retardation~~] or the appropriate community center shall admit the
17 child to a residential care facility.

18 SECTION 1.013. The heading to Section 55.42, Family Code,
19 is amended to read as follows:

20 Sec. 55.42. REFERRAL FOR COMMITMENT PROCEEDINGS FOR
21 CHILDREN WITH INTELLECTUAL DISABILITY [~~MENTAL RETARDATION~~].

22 SECTION 1.014. Section 55.42(a), Family Code, is amended to
23 read as follows:

24 (a) If the juvenile court refers the child's case to an
25 appropriate court for the initiation of commitment proceedings
26 under Section 55.40(2), the juvenile court shall:

27 (1) send all papers relating to the child's

1 intellectual disability [~~mental retardation~~] to the clerk of the
2 court to which the case is referred;

3 (2) send to the office of the appropriate county
4 attorney or, if a county attorney is not available, to the office of
5 the appropriate district attorney, copies of all papers sent to the
6 clerk of the court under Subdivision (1); and

7 (3) if the child is in detention:

8 (A) order the child released from detention to
9 the child's home or another appropriate place;

10 (B) order the child detained in an appropriate
11 place other than a juvenile detention facility; or

12 (C) if an appropriate place to release or detain
13 the child as described by Paragraph (A) or (B) is not available,
14 order the child to remain in the juvenile detention facility
15 subject to further detention orders of the court.

16 SECTION 1.015. Section 55.43(a), Family Code, is amended to
17 read as follows:

18 (a) The prosecuting attorney may file with the juvenile
19 court a motion for a restoration hearing concerning a child if:

20 (1) the child is found unfit to proceed as a result of
21 mental illness or an intellectual disability [~~mental retardation~~];
22 and

23 (2) the child:

24 (A) is not:

25 (i) ordered by a court to receive inpatient
26 mental health services;

27 (ii) committed by a court to a residential

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1 care facility; or

2 (iii) ordered by a court to receive

3 treatment on an outpatient basis; or

(B) is discharged or currently on furlough from a mental health facility or outpatient center before the child reaches 18 years of age.

7 SECTION 1.016. Section 55.44(a), Family Code, is amended to
8 read as follows:

9 (a) The juvenile court shall transfer all pending
10 proceedings from the juvenile court to a criminal court on the 18th
11 birthday of a child for whom the juvenile court or a court to which
12 the child's case is referred has ordered inpatient mental health
13 services or residential care for persons with an intellectual
14 disability [mental retardation] if:

15 (1) the child is not discharged or currently on
16 furlough from the facility before reaching 18 years of age; and

21 SECTION 1.017. The heading to Subchapter D, Chapter 55,
22 Family Code, is amended to read as follows:

23 SUBCHAPTER D. LACK OF RESPONSIBILITY FOR CONDUCT AS A RESULT OF

24 MENTAL ILLNESS OR INTELLECTUAL DISABILITY [MENTAL RETARDATION]

25 SECTION 1.018. Section 55.51, Family Code, is amended to
26 read as follows:

27 Sec. 55.51. LACK OF RESPONSIBILITY FOR CONDUCT

1 DETERMINATION; EXAMINATION. (a) A child alleged by petition to
2 have engaged in delinquent conduct or conduct indicating a need for
3 supervision is not responsible for the conduct if at the time of the
4 conduct, as a result of mental illness or an intellectual
5 disability [~~mental retardation~~], the child lacks substantial
6 capacity either to appreciate the wrongfulness of the child's
7 conduct or to conform the child's conduct to the requirements of
8 law.

9 (b) On a motion by a party in which it is alleged that a
10 child may not be responsible as a result of mental illness or an
11 intellectual disability [~~mental retardation~~] for the child's
12 conduct, the court shall order the child to be examined under
13 Section 51.20. The information obtained from the examinations must
14 include expert opinion as to whether the child is not responsible
15 for the child's conduct as a result of mental illness or an
16 intellectual disability [~~mental retardation~~].

17 (c) The issue of whether the child is not responsible for
18 the child's conduct as a result of mental illness or an intellectual
19 disability [~~mental retardation~~] shall be tried to the court or jury
20 in the adjudication hearing.

21 (d) Lack of responsibility for conduct as a result of mental
22 illness or an intellectual disability [~~mental retardation~~] must be
23 proved by a preponderance of the evidence.

24 (e) In its findings or verdict the court or jury must state
25 whether the child is not responsible for the child's conduct as a
26 result of mental illness or an intellectual disability [~~mental~~
27 ~~retardation~~].

1 (f) If the court or jury finds the child is not responsible
2 for the child's conduct as a result of mental illness or an
3 intellectual disability [~~mental retardation~~], the court shall
4 proceed under Section 55.52.

5 (g) A child found to be not responsible for the child's
6 conduct as a result of mental illness or an intellectual disability
7 [~~mental retardation~~] shall not be subject to proceedings under this
8 title with respect to such conduct, other than proceedings under
9 Section 55.52.

10 SECTION 1.019. Section 55.52(a), Family Code, is amended to
11 read as follows:

12 (a) If the court or jury finds that a child is not
13 responsible for the child's conduct under Section 55.51, the court
14 shall:

15 (1) if the lack of responsibility is a result of mental
16 illness or an intellectual disability [~~mental retardation~~]:

17 (A) provided that the child meets the commitment
18 criteria under Subtitle C or D, Title 7, Health and Safety Code,
19 order the child placed with the [~~Texas~~] Department of State Health
20 Services or the Department of Aging and Disability Services, as
21 appropriate, [~~Mental Health and Mental Retardation~~] for a period of
22 not more than 90 days, which order may not specify a shorter period,
23 for placement in a facility designated by the department; or

24 (B) on application by the child's parent,
25 guardian, or guardian ad litem, order the child placed in a private
26 psychiatric inpatient facility for a period of not more than 90
27 days, which order may not specify a shorter period, but only if the

1 placement is agreed to in writing by the administrator of the
2 facility; or

3 (2) if the child's lack of responsibility is a result
4 of mental illness and the court determines that the child may be
5 adequately treated in an alternative setting, order the child to
6 receive treatment on an outpatient basis for a period of not more
7 than 90 days, which order may not specify a shorter period.

8 SECTION 1.020. Sections 55.54(a) and (b), Family Code, are
9 amended to read as follows:

10 (a) If the juvenile court issues a placement order under
11 Section 55.52(a), the court shall order the probation department to
12 send copies of any information in the possession of the department
13 and relevant to the issue of the child's mental illness or
14 intellectual disability [~~mental retardation~~] to the public or
15 private facility or outpatient center, as appropriate.

16 (b) Not later than the 75th day after the date the court
17 issues a placement order under Section 55.52(a), the public or
18 private facility or outpatient center, as appropriate, shall submit
19 to the court a report that:

20 (1) describes the treatment of the child provided by
21 the facility or center; and

22 (2) states the opinion of the director of the facility
23 or center as to whether the child has a mental illness or an
24 intellectual disability [~~is mentally ill or mentally retarded~~].

25 SECTION 1.021. Section 55.55, Family Code, is amended to
26 read as follows:

27 Sec. 55.55. REPORT THAT CHILD DOES NOT HAVE MENTAL ILLNESS

1 OR INTELLECTUAL DISABILITY [~~IS NOT MENTALLY ILL OR MENTALLY~~
2 ~~RETARDED~~]; HEARING ON OBJECTION. (a) If a report submitted under
3 Section 55.54(b) states that a child does not have a mental illness
4 or an intellectual disability [~~mental retardation~~], the juvenile
5 court shall discharge the child unless:

6 (1) an adjudication hearing was conducted concerning
7 conduct that included a violation of a penal law listed in Section
8 53.045(a) and a petition was approved by a grand jury under Section
9 53.045; and

10 (2) the prosecuting attorney objects in writing not
11 later than the second day after the date the attorney receives a
12 copy of the report under Section 55.54(c).

13 (b) On objection by the prosecuting attorney under
14 Subsection (a), the juvenile court shall hold a hearing without a
15 jury to determine whether the child has a mental illness or an
16 intellectual disability [~~mental retardation~~] and whether the child
17 meets the commitment criteria for civil commitment under Subtitle C
18 or D, Title 7, Health and Safety Code.

19 (c) At the hearing, the burden is on the state to prove by
20 clear and convincing evidence that the child has a mental illness or
21 an intellectual disability [~~mental retardation~~] and that the child
22 meets the commitment criteria for civil commitment under Subtitle C
23 or D, Title 7, Health and Safety Code.

24 (d) If, after a hearing, the court finds that the child does
25 not have a mental illness or an intellectual disability [~~mental~~
26 ~~retardation~~] and that the child does not meet the commitment
27 criteria under Subtitle C or D, Title 7, Health and Safety Code, the

1 court shall discharge the child.

2 (e) If, after a hearing, the court finds that the child has a
3 mental illness or an intellectual disability [~~mental retardation~~]
4 and that the child meets the commitment criteria under Subtitle C or
5 D, Title 7, Health and Safety Code, the court shall issue an
6 appropriate commitment order.

7 SECTION 1.022. Section 55.59, Family Code, is amended to
8 read as follows:

9 Sec. 55.59. REPORT THAT CHILD HAS INTELLECTUAL DISABILITY
10 [~~MENTAL RETARDATION~~]; INITIATION OF COMMITMENT PROCEEDINGS. If a
11 report submitted under Section 55.54(b) states that a child has an
12 intellectual disability [~~mental retardation~~] and that the child
13 meets the commitment criteria for civil commitment under Subtitle
14 D, Title 7, Health and Safety Code, the director of the residential
15 care facility shall submit to the court an affidavit stating the
16 conclusions reached as a result of the diagnosis. On receipt of an
17 affidavit, the juvenile court shall:

18 (1) initiate proceedings in the juvenile court as
19 provided by Section 55.60 for commitment of the child under
20 Subtitle D, Title 7, Health and Safety Code; or

21 (2) refer the child's case to the appropriate court as
22 provided by Section 55.61 for the initiation of proceedings in that
23 court for commitment of the child under Subtitle D, Title 7, Health
24 and Safety Code.

25 SECTION 1.023. The heading to Section 55.60, Family Code,
26 is amended to read as follows:

27 Sec. 55.60. COMMITMENT PROCEEDINGS IN JUVENILE COURT FOR

1 CHILDREN WITH INTELLECTUAL DISABILITY [MENTAL RETARDATION].

2 SECTION 1.024. Section 55.60(c), Family Code, is amended to
3 read as follows:

4 (c) On receipt of the court's order, the [Texas] Department
5 of Aging and Disability Services [Mental Health and Mental
6 Retardation] or the appropriate community center shall admit the
7 child to a residential care facility.

8 SECTION 1.025. The heading to Section 55.61, Family Code,
9 is amended to read as follows:

10 Sec. 55.61. REFERRAL FOR COMMITMENT PROCEEDINGS FOR
11 CHILDREN WITH INTELLECTUAL DISABILITY [MENTAL RETARDATION].

12 SECTION 1.026. Section 55.61(a), Family Code, is amended to
13 read as follows:

14 (a) If the juvenile court refers the child's case to an
15 appropriate court for the initiation of commitment proceedings
16 under Section 55.59(2), the juvenile court shall:

17 (1) send all papers relating to the child's
18 intellectual disability [mental retardation] to the clerk of the
19 court to which the case is referred;

20 (2) send to the office of the appropriate county
21 attorney or, if a county attorney is not available, to the office of
22 the appropriate district attorney, copies of all papers sent to the
23 clerk of the court under Subdivision (1); and

24 (3) if the child is in detention:

25 (A) order the child released from detention to
26 the child's home or another appropriate place;

27 (B) order the child detained in an appropriate

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1 place other than a juvenile detention facility; or
2 (C) if an appropriate place to release or detain
3 the child as described by Paragraph (A) or (B) is not available,
4 order the child to remain in the juvenile detention facility
5 subject to further detention orders of the court.

6 SECTION 1.027. Section 101.0021, Family Code, is
7 redesignated as Section 101.036, Family Code, and amended to read
8 as follows:

9 Sec. 101.036 [101.0021]. [BUREAU OF] VITAL STATISTICS
10 UNIT. "Vital [Bureau of vital] statistics unit" means the [bureau
11 ~~of~~] vital statistics unit of the [Texas] Department of State Health
12 Services.

13 SECTION 1.028. Section 101.017, Family Code, is amended to
14 read as follows:

15 Sec. 101.017. LICENSED CHILD PLACING AGENCY. "Licensed
16 child placing agency" means a person, including an organization
17 [~~private association~~] or corporation, licensed or certified under
18 Chapter 42, Human Resources Code, [approved] by the Department of
19 Family and Protective Services to place a child in a child-care
20 facility, agency foster home, agency foster group home, or adoptive
21 home [~~children for adoption through a license, certification, or~~
22 ~~other means~~].

23 SECTION 1.029. Section 102.003(a), Family Code, is amended
24 to read as follows:

25 (a) An original suit may be filed at any time by:
26 (1) a parent of the child;
27 (2) the child through a representative authorized by

1 the court;

(3) a custodian or person having the right of
visitation with or access to the child appointed by an order of a
court of another state or country;

7 (5) a governmental entity;

10 (7) a licensed child placing agency;

1 (12) a person who is the foster parent of a child
2 placed by the Department of Family and Protective Services in the
3 person's home for at least 12 months ending not more than 90 days
4 preceding the date of the filing of the petition;

5 (13) a person who is a relative of the child within the
6 third degree by consanguinity, as determined by Chapter 573,
7 Government Code, if the child's parents are deceased at the time of
8 the filing of the petition; or

9 (14) a person who has been named as a prospective
10 adoptive parent of a child by a pregnant woman or the parent of the
11 child, in a verified written statement to confer standing executed
12 under Section [102.0035](#), regardless of whether the child has been
13 born.

14 SECTION 1.030. Section [102.011\(b\)](#), Family Code, is amended
15 to read as follows:

16 (b) The court may also exercise personal jurisdiction over a
17 person on whom service of citation is required or over the person's
18 personal representative, although the person is not a resident or
19 domiciliary of this state, if:

20 (1) the person is personally served with citation in
21 this state;

22 (2) the person submits to the jurisdiction of this
23 state by consent, by entering a general appearance, or by filing a
24 responsive document having the effect of waiving any contest to
25 personal jurisdiction;

26 (3) the child resides in this state as a result of the
27 acts or directives of the person;

1 (4) the person resided with the child in this state;

2 (5) the person resided in this state and provided

3 prenatal expenses or support for the child;

4 (6) the person engaged in sexual intercourse in this

5 state and the child may have been conceived by that act of

6 intercourse;

7 (7) the person, as provided by Chapter 160:

8 (A) registered with the paternity registry

9 maintained by the [bureau of] vital statistics unit; or

10 (B) signed an acknowledgment of paternity of a

11 child born in this state; or

12 (8) there is any basis consistent with the

13 constitutions of this state and the United States for the exercise

14 of the personal jurisdiction.

15 SECTION 1.031. Section 107.001(5), Family Code, is amended

16 to read as follows:

17 (5) "Guardian ad litem" means a person appointed to

18 represent the best interests of a child. The term includes:

19 (A) a volunteer advocate from a charitable

20 organization described by [appointed under] Subchapter C who is

21 appointed by the court as the child's guardian ad litem;

22 (B) a professional, other than an attorney, who

23 holds a relevant professional license and whose training relates to

24 the determination of a child's best interests;

25 (C) an adult having the competence, training, and

26 expertise determined by the court to be sufficient to represent the

27 best interests of the child; or

1 (D) an attorney ad litem appointed to serve in
2 the dual role.

3 SECTION 1.032. Section 107.002(c), Family Code, is amended
4 to read as follows:

5 (c) A guardian ad litem appointed for the child under this
6 chapter is entitled to:

7 (1) receive a copy of each pleading or other paper
8 filed with the court in the case in which the guardian ad litem is
9 appointed;

10 (2) receive notice of each hearing in the case;

11 (3) participate in case staffings by the Department of
12 Family and Protective Services [an authorized agency] concerning
13 the child;

14 (4) attend all legal proceedings in the case but may
15 not call or question a witness or otherwise provide legal services
16 unless the guardian ad litem is a licensed attorney who has been
17 appointed in the dual role;

18 (5) review and sign, or decline to sign, an agreed
19 order affecting the child; and

20 (6) explain the basis for the guardian ad litem's
21 opposition to the agreed order if the guardian ad litem does not
22 agree to the terms of a proposed order.

23 SECTION 1.033. Section 107.003(a), Family Code, is amended
24 to read as follows:

25 (a) An attorney ad litem appointed to represent a child or
26 an amicus attorney appointed to assist the court:

27 (1) shall:

9 (iii) the parties to the suit;

10 (B) seek to elicit in a developmentally
11 appropriate manner the child's expressed objectives of
12 representation;

13 (C) consider the impact on the child in
14 formulating the attorney's presentation of the child's expressed
15 objectives of representation to the court;

16 (D) investigate the facts of the case to the
17 extent the attorney considers appropriate;

18 (E) obtain and review copies of relevant records
19 relating to the child as provided by Section [107.006](#);

20 (F) participate in the conduct of the litigation
21 to the same extent as an attorney for a party;

22 (G) take any action consistent with the child's
23 interests that the attorney considers necessary to expedite the
24 proceedings;

25 (H) encourage settlement and the use of
26 alternative forms of dispute resolution; and

27 (I) review and sign, or decline to sign, a

1 proposed or agreed order affecting the child;

2 (2) must be trained in child advocacy or have
3 experience determined by the court to be equivalent to that
4 training; and

5 (3) is entitled to:

6 (A) request clarification from the court if the
7 role of the attorney is ambiguous;

8 (B) request a hearing or trial on the merits;

9 (C) consent or refuse to consent to an interview
10 of the child by another attorney;

11 (D) receive a copy of each pleading or other
12 paper filed with the court;

13 (E) receive notice of each hearing in the suit;

14 (F) participate in any case staffing concerning
15 the child conducted by the Department of Family and Protective
16 Services [~~an authorized agency~~]; and

17 (G) attend all legal proceedings in the suit.

18 SECTION 1.034. Section 108.001, Family Code, is amended to
19 read as follows:

20 Sec. 108.001. TRANSMITTAL OF RECORDS OF SUIT BY CLERK. (a)
21 Except as provided by this chapter, the clerk of the court shall
22 transmit to the [~~bureau of~~] vital statistics unit a certified
23 record of the order rendered in a suit, together with the name and
24 all prior names, birth date, and place of birth of the child on a
25 form provided by the unit [~~bureau~~]. The form shall be completed by
26 the petitioner and submitted to the clerk at the time the order is
27 filed for record.

1 (b) The [bureau of] vital statistics unit shall maintain
2 these records in a central file according to the name, birth date,
3 and place of birth of the child, the court that rendered the order,
4 and the docket number of the suit.

5 (c) Except as otherwise provided by law, the records
6 required under this section to be maintained by the [bureau of]
7 vital statistics unit are confidential.

8 (d) In a Title IV-D case, the Title IV-D agency may transmit
9 the record and information specified by Subsection (a) to the
10 [bureau of] vital statistics unit, with a copy to the clerk of the
11 court on request by the clerk. The record and information are not
12 required to be certified if transmitted by the Title IV-D agency
13 under this subsection.

14 SECTION 1.035. Section 108.003, Family Code, is amended to
15 read as follows:

16 Sec. 108.003. TRANSMITTAL OF INFORMATION REGARDING
17 ADOPTION. (a) The clerk of a court that renders a decree of
18 adoption shall, not later than the 10th day of the first month after
19 the month in which the adoption is rendered, transmit to the central
20 registry of the [bureau of] vital statistics unit a certified
21 report of adoption that includes:

22 (1) the name of the adopted child after adoption as
23 shown in the adoption order;

24 (2) the birth date of the adopted child;

25 (3) the docket number of the adoption suit;

26 (4) the identity of the court rendering the adoption;

27 (5) the date of the adoption order;

1 (6) the name and address of each parent, guardian,
2 managing conservator, or other person whose consent to adoption was
3 required or waived under Chapter 162, or whose parental rights were
4 terminated in the adoption suit;

5 (7) the identity of the licensed child placing agency,
6 if any, through which the adopted child was placed for adoption; and

7 (8) the identity, address, and telephone number of the
8 registry through which the adopted child may register as an
9 adoptee.

10 (b) Except as otherwise provided by law, for good cause
11 shown, or on an order of the court that granted the adoption or
12 terminated the proceedings under Section 155.001, the records
13 concerning a child maintained by the district clerk after rendition
14 of a decree of adoption, the records of a child-placing agency that
15 has ceased operations, and the records required under this section
16 to be maintained by the [bureau of] vital statistics unit are
17 confidential, and no person is entitled to access to or information
18 from these records.

19 (c) If the [bureau of] vital statistics unit determines that
20 a report filed with the unit [bureau] under this section requires
21 correction, the unit [bureau] shall mail the report directly to an
22 attorney of record with respect to the adoption. The attorney shall
23 return the corrected report to the unit [bureau]. If there is no
24 attorney of record, the unit [bureau] shall mail the report to the
25 clerk of the court for correction.

26 SECTION 1.036. Section 108.004, Family Code, is amended to
27 read as follows:

1 Sec. 108.004. TRANSMITTAL OF FILES ON LOSS OF JURISDICTION.

2 On the loss of jurisdiction of a court under Chapter 155, 159, or
3 262, the clerk of the court shall transmit to the central registry
4 of the [bureau of] vital statistics unit a certified record, on a
5 form provided by the unit [bureau], stating that jurisdiction has
6 been lost, the reason for the loss of jurisdiction, and the name and
7 all previous names, date of birth, and place of birth of the child.

8 SECTION 1.037. The heading to Section 108.005, Family Code,
9 is amended to read as follows:

10 Sec. 108.005. ADOPTION RECORDS RECEIVED BY [BUREAU OF]
11 VITAL STATISTICS UNIT.

12 SECTION 1.038. Section 108.005(a), Family Code, is amended
13 to read as follows:

14 (a) When the [bureau of] vital statistics unit receives a
15 record from the district clerk showing that continuing, exclusive
16 jurisdiction of a child has been lost due to the adoption of the
17 child, the unit [bureau] shall close the records concerning that
18 child.

19 SECTION 1.039. Sections 108.006(a), (c), and (d), Family
20 Code, are amended to read as follows:

21 (a) The Department of State Health Services [bureau of vital
22 statistics] may charge a reasonable fee to cover the cost of
23 determining and sending information concerning the identity of the
24 court with continuing, exclusive jurisdiction.

25 (c) The clerk shall send the fees collected under Subsection
26 (b) to the Department of State Health Services [bureau of vital
27 statistics] for deposit in a special fund in the state treasury from

1 which the legislature may appropriate money only to operate and
2 maintain the central file and central registry of the vital
3 statistics unit [bureau].

4 (d) The receipts from the fees charged under Subsection (a)
5 shall be deposited in a financial institution as determined by the
6 Department of State Health Services [~~director of the bureau of~~
7 ~~vital statistics~~] and withdrawn as necessary for the sole purpose
8 of operating and maintaining the central record file.

9 SECTION 1.040. Section 108.007, Family Code, is amended to
10 read as follows:

11 Sec. 108.007. MICROFILM. (a) The [bureau of] vital
12 statistics unit may use microfilm or other suitable means for
13 maintaining the central record file.

14 (b) A certified reproduction of a document maintained by the
15 [bureau of] vital statistics unit is admissible in evidence as the
16 original document.

17 SECTION 1.041. Section 108.008(a), Family Code, is amended
18 to read as follows:

19 (a) On a determination of paternity, the petitioner shall
20 provide the clerk of the court in which the order was rendered the
21 information necessary to prepare the report of determination of
22 paternity. The clerk shall:

23 (1) prepare the report on a form provided by the vital
24 statistics unit [Bureau of Vital Statistics]; and

25 (2) complete the report immediately after the order
26 becomes final.

27 SECTION 1.042. Section 108.110, Family Code, is amended to

1 read as follows:

2 Sec. 108.110. RELEASE OF INFORMATION BY [BUREAU OF] VITAL
3 STATISTICS UNIT. (a) The [bureau of] vital statistics unit shall
4 provide to the Department of Family and Protective [and Regulatory]
5 Services:

6 (1) adoption information as necessary for the department
7 to comply with federal law or regulations regarding the
8 compilation or reporting of adoption information to federal
9 officials; and

10 (2) other information as necessary for the department
11 to administer its duties.

12 (b) The unit [bureau] may release otherwise confidential
13 information from the unit's [bureau's] central record files to
14 another governmental entity that has a specific need for the
15 information and maintains appropriate safeguards to prevent
16 further dissemination of the information.

17 SECTION 1.043. Section 153.005(b), Family Code, is amended
18 to read as follows:

19 (b) A managing conservator must be a parent, a competent
20 adult, the Department of Family and Protective Services [~~an~~
21 ~~authorized agency~~], or a licensed child-placing agency.

22 SECTION 1.044. Section 153.371, Family Code, is amended to
23 read as follows:

24 Sec. 153.371. RIGHTS AND DUTIES OF NONPARENT APPOINTED AS
25 SOLE MANAGING CONSERVATOR. Unless limited by court order or other
26 provisions of this chapter, a nonparent, a licensed child-placing
27 agency, or the Department of Family and Protective Services

1 [authorized agency] appointed as a managing conservator of the
2 child has the following rights and duties:

3 (1) the right to have physical possession and to
4 direct the moral and religious training of the child;

5 (2) the duty of care, control, protection, and
6 reasonable discipline of the child;

7 (3) the duty to provide the child with clothing, food,
8 shelter, education, and medical, psychological, and dental care;

9 (4) the right to consent for the child to medical,
10 psychiatric, psychological, dental, and surgical treatment and to
11 have access to the child's medical records;

12 (5) the right to receive and give receipt for payments
13 for the support of the child and to hold or disburse funds for the
14 benefit of the child;

15 (6) the right to the services and earnings of the
16 child;

17 (7) the right to consent to marriage and to enlistment
18 in the armed forces of the United States;

19 (8) the right to represent the child in legal action
20 and to make other decisions of substantial legal significance
21 concerning the child;

22 (9) except when a guardian of the child's estate or a
23 guardian or attorney ad litem has been appointed for the child, the
24 right to act as an agent of the child in relation to the child's
25 estate if the child's action is required by a state, the United
26 States, or a foreign government;

27 (10) the right to designate the primary residence of

1 the child and to make decisions regarding the child's education;
2 and

3 (11) if the parent-child relationship has been
4 terminated with respect to the parents, or only living parent, or if
5 there is no living parent, the right to consent to the adoption of
6 the child and to make any other decision concerning the child that a
7 parent could make.

8 SECTION 1.045. Section 153.372(a), Family Code, is amended
9 to read as follows:

10 (a) A nonparent, the Department of Family and Protective
11 Services [authorized agency], or a licensed child-placing agency
12 appointed as a joint managing conservator may serve in that
13 capacity with either another nonparent or with a parent of the
14 child.

15 SECTION 1.046. Section 153.373, Family Code, is amended to
16 read as follows:

17 Sec. 153.373. VOLUNTARY SURRENDER OF POSSESSION REBUTS
18 PARENTAL PRESUMPTION. The presumption that a parent should be
19 appointed or retained as managing conservator of the child is
20 rebutted if the court finds that:

21 (1) the parent has voluntarily relinquished actual
22 care, control, and possession of the child to a nonparent, a
23 licensed child-placing agency, or the Department of Family and
24 Protective Services [authorized agency] for a period of one year or
25 more, a portion of which was within 90 days preceding the date of
26 intervention in or filing of the suit; and

27 (2) the appointment of the nonparent, [or] agency, or

1 Department of Family and Protective Services as managing
2 conservator is in the best interest of the child.

3 SECTION 1.047. Section 153.374, Family Code, is amended to
4 read as follows:

5 Sec. 153.374. DESIGNATION OF MANAGING CONSERVATOR IN
6 AFFIDAVIT OF RELINQUISHMENT. (a) A parent may designate a
7 competent person, the Department of Family and Protective Services
8 [~~authorized agency~~], or a licensed child-placing agency to serve as
9 managing conservator of the child in an unrevoked or irrevocable
10 affidavit of relinquishment of parental rights executed as provided
11 by Chapter 161.

12 (b) The person, Department of Family and Protective
13 Services, or agency designated to serve as managing conservator
14 shall be appointed managing conservator unless the court finds that
15 the appointment would not be in the best interest of the child.

16 SECTION 1.048. Section 153.376(a), Family Code, is amended
17 to read as follows:

18 (a) Unless limited by court order or other provisions of
19 this chapter, a nonparent, a licensed child-placing agency, or the
20 Department of Family and Protective Services [~~authorized agency~~]
21 appointed as a possessory conservator has the following rights and
22 duties during the period of possession:

23 (1) the duty of care, control, protection, and
24 reasonable discipline of the child;

25 (2) the duty to provide the child with clothing, food,
26 and shelter; and

27 (3) the right to consent to medical, dental, and

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1 surgical treatment during an emergency involving an immediate
2 danger to the health and safety of the child.

3 SECTION 1.049. Section 153.434, Family Code, is amended to
4 read as follows:

5 Sec. 153.434. LIMITATION ON RIGHT TO REQUEST POSSESSION OR
6 ACCESS. A biological or adoptive grandparent may not request
7 possession of or access to a grandchild if:

8 (1) each of the biological parents of the grandchild
9 has:

10 (A) died;

11 (B) had the person's parental rights terminated;
12 or

13 (C) executed an affidavit of waiver of interest
14 in child or an affidavit of relinquishment of parental rights under
15 Chapter 161 and the affidavit designates the Department of Family
16 and Protective Services [~~an authorized agency~~], a licensed
17 child-placing agency, or a person other than the child's stepparent
18 as the managing conservator of the child; and

19 (2) the grandchild has been adopted, or is the subject
20 of a pending suit for adoption, by a person other than the child's
21 stepparent.

22 SECTION 1.050. Section 155.004(a), Family Code, is amended
23 to read as follows:

24 (a) A court of this state loses its continuing, exclusive
25 jurisdiction to modify its order if:

26 (1) an order of adoption is rendered after the court
27 acquires continuing, exclusive jurisdiction of the suit;

1 (2) the parents of the child have remarried each other
2 after the dissolution of a previous marriage between them and file a
3 suit for the dissolution of their subsequent marriage combined with
4 a suit affecting the parent-child relationship as if there had not
5 been a prior court with continuing, exclusive jurisdiction over the
6 child; or

7 (3) another court assumed jurisdiction over a suit and
8 rendered a final order based on incorrect information received from
9 the [bureau of] vital statistics unit that there was no court of
10 continuing, exclusive jurisdiction.

11 SECTION 1.051. Sections 155.101(a), (b), and (d), Family
12 Code, are amended to read as follows:

13 (a) The petitioner or the court shall request from the
14 [bureau of] vital statistics unit identification of the court that
15 last had continuing, exclusive jurisdiction of the child in a suit
16 unless:

17 (1) the petition alleges that no court has continuing,
18 exclusive jurisdiction of the child and the issue is not disputed by
19 the pleadings; or

20 (2) the petition alleges that the court in which the
21 suit or petition to modify has been filed has acquired and retains
22 continuing, exclusive jurisdiction of the child as the result of a
23 prior proceeding and the issue is not disputed by the pleadings.

24 (b) The [bureau of] vital statistics unit shall, on the
25 written request of the court, an attorney, or a party:

26 (1) identify the court that last had continuing,
27 exclusive jurisdiction of the child in a suit and give the docket

1 number of the suit; or

2 (2) state that the child has not been the subject of a
3 suit.

4 (d) The [bureau of] vital statistics unit shall transmit the
5 information not later than the 10th day after the date on which the
6 request is received.

7 SECTION 1.052. Section 155.103, Family Code, is amended to
8 read as follows:

9 Sec. 155.103. RELIANCE ON [BUREAU OF] VITAL STATISTICS UNIT
10 INFORMATION. (a) A court shall have jurisdiction over a suit if it
11 has been, correctly or incorrectly, informed by the [bureau of]
12 vital statistics unit that the child has not been the subject of a
13 suit and the petition states that no other court has continuing,
14 exclusive jurisdiction over the child.

15 (b) If the [bureau of] vital statistics unit notifies the
16 court that the unit [bureau] has furnished incorrect information
17 regarding the existence of another court with continuing, exclusive
18 jurisdiction before the rendition of a final order, the provisions
19 of this chapter apply.

20 SECTION 1.053. Section 155.104, Family Code, is amended to
21 read as follows:

22 Sec. 155.104. VOIDABLE ORDER. (a) If a request for
23 information from the [bureau of] vital statistics unit relating to
24 the identity of the court having continuing, exclusive jurisdiction
25 of the child has been made under this subchapter, a final order,
26 except an order of dismissal, may not be rendered until the
27 information is filed with the court.

1 (b) If a final order is rendered in the absence of the filing
2 of the information from the [bureau of] vital statistics unit, the
3 order is voidable on a showing that a court other than the court
4 that rendered the order had continuing, exclusive jurisdiction.

5 SECTION 1.054. Section 159.201(a), Family Code, is amended
6 to read as follows:

7 (a) In a proceeding to establish or enforce a support order
8 or to determine parentage, a tribunal of this state may exercise
9 personal jurisdiction over a nonresident individual or the
10 individual's guardian or conservator if:

11 (1) the individual is personally served with citation
12 in this state;

13 (2) the individual submits to the jurisdiction of this
14 state by consent, by entering a general appearance, or by filing a
15 responsive document having the effect of waiving any contest to
16 personal jurisdiction;

17 (3) the individual resided with the child in this
18 state;

19 (4) the individual resided in this state and provided
20 prenatal expenses or support for the child;

21 (5) the child resides in this state as a result of the
22 acts or directives of the individual;

23 (6) the individual engaged in sexual intercourse in
24 this state and the child may have been conceived by that act of
25 intercourse;

26 (7) the individual asserted parentage in the paternity
27 registry maintained in this state by the [bureau of] vital

1 statistics unit; or

2 (8) there is any other basis consistent with the
3 constitutions of this state and the United States for the exercise
4 of personal jurisdiction.

5 SECTION 1.055. Section 160.204(a), Family Code, is amended
6 to read as follows:

7 (a) A man is presumed to be the father of a child if:

8 (1) he is married to the mother of the child and the
9 child is born during the marriage;

10 (2) he is married to the mother of the child and the
11 child is born before the 301st day after the date the marriage is
12 terminated by death, annulment, declaration of invalidity, or
13 divorce;

14 (3) he married the mother of the child before the birth
15 of the child in apparent compliance with law, even if the attempted
16 marriage is or could be declared invalid, and the child is born
17 during the invalid marriage or before the 301st day after the date
18 the marriage is terminated by death, annulment, declaration of
19 invalidity, or divorce;

20 (4) he married the mother of the child after the birth
21 of the child in apparent compliance with law, regardless of whether
22 the marriage is or could be declared invalid, he voluntarily
23 asserted his paternity of the child, and:

24 (A) the assertion is in a record filed with the
25 [bureau of] vital statistics unit;

26 (B) he is voluntarily named as the child's father
27 on the child's birth certificate; or

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1 (C) he promised in a record to support the child
2 as his own; or

6 SECTION 1.056. Section 160.302(b), Family Code, is amended
7 to read as follows:

8 (b) An acknowledgment of paternity is void if it:

15 (3) falsely denies the existence of a presumed,
16 acknowledged or adjudicated father of the child.

17 SECTION 1.057. Section 160.304(c), Family Code, is amended
18 to read as follows:

19 (c) Subject to Subsection (a), an acknowledgment of
20 paternity or denial of paternity takes effect on the date of the
21 birth of the child or the filing of the document with the [bureau
22 eff] vital statistics unit whichever occurs later.

23 SECTION 1.058. Section 160.305, Family Code, is amended to
24 read as follows:

25 Sec. 160.305. EFFECT OF ACKNOWLEDGMENT OR DENIAL OF
26 PATERNITY. (a) Except as provided by Sections 160.307 and 160.308,
27 a valid acknowledgment of paternity filed with the [bureau of]

1 vital statistics unit is the equivalent of an adjudication of the
2 paternity of a child and confers on the acknowledged father all
3 rights and duties of a parent.

4 (b) Except as provided by Sections [160.307](#) and [160.308](#), a
5 valid denial of paternity filed with the ~~[bureau of]~~ vital
6 statistics unit in conjunction with a valid acknowledgment of
7 paternity is the equivalent of an adjudication of the nonpaternity
8 of the presumed father and discharges the presumed father from all
9 rights and duties of a parent.

10 SECTION 1.059. Section [160.306](#), Family Code, is amended to
11 read as follows:

12 Sec. 160.306. FILING FEE NOT REQUIRED. The Department of
13 State Health Services ~~[bureau of vital statistics]~~ may not charge a
14 fee for filing:

15 (1) an acknowledgment of paternity;
16 (2) a denial of paternity; or
17 (3) a rescission of an acknowledgment of paternity or
18 denial of paternity.

19 SECTION 1.060. Sections [160.307](#)(b) and (c), Family Code,
20 are amended to read as follows:

21 (b) A signatory seeking to rescind an acknowledgment of
22 paternity or denial of paternity must file with the ~~[bureau of]~~
23 vital statistics unit a completed rescission, on the form
24 prescribed under Section [160.312](#), in which the signatory declares
25 under penalty of perjury that:

26 (1) as of the date the rescission is filed, a
27 proceeding has not been held affecting the child identified in the

1 acknowledgment of paternity or denial of paternity, including a
2 proceeding to establish child support;

3 (2) a copy of the completed rescission was sent by
4 certified or registered mail, return receipt requested, to:

5 (A) if the rescission is of an acknowledgment of
6 paternity, the other signatory of the acknowledgment of paternity
7 and the signatory of any related denial of paternity; or

8 (B) if the rescission is of a denial of
9 paternity, the signatories of the related acknowledgment of
10 paternity; and

11 (3) if a signatory to the acknowledgment of paternity
12 or denial of paternity is receiving services from the Title IV-D
13 agency, a copy of the completed rescission was sent by certified or
14 registered mail to the Title IV-D agency.

15 (c) On receipt of a completed rescission, the [bureau of]
16 vital statistics unit shall void the acknowledgment of paternity or
17 denial of paternity affected by the rescission and amend the birth
18 record of the child, if appropriate.

19 SECTION 1.061. Sections 160.309(b) and (e), Family Code,
20 are amended to read as follows:

21 (b) For purposes of a challenge to an acknowledgment of
22 paternity or denial of paternity, a signatory submits to the
23 personal jurisdiction of this state by signing the acknowledgment
24 or denial. The jurisdiction is effective on the filing of the
25 document with the [bureau of] vital statistics unit.

26 (e) At the conclusion of a proceeding to challenge an
27 acknowledgment of paternity or a denial of paternity, the court

1 shall order the [bureau of] vital statistics unit to amend the birth
2 record of the child, if appropriate.

3 SECTION 1.062. Section 160.312(a), Family Code, is amended
4 to read as follows:

5 (a) To facilitate compliance with this subchapter, the
6 [bureau of] vital statistics unit shall prescribe forms for the:
7 (1) acknowledgment of paternity;
8 (2) denial of paternity; and
9 (3) rescission of an acknowledgment or denial of
10 paternity.

11 SECTION 1.063. Section 160.313, Family Code, is amended to
12 read as follows:

13 Sec. 160.313. RELEASE OF INFORMATION. The [bureau of]
14 vital statistics unit may release information relating to the
15 acknowledgment of paternity or denial of paternity to a signatory
16 of the acknowledgment or denial and to the courts and Title IV-D
17 agency of this or another state.

18 SECTION 1.064. Section 160.314, Family Code, is amended to
19 read as follows:

20 Sec. 160.314. ADOPTION OF RULES. The Title IV-D agency and
21 the executive commissioner of the Health and Human Services
22 Commission [bureau of vital statistics] may adopt rules to
23 implement this subchapter.

24 SECTION 1.065. Section 160.315, Family Code, is amended to
25 read as follows:

26 Sec. 160.315. MEMORANDUM OF UNDERSTANDING. (a) The Title
27 IV-D agency and the [bureau of] vital statistics unit shall adopt a

1 memorandum of understanding governing the collection and transfer
2 of information for the voluntary acknowledgment of paternity.

3 (b) The Title IV-D agency and the [bureau of] vital
4 statistics unit shall review the memorandum semiannually and renew
5 or modify the memorandum as necessary.

6 SECTION 1.066. Section 160.401, Family Code, is amended to
7 read as follows:

8 Sec. 160.401. ESTABLISHMENT OF REGISTRY. A registry of
9 paternity is established in the [bureau of] vital statistics unit.

10 SECTION 1.067. Section 160.402(c), Family Code, is amended
11 to read as follows:

12 (c) A registrant shall promptly notify the registry in a
13 record of any change in the information provided by the registrant.
14 The [bureau of] vital statistics unit shall incorporate all new
15 information received into its records but is not required to
16 affirmatively seek to obtain current information for incorporation
17 in the registry.

18 SECTION 1.068. Section 160.404, Family Code, is amended to
19 read as follows:

20 Sec. 160.404. TERMINATION OF PARENTAL RIGHTS: FAILURE TO
21 REGISTER. The parental rights of a man alleged to be the father of a
22 child may be terminated without notice as provided by Section
23 161.002 if the man:

24 (1) did not timely register with the [bureau of] vital
25 statistics unit; and

26 (2) is not entitled to notice under Section 160.402 or
27 161.002.

1 SECTION 1.069. Section 160.411, Family Code, is amended to
2 read as follows:

3 Sec. 160.411. REQUIRED FORM. The [bureau of] vital
4 statistics unit shall adopt a form for registering with the
5 registry. The form must require the signature of the registrant.

6 The form must state that:

7 (1) the form is signed under penalty of perjury;

8 (2) a timely registration entitles the registrant to
9 notice of a proceeding for adoption of the child or for termination
10 of the registrant's parental rights;

11 (3) a timely registration does not commence a
12 proceeding to establish paternity;

13 (4) the information disclosed on the form may be used
14 against the registrant to establish paternity;

15 (5) services to assist in establishing paternity are
16 available to the registrant through the support enforcement agency;

17 (6) the registrant should also register in another
18 state if the conception or birth of the child occurred in the other
19 state;

20 (7) information on registries in other states is
21 available from the [bureau of] vital statistics unit; and

22 (8) procedures exist to rescind the registration of a
23 claim of paternity.

24 SECTION 1.070. Section 160.412(a), Family Code, is amended
25 to read as follows:

26 (a) The [bureau of] vital statistics unit is not required to
27 attempt to locate the mother of a child who is the subject of a

1 registration. The [bureau of] vital statistics unit shall send a
2 copy of the notice of the registration to a mother who has provided
3 an address.

4 SECTION 1.071. Section 160.415, Family Code, is amended to
5 read as follows:

6 Sec. 160.415. UNTIMELY REGISTRATION. If a man registers
7 later than the 31st day after the date of the birth of the child, the
8 [bureau of] vital statistics unit shall notify the registrant that
9 the registration was not timely filed.

10 SECTION 1.072. Section 160.416(b), Family Code, is amended
11 to read as follows:

12 (b) Except as otherwise provided by Subsection (c), the
13 [bureau of] vital statistics unit may charge a reasonable fee for
14 making a search of the registry and for furnishing a certificate.

15 SECTION 1.073. Section 160.421(a), Family Code, is amended
16 to read as follows:

17 (a) If a father-child relationship has not been established
18 under this chapter, a petitioner for the adoption of or the
19 termination of parental rights regarding the child must obtain a
20 certificate of the results of a search of the registry. The
21 petitioner may request a search of the registry on or after the 32nd
22 day after the date of the birth of the child, and the executive
23 commissioner of the Health and Human Services Commission [bureau of
24 ~~vital statistics~~] may not by rule impose a waiting period that must
25 elapse before the vital statistics unit [bureau] will conduct the
26 requested search.

27 SECTION 1.074. Sections 160.422(a) and (b), Family Code,

1 are amended to read as follows:

2 (a) The ~~bureau of~~ vital statistics unit shall furnish a
3 certificate of the results of a search of the registry on request by
4 an individual, a court, or an agency listed in Section 160.412(b).

5 (b) The certificate of the results of a search must be
6 signed on behalf of the unit ~~bureau~~ and state that:

7 (1) a search has been made of the registry; and

8 (2) a registration containing the information
9 required to identify the registrant:

10 (A) has been found and is attached to the
11 certificate; or

12 (B) has not been found.

13 SECTION 1.075. Section 160.636(f), Family Code, is amended
14 to read as follows:

15 (f) If the order of the court is at variance with the child's
16 birth certificate, the court shall order the ~~bureau of~~ vital
17 statistics unit to issue an amended birth record.

18 SECTION 1.076. Section 160.760(b), Family Code, is amended
19 to read as follows:

20 (b) After receiving notice of the birth, the court shall
21 render an order that:

22 (1) confirms that the intended parents are the child's
23 parents;

24 (2) requires the gestational mother to surrender the
25 child to the intended parents, if necessary; and

26 (3) requires the ~~bureau of~~ vital statistics unit to
27 issue a birth certificate naming the intended parents as the

1 child's parents.

2 SECTION 1.077. Section 160.763, Family Code, is amended to
3 read as follows:

4 Sec. 160.763. HEALTH CARE FACILITY REPORTING REQUIREMENT.

5 (a) The executive commissioner of the Health and Human Services
6 Commission [~~Texas Department of Health~~] by rule shall develop and
7 implement a confidential reporting system that requires each health
8 care facility in this state at which assisted reproduction
9 procedures are performed under gestational agreements to report
10 statistics related to those procedures.

11 (b) In developing the reporting system, the executive
12 commissioner [~~department~~] shall require each health care facility
13 described by Subsection (a) to annually report:

14 (1) the number of assisted reproduction procedures
15 under a gestational agreement performed at the facility during the
16 preceding year; and

17 (2) the number and current status of embryos created
18 through assisted reproduction procedures described by Subdivision
19 (1) that were not transferred for implantation.

20 SECTION 1.078. Section 161.001, Family Code, is amended to
21 read as follows:

22 Sec. 161.001. INVOLUNTARY TERMINATION OF PARENT-CHILD
23 RELATIONSHIP. (a) In this section, "born addicted to alcohol or a
24 controlled substance" means a child:

25 (1) who is born to a mother who during the pregnancy
26 used a controlled substance, as defined by Chapter 481, Health and
27 Safety Code, other than a controlled substance legally obtained by

1 prescription, or alcohol; and

2 (2) who, after birth as a result of the mother's use of
3 the controlled substance or alcohol:

4 (A) experiences observable withdrawal from the
5 alcohol or controlled substance;

6 (B) exhibits observable or harmful effects in the
7 child's physical appearance or functioning; or

8 (C) exhibits the demonstrable presence of
9 alcohol or a controlled substance in the child's bodily fluids.

10 (b) The court may order termination of the parent-child
11 relationship if the court finds by clear and convincing evidence:

12 (1) that the parent has:

13 (A) voluntarily left the child alone or in the
14 possession of another not the parent and expressed an intent not to
15 return;

16 (B) voluntarily left the child alone or in the
17 possession of another not the parent without expressing an intent
18 to return, without providing for the adequate support of the child,
19 and remained away for a period of at least three months;

20 (C) voluntarily left the child alone or in the
21 possession of another without providing adequate support of the
22 child and remained away for a period of at least six months;

23 (D) knowingly placed or knowingly allowed the
24 child to remain in conditions or surroundings which endanger the
25 physical or emotional well-being of the child;

26 (E) engaged in conduct or knowingly placed the
27 child with persons who engaged in conduct which endangers the

1 physical or emotional well-being of the child;

2 (F) failed to support the child in accordance
3 with the parent's ability during a period of one year ending within
4 six months of the date of the filing of the petition;

5 (G) abandoned the child without identifying the
6 child or furnishing means of identification, and the child's
7 identity cannot be ascertained by the exercise of reasonable
8 diligence;

9 (H) voluntarily, and with knowledge of the
10 pregnancy, abandoned the mother of the child beginning at a time
11 during her pregnancy with the child and continuing through the
12 birth, failed to provide adequate support or medical care for the
13 mother during the period of abandonment before the birth of the
14 child, and remained apart from the child or failed to support the
15 child since the birth;

16 (I) contumaciously refused to submit to a
17 reasonable and lawful order of a court under Subchapter D, Chapter
18 261;

19 (J) been the major cause of:

20 (i) the failure of the child to be enrolled
21 in school as required by the Education Code; or

22 (ii) the child's absence from the child's
23 home without the consent of the parents or guardian for a
24 substantial length of time or without the intent to return;

25 (K) executed before or after the suit is filed an
26 unrevoked or irrevocable affidavit of relinquishment of parental
27 rights as provided by this chapter;

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(iii) Section 18.04 (manslaughter).

11 $\left(\begin{array}{cc} 1 & 0 \\ 0 & 1 \end{array}\right)$ $\left(\begin{array}{cc} 0 & 1 \\ 1 & 0 \end{array}\right)$ $\left(\begin{array}{cc} 0 & -1 \\ -1 & 0 \end{array}\right)$ $\left(\begin{array}{cc} 1 & 1 \\ 1 & 1 \end{array}\right)$

(v) Section 11(1)(b) (assault),

(vi) Section 22.01 (sexual assault),

(viii) Section 22.021 (aggravated assault);

18 (ix) Section 22.04 (injury to a child,
19 elderly individual, or disabled individual);

20 (x) Section 22.041 (abandoning or
21 endangering child);

22 (xi) Section 25.02 (prohibited sexual
23 conduct);

24 (xii) Section 43.25 (sexual performance by
25 a child);

(xiii) Section 43.26 (possession or promotion of child pornography);

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(xiv) Section 21.02 (continuous sexual abuse of young child or children);

3 (xv) Section 20A.02(a)(7) or (8)
4 (trafficking of persons); and

5 (xvi) Section 43.05(a)(2) (compelling
6 prostitution);

7 (M) had his or her parent-child relationship
8 terminated with respect to another child based on a finding that the
9 parent's conduct was in violation of Paragraph (D) or (E) or
10 substantially equivalent provisions of the law of another state;

11 (N) constructively abandoned the child who has
12 been in the permanent or temporary managing conservatorship of the
13 Department of Family and Protective Services [~~or an authorized~~
14 ~~agency~~] for not less than six months, and:

15 (i) the department [or authorized agency]
16 has made reasonable efforts to return the child to the parent;

17 (ii) the parent has not regularly visited
18 or maintained significant contact with the child; and

(iii) the parent has demonstrated an inability to provide the child with a safe environment;

21 (O) failed to comply with the provisions of a
22 court order that specifically established the actions necessary for
23 the parent to obtain the return of the child who has been in the
24 permanent or temporary managing conservatorship of the Department
25 of Family and Protective Services for not less than nine months as a
26 result of the child's removal from the parent under Chapter 262 for
27 the abuse or neglect of the child;

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(P) used a controlled substance, as defined by Chapter 481, Health and Safety Code, in a manner that endangered the health or safety of the child, and:

11 (i) conviction of an offense; and

12 (ii) confinement or imprisonment and
13 inability to care for the child for not less than two years from the
14 date of filing the petition;

15 (R) been the cause of the child being born
16 addicted to alcohol or a controlled substance, other than a
17 controlled substance legally obtained by prescription [~~, as defined~~
18 ~~by Section 261.001~~]:

19 (S) voluntarily delivered the child to a
20 designated emergency infant care provider under Section 262.302
21 without expressing an intent to return for the child; or

22 (T) been convicted of:

¹ 19.02 or 19.03, Penal Code;

(ii) criminal attempt under Section 15.01, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 15.01, Penal Code, to commit the offense described by Subparagraph (i); or

14 (2) that termination is in the best interest of the
15 child.

16 SECTION 1.079. Section 161.002(e), Family Code, is amended
17 to read as follows:

18 (e) The court shall not render an order terminating parental
19 rights under Subsection (b)(2) or (3) unless the court receives
20 evidence of a certificate of the results of a search of the
21 paternity registry under Chapter 160 from the [bureau of] vital
22 statistics unit indicating that no man has registered the intent to
23 claim paternity.

24 SECTION 1.080. Section 161.003(a), Family Code, is amended
25 to read as follows:

26 (a) The court may order termination of the parent-child
27 relationship in a suit filed by the Department of Family and

1 Protective [and Regulatory] Services if the court finds that:

2 (1) the parent has a mental or emotional illness or a
3 mental deficiency that renders the parent unable to provide for the
4 physical, emotional, and mental needs of the child;

5 (2) the illness or deficiency, in all reasonable
6 probability, proved by clear and convincing evidence, will continue
7 to render the parent unable to provide for the child's needs until
8 the 18th birthday of the child;

9 (3) the department has been the temporary or sole
10 managing conservator of the child of the parent for at least six
11 months preceding the date of the hearing on the termination held in
12 accordance with Subsection (c);

13 (4) the department has made reasonable efforts to
14 return the child to the parent; and

15 (5) the termination is in the best interest of the
16 child.

17 SECTION 1.081. Section 161.005(b), Family Code, is amended
18 to read as follows:

19 (b) If the petition designates the Department of Family and
20 Protective [and Regulatory] Services as managing conservator, the
21 department shall be given service of citation. The court shall
22 notify the department if the court appoints the department as the
23 managing conservator of the child.

24 SECTION 1.082. Sections 161.103(c) and (e), Family Code,
25 are amended to read as follows:

26 (c) The affidavit may contain:

27 (1) a waiver of process in a suit to terminate the

1 parent-child relationship filed under this chapter or in a suit to
2 terminate joined with a petition for adoption; and

3 (2) a consent to the placement of the child for
4 adoption by the Department of Family and Protective [and
5 ~~Regulatory~~] Services or by a licensed child-placing agency.

6 (e) The relinquishment in an affidavit that designates the
7 Department of Family and Protective [and ~~Regulatory~~] Services or a
8 licensed child-placing agency to serve as the managing conservator
9 is irrevocable. A relinquishment in any other affidavit of
10 relinquishment is revocable unless it expressly provides that it is
11 irrevocable for a stated period of time not to exceed 60 days after
12 the date of its execution.

13 SECTION 1.083. Section 161.104, Family Code, is amended to
14 read as follows:

15 Sec. 161.104. RIGHTS OF DESIGNATED MANAGING CONSERVATOR
16 PENDING COURT APPOINTMENT. A person, licensed child-placing
17 agency, or the Department of Family and Protective Services
18 [~~authorized agency~~] designated managing conservator of a child in
19 an irrevocable or unrevoked affidavit of relinquishment has a right
20 to possession of the child superior to the right of the person
21 executing the affidavit, the right to consent to medical, surgical,
22 dental, and psychological treatment of the child, and the rights
23 and duties given by Chapter 153 to a possessory conservator until
24 such time as these rights and duties are modified or terminated by
25 court order.

26 SECTION 1.084. Section 161.106(e), Family Code, is amended
27 to read as follows:

1 (e) An affidavit of waiver of interest in a child may be used
2 in a suit in which the affiant attempts to establish an interest in
3 the child. The affidavit may not be used in a suit brought by
4 another person, licensed child-placing agency, or the Department of
5 Family and Protective Services [~~authorized agency~~] to establish the
6 affiant's paternity of the child.

7 SECTION 1.085. Section 161.108(a), Family Code, is amended
8 to read as follows:

9 (a) Before or at the time an affidavit of relinquishment of
10 parental rights under Section 161.103 is executed, the mother of a
11 newborn child may authorize the release of the child from the
12 hospital or birthing center to a licensed child-placing agency, the
13 Department of Family and Protective [~~and Regulatory~~] Services, or
14 another designated person.

15 SECTION 1.086. Section 161.109, Family Code, is amended to
16 read as follows:

17 Sec. 161.109. REQUIREMENT OF PATERNITY REGISTRY
18 CERTIFICATE. (a) If a parent-child relationship does not exist
19 between the child and any man, a certificate from the [~~bureau of~~]
20 vital statistics unit signed by the registrar that a diligent
21 search has been made of the paternity registry maintained by the
22 unit [~~bureau~~] and that a registration has not been found pertaining
23 to the father of the child in question must be filed with the court
24 before a trial on the merits in the suit for termination may be
25 held.

26 (b) In a proceeding to terminate parental rights in which
27 the alleged or probable father has not been personally served with

1 citation or signed an affidavit of relinquishment or an affidavit
2 of waiver of interest, the court may not terminate the parental
3 rights of the alleged or probable father, whether known or unknown,
4 unless a certificate from the [bureau of] vital statistics unit
5 signed by the registrar states that a diligent search has been made
6 of the paternity registry maintained by the unit [bureau] and that a
7 filing or registration has not been found pertaining to the father
8 of the child in question.

9 SECTION 1.087. Section 161.2061(a), Family Code, is amended
10 to read as follows:

11 (a) If the court finds it to be in the best interest of the
12 child, the court may provide in an order terminating the
13 parent-child relationship that the biological parent who filed an
14 affidavit of voluntary relinquishment of parental rights under
15 Section 161.103 shall have limited post-termination contact with
16 the child as provided by Subsection (b) on the agreement of the
17 biological parent and the Department of Family and Protective [and
18 ~~Regulatory~~] Services.

19 SECTION 1.088. Section 161.207(a), Family Code, is amended
20 to read as follows:

21 (a) If the court terminates the parent-child relationship
22 with respect to both parents or to the only living parent, the court
23 shall appoint a suitable, competent adult, the Department of Family
24 and Protective [and Regulatory] Services, or a licensed
25 child-placing agency[, or an authorized agency] as managing
26 conservator of the child. An agency designated managing
27 conservator in an unrevoked or irrevocable affidavit of

1 relinquishment shall be appointed managing conservator.

2 SECTION 1.089. Section 161.208, Family Code, is amended to
3 read as follows:

4 Sec. 161.208. APPOINTMENT OF DEPARTMENT OF FAMILY AND
5 PROTECTIVE [AND REGULATORY] SERVICES AS MANAGING CONSERVATOR. If a
6 parent of the child has not been personally served in a suit in
7 which the Department of Family and Protective [and Regulatory]
8 Services seeks termination, the court that terminates a
9 parent-child relationship may not appoint the Department of Family
10 and Protective [and Regulatory] Services as permanent managing
11 conservator of the child unless the court determines that:

12 (1) the department has made a diligent effort to
13 locate a missing parent who has not been personally served and a
14 relative of that parent; and

15 (2) a relative located by the department has had a
16 reasonable opportunity to request appointment as managing
17 conservator of the child or the department has not been able to
18 locate the missing parent or a relative of the missing parent.

19 SECTION 1.090. Section 162.001(c), Family Code, is amended
20 to read as follows:

21 (c) If an affidavit of relinquishment of parental rights
22 contains a consent for the Department of Family and Protective [and
23 Regulatory] Services or a licensed child-placing agency to place
24 the child for adoption and appoints the department or agency
25 managing conservator of the child, further consent by the parent is
26 not required and the adoption order shall terminate all rights of
27 the parent without further termination proceedings.

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1 SECTION 1.091. Section 162.005(b), Family Code, is amended
2 to read as follows:

3 (b) Before placing a child for adoption, the Department of
4 Family and Protective [~~and Regulatory~~] Services, a licensed
5 child-placing agency, or the child's parent or guardian shall
6 compile a report on the available health, social, educational, and
7 genetic history of the child to be adopted.

8 SECTION 1.092. Section 162.006(a), Family Code, is amended
9 to read as follows:

10 (a) The Department of Family and Protective Services
11 [~~department~~], licensed child-placing agency, or other person
12 placing a child for adoption shall inform the prospective adoptive
13 parents of their right to examine the records and other information
14 relating to the history of the child. The department, licensed
15 child-placing agency, or other person placing the child for
16 adoption shall edit the records and information to protect the
17 identity of the biological parents and any other person whose
18 identity is confidential.

19 SECTION 1.093. Section 162.0065, Family Code, is amended to
20 read as follows:

21 Sec. 162.0065. EDITING ADOPTION RECORDS IN DEPARTMENT
22 PLACEMENT. Notwithstanding any other provision of this chapter, in
23 an adoption in which a child is placed for adoption by the
24 Department of Family and Protective [~~and Regulatory~~] Services, the
25 department is not required to edit records to protect the identity
26 of birth parents and other persons whose identity is confidential
27 if the department determines that information is already known to

1 the adoptive parents or is readily available through other sources,
2 including the court records of a suit to terminate the parent-child
3 relationship under Chapter 161.

4 SECTION 1.094. Section 162.008(b), Family Code, is amended
5 to read as follows:

6 (b) A petition for adoption may not be granted until the
7 following documents have been filed:

8 (1) a copy of the health, social, educational, and
9 genetic history report signed by the child's adoptive parents; and

10 (2) if the report is required to be submitted to the
11 Department of Family and Protective Services [~~bureau of vital~~
12 ~~statistics~~] under Section 162.006(e), a certificate from the
13 department [~~bureau~~] acknowledging receipt of the report.

14 SECTION 1.095. Section 162.0085(a), Family Code, is amended
15 to read as follows:

16 (a) In a suit affecting the parent-child relationship in
17 which an adoption is sought, the court shall order each person
18 seeking to adopt the child to obtain that person's own criminal
19 history record information. The court shall accept under this
20 section a person's criminal history record information that is
21 provided by the Department of Family and Protective [~~and~~
22 ~~Regulatory~~] Services or by a licensed child-placing agency that
23 received the information from the department if the information was
24 obtained not more than one year before the date the court ordered
25 the history to be obtained.

26 SECTION 1.096. Sections 162.018(a) and (d), Family Code,
27 are amended to read as follows:

1 (a) The adoptive parents are entitled to receive copies of
2 the records and other information relating to the history of the
3 child maintained by the Department of Family and Protective
4 Services [department], licensed child-placing agency, person, or
5 entity placing the child for adoption.

6 (d) At the time an adoption order is rendered, the court
7 shall provide to the parents of an adopted child information
8 provided by the [bureau of] vital statistics unit that describes
9 the functions of the voluntary adoption registry under Subchapter
10 E. The licensed child-placing agency shall provide to each of the
11 child's biological parents known to the agency, the information
12 when the parent signs an affidavit of relinquishment of parental
13 rights or affidavit of waiver of interest in a child. The
14 information shall include the right of the child or biological
15 parent to refuse to participate in the registry. If the adopted
16 child is 14 years old or older the court shall provide the
17 information to the child.

18 SECTION 1.097. Section 162.021(b), Family Code, is amended
19 to read as follows:

20 (b) Rendition of the order does not relieve the clerk from
21 the duty to send information regarding adoption to the [bureau of]
22 vital statistics unit as required by this subchapter and Chapter
23 108.

24 SECTION 1.098. Sections 162.101(1) and (2), Family Code,
25 are amended to read as follows:

26 (1) "Appropriate public authorities," with reference
27 to this state, means the commissioner of the Department of Family

1 and Protective Services [executive director].

2 (2) "Appropriate authority in the receiving state,"
3 with reference to this state, means the commissioner of the
4 Department of Family and Protective Services [executive director].

5 SECTION 1.099. Section 162.103, Family Code, is amended to
6 read as follows:

7 Sec. 162.103. FINANCIAL RESPONSIBILITY FOR CHILD. (a)
8 Financial responsibility for a child placed as provided in the
9 compact is determined, in the first instance, as provided in
10 Article V of the compact. After partial or complete default of
11 performance under the provisions of Article V assigning financial
12 responsibility, the commissioner of the Department of Family and
13 Protective Services [executive director] may bring suit under
14 Chapter 154 and may file a complaint with the appropriate
15 prosecuting attorney, claiming a violation of Section 25.05, Penal
16 Code.

17 (b) After default, if the commissioner of the Department of
18 Family and Protective Services [executive director] determines
19 that financial responsibility is unlikely to be assumed by the
20 sending agency or the child's parents, the commissioner [executive
21 director] may cause the child to be returned to the sending agency.

22 (c) After default, the Department of Family and Protective
23 Services [department] shall assume financial responsibility for
24 the child until it is assumed by the child's parents or until the
25 child is safely returned to the sending agency.

26 SECTION 1.100. Section 162.104, Family Code, is amended to
27 read as follows:

1 Sec. 162.104. APPROVAL OF PLACEMENT. The commissioner of
2 the Department of Family and Protective Services [~~executive~~
3 ~~director~~] may not approve the placement of a child in this state
4 without the concurrence of the individuals with whom the child is
5 proposed to be placed or the head of an institution with which the
6 child is proposed to be placed.

7 SECTION 1.101. Section 162.106, Family Code, is amended to
8 read as follows:

9 Sec. 162.106. COMPACT AUTHORITY. (a) The governor shall
10 appoint the commissioner [~~executive director~~] of the Department of
11 Family and Protective [~~and Regulatory~~] Services as compact
12 administrator.

13 (b) The commissioner of the Department of Family and
14 Protective Services [~~executive director~~] shall designate a deputy
15 compact administrator and staff necessary to execute the terms of
16 the compact in this state.

17 SECTION 1.102. Section 162.107(b), Family Code, is amended
18 to read as follows:

19 (b) An individual, agency, corporation, child-care
20 facility, or general residential operation [~~child-care~~
21 ~~institution~~] in this state that violates Article IV of the compact
22 commits an offense. An offense under this subsection is a Class B
23 misdemeanor. On conviction, the court shall revoke any license to
24 operate as a child-care facility or general residential operation
25 [~~child-care institution~~] issued by the Department of Family and
26 Protective Services [~~department~~] to the entity convicted and shall
27 revoke any license or certification of the individual, agency, or

1 corporation necessary to practice in the state.

2 SECTION 1.103. Section [162.201](#), Family Code, is amended to
3 read as follows:

4 Sec. 162.201. ADOPTION OF COMPACT; TEXT. The Interstate
5 Compact on Adoption and Medical Assistance is adopted by this state
6 and entered into with all other jurisdictions joining in the
7 compact in form substantially as provided under this subchapter.

8 INTERSTATE COMPACT ON ADOPTION AND MEDICAL ASSISTANCE

9 ARTICLE I. FINDINGS

10 The legislature finds that:

11 (a) Finding adoptive families for children for whom
12 state assistance is desirable, under Subchapter D, Chapter 162, and
13 assuring the protection of the interest of the children affected
14 during the entire assistance period require special measures when
15 the adoptive parents move to other states or are residents of
16 another state.

17 (b) The provision of medical and other necessary
18 services for children, with state assistance, encounters special
19 difficulties when the provision of services takes place in other
20 states.

21 ARTICLE II. PURPOSES

22 The purposes of the compact are to:

23 (a) authorize the Department of Family and Protective
24 [~~and Regulatory~~] Services, with the concurrence of the Health and
25 Human Services Commission, to enter into interstate agreements with
26 agencies of other states for the protection of children on behalf of
27 whom adoption assistance is being provided by the Department of

1 Family and Protective [~~and Regulatory~~] Services; and
2 (b) provide procedures for interstate children's
3 adoption assistance payments, including medical payments.

4 ARTICLE III. DEFINITIONS

5 In this compact:

6 (a) "Adoption assistance state" means the state that
7 signs an adoption assistance agreement in a particular case.

8 (b) "Residence state" means the state in which the
9 child resides by virtue of the residence of the adoptive parents.

10 (c) "State" means a state of the United States, the
11 District of Columbia, the Commonwealth of Puerto Rico, the Virgin
12 Islands, Guam, the Commonwealth of the Northern Mariana Islands, or
13 a territory or possession of or a territory or possession
14 administered by the United States.

15 ARTICLE IV. COMPACTS AUTHORIZED

16 The Department of Family and Protective [~~and Regulatory~~]
17 Services, through its commissioner [~~executive director~~], is
18 authorized to develop, participate in the development of,
19 negotiate, and enter into one or more interstate compacts on behalf
20 of this state with other states to implement one or more of the
21 purposes of this compact. An interstate compact authorized by this
22 article has the force and effect of law.

23 ARTICLE V. CONTENTS OF COMPACTS

24 A compact entered into under the authority conferred by this
25 compact shall contain:

26 (1) a provision making the compact available for
27 joinder by all states;

1 (2) a provision for withdrawal from the compact on
2 written notice to the parties, with a period of one year between the
3 date of the notice and the effective date of the withdrawal;

4 (3) a requirement that protections under the compact
5 continue for the duration of the adoption assistance and apply to
6 all children and their adoptive parents who on the effective date of
7 the withdrawal are receiving adoption assistance from a party state
8 other than the one in which they reside and have their principal
9 place of abode;

10 (4) a requirement that each case of adoption
11 assistance to which the compact applies be covered by a written
12 adoption assistance agreement between the adoptive parents and the
13 state child welfare agency of the state that provides the adoption
14 assistance and that the agreement be expressly for the benefit of
15 the adopted child and enforceable by the adoptive parents and the
16 state agency providing the adoption assistance; and

17 (5) other provisions that are appropriate for the
18 proper administration of the compact.

19 ARTICLE VI. OPTIONAL CONTENTS OF COMPACTS

20 A compact entered into under the authority conferred by this
21 compact may contain the following provisions, in addition to those
22 required under Article V of this compact:

23 (1) provisions establishing procedures and
24 entitlement to medical, developmental, child-care, or other social
25 services for the child in accordance with applicable laws, even if
26 the child and the adoptive parents are in a state other than the one
27 responsible for or providing the services or the funds to defray

1 part or all of the costs thereof; and

2 (2) other provisions that are appropriate or
3 incidental to the proper administration of the compact.

4 ARTICLE VII. MEDICAL ASSISTANCE

5 (a) A child with special needs who resides in this state and
6 who is the subject of an adoption assistance agreement with another
7 state is entitled to receive a medical assistance identification
8 from this state on the filing in the state medical assistance agency
9 of a certified copy of the adoption assistance agreement obtained
10 from the adoption assistance state. In accordance with rules of the
11 state medical assistance agency, the adoptive parents, at least
12 annually, shall show that the agreement is still in effect or has
13 been renewed.

14 (b) The state medical assistance agency shall consider the
15 holder of a medical assistance identification under this article as
16 any other holder of a medical assistance identification under the
17 laws of this state and shall process and make payment on claims on
18 the holder's account in the same manner and under the same
19 conditions and procedures as for other recipients of medical
20 assistance.

21 (c) The state medical assistance agency shall provide
22 coverage and benefits for a child who is in another state and who is
23 covered by an adoption assistance agreement made by the Department
24 of Family and Protective [~~and Regulatory~~] Services for the coverage
25 or benefits, if any, not provided by the residence state. The
26 adoptive parents acting for the child may submit evidence of
27 payment for services or benefit amounts not payable in the

1 residence state and shall be reimbursed for those amounts.
2 Services or benefit amounts covered under any insurance or other
3 third-party medical contract or arrangement held by the child or
4 the adoptive parents may not be reimbursed. The state medical
5 assistance agency shall adopt rules implementing this subsection.
6 The additional coverage and benefit amounts provided under this
7 subsection are for services for which there is no federal
8 contribution or services that, if federally aided, are not provided
9 by the residence state. The rules shall include procedures for
10 obtaining prior approval for services in cases in which prior
11 approval is required for the assistance.

12 (d) The submission of a false, misleading, or fraudulent
13 claim for payment or reimbursement for services or benefits under
14 this article or the making of a false, misleading, or fraudulent
15 statement in connection with the claim is an offense under this
16 subsection if the person submitting the claim or making the
17 statement knows or should know that the claim or statement is false,
18 misleading, or fraudulent. A person who commits an offense under
19 this subsection may be liable for a fine not to exceed \$10,000 or
20 imprisonment for not more than two years, or both the fine and the
21 imprisonment. An offense under this subsection that also
22 constitutes an offense under other law may be punished under either
23 this subsection or the other applicable law.

24 (e) This article applies only to medical assistance for
25 children under adoption assistance agreements with states that have
26 entered into a compact with this state under which the other state
27 provides medical assistance to children with special needs under

1 adoption assistance agreements made by this state. All other
2 children entitled to medical assistance under adoption assistance
3 agreements entered into by this state are eligible to receive the
4 medical assistance in accordance with the laws and procedures that
5 apply to the agreement.

6 ARTICLE VIII. FEDERAL PARTICIPATION

7 Consistent with federal law, the Department of Family and
8 Protective [and Regulatory] Services and the Health and Human
9 Services Commission, in connection with the administration of this
10 compact or a compact authorized by this compact, shall include the
11 provision of adoption assistance and medical assistance for which
12 the federal government pays some or all of the cost in any state
13 plan made under the Adoption Assistance and Child Welfare Act of
14 1980 (Pub. L. No. 96-272), Titles IV-E and XIX of the Social
15 Security Act, and other applicable federal laws. The Department of
16 Family and Protective [and Regulatory] Services and the Health and
17 Human Services Commission shall apply for and administer all
18 relevant federal aid in accordance with law.

19 SECTION 1.104. Section 162.202, Family Code, is amended to
20 read as follows:

21 Sec. 162.202. AUTHORITY OF DEPARTMENT OF FAMILY AND
22 PROTECTIVE [AND REGULATORY] SERVICES. The Department of Family and
23 Protective [and Regulatory] Services, with the concurrence of the
24 Health and Human Services Commission, may develop, participate in
25 the development of, negotiate, and enter into one or more
26 interstate compacts on behalf of this state with other states to
27 implement one or more of the purposes of this subchapter. An

1 interstate compact authorized by this subchapter [~~article~~] has the
2 force and effect of law.

3 SECTION 1.105. Section 162.203, Family Code, is amended to
4 read as follows:

5 Sec. 162.203. COMPACT ADMINISTRATION. The commissioner
6 [~~executive director~~] of the Department of Family and Protective
7 [~~and Regulatory~~] Services shall serve as the compact administrator.
8 The administrator shall cooperate with all departments, agencies,
9 and officers of this state and its subdivisions in facilitating the
10 proper administration of the compact and any supplemental
11 agreements entered into by this state. The commissioner of the
12 Department of Family and Protective Services [~~executive director~~]
13 and the executive commissioner of the Health and Human Services
14 Commission [~~human services~~] shall designate deputy compact
15 administrators to represent adoption assistance services and
16 medical assistance services provided under Title XIX of the Social
17 Security Act.

18 SECTION 1.106. The heading to Subchapter D, Chapter 162,
19 Family Code, is amended to read as follows:

20 SUBCHAPTER D. ADOPTION SERVICES BY THE DEPARTMENT OF
21 FAMILY AND PROTECTIVE [~~AND REGULATORY~~] SERVICES

22 SECTION 1.107. Sections 162.301(1) and (3), Family Code,
23 are amended to read as follows:

24 (1) "Adoption assistance agreement" means a written
25 agreement, binding on the parties to the agreement, between the
26 Department of Family and Protective Services [~~department~~] and the
27 prospective adoptive parents that specifies the nature and amount

1 of any payment, services, or assistance to be provided under the
2 agreement and stipulates that the agreement will remain in effect
3 without regard to the state in which the prospective adoptive
4 parents reside at any particular time.

5 (3) "Department" means the Department of Family and
6 Protective [and Regulatory] Services.

7 SECTION 1.108. Section 162.302(c), Family Code, is amended
8 to read as follows:

9 (c) The program shall be carried out by licensed
10 child-placing agencies or county child-care or welfare units under
11 department rules [~~adopted by the department~~].

12 SECTION 1.109. Sections 162.309(b) and (i), Family Code,
13 are amended to read as follows:

14 (b) The committee is composed of 12 members appointed by the
15 commissioner [~~board~~] of the department [~~Department of Protective~~
16 ~~and Regulatory Services~~]. The commissioner [~~board~~] shall appoint
17 to the committee individuals who in the aggregate have knowledge of
18 and experience in community education, cultural relations, family
19 support, counseling, and parenting skills and education. At least
20 six members must be ordained members of the clergy.

21 (i) On receiving the committee's recommendations, the
22 department may [~~adopt rules to~~] implement a program or project
23 recommended under this section. The executive commissioner of the
24 Health and Human Services Commission may adopt rules necessary for
25 the implementation of a program or project by the department. The
26 department may solicit, accept, and use gifts and donations to
27 implement a program or project recommended by the committee.

1 SECTION 1.110. Sections 162.402(7), (11), (12), and (14),
2 Family Code, are amended to read as follows:

3 (7) "Authorized agency" means a public agency
4 authorized to care for or to place children for adoption or a
5 private entity approved for that purpose by the department through
6 a license, certification, or other means. The term includes a
7 licensed child-placing agency or a previously licensed
8 child-placing agency that has ceased operations and has transferred
9 its adoption records to the vital statistics unit [bureau] or an
10 agency authorized by the department to place children for adoption
11 and a licensed child-placing agency that has been acquired by,
12 merged with, or otherwise succeeded by an agency authorized by the
13 department to place children for adoption.

14 (11) "Central registry" means the mutual consent
15 voluntary adoption registry established and maintained by the vital
16 statistics unit [bureau] under this subchapter.

17 (12) "Department" means the Department of Family and
18 Protective [~~and Regulatory~~] Services.

19 (14) "Vital statistics unit" [~~Bureau~~] means the
20 [~~bureau of~~] vital statistics unit of the Department of State Health
21 Services.

22 SECTION 1.111. Sections 162.403(a) and (c), Family Code,
23 are amended to read as follows:

24 (a) The vital statistics unit [bureau] shall establish and
25 maintain a mutual consent voluntary adoption registry.

26 (c) An authorized agency that did not directly or by
27 contract provide registry services as required by this subchapter

1 on January 1, 1984, may not provide its own registry service. The
2 vital statistics unit [bureau] shall operate through the central
3 registry those services for agencies not permitted to provide a
4 registry under this section.

5 SECTION 1.112. Section 162.407(b), Family Code, is amended
6 to read as follows:

7 (b) An adoptee adopted or placed through an authorized
8 agency may register through the registry maintained by that agency
9 or the registry to which the agency has delegated registry services
10 or through the central registry maintained by the vital statistics
11 unit [bureau].

12 SECTION 1.113. Section 162.408, Family Code, is amended to
13 read as follows:

14 Sec. 162.408. PROOF OF IDENTITY. The rules and minimum
15 standards of the Department [Texas Board] of State Health Services
16 for the vital statistics unit [bureau] must provide for proof of
17 identity in order to facilitate the purposes of this subchapter and
18 to protect the privacy rights of adoptees, adoptive parents, birth
19 parents, biological siblings, and their families.

20 SECTION 1.114. Section 162.411(d), Family Code, is amended
21 to read as follows:

22 (d) The fees collected by the vital statistics unit [bureau]
23 shall be deposited in a special fund in the general revenue fund.
24 Funds in the special fund may be appropriated only for the
25 administration of the central registry.

26 SECTION 1.115. Section 162.414(c), Family Code, is amended
27 to read as follows:

1 (c) To establish or corroborate a match, the administrator
2 shall request confirmation of a possible match from the vital
3 statistics unit [bureau]. If the agency operating the registry has
4 in its own records sufficient information through which the match
5 may be confirmed, the administrator may, but is not required to,
6 request confirmation from the vital statistics unit [bureau]. The
7 vital statistics unit [bureau] may confirm or deny the match
8 without breaching the duty of confidentiality to the adoptee,
9 adoptive parents, birth parents, or biological siblings and without
10 a court order.

11 SECTION 1.116. Section 162.420, Family Code, is amended to
12 read as follows:

13 Sec. 162.420. RULEMAKING. (a) The executive commissioner
14 of the Health and Human Services Commission [~~Texas Board of Health~~]
15 shall make rules and adopt minimum standards for the Department of
16 State Health Services [bureau] to:

17 (1) administer the provisions of this subchapter; and
18 (2) ensure that each registry respects the right to
19 privacy and confidentiality of an adoptee, birth parent, and
20 biological sibling who does not desire to disclose the person's
21 identity.

22 (b) The Department of State Health Services [bureau] shall
23 conduct a comprehensive review of all rules and standards adopted
24 under this subchapter not less than every six years.

25 (c) In order to provide the administrators an opportunity to
26 review proposed rules and standards and send written suggestions to
27 the executive commissioner of the Health and Human Services

1 Commission [~~Texas Board of Health~~], the executive commissioner
2 [~~board~~] shall, before adopting rules and minimum standards, send a
3 copy of the proposed rules and standards not less than 60 days
4 before the date they take effect to:

5 (1) the administrator of each registry established
6 under this subchapter; and

7 (2) the administrator of each agency authorized by the
8 department to place children for adoption.

9 SECTION 1.117. Section 162.421(a), Family Code, is amended
10 to read as follows:

11 (a) This subchapter does not prevent the Department of State
12 Health Services [~~bureau~~] from making known to the public, by
13 appropriate means, the existence of voluntary adoption registries.

14 SECTION 1.118. Sections 162.422(a) and (b), Family Code,
15 are amended to read as follows:

16 (a) The Department of State Health Services [~~bureau~~] or
17 authorized agency establishing or operating a registry is not
18 liable to any person for obtaining or disclosing identifying
19 information about a birth parent, adoptee, or biological sibling
20 within the scope of this subchapter and under its provisions.

21 (b) An employee or agent of the Department of State Health
22 Services [~~bureau~~] or of an authorized agency establishing or
23 operating a registry under this subchapter is not liable to any
24 person for obtaining or disclosing identifying information about a
25 birth parent, adoptee, or biological sibling within the scope of
26 this subchapter and under its provisions.

27 SECTION 1.119. Section 162.601(a), Family Code, is amended

1 to read as follows:

2 (a) Subject to the availability of funds, the Department of
3 Family and Protective [~~and Regulatory~~] Services shall pay, in
4 addition to any other amounts due, a monetary incentive to a
5 licensed child-placing agency for the completion of an adoption:

6 (1) of a child, as defined by Section [162.301](#),
7 receiving or entitled to receive foster care at department expense;
8 and

9 (2) arranged with the assistance of the agency.

10 SECTION 1.120. Section [261.001](#)(7), Family Code, is amended
11 to read as follows:

12 (7) "Executive commissioner" [~~Board~~] means the
13 executive commissioner of the Health and Human Services Commission
14 [~~Board of Protective and Regulatory Services~~].

15 SECTION 1.121. Sections [261.002](#)(a) and (b), Family Code,
16 are amended to read as follows:

17 (a) The department shall establish and maintain [~~in Austin~~]
18 a central registry of the names of individuals found by the
19 department to have abused or neglected a [~~reported cases of~~] child
20 [~~abuse or neglect~~].

21 (b) The executive commissioner [~~department~~] may adopt rules
22 necessary to carry out this section. The rules shall provide for
23 cooperation with local child service agencies, including
24 hospitals, clinics, and schools, and cooperation with other states
25 in exchanging reports to effect a national registration system.

26 SECTION 1.122. Section [261.101](#)(b-1), Family Code, is
27 amended to read as follows:

1 (b-1) In addition to the duty to make a report under
2 Subsection (a) or (b), a person or professional shall make a report
3 in the manner required by Subsection (a) or (b), as applicable, if
4 the person or professional has cause to believe that an adult was a
5 victim of abuse or neglect as a child and the person or professional
6 determines in good faith that disclosure of the information is
7 necessary to protect the health and safety of:

8 (1) another child; or
9 (2) an elderly person or [disabled] person with a
10 disability as defined by Section 48.002, Human Resources Code.

11 SECTION 1.123. Section 261.103(a), Family Code, is amended
12 to read as follows:

13 (a) Except as provided by Subsections (b) and (c) and
14 Section 261.405, a report shall be made to:

15 (1) any local or state law enforcement agency;
16 (2) the department; or
17 (3) the state agency that operates, licenses,
18 certifies, or registers the facility in which the alleged abuse or
19 neglect occurred[; or]

20 [4) the agency designated by the court to be
21 responsible for the protection of children].

22 SECTION 1.124. Sections 261.105(a), (b), and (c-1), Family
23 Code, are amended to read as follows:

24 (a) All reports received by a local or state law enforcement
25 agency that allege abuse or neglect by a person responsible for a
26 child's care, custody, or welfare shall be referred immediately to
27 the department [or the designated agency].

1 (b) The department [~~or designated agency~~] shall immediately
2 notify the appropriate state or local law enforcement agency of any
3 report it receives, other than a report from a law enforcement
4 agency, that concerns the suspected abuse or neglect of a child or
5 death of a child from abuse or neglect.

6 (c-1) Notwithstanding Subsections (b) and (c), if a report
7 under this section relates to a child with an intellectual
disability [~~mental retardation~~] receiving services in a state
9 supported living center as defined by Section 531.002, Health and
10 Safety Code, or the ICF-IID [~~ICF-MR~~] component of the Rio Grande
11 State Center, the department shall proceed with the investigation
12 of the report as provided by Section 261.404.

13 SECTION 1.125. Section 261.1055, Family Code, is amended to
14 read as follows:

15 Sec. 261.1055. NOTIFICATION OF DISTRICT ATTORNEYS. (a) A
16 district attorney may inform the department [~~or designated agency~~]
17 that the district attorney wishes to receive notification of some
18 or all reports of suspected abuse or neglect of children who were in
19 the county at the time the report was made or who were in the county
20 at the time of the alleged abuse or neglect.

21 (b) If the district attorney makes the notification under
22 this section, the department [~~or designated agency~~] shall, on
23 receipt of a report of suspected abuse or neglect, immediately
24 notify the district attorney as requested and the department [~~or~~
25 ~~designated agency~~] shall forward a copy of the reports to the
26 district attorney on request.

27 SECTION 1.126. Section 261.109(b), Family Code, is amended

1 to read as follows:

2 (b) An offense under Subsection (a) is a Class A
3 misdemeanor, except that the offense is a state jail felony if it is
4 shown on the trial of the offense that the child was a person with an
5 intellectual disability who resided in a state supported living
6 center, the ICF-IID [~~ICF-MR~~] component of the Rio Grande State
7 Center, or a facility licensed under Chapter 252, Health and Safety
8 Code, and the actor knew that the child had suffered serious bodily
9 injury as a result of the abuse or neglect.

10 SECTION 1.127. Section 261.111, Family Code, is amended to
11 read as follows:

12 Sec. 261.111. REFUSAL OF PSYCHIATRIC OR PSYCHOLOGICAL
13 TREATMENT OF CHILD. (a) In this section, "psychotropic medication
14 [~~drug~~]" has the meaning assigned by Section 266.001 [~~means a~~
15 ~~substance that is~~]

16 [~~(1) used in the diagnosis, treatment, or prevention~~
17 ~~of a disease or as a component of a medication; and~~
18 [~~(2) intended to have an altering effect on~~
19 ~~perception, emotion, or behavior~~].

20 (b) The refusal of a parent, guardian, or managing or
21 possessory conservator of a child to administer or consent to the
22 administration of a psychotropic medication [~~drug~~] to the child, or
23 to consent to any other psychiatric or psychological treatment of
24 the child, does not by itself constitute neglect of the child unless
25 the refusal to consent:

26 (1) presents a substantial risk of death,
27 disfigurement, or bodily injury to the child; or

1 (2) has resulted in an observable and material
2 impairment to the growth, development, or functioning of the child.

3 SECTION 1.128. Section 261.201(e), Family Code, is amended
4 to read as follows:

5 (e) Before placing a child who was the subject of an
6 investigation, the department shall notify the prospective
7 adoptive parents of their right to examine any report, record,
8 working paper, or other information in the possession, custody, or
9 control of the department [~~state~~] that pertains to the history of
10 the child.

11 SECTION 1.129. Sections 261.301(a), (d), and (e), Family
12 Code, are amended to read as follows:

13 (a) With assistance from the appropriate state or local law
14 enforcement agency as provided by this section, the department [~~or~~
15 ~~designated agency~~] shall make a prompt and thorough investigation
16 of a report of child abuse or neglect allegedly committed by a
17 person responsible for a child's care, custody, or welfare. The
18 investigation shall be conducted without regard to any pending suit
19 affecting the parent-child relationship.

20 (d) The executive commissioner [~~department~~] shall by rule
21 assign priorities and prescribe investigative procedures for
22 investigations based on the severity and immediacy of the alleged
23 harm to the child. The primary purpose of the investigation shall
24 be the protection of the child. The rules must require the
25 department, subject to the availability of funds, to:

26 (1) immediately respond to a report of abuse and
27 neglect that involves circumstances in which the death of the child

1 or substantial bodily harm to the child would result unless the
2 department immediately intervenes;

3 (2) respond within 24 hours to a report of abuse and
4 neglect that is assigned the highest priority, other than a report
5 described by Subdivision (1); and

6 (3) respond within 72 hours to a report of abuse and
7 neglect that is assigned the second highest priority.

8 (e) As necessary to provide for the protection of the child,
9 the department [~~or designated agency~~] shall determine:

10 (1) the nature, extent, and cause of the abuse or
11 neglect;

12 (2) the identity of the person responsible for the
13 abuse or neglect;

14 (3) the names and conditions of the other children in
15 the home;

16 (4) an evaluation of the parents or persons
17 responsible for the care of the child;

18 (5) the adequacy of the home environment;

19 (6) the relationship of the child to the persons
20 responsible for the care, custody, or welfare of the child; and

21 (7) all other pertinent data.

22 SECTION 1.130. The heading to Section [261.3015](#), Family
23 Code, is amended to read as follows:

24 Sec. 261.3015. ALTERNATIVE [~~FLEXIBLE~~] RESPONSE SYSTEM.

25 SECTION 1.131. Sections [261.3015](#)(a) and (d), Family Code,
26 are amended to read as follows:

27 (a) In assigning priorities and prescribing investigative

1 procedures based on the severity and immediacy of the alleged harm
2 to a child under Section 261.301(d), the department shall establish
3 an alternative [~~a flexible~~] response system to allow the department
4 to make the most effective use of resources to investigate and
5 respond to reported cases of abuse and neglect.

6 (d) In determining how to classify a reported case of abuse
7 or neglect under the alternative [~~flexible~~] response system, the
8 child's safety is the primary concern. The classification of a case
9 may be changed as warranted by the circumstances.

10 SECTION 1.132. Section 261.302(b), Family Code, is amended
11 to read as follows:

12 (b) The interview with and examination of the child may:
13 (1) be conducted at any reasonable time and place,
14 including the child's home or the child's school;
15 (2) include the presence of persons the department [~~or~~
16 ~~designated agency~~] determines are necessary; and
17 (3) include transporting the child for purposes
18 relating to the interview or investigation.

19 SECTION 1.133. Sections 261.303(a), (c), and (d), Family
20 Code, are amended to read as follows:

21 (a) A person may not interfere with an investigation of a
22 report of child abuse or neglect conducted by the department [~~or~~
23 ~~designated agency~~].

24 (c) If a parent or person responsible for the child's care
25 does not consent to release of the child's prior medical,
26 psychological, or psychiatric records or to a medical,
27 psychological, or psychiatric examination of the child that is

1 requested by the department [~~or designated agency~~], the court
2 having family law jurisdiction shall, for good cause shown, order
3 the records to be released or the examination to be made at the
4 times and places designated by the court.

5 (d) A person, including a medical facility, that makes a
6 report under Subchapter B shall release to the department [~~or~~
7 ~~designated agency~~], as part of the required report under Section
8 261.103, records that directly relate to the suspected abuse or
9 neglect without requiring parental consent or a court order. If a
10 child is transferred from a reporting medical facility to another
11 medical facility to treat the injury or condition that formed the
12 basis for the original report, the transferee medical facility
13 shall, at the department's request, release to the department
14 records relating to the injury or condition without requiring
15 parental consent or a court order.

16 SECTION 1.134. Section 261.3031(a), Family Code, is amended
17 to read as follows:

18 (a) If a parent or other person refuses to cooperate with
19 the department's investigation of the alleged abuse or neglect of a
20 child and the refusal poses a risk to the child's safety, the
21 department shall seek assistance from the appropriate [~~county~~
22 ~~attorney or district attorney or criminal district~~] attorney with
23 responsibility for representing the department as provided by
24 Section 264.009 to obtain a court order as described by Section
25 261.303.

26 SECTION 1.135. Sections 261.305(b) and (d), Family Code,
27 are amended to read as follows:

1 (b) If the parent or person does not consent to an
2 examination or allow the department [~~or designated agency~~] to have
3 access to medical or mental health records requested by the
4 department [~~or agency~~], the court having family law jurisdiction,
5 for good cause shown, shall order the examination to be made or that
6 the department [~~or agency~~] be permitted to have access to the
7 records under terms and conditions prescribed by the court.

8 (d) A parent or person responsible for the child's care is
9 entitled to notice and a hearing when the department [~~or designated~~
10 ~~agency~~] seeks a court order to allow a medical, psychological, or
11 psychiatric examination or access to medical or mental health
12 records.

13 SECTION 1.136. Section 261.306, Family Code, is amended to
14 read as follows:

15 Sec. 261.306. REMOVAL OF CHILD FROM STATE. (a) If the
16 department [~~or designated agency~~] has reason to believe that a
17 person responsible for the care, custody, or welfare of the child
18 may remove the child from the state before the investigation is
19 completed, the department [~~or designated agency~~] may file an
20 application for a temporary restraining order in a district court
21 without regard to continuing jurisdiction of the child as provided
22 in Chapter 155.

23 (b) The court may render a temporary restraining order
24 prohibiting the person from removing the child from the state
25 pending completion of the investigation if the court:

26 (1) finds that the department [~~or designated agency~~]
27 has probable cause to conduct the investigation; and

1 (2) has reason to believe that the person may remove
2 the child from the state.

3 SECTION 1.137. Sections [261.308\(a\), \(b\), and \(c\)](#), Family
4 Code, are amended to read as follows:

5 (a) The department [~~or designated agency~~] shall make a
6 complete written report of the investigation.

7 (b) If sufficient grounds for filing a suit exist, the
8 department [~~or designated agency~~] shall submit the report, together
9 with recommendations, to the court, the district attorney, and the
10 appropriate law enforcement agency.

11 (c) On receipt of the report and recommendations, the court
12 may direct the department [~~or designated agency~~] to file a petition
13 requesting appropriate relief as provided in this title.

14 SECTION 1.138. Section [261.309\(a\)](#), Family Code, is amended
15 to read as follows:

16 (a) The executive commissioner [~~department~~] shall by rule
17 establish policies and procedures to resolve complaints relating to
18 and conduct reviews of child abuse or neglect investigations
19 conducted by the department.

20 SECTION 1.139. Section [261.310\(a\)](#), Family Code, is amended
21 to read as follows:

22 (a) The executive commissioner [~~department~~] shall by rule
23 develop and adopt standards for persons who investigate suspected
24 child abuse or neglect at the state or local level. The standards
25 shall encourage professionalism and consistency in the
26 investigation of suspected child abuse or neglect.

27 SECTION 1.140. Sections [261.311\(a\) and \(b\)](#), Family Code,

1 are amended to read as follows:

2 (a) When during an investigation of a report of suspected
3 child abuse or neglect a representative of the department [~~or the~~
4 ~~designated agency~~] conducts an interview with or an examination of
5 a child, the department [~~or designated agency~~] shall make a
6 reasonable effort before 24 hours after the time of the interview or
7 examination to notify each parent of the child and the child's legal
8 guardian, if one has been appointed, of the nature of the allegation
9 and of the fact that the interview or examination was conducted.

10 (b) If a report of suspected child abuse or neglect is
11 administratively closed by the department [~~or designated agency~~] as
12 a result of a preliminary investigation that did not include an
13 interview or examination of the child, the department [~~or~~
14 ~~designated agency~~] shall make a reasonable effort before the
15 expiration of 24 hours after the time the investigation is closed to
16 notify each parent and legal guardian of the child of the
17 disposition of the investigation.

18 SECTION 1.141. Section 261.312(b), Family Code, is amended
19 to read as follows:

20 (b) A review team consists of at least five members who
21 serve staggered two-year terms. Review team members are appointed
22 by the commissioner [~~director~~] of the department and consist of
23 volunteers who live in and are broadly representative of the region
24 in which the review team is established and have expertise in the
25 prevention and treatment of child abuse and neglect. At least two
26 members of a review team must be parents who have not been convicted
27 of or indicted for an offense involving child abuse or neglect, have

1 not been determined by the department to have engaged in child abuse
2 or neglect, and are not under investigation by the department for
3 child abuse or neglect. A member of a review team is a department
4 volunteer for the purposes of Section [411.114](#), Government Code.

5 SECTION 1.142. Section [261.315\(c\)](#), Family Code, is amended
6 to read as follows:

7 (c) The executive commissioner [board] shall adopt rules
8 necessary to administer this section.

9 SECTION 1.143. Sections [261.401\(c\)](#) and (d), Family Code,
10 are amended to read as follows:

11 (c) A state agency shall adopt rules relating to the
12 investigation and resolution of reports received as provided by
13 this subchapter. The executive commissioner [~~Health and Human~~
14 ~~Services Commission~~] shall review and approve the rules of agencies
15 other than the Texas Department of Criminal Justice or the[~~T~~] Texas
16 Juvenile Justice Department [~~Youth Commission, or Texas Juvenile~~
17 ~~Probation Commission~~] to ensure that those agencies implement
18 appropriate standards for the conduct of investigations and that
19 uniformity exists among agencies in the investigation and
20 resolution of reports.

21 (d) The Texas School for the Blind and Visually Impaired and
22 the Texas School for the Deaf shall adopt policies relating to the
23 investigation and resolution of reports received as provided by
24 this subchapter. The executive commissioner [~~Health and Human~~
25 ~~Services Commission~~] shall review and approve the policies to
26 ensure that the Texas School for the Blind and Visually Impaired and
27 the Texas School for the Deaf adopt those policies in a manner

1 consistent with the minimum standards adopted by the executive
2 commissioner [~~Health and Human Services Commission~~] under Section
3 261.407.

4 SECTION 1.144. Section 261.402(c), Family Code, is amended
5 to read as follows:

6 (c) A state agency that licenses, certifies, or registers a
7 facility in which children are located shall compile, maintain, and
8 make available statistics on the incidence in the facility of child
9 abuse, neglect, and exploitation that is investigated by the agency
10 [~~in the facility~~].

11 SECTION 1.145. Section 261.403, Family Code, is amended to
12 read as follows:

13 Sec. 261.403. COMPLAINTS. (a) If a state agency receives a
14 complaint relating to an investigation conducted by the agency
15 concerning a facility operated by that agency in which children are
16 located, the agency shall refer the complaint to the agency's
17 governing body [~~board~~].

18 (b) The governing body [~~board~~] of a state agency that
19 operates a facility in which children are located shall ensure that
20 the procedure for investigating abuse, neglect, and exploitation
21 allegations and inquiries in the agency's facility is periodically
22 reviewed under the agency's internal audit program required by
23 Chapter 2102, Government Code.

24 SECTION 1.146. Section 261.404, Family Code, is amended to
25 read as follows:

26 Sec. 261.404. INVESTIGATIONS REGARDING CERTAIN CHILDREN
27 WITH MENTAL ILLNESS OR AN INTELLECTUAL DISABILITY [~~MENTAL~~

1 RETARDATION]. (a) The department shall investigate a report of
2 abuse, neglect, or exploitation of a child receiving services:

3 (1) in a facility operated by the Department of Aging
4 and Disability Services or a mental health facility operated by the
5 Department of State Health Services;

6 (2) in or from a community center, a local mental
7 health authority, or a local intellectual and developmental
8 disability [~~mental retardation~~] authority;

9 (3) through a program providing services to that child
10 by contract with a facility operated by the Department of Aging and
11 Disability Services, a mental health facility operated by the
12 Department of State Health Services, a community center, a local
13 mental health authority, or a local intellectual and developmental
14 disability [~~mental retardation~~] authority;

15 (4) from a provider of home and community-based
16 services who contracts with the Department of Aging and Disability
17 Services; or

18 (5) in a facility licensed under Chapter 252, Health
19 and Safety Code.

20 (b) The department shall investigate the report under rules
21 developed by the executive commissioner [~~of the Health and Human~~
22 ~~Services Commission~~] with the advice and assistance of the
23 department, the Department of Aging and Disability Services, and
24 the Department of State Health Services.

25 (c) If a report under this section relates to a child with an
26 intellectual disability [~~mental retardation~~] receiving services in
27 a state supported living center or the ICF-IID [~~ICF-MR~~] component

1 of the Rio Grande State Center, the department shall, within one
2 hour of receiving the report, notify the facility in which the child
3 is receiving services of the allegations in the report.

4 (d) If during the course of the department's investigation
5 of reported abuse, neglect, or exploitation a caseworker of the
6 department or the caseworker's supervisor has cause to believe that
7 a child with an intellectual disability [mental retardation]
8 described by Subsection (c) has been abused, neglected, or
9 exploited by another person in a manner that constitutes a criminal
10 offense under any law, including Section 22.04, Penal Code, the
11 caseworker shall immediately notify the Health and Human Services
12 Commission's office of inspector general and promptly provide the
13 commission's office of inspector general with a copy of the
14 department's investigation report.

15 (e) The definitions of "abuse" and "neglect" prescribed by
16 Section 261.001 do not apply to an investigation under this
17 section.

18 (f) In this section:

19 (1) "Community center," "local mental health
20 authority," "local intellectual and developmental disability
21 [mental retardation] authority," and "state supported living
22 center" have the meanings assigned by Section 531.002, Health and
23 Safety Code.

24 (2) "Provider" has the meaning assigned by Section
25 48.351, Human Resources Code.

26 SECTION 1.147. Section 261.405(a)(1), Family Code, is
27 amended to read as follows:

1 (1) "Juvenile justice facility" means a facility
2 operated wholly or partly by the juvenile board, by another
3 governmental unit, or by a private vendor under a contract with the
4 juvenile board, county, or other governmental unit that serves
5 juveniles under juvenile court jurisdiction. The term includes:

6 (A) a public or private juvenile
7 pre-adjudication secure detention facility, including a holdover
8 facility;

9 (B) a public or private juvenile
10 post-adjudication secure correctional facility except for a
11 facility operated solely for children committed to the Texas
12 Juvenile Justice Department [~~Youth Commission~~]; and

13 (C) a public or private non-secure juvenile
14 post-adjudication residential treatment facility that is not
15 licensed by the Department of Family and Protective [~~and~~
16 ~~Regulatory~~] Services or the Department of State Health Services
17 [~~Texas Commission on Alcohol and Drug Abuse~~].

18 SECTION 1.148. Section 261.406(d), Family Code, is amended
19 to read as follows:

20 (d) The executive commissioner [~~Board of Protective and~~
21 ~~Regulatory Services~~] shall adopt rules necessary to implement this
22 section.

23 SECTION 1.149. Section 261.407, Family Code, is amended to
24 read as follows:

25 Sec. 261.407. MINIMUM STANDARDS. (a) The executive
26 commissioner [~~Health and Human Services Commission~~] by rule shall
27 adopt minimum standards for the investigation under Section 261.401

1 of suspected child abuse, neglect, or exploitation in a facility.

2 (b) A rule or policy adopted by a state agency or
3 institution under Section 261.401 must be consistent with the
4 minimum standards adopted by the executive commissioner [~~Health and~~
5 ~~Human Services Commission~~].

6 (c) This section does not apply to a facility under the
7 jurisdiction of the Texas Department of Criminal Justice or the[~~T~~]
8 Texas Juvenile Justice Department [~~Youth Commission, or Texas~~
9 ~~Juvenile Probation Commission~~].

10 SECTION 1.150. Sections 261.408(a) and (c), Family Code,
11 are amended to read as follows:

12 (a) The executive commissioner [~~Health and Human Services~~
13 ~~Commission~~] by rule shall adopt uniform procedures for collecting
14 information under Section 261.401, including procedures for
15 collecting information on deaths that occur in facilities.

16 (c) This section does not apply to a facility under the
17 jurisdiction of the Texas Department of Criminal Justice or the[~~T~~]
18 Texas Juvenile Justice Department [~~Youth Commission, or Texas~~
19 ~~Juvenile Probation Commission~~].

20 SECTION 1.151. Section 262.006(a), Family Code, is amended
21 to read as follows:

22 (a) An authorized representative of the Department of
23 Family and Protective [~~and Regulatory~~] Services may assume the
24 care, control, and custody of a child born alive as the result of an
25 abortion as defined by Chapter 161.

26 SECTION 1.152. Section 262.007(c), Family Code, is amended
27 to read as follows:

1 (c) If a person entitled to possession of the child is not
2 immediately available to take possession of the child, the law
3 enforcement officer shall deliver the child to the Department of
4 Family and Protective [~~and Regulatory~~] Services. Until a person
5 entitled to possession of the child takes possession of the child,
6 the department may, without a court order, retain possession of the
7 child not longer than five days after the date the child is
8 delivered to the department. While the department retains
9 possession of a child under this subsection, the department may
10 place the child in foster [~~home~~] care. If a parent or other person
11 entitled to possession of the child does not take possession of the
12 child before the sixth day after the date the child is delivered to
13 the department, the department shall proceed under this chapter as
14 if the law enforcement officer took possession of the child under
15 Section [262.104](#).

16 SECTION 1.153. Section [262.008](#)(a), Family Code, is amended
17 to read as follows:

18 (a) An authorized representative of the Department of
19 Family and Protective [~~and Regulatory~~] Services may assume the
20 care, control, and custody of a child:

21 (1) who is abandoned without identification or a means
22 for identifying the child; and

23 (2) whose identity cannot be ascertained by the
24 exercise of reasonable diligence.

25 SECTION 1.154. Section [262.1015](#)(a), Family Code, is amended
26 to read as follows:

27 (a) If the Department of Family and Protective Services

1 [department] determines after an investigation that child abuse has
2 occurred and that the child would be protected in the child's home
3 by the removal of the alleged perpetrator of the abuse, the
4 department shall file a petition for the removal of the alleged
5 perpetrator from the residence of the child rather than attempt to
6 remove the child from the residence.

7 SECTION 1.155. Sections [262.102\(a\), \(c\), and \(d\)](#), Family
8 Code, are amended to read as follows:

9 (a) Before a court may, without prior notice and a hearing,
10 issue a temporary order for the conservatorship of a child under
11 Section 105.001(a)(1) or a temporary restraining order or
12 attachment of a child authorizing a governmental entity to take
13 possession of a child in a suit brought by a governmental entity,
14 the court must find that:

15 (1) there is an immediate danger to the physical
16 health or safety of the child or the child has been a victim of
17 neglect or sexual abuse and that continuation in the home would be
18 contrary to the child's welfare;

19 (2) there is no time, consistent with the physical
20 health or safety of the child and the nature of the emergency, for a
21 full adversary hearing under Subchapter C; and

22 (3) reasonable efforts, consistent with the
23 circumstances and providing for the safety of the child, were made
24 to prevent or eliminate the need for removal of the child.

25 (c) If, based on the recommendation of or a request by the
26 Department of Family and Protective Services [department], the
27 court finds that child abuse or neglect has occurred and that the

1 child requires protection from family violence by a member of the
2 child's family or household, the court shall render a temporary
3 order under Title 4 [~~Chapter 71~~] for the protection of the child.
4 In this subsection, "family violence" has the meaning assigned by
5 Section 71.004.

6 (d) The temporary order, temporary restraining order, or
7 attachment of a child rendered by the court under Subsection (a)
8 must contain the following statement prominently displayed in
9 boldface type, capital letters, or underlined:

10 "YOU HAVE THE RIGHT TO BE REPRESENTED BY AN ATTORNEY. IF YOU
11 ARE INDIGENT AND UNABLE TO AFFORD AN ATTORNEY, YOU HAVE THE RIGHT TO
12 REQUEST THE APPOINTMENT OF AN ATTORNEY BY CONTACTING THE COURT AT
13 [ADDRESS], [TELEPHONE NUMBER]. IF YOU APPEAR IN OPPOSITION TO THE
14 SUIT, CLAIM INDIGENCE, AND REQUEST THE APPOINTMENT OF AN ATTORNEY,
15 THE COURT WILL REQUIRE YOU TO SIGN AN AFFIDAVIT OF INDIGENCE AND THE
16 COURT MAY HEAR EVIDENCE TO DETERMINE IF YOU ARE INDIGENT. IF THE
17 COURT DETERMINES YOU ARE INDIGENT AND ELIGIBLE FOR APPOINTMENT OF
18 AN ATTORNEY, THE COURT WILL APPOINT AN ATTORNEY TO REPRESENT YOU."

19 SECTION 1.156. Section 262.103, Family Code, is amended to
20 read as follows:

21 Sec. 262.103. DURATION OF TEMPORARY ORDER, TEMPORARY
22 RESTRAINING ORDER, AND ATTACHMENT. A temporary order, temporary
23 restraining order, or attachment of the child issued under Section
24 262.102(a) [~~this chapter~~] expires not later than 14 days after the
25 date it is issued unless it is extended as provided by the Texas
26 Rules of Civil Procedure or Section 262.201(a-3).

27 SECTION 1.157. Section 262.104(a), Family Code, is amended

1 to read as follows:

2 (a) If there is no time to obtain a temporary order,
3 temporary restraining order, or attachment under Section
4 262.102(a) before taking possession of a child consistent with the
5 health and safety of that child, an authorized representative of
6 the Department of Family and Protective Services, a law enforcement
7 officer, or a juvenile probation officer may take possession of a
8 child without a court order under the following conditions, only:

9 (1) on personal knowledge of facts that would lead a
10 person of ordinary prudence and caution to believe that there is an
11 immediate danger to the physical health or safety of the child;

12 (2) on information furnished by another that has been
13 corroborated by personal knowledge of facts and all of which taken
14 together would lead a person of ordinary prudence and caution to
15 believe that there is an immediate danger to the physical health or
16 safety of the child;

17 (3) on personal knowledge of facts that would lead a
18 person of ordinary prudence and caution to believe that the child
19 has been the victim of sexual abuse;

20 (4) on information furnished by another that has been
21 corroborated by personal knowledge of facts and all of which taken
22 together would lead a person of ordinary prudence and caution to
23 believe that the child has been the victim of sexual abuse; or

24 (5) on information furnished by another that has been
25 corroborated by personal knowledge of facts and all of which taken
26 together would lead a person of ordinary prudence and caution to
27 believe that the parent or person who has possession of the child is

1 currently using a controlled substance as defined by Chapter 481,
2 Health and Safety Code, and the use constitutes an immediate danger
3 to the physical health or safety of the child.

4 SECTION 1.158. Section 262.105(b), Family Code, is amended
5 to read as follows:

6 (b) If the Department of Family and Protective [and
7 ~~Regulatory~~] Services files a suit affecting the parent-child
8 relationship required under Subsection (a)(1) seeking termination
9 of the parent-child relationship, the department shall file the
10 suit not later than the 45th day after the date the department
11 assumes the care, control, and custody of a child under Section
12 262.303.

13 SECTION 1.159. Section 262.106(d), Family Code, is amended
14 to read as follows:

15 (d) For the purpose of determining under Subsection (a) the
16 first working day after the date the child is taken into possession,
17 the child is considered to have been taken into possession by the
18 Department of Family and Protective [and ~~Regulatory~~] Services on
19 the expiration of the five-day period permitted under Section
20 262.007(c) or 262.110(b), as appropriate.

21 SECTION 1.160. Section 262.109(a), Family Code, is amended
22 to read as follows:

23 (a) The Department of Family and Protective Services
24 [~~Department~~] or other agency must give written notice as prescribed
25 by this section to each parent of the child or to the child's
26 conservator or legal guardian when a representative of the
27 department [~~Department of Protective and Regulatory Services~~] or

1 other agency takes possession of a child under this chapter.

2 SECTION 1.161. Section 262.110(a), Family Code, is amended
3 to read as follows:

4 (a) An authorized representative of the Department of
5 Family and Protective [~~and Regulatory~~] Services, a law enforcement
6 officer, or a juvenile probation officer may take temporary
7 possession of a child without a court order on discovery of a child
8 in a situation of danger to the child's physical health or safety
9 when the sole purpose is to deliver the child without unnecessary
10 delay to the parent, managing conservator, possessory conservator,
11 guardian, caretaker, or custodian who is presently entitled to
12 possession of the child.

13 SECTION 1.162. Section 262.112(a), Family Code, is amended
14 to read as follows:

15 (a) The Department of Family and Protective [~~and~~
16 ~~Regulatory~~] Services is entitled to an expedited hearing under this
17 chapter in any proceeding in which a hearing is required if the
18 department determines that a child should be removed from the
19 child's home because of an immediate danger to the physical health
20 or safety of the child.

21 SECTION 1.163. Sections 262.201(a-3) and (g), Family Code,
22 are amended to read as follows:

23 (a-3) The court may, for good cause shown, postpone the full
24 adversary hearing for not more than seven days from the date of the
25 attorney's appointment to provide the attorney time to respond to
26 the petition and prepare for the hearing. The court may shorten or
27 lengthen the extension granted under this subsection if the parent

1 and the appointed attorney agree in writing. If the court postpones
2 the full adversary hearing, the court shall extend a temporary
3 order, temporary restraining order, or attachment issued by the
4 court under Section 262.102(a) for the protection of the child
5 until the date of the rescheduled full adversary hearing.

6 (g) For the purpose of determining under Subsection (a) the
7 14th day after the date the child is taken into possession, a child
8 is considered to have been taken into possession by the Department
9 of Family and Protective Services [department] on the expiration of
10 the five-day period permitted under Section 262.007(c) or
11 262.110(b), as appropriate.

12 SECTION 1.164. Sections 262.2015(a), (b), and (d), Family
13 Code, are amended to read as follows:

14 (a) The court may waive the requirement of a service plan
15 and the requirement to make reasonable efforts to return the child
16 to a parent and may accelerate the trial schedule to result in a
17 final order for a child under the care of the Department of Family
18 and Protective Services [department] at an earlier date than
19 provided by Subchapter D, Chapter 263, if the court finds that the
20 parent has subjected the child to aggravated circumstances.

21 (b) The court may find under Subsection (a) that a parent
22 has subjected the child to aggravated circumstances if:

23 (1) the parent abandoned the child without
24 identification or a means for identifying the child;

25 (2) the child is a victim of serious bodily injury or
26 sexual abuse inflicted by the parent or by another person with the
27 parent's consent;

(3) the parent has engaged in conduct against the child that would constitute an offense under the following provisions of the Penal Code:

- 4 (A) Section 19.02 (murder);
5 (B) Section 19.03 (capital murder);
6 (C) Section 19.04 (manslaughter);
7 (D) Section 21.11 (indecency with a child);
8 (E) Section 22.011 (sexual assault);
9 (F) Section 22.02 (aggravated assault);
10 (G) Section 22.021 (aggravated sexual assault);
11 (H) Section 22.04 (injury to a child, elderly
12 individual, or disabled individual);
13 (I) Section 22.041 (abandoning or endangering
14 child);
15 (J) Section 25.02 (prohibited sexual conduct);
16 (K) Section 43.25 (sexual performance by a
17 child);
18 (L) Section 43.26 (possession or promotion of
19 child pornography);
20 (M) Section 21.02 (continuous sexual abuse of
21 young child or children);
22 (N) Section 43.05(a)(2) (compelling
23 prostitution); or
24 (O) Section 20A.02(a)(7) or (8) (trafficking of
25 persons);
26 (4) the parent voluntarily left the child alone or in
27 the possession of another person not the parent of the child for at

1 least six months without expressing an intent to return and without
2 providing adequate support for the child;

3 (5) the parent's parental rights with regard to
4 another child have been involuntarily terminated based on a finding
5 that the parent's conduct violated Section 161.001(b)(1)(D)
6 [~~161.001(1)(D)~~] or (E) or a substantially equivalent provision of
7 another state's law;

8 (6) the parent has been convicted for:

9 (A) the murder of another child of the parent and
10 the offense would have been an offense under 18 U.S.C. Section
11 1111(a) if the offense had occurred in the special maritime or
12 territorial jurisdiction of the United States;

13 (B) the voluntary manslaughter of another child
14 of the parent and the offense would have been an offense under 18
15 U.S.C. Section 1112(a) if the offense had occurred in the special
16 maritime or territorial jurisdiction of the United States;

17 (C) aiding or abetting, attempting, conspiring,
18 or soliciting an offense under Paragraph [Subdivision] (A) or (B);
19 or

20 (D) the felony assault of the child or another
21 child of the parent that resulted in serious bodily injury to the
22 child or another child of the parent; or

23 (7) the parent's parental rights with regard to two
24 other children have been involuntarily terminated.

25 (d) The Department of Family and Protective [and
26 ~~Regulatory~~] Services shall make reasonable efforts to finalize the
27 permanent placement of a child for whom the court has made the

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1 finding described by Subsection (c). The court shall set the suit
2 for trial on the merits as required by Subchapter D, Chapter 263, in
3 order to facilitate final placement of the child.

4 SECTION 1.165. Section 262.301(1), Family Code, is amended
5 to read as follows:

6 (1) "Designated emergency infant care provider"
7 means:

8 (A) an emergency medical services provider;
9 (B) a hospital; or
10 (C) a child-placing agency licensed by the
11 Department of Family and Protective [and Regulatory] Services under
12 Chapter 42, Human Resources Code, that:

13 (i) agrees to act as a designated emergency
14 infant care provider under this subchapter; and

15 (ii) has on staff a person who is licensed
16 as a registered nurse under Chapter 301, Occupations Code, or who
17 provides emergency medical services under Chapter 773, Health and
18 Safety Code, and who will examine and provide emergency medical
19 services to a child taken into possession by the agency under this
20 subchapter.

21 SECTION 1.166. Section 262.303(a), Family Code, is amended
22 to read as follows:

23 (a) Not later than the close of the first business day after
24 the date on which a designated emergency infant care provider takes
25 possession of a child under Section 262.302, the provider shall
26 notify the Department of Family and Protective [and Regulatory]
27 Services that the provider has taken possession of the child.

1 SECTION 1.167. Section 262.304, Family Code, is amended to
2 read as follows:

3 Sec. 262.304. FILING PETITION AFTER ACCEPTING POSSESSION OF
4 ABANDONED CHILD. A child for whom the Department of Family and
5 Protective [and Regulatory] Services assumes care, control, and
6 custody under Section 262.303 shall be treated as a child taken into
7 possession without a court order, and the department shall take
8 action as required by Section 262.105 with regard to the child.

9 SECTION 1.168. Section 262.305(a), Family Code, is amended
10 to read as follows:

11 (a) Immediately after assuming care, control, and custody
12 of a child under Section 262.303, the Department of Family and
13 Protective [and Regulatory] Services shall report the child to
14 appropriate state and local law enforcement agencies as a potential
15 missing child.

16 SECTION 1.169. Section 262.307, Family Code, is amended to
17 read as follows:

18 Sec. 262.307. REIMBURSEMENT FOR CARE OF ABANDONED CHILD.
19 The Department of Family and Protective Services [department] shall
20 reimburse a designated emergency infant care provider that takes
21 possession of a child under Section 262.302 for the cost to the
22 provider of assuming the care, control, and custody of the child.

23 SECTION 1.170. Section 263.001(a)(4), Family Code, is
24 amended to read as follows:

25 (4) "Substitute care" means the placement of a child
26 who is in the conservatorship of the department [or an authorized
27 agency] in care outside the child's home. The term includes foster

1 care, institutional care, adoption, placement with a relative of
2 the child, or commitment to the Texas Juvenile Justice Department
3 [~~Youth Commission~~].

4 SECTION 1.171. Section 263.002, Family Code, is amended to
5 read as follows:

6 Sec. 263.002. REVIEW OF PLACEMENTS BY COURT. In a suit
7 affecting the parent-child relationship in which the department [~~or~~
8 ~~an authorized agency~~] has been appointed by the court or designated
9 in an affidavit of relinquishment of parental rights as the
10 temporary or permanent managing conservator of a child, the court
11 shall hold a hearing to review:

12 (1) the conservatorship appointment and substitute
13 care; and

14 (2) for a child committed to the Texas Juvenile
15 Justice Department [~~Youth Commission~~], the child's commitment in
16 the Texas Juvenile Justice Department [~~Youth Commission~~] or release
17 under supervision by the Texas Juvenile Justice Department [~~Youth~~
18 ~~Commission~~].

19 SECTION 1.172. Section 263.008(a)(2), Family Code, is
20 amended to read as follows:

21 (2) "Foster care" means the placement of a child who is
22 in the conservatorship of the department [~~or an authorized agency~~]
23 and in care outside the child's home in an agency foster group home,
24 agency foster home, foster group home, foster home, or another
25 facility licensed or certified under Chapter 42, Human Resources
26 Code, in which care is provided for 24 hours a day.

27 SECTION 1.173. Section 263.101, Family Code, is amended to

1 read as follows:

2 Sec. 263.101. DEPARTMENT TO FILE SERVICE PLAN. Not later
3 than the 45th day after the date the court renders a temporary order
4 appointing the department as temporary managing conservator of a
5 child under Chapter 262, the department [~~or other agency appointed~~
6 ~~as the managing conservator of a child~~] shall file a service plan.

7 SECTION 1.174. Section 263.102(a), Family Code, is amended
8 to read as follows:

9 (a) The service plan must:

10 (1) be specific;

11 (2) be in writing in a language that the parents
12 understand, or made otherwise available;

13 (3) be prepared by the department [~~or other agency~~] in
14 conference with the child's parents;

15 (4) state appropriate deadlines;

16 (5) state whether the goal of the plan is:

17 (A) return of the child to the child's parents;

18 (B) termination of parental rights and placement
19 of the child for adoption; or

20 (C) because of the child's special needs or
21 exceptional circumstances, continuation of the child's care out of
22 the child's home;

23 (6) state steps that are necessary to:

24 (A) return the child to the child's home if the
25 placement is in foster care;

26 (B) enable the child to remain in the child's
27 home with the assistance of a service plan if the placement is in

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1 the home under the department's [or other agency's] supervision; or
2 (C) otherwise provide a permanent safe placement
3 for the child:

12 (9) state the actions and responsibilities that are
13 necessary for the child's parents to take to ensure that the child
14 attends school and maintains or improves the child's academic
15 compliance;

16 (10) state the name of the person with the department
17 [or other agency] whom the child's parents may contact for
18 information relating to the child if other than the person
19 preparing the plan; and

23 SECTION 1.175. Sections 263.103(a), (a-1), (c), and (d),
24 Family Code, are amended to read as follows:

25 (a) The original service plan shall be developed jointly by
26 the child's parents and a representative of the department [or
27 ~~other authorized agency~~], including informing the parents of their

1 rights in connection with the service plan process. If a parent is
2 not able or willing to participate in the development of the service
3 plan, it should be so noted in the plan.

4 (a-1) Before the original service plan is signed, the
5 child's parents and the representative of the department [~~or other~~
6 ~~authorized agency~~] shall discuss each term and condition of the
7 plan.

8 (c) If the department [~~or other authorized agency~~]
9 determines that the child's parents are unable or unwilling to
10 participate in the development of the original service plan or sign
11 the plan, the department may file the plan without the parents'
12 signatures.

13 (d) The original service plan takes effect when:

14 (1) the child's parents and the appropriate
15 representative of the department [~~or other authorized agency~~] sign
16 the plan; or

17 (2) the court issues an order giving effect to the plan
18 without the parents' signatures.

19 SECTION 1.176. Section 263.104(b), Family Code, is amended
20 to read as follows:

21 (b) The amended service plan supersedes the previously
22 filed service plan and takes effect when:

23 (1) the child's parents and the appropriate
24 representative of the department [~~or other authorized agency~~] sign
25 the plan; or

26 (2) the department [~~or other authorized agency~~]
27 determines that the child's parents are unable or unwilling to sign

1 the amended plan and files it without the parents' signatures.

2 SECTION 1.177. Sections [263.202](#)(a) and (b), Family Code,
3 are amended to read as follows:

4 (a) If all persons entitled to citation and notice of a
5 status hearing under this chapter were not served, the court shall
6 make findings as to whether:

7 (1) the department [~~or other agency~~] has exercised due
8 diligence to locate all necessary persons, including an alleged
9 father of the child, regardless of whether the alleged father is
10 registered with the registry of paternity under Section [160.402](#);
11 and

12 (2) the child and each parent, alleged father, or
13 relative of the child before the court have furnished to the
14 department all available information necessary to locate an absent
15 parent, alleged father, or relative of the child through exercise
16 of due diligence.

17 (b) Except as otherwise provided by this subchapter, a
18 status hearing shall be limited to matters related to the contents
19 and execution of the service plan filed with the court. The court
20 shall review the service plan that the department [~~or other agency~~]
21 filed under this chapter for reasonableness, accuracy, and
22 compliance with requirements of court orders and make findings as
23 to whether:

24 (1) a plan that has the goal of returning the child to
25 the child's parents adequately ensures that reasonable efforts are
26 made to enable the child's parents to provide a safe environment for
27 the child;

1 (2) the child's parents have reviewed and understand
2 the plan and have been advised that unless the parents are willing
3 and able to provide the child with a safe environment, even with the
4 assistance of a service plan, within the reasonable period of time
5 specified in the plan, the parents' parental and custodial duties
6 and rights may be subject to restriction or to termination under
7 this code or the child may not be returned to the parents;

8 (3) the plan is reasonably tailored to address any
9 specific issues identified by the department [~~or other agency~~]; and

10 (4) the child's parents and the representative of the
11 department [~~or other agency~~] have signed the plan.

12 SECTION 1.178. Section 263.301(c), Family Code, is amended
13 to read as follows:

14 (c) If a person entitled to notice under Chapter 102 or this
15 section has not been served, the court shall review the
16 department's [~~or other agency's~~] efforts at attempting to locate
17 all necessary persons and requesting service of citation and the
18 assistance of a parent in providing information necessary to locate
19 an absent parent.

20 SECTION 1.179. Section 263.303, Family Code, is amended to
21 read as follows:

22 Sec. 263.303. PERMANENCY PROGRESS REPORT. (a) Not later
23 than the 10th day before the date set for each permanency hearing
24 other than the first permanency hearing, the department [~~or other~~
25 ~~authorized agency~~] shall file with the court and provide to each
26 party, the child's attorney ad litem, the child's guardian ad litem,
27 and the child's volunteer advocate a permanency progress report

1 unless the court orders a different period for providing the
2 report.

3 (b) The permanency progress report must:

4 (1) recommend that the suit be dismissed; or

5 (2) recommend that the suit continue, and:

6 (A) identify the date for dismissal of the suit
7 under this chapter;

8 (B) provide:

9 (i) the name of any person entitled to
10 notice under Chapter 102 who has not been served;

11 (ii) a description of the efforts by the
12 department [~~or another agency~~] to locate and request service of
13 citation; and

14 (iii) a description of each parent's
15 assistance in providing information necessary to locate an unserved
16 party;

17 (C) evaluate the parties' compliance with
18 temporary orders and with the service plan;

19 (D) evaluate whether the child's placement in
20 substitute care meets the child's needs and recommend other plans
21 or services to meet the child's special needs or circumstances;

22 (E) describe the permanency plan for the child
23 and recommend actions necessary to ensure that a final order
24 consistent with that permanency plan, including the concurrent
25 permanency goals contained in that plan, is rendered before the
26 date for dismissal of the suit under this chapter;

27 (F) with respect to a child 16 years of age or

1 older, identify the services needed to assist the child in the
2 transition to adult life; and

3 (G) with respect to a child committed to the
4 Texas Juvenile Justice Department [~~Youth Commission~~] or released
5 under supervision by the Texas Juvenile Justice Department [~~Youth~~
6 ~~Commission~~]:

7 (i) evaluate whether the child's needs for
8 treatment and education are being met;

9 (ii) describe, using information provided
10 by the Texas Juvenile Justice Department [~~Youth Commission~~], the
11 child's progress in any rehabilitation program administered by the
12 Texas Juvenile Justice Department [~~Youth Commission~~]; and

13 (iii) recommend other plans or services to
14 meet the child's needs.

15 (c) A parent whose parental rights are the subject of a suit
16 affecting the parent-child relationship, the attorney for that
17 parent, or the child's attorney ad litem or guardian ad litem may
18 file a response to the department's [~~or other agency's~~] report filed
19 under Subsection (b). A response must be filed not later than the
20 third day before the date of the hearing.

21 SECTION 1.180. Section 263.306(a), Family Code, as amended
22 by Chapters 191 (S.B. 352), 204 (H.B. 915), and 688 (H.B. 2619),
23 Acts of the 83rd Legislature, Regular Session, 2013, is reenacted
24 and amended to read as follows:

25 (a) At each permanency hearing the court shall:

26 (1) identify all persons or parties present at the
27 hearing or those given notice but failing to appear;

1 (2) review the efforts of the department [~~or another~~
2 ~~agency~~] in:

3 (A) attempting to locate all necessary persons;
4 (B) requesting service of citation; and
5 (C) obtaining the assistance of a parent in
6 providing information necessary to locate an absent parent, alleged
7 father, or relative of the child;

8 (3) review the efforts of each custodial parent,
9 alleged father, or relative of the child before the court in
10 providing information necessary to locate another absent parent,
11 alleged father, or relative of the child;

12 (4) review any visitation plan or amended plan
13 required under Section 263.107 and render any orders for visitation
14 the court determines necessary;

15 (5) return the child to the parent or parents if the
16 child's parent or parents are willing and able to provide the child
17 with a safe environment and the return of the child is in the
18 child's best interest;

19 (6) place the child with a person or entity, other than
20 a parent, entitled to service under Chapter 102 if the person or
21 entity is willing and able to provide the child with a safe
22 environment and the placement of the child is in the child's best
23 interest;

24 (7) evaluate the department's efforts to identify
25 relatives who could provide the child with a safe environment, if
26 the child is not returned to a parent or another person or entity
27 entitled to service under Chapter 102;

1 (8) evaluate the parties' compliance with temporary
2 orders and the service plan;

3 (9) identify an education decision-maker for the child
4 if one has not previously been identified;

5 (10) review the medical care provided to the child as
6 required by Section 266.007;

7 (11) [~~9~~] ensure the child has been provided the
8 opportunity, in a developmentally appropriate manner, to express
9 the child's opinion on the medical care provided;

10 (12) [~~10~~] for a child receiving psychotropic
11 medication, determine whether the child:

12 (A) has been provided appropriate psychosocial
13 therapies, behavior strategies, and other non-pharmacological
14 interventions; and

15 (B) has been seen by the prescribing physician,
16 physician assistant, or advanced practice nurse at least once every
17 90 days for purposes of the review required by Section 266.011;

18 (13) [~~11~~] determine whether:

19 (A) the child continues to need substitute care;

20 (B) the child's current placement is appropriate
21 for meeting the child's needs, including with respect to a child who
22 has been placed outside of the state, whether that placement
23 continues to be in the best interest of the child; and

24 (C) other plans or services are needed to meet
25 the child's special needs or circumstances;

26 (14) [~~12~~] if the child is placed in institutional
27 care, determine whether efforts have been made to ensure placement

1 of the child in the least restrictive environment consistent with
2 the best interest and special needs of the child;

3 (15) [~~(13)~~] if the child is 16 years of age or older,
4 order services that are needed to assist the child in making the
5 transition from substitute care to independent living if the
6 services are available in the community;

7 (16) [~~(14)~~] determine plans, services, and further
8 temporary orders necessary to ensure that a final order is rendered
9 before the date for dismissal of the suit under this chapter;

10 (17) [~~(15)~~] if the child is committed to the Texas
11 Juvenile Justice Department or released under supervision by the
12 Texas Juvenile Justice Department, determine whether the child's
13 needs for treatment, rehabilitation, and education are being met;
14 and

15 (18) [~~(16)~~] determine the date for dismissal of the
16 suit under this chapter and give notice in open court to all parties
17 of:

18 (A) the dismissal date;
19 (B) the date of the next permanency hearing; and
20 (C) the date the suit is set for trial.

21 SECTION 1.181. Section 263.307(b), Family Code, is amended
22 to read as follows:

23 (b) The following factors should be considered by the court
24 and [~~r~~] the department[~~, and other authorized agencies~~] in
25 determining whether the child's parents are willing and able to
26 provide the child with a safe environment:

27 (1) the child's age and physical and mental

1 vulnerabilities;

2 (2) the frequency and nature of out-of-home
3 placements;

4 (3) the magnitude, frequency, and circumstances of the
5 harm to the child;

6 (4) whether the child has been the victim of repeated
7 harm after the initial report and intervention by the department
8 [or other agency];

9 (5) whether the child is fearful of living in or
10 returning to the child's home;

11 (6) the results of psychiatric, psychological, or
12 developmental evaluations of the child, the child's parents, other
13 family members, or others who have access to the child's home;

14 (7) whether there is a history of abusive or
15 assaultive conduct by the child's family or others who have access
16 to the child's home;

17 (8) whether there is a history of substance abuse by
18 the child's family or others who have access to the child's home;

19 (9) whether the perpetrator of the harm to the child is
20 identified;

21 (10) the willingness and ability of the child's family
22 to seek out, accept, and complete counseling services and to
23 cooperate with and facilitate an appropriate agency's close
24 supervision;

25 (11) the willingness and ability of the child's family
26 to effect positive environmental and personal changes within a
27 reasonable period of time;

(12) whether the child's family demonstrates adequate parenting skills, including providing the child and other children under the family's care with:

4 (A) minimally adequate health and nutritional
5 care;

9 (C) guidance and supervision consistent with the
10 child's safety;

11 (D) a safe physical home environment;

12 (E) protection from repeated exposure to
13 violence even though the violence may not be directed at the child;
14 and

15 (F) an understanding of the child's needs and
16 capabilities; and

17 (13) whether an adequate social support system
18 consisting of an extended family and friends is available to the
19 child.

20 SECTION 1.182. Sections 263.502(a) and (c), Family Code,
21 are amended to read as follows:

22 (a) Not later than the 10th day before the date set for a
23 placement review hearing, the department [or other authorized
24 agency] shall file a placement review report with the court and
25 provide a copy to each person entitled to notice under Section
26 263.501(d).

(c) The placement review report must identify the

1 department's permanency goal for the child and must:

2 (1) evaluate whether the child's current placement is
3 appropriate for meeting the child's needs;

4 (2) evaluate whether efforts have been made to ensure
5 placement of the child in the least restrictive environment
6 consistent with the best interest and special needs of the child if
7 the child is placed in institutional care;

8 (3) contain a transition plan for a child who is at
9 least 16 years of age that identifies the services and specific
10 tasks that are needed to assist the child in making the transition
11 from substitute care to adult living and describes the services
12 that are being provided through the Transitional Living Services
13 Program operated by the department;

14 (4) evaluate whether the child's current educational
15 placement is appropriate for meeting the child's academic needs;

16 (5) identify other plans or services that are needed
17 to meet the child's special needs or circumstances;

18 (6) describe the efforts of the department [or
19 ~~authorized agency~~] to place the child for adoption if parental
20 rights to the child have been terminated and the child is eligible
21 for adoption, including efforts to provide adoption promotion and
22 support services as defined by 42 U.S.C. Section 629a and other
23 efforts consistent with the federal Adoption and Safe Families Act
24 of 1997 (Pub. L. No. 105-89);

25 (7) for a child for whom the department has been named
26 managing conservator in a final order that does not include
27 termination of parental rights, describe the efforts of the

1 department to find a permanent placement for the child, including
2 efforts to:

3 (A) work with the caregiver with whom the child
4 is placed to determine whether that caregiver is willing to become a
5 permanent placement for the child;

6 (B) locate a relative or other suitable
7 individual to serve as permanent managing conservator of the child;
8 and

9 (C) evaluate any change in a parent's
10 circumstances to determine whether:

11 (i) the child can be returned to the parent;
12 or

13 (ii) parental rights should be terminated;

14 (8) with respect to a child committed to the Texas
15 Juvenile Justice Department or released under supervision by the
16 Texas Juvenile Justice Department:

17 (A) evaluate whether the child's needs for
18 treatment and education are being met;

19 (B) describe, using information provided by the
20 Texas Juvenile Justice Department, the child's progress in any
21 rehabilitation program administered by the Texas Juvenile Justice
22 Department; and

23 (C) recommend other plans or services to meet the
24 child's needs; and

25 (9) identify any placement changes that have occurred
26 since the most recent court hearing concerning the child and
27 describe any barriers to sustaining the child's placement,

1 including any reason for which a substitute care provider has
2 requested a placement change.

3 SECTION 1.183. Section 263.503(a), Family Code, as amended
4 by Chapters 204 (H.B. 915) and 688 (H.B. 2619), Acts of the 83rd
5 Legislature, Regular Session, 2013, is reenacted and amended to
6 read as follows:

7 (a) At each placement review hearing, the court shall
8 determine whether:

9 (1) the child's current placement is necessary, safe,
10 and appropriate for meeting the child's needs, including with
11 respect to a child placed outside of the state, whether the
12 placement continues to be appropriate and in the best interest of
13 the child;

14 (2) efforts have been made to ensure placement of the
15 child in the least restrictive environment consistent with the best
16 interest and special needs of the child if the child is placed in
17 institutional care;

18 (3) the services that are needed to assist a child who
19 is at least 16 years of age in making the transition from substitute
20 care to independent living are available in the community;

21 (4) the child is receiving appropriate medical care;

22 (5) the child has been provided the opportunity, in a
23 developmentally appropriate manner, to express the child's opinion
24 on the medical care provided;

25 (6) for a child who is receiving psychotropic
26 medication, the child:

27 (A) has been provided appropriate psychosocial

1 therapies, behavior strategies, and other non-pharmacological
2 interventions; and

3 (B) has been seen by the prescribing physician,
4 physician assistant, or advanced practice nurse at least once every
5 90 days for purposes of the review required by Section [266.011](#);

6 (7) other plans or services are needed to meet the
7 child's special needs or circumstances;

8 (8) the department [~~or authorized agency~~] has
9 exercised due diligence in attempting to place the child for
10 adoption if parental rights to the child have been terminated and
11 the child is eligible for adoption;

12 (9) for a child for whom the department has been named
13 managing conservator in a final order that does not include
14 termination of parental rights, a permanent placement, including
15 appointing a relative as permanent managing conservator or
16 returning the child to a parent, is appropriate for the child;

17 (10) for a child whose permanency goal is another
18 planned, permanent living arrangement, the department has:

19 (A) documented a compelling reason why adoption,
20 permanent managing conservatorship with a relative or other
21 suitable individual, or returning the child to a parent is not in
22 the child's best interest; and

23 (B) identified a family or other caring adult who
24 has made a permanent commitment to the child;

25 (11) the department [~~or authorized agency~~] has made
26 reasonable efforts to finalize the permanency plan that is in
27 effect for the child; [~~and~~]

1 (12) if the child is committed to the Texas Juvenile
2 Justice Department or released under supervision by the Texas
3 Juvenile Justice Department, the child's needs for treatment,
4 rehabilitation, and education are being met;

5 (13) [~~(10)~~] an education decision-maker for the child
6 has been identified; and

7 (14) [~~(11)~~] the child's education needs and goals have
8 been identified and addressed.

9 SECTION 1.184. Section 264.0091, Family Code, is amended to
10 read as follows:

11 Sec. 264.0091. USE OF TELECONFERENCING AND
12 VIDEOCONFERENCE TECHNOLOGY. Subject to the availability of
13 funds, the department, in cooperation with district and county
14 courts, shall expand the use of teleconferencing and
15 videoconferencing to facilitate participation by medical experts,
16 children, and other individuals in court proceedings, including
17 children for whom the department [~~, an authorized agency,~~] or a
18 licensed child-placing agency has been appointed managing
19 conservator and who are committed to the Texas Juvenile Justice
20 Department [~~Youth Commission~~].

21 SECTION 1.185. Section 264.010(d), Family Code, is amended
22 to read as follows:

23 (d) A child abuse prevention and protection plan must:

24 (1) specify the manner of communication between
25 entities who are parties to the plan, including the department, the
26 commission [~~Texas Department of Human Services~~], local law
27 enforcement agencies, the county and district attorneys, members of

1 the medical and social service community, foster parents, and child
2 advocacy groups; and

3 (2) provide other information concerning the
4 prevention and investigation of child abuse in the area for which
5 the plan is adopted.

6 SECTION 1.186. Section 264.0111(e), Family Code, is amended
7 to read as follows:

8 (e) The executive commissioner [department] may adopt rules
9 to implement this section.

10 SECTION 1.187. Section 264.0145(b), Family Code, is amended
11 to read as follows:

12 (b) The executive commissioner [department] by rule shall
13 establish guidelines that prioritize requests to release case
14 records, including those made by an adult previously in the
15 department's managing conservatorship.

16 SECTION 1.188. Sections 264.101(b) and (d), Family Code,
17 are amended to read as follows:

18 (b) The department may not pay the cost of protective foster
19 care for a child for whom the department has been named managing
20 conservator under an order rendered solely under Section
21 161.001(b)(1)(J) [161.001(1)(J)].

22 (d) The executive commissioner [~~of the Health and Human~~
23 ~~Services Commission~~] may adopt rules that establish criteria and
24 guidelines for the payment of foster care, including medical care,
25 for a child and for providing care for a child after the child
26 becomes 18 years of age if the child meets the requirements for
27 continued foster care under Subsection (a-1).

1 SECTION 1.189. Sections 264.107(a) and (b), Family Code,
2 are amended to read as follows:

3 (a) The department shall use a system for the placement of
4 children in contract residential care, including foster care, that
5 conforms to the levels of care adopted [and maintained] by the
6 executive commissioner [~~Health and Human Services Commission~~].

7 (b) The department shall use the standard application
8 provided by the Health and Human Services Commission for the
9 placement of children in contract residential care [~~as adopted and~~
10 ~~maintained by the Health and Human Services Commission~~].

11 SECTION 1.190. Section 264.1075(b), Family Code, is amended
12 to read as follows:

13 (b) As soon as possible after a child begins receiving
14 foster care under this subchapter, the department shall assess
15 whether the child has a developmental or intellectual disability
16 [~~or mental retardation~~]. The commission shall establish the
17 procedures that the department must use in making an assessment
18 under this subsection. The procedures may include screening or
19 participation by:

20 (1) a person who has experience in childhood
21 developmental or intellectual disabilities [~~or mental~~
22 ~~retardation~~];

23 (2) a local intellectual and developmental disability
24 [~~mental retardation~~] authority; or

25 (3) a provider in a county with a local child welfare
26 board.

27 SECTION 1.191. Section 264.108(f), Family Code, is amended

1 to read as follows:

2 (f) The executive commissioner [department] by rule shall
3 define what constitutes a delay under Subsections (b) and (d).

4 SECTION 1.192. Sections [264.110](#)(b) and (g), Family Code,
5 are amended to read as follows:

6 (b) A person registered under this section must satisfy
7 requirements adopted by rule by the executive commissioner
8 [department].

9 (g) The department may refuse to place a child with a person
10 registered under this section only for a reason permitted under
11 criteria adopted by the executive commissioner by [department]
12 rule.

13 SECTION 1.193. Section [264.112](#)(a), Family Code, is amended
14 to read as follows:

15 (a) The department shall report the status for children in
16 substitute care to the executive commissioner [Board of Protective
17 and Regulatory Services] at least once every 12 months.

18 SECTION 1.194. Section [264.121](#)(a), Family Code, is amended
19 to read as follows:

20 (a) The department shall address the unique challenges
21 facing foster children in the conservatorship of the department who
22 must transition to independent living by:

23 (1) expanding efforts to improve transition planning
24 and increasing the availability of transitional family group
25 decision-making to all youth age 14 or older in the department's
26 permanent managing conservatorship, including enrolling the youth
27 in the Preparation for Adult Living Program before the age of 16;

1 (2) coordinating with the commission [~~Health and Human~~
2 ~~Services Commission~~] to obtain authority, to the extent allowed by
3 federal law, the state Medicaid plan, the Title IV-E state plan, and
4 any waiver or amendment to either plan, necessary to:

5 (A) extend foster care eligibility and
6 transition services for youth up to age 21 and develop policy to
7 permit eligible youth to return to foster care as necessary to
8 achieve the goals of the Transitional Living Services Program; and

9 (B) extend Medicaid coverage for foster care
10 youth and former foster care youth up to age 21 with a single
11 application at the time the youth leaves foster care; and

12 (3) entering into cooperative agreements with the
13 Texas Workforce Commission and local workforce development boards
14 to further the objectives of the Preparation for Adult Living
15 Program. The department, the Texas Workforce Commission, and the
16 local workforce development boards shall ensure that services are
17 prioritized and targeted to meet the needs of foster care and former
18 foster care children and that such services will include, where
19 feasible, referrals for short-term stays for youth needing housing.

20 SECTION 1.195. Section 264.124(b), Family Code, as added by
21 Chapter 423 (S.B. 430), Acts of the 83rd Legislature, Regular
22 Session, 2013, is amended to read as follows:

23 (b) The department, in accordance with department rules
24 [~~executive commissioner rule~~], shall implement a process to verify
25 that each foster parent who is seeking monetary assistance from the
26 department for day care for a foster child has attempted to find
27 appropriate day-care services for the foster child through

1 community services, including Head Start programs, prekindergarten
2 classes, and early education programs offered in public schools.
3 The department shall specify the documentation the foster parent
4 must provide to the department to demonstrate compliance with the
5 requirements established under this subsection.

6 SECTION 1.196. Section 264.205(b), Family Code, is amended
7 to read as follows:

8 (b) A swift adoption team shall consist of department
9 personnel who shall operate under policies adopted by rule by the
10 executive commissioner [department]. The department shall set
11 priorities for the allocation of department resources to enable a
12 swift adoption team to operate successfully under the policies
13 adopted under this subsection.

14 SECTION 1.197. Section 264.506(b), Family Code, is amended
15 to read as follows:

16 (b) To achieve its purpose, a review team shall:

17 (1) adapt and implement, according to local needs and
18 resources, the model protocols developed by the department and the
19 committee;

20 (2) meet on a regular basis to review child fatality
21 cases and recommend methods to improve coordination of services and
22 investigations between agencies that are represented on the team;

23 (3) collect and maintain data as required by the
24 committee; and

25 (4) submit to the [bureau of] vital statistics unit
26 data reports on deaths reviewed as specified by the committee.

27 SECTION 1.198. Section 264.507, Family Code, is amended to

1 read as follows:

2 Sec. 264.507. DUTIES OF PRESIDING OFFICER. The presiding
3 officer of a review team shall:

4 (1) send notices to the review team members of a
5 meeting to review a child fatality;

6 (2) provide a list to the review team members of each
7 child fatality to be reviewed at the meeting;

8 (3) submit data reports to the [bureau of] vital
9 statistics unit not later than the 30th day after the date on which
10 the review took place; and

11 (4) ensure that the review team operates according to
12 the protocols developed by the department and the committee, as
13 adapted by the review team.

14 SECTION 1.199. Section 264.514(a), Family Code, is amended
15 to read as follows:

16 (a) A medical examiner or justice of the peace notified of a
17 death of a child under Section 264.513 shall hold an inquest under
18 Chapter 49, Code of Criminal Procedure, to determine whether the
19 death is unexpected or the result of abuse or neglect. An inquest
20 is not required under this subchapter if the child's death is
21 expected and is due to a congenital or neoplastic disease. A death
22 caused by an infectious disease may be considered an expected death
23 if:

24 (1) the disease was not acquired as a result of trauma
25 or poisoning;

26 (2) the infectious organism is identified using
27 standard medical procedures; and

1 (3) the death is not reportable to the [Texas]
2 Department of State Health Services under Chapter 81, Health and
3 Safety Code.

4 SECTION 1.200. Section 264.614(d), Family Code, is amended
5 to read as follows:

6 (d) The executive commissioner [~~of the Health and Human~~
7 ~~Services Commission~~] shall adopt rules necessary to implement this
8 section.

9 SECTION 1.201. Section 264.753, Family Code, is amended to
10 read as follows:

11 Sec. 264.753. EXPEDITED PLACEMENT. The department [~~or~~
12 ~~other authorized entity~~] shall expedite the completion of the
13 background and criminal history check, the home study, and any
14 other administrative procedure to ensure that the child is placed
15 with a qualified relative or caregiver as soon as possible after the
16 date the caregiver is identified.

17 SECTION 1.202. Section 264.755(d), Family Code, is amended
18 to read as follows:

19 (d) The department, in accordance with department rules
20 [~~executive commissioner rule~~], shall implement a process to verify
21 that each relative and designated caregiver who is seeking monetary
22 assistance or additional support services from the department for
23 day care as defined by Section 264.124 for a child under this
24 section has attempted to find appropriate day-care services for the
25 child through community services, including Head Start programs,
26 prekindergarten classes, and early education programs offered in
27 public schools. The department shall specify the documentation the

1 relative or designated caregiver must provide to the department to
2 demonstrate compliance with the requirements established under
3 this subsection. The department may not provide monetary
4 assistance or additional support services to the relative or
5 designated caregiver for the day care unless the department
6 receives the required verification.

7 SECTION 1.203. The following provisions of the Family Code
8 are repealed:

- 9 (1) Section 101.002;
- 10 (2) Section 161.002(c);
- 11 (3) Section 162.305;
- 12 (4) Sections 261.001(3) and (8);
- 13 (5) Section 262.008(c);
- 14 (6) Section 263.1015;
- 15 (7) Section 264.007;
- 16 (8) Section 264.105;
- 17 (9) Section 264.106;
- 18 (10) Section 264.1063;
- 19 (11) Section 264.107(f);
- 20 (12) Section 264.206;
- 21 (13) Sections 264.501(2) and (5); and
- 22 (14) Subchapter H, Chapter 264.

23 ARTICLE 2. GOVERNMENT CODE

24 SECTION 2.001. Section 403.1066(c), Government Code, is
25 amended to read as follows:

26 (c) The available earnings of the fund may be appropriated
27 to the [Texas] Department of State Health Services for the purpose

1 of providing services at a public health hospital as defined by
2 Section 13.033, Health and Safety Code, [the Texas Center for
3 Infectious Disease] and grants, loans, or loan guarantees to public
4 or nonprofit community hospitals with 125 beds or fewer located in
5 an urban area of the state.

6 SECTION 2.002. Section 411.110(a), Government Code, is
7 amended to read as follows:

8 (a) The Department of State Health Services is entitled to
9 obtain from the department criminal history record information
10 maintained by the department that relates to:

11 (1) a person who is:

12 (A) an applicant for a license or certificate
13 under the Emergency Health Care [~~Medical Services~~] Act (Chapter
14 773, Health and Safety Code);

15 (B) an owner or manager of an applicant for an
16 emergency medical services provider license under that Act; or

17 (C) the holder of a license or certificate under
18 that Act;

19 (2) an applicant for a license or a license holder
20 under Subchapter N, Chapter 431, Health and Safety Code;

21 (3) an applicant for a license, the owner or manager of
22 an applicant for a massage establishment license, or a license
23 holder under Chapter 455, Occupations Code;

24 (4) an applicant for employment at or current employee
25 of:

26 (A) a public health hospital as defined by
27 Section 13.033, Health and Safety Code [the Texas Center for

S.B. No. 219

1 ~~Commission for the Deaf and Hard of Hearing~~] under Subsection (a)
2 may be used only to evaluate an applicant for a staff position at an
3 outdoor training program for children who are deaf or hard of
4 hearing. The Department of Assistive and Rehabilitative Services
5 [~~Texas Commission for the Deaf and Hard of Hearing~~] may release or
6 disclose the information to a private entity described by
7 Subsection (a) for that purpose.

8 (c) The Department of Assistive and Rehabilitative Services
9 [~~Texas Commission for the Deaf and Hard of Hearing~~] may not release
10 or disclose information obtained under Subsection (a), except on
11 court order or with the consent of the person who is the subject of
12 the criminal history record information, and shall destroy all
13 criminal history record information obtained under Subsection (a)
14 after the information is used for its authorized purpose.

15 SECTION 2.004. Section [411.114\(a\)\(3\)](#), Government Code, is
16 amended to read as follows:

17 (3) The Department of Family and Protective Services
18 is entitled to obtain from the department criminal history record
19 information maintained by the department that relates to a person
20 who is:

21 (A) a volunteer or applicant volunteer with a
22 local affiliate in this state of Big Brothers/Big Sisters of
23 America;

24 (B) a volunteer or applicant volunteer with the
25 "I Have a Dream/Houston" program;

26 (C) a volunteer or applicant volunteer with an
27 organization that provides court-appointed special advocates for

1 abused or neglected children;

2 (D) a person providing, at the request of the
3 child's parent, in-home care for a child who is the subject of a
4 report alleging the child has been abused or neglected;

(F) a person providing, at the request of the child's parent, in-home care for a child only if the person gives written consent to the release and disclosure of the information;

10 (G) a child who is related to the caretaker, as
11 determined under Section **42.002**, Human Resources Code, and who
12 resides in or is present in a child-care facility or family home,
13 other than a child described by Subdivision (2)(C), or any other
14 person who has unsupervised access to a child in the care of a
15 child-care facility or family home;

16 (H) an applicant for a position with the
17 Department of Family and Protective Services, other than a position
18 described by Subdivision (2)(D), regardless of the duties of the
19 position;

20 (I) a volunteer or applicant volunteer with the
21 Department of Family and Protective Services, other than a
22 registered volunteer, regardless of the duties to be performed:

23 (J) a person providing or applying to provide
24 in-home, adoptive, or foster care for children to the extent
25 necessary to comply with Subchapter B, Chapter 162, Family Code.

1 (2)(H), regardless of the duties of the employee's position;

2 (L) a relative of a child in the care of the
3 Department of Family and Protective Services, to the extent
4 necessary to comply with Section [162.007](#), Family Code;

5 (M) a person, other than an alleged perpetrator
6 in a report described in Subdivision (2)(I), living in the
7 residence in which the alleged victim of the report resides;

8 (N) ~~a contractor or an employee of a contractor
who delivers services to a ward of the Department of Family and
Protective Services under a contract with the estate of the ward,~~
~~(O) a person who seeks unsupervised visits with
a ward of the Department of Family and Protective Services,
including a relative of the ward,~~

11 ~~(P) an employee, volunteer, or applicant
volunteer of a children's advocacy center under Subchapter E,
Chapter 264, Family Code, including a member of the governing board
of a center;~~

18 (O) ~~(Q)~~ an employee of, an applicant for
employment with, or a volunteer or an applicant volunteer with an
entity or person that contracts with the Department of Family and
Protective Services and has access to confidential information in
the department's records, if the employee, applicant, volunteer, or
applicant volunteer has or will have access to that confidential
information;

25 (P) ~~(R)~~ an employee of or volunteer at, or an
applicant for employment with or to be a volunteer at, an entity
that provides supervised independent living services to a young

1 adult receiving extended foster care services from the Department
2 of Family and Protective Services;

3 (Q) [~~(S)~~] a person 14 years of age or older who
4 will be regularly or frequently working or staying in a host home
5 that is providing supervised independent living services to a young
6 adult receiving extended foster care services from the Department
7 of Family and Protective Services; or

8 (R) [~~(T)~~] a person who volunteers to supervise
9 visitation under Subchapter B, Chapter 263, Family Code.

10 SECTION 2.005. Sections [411.1386\(a-1\)](#) and [\(a-3\)](#),
11 Government Code, are amended to read as follows:

12 (a-1) The Department of Aging and Disability Services shall
13 obtain from the Department of Public Safety criminal history record
14 information maintained by the Department of Public Safety that
15 relates to each individual who is or will be providing guardianship
16 services to a ward of or referred by the Department of Aging and
17 Disability Services, including:

18 (1) an employee of or an applicant selected for an
19 employment position with the Department of Aging and Disability
20 Services;

21 (2) a volunteer or an applicant selected to volunteer
22 with the Department of Aging and Disability Services;

23 (3) an employee of or an applicant selected for an
24 employment position with a business entity or other person that
25 contracts with the Department of Aging and Disability Services to
26 provide guardianship services to a ward referred by the department;
27 [and]

1 (4) a volunteer or an applicant selected to volunteer
2 with a business entity or person described by Subdivision (3); and
3 (5) a contractor or an employee of a contractor who
4 provides services to a ward of the Department of Aging and
5 Disability Services under a contract with the estate of the ward.

6 (a-3) The information in Subsection (a-1) regarding
7 employees, contractors, or volunteers providing guardianship
8 services must be obtained annually.

9 SECTION 2.006. Section 411.13861, Government Code, is
10 amended by amending Subsection (a) and adding Subsection (e) to
11 read as follows:

12 (a) The Department of Aging and Disability Services is
13 entitled to obtain from the Department of Public Safety criminal
14 history record information maintained by the Department of Public
15 Safety that relates to a person:

16 (1) required to undergo a background and criminal
17 history check under Chapter 248A, Health and Safety Code; or
18 (2) who seeks unsupervised visits with a ward of the
19 department, including a relative of the ward.

20 (e) In this section, "ward" has the meaning assigned by
21 Section 1002.030, Estates Code.

22 SECTION 2.007. Section 531.001, Government Code, is amended
23 by amending Subdivisions (4-a) and (6) and adding Subdivision (4-b)
24 to read as follows:

25 (4-a) "Home telemonitoring service" means a health
26 service that requires scheduled remote monitoring of data related
27 to a patient's health and transmission of the data to a licensed

1 home and community support services [~~health~~] agency or a hospital,
2 as those terms are defined by Section 531.02164(a).

3 (4-b) "Medicaid" means the medical assistance program
4 established under Chapter 32, Human Resources Code.

5 (6) "Section 1915(c) waiver program" means a federally
6 funded [~~Medicaid~~] program of the state under Medicaid that is
7 authorized under Section 1915(c) of the federal Social Security Act
8 (42 U.S.C. Section 1396n(c)).

9 SECTION 2.008. Section 531.0055(b), Government Code, is
10 amended to read as follows:

11 (b) The commission shall:

12 (1) supervise the administration and operation of
13 [~~the~~] Medicaid [~~program~~], including the administration and
14 operation of the Medicaid managed care system in accordance with
15 Section 531.021;

16 (2) perform information systems planning and
17 management for health and human services agencies under Section
18 531.0273, with:

19 (A) the provision of information technology
20 services at health and human services agencies considered to be a
21 centralized administrative support service either performed by
22 commission personnel or performed under a contract with the
23 commission; and

24 (B) an emphasis on research and implementation on
25 a demonstration or pilot basis of appropriate and efficient uses of
26 new and existing technology to improve the operation of health and
27 human services agencies and delivery of health and human services;

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8 (A) the child health plan program;

11 (C) Medicaid [~~the medical assistance program~~
12 ~~under Chapter 32, Human Resources Code~~];

13 (D) the supplemental nutrition [~~nutritional~~]
14 assistance program [~~programs~~] under Chapter 33, Human Resources
15 Code:

16 (E) long-term care services, as defined by
17 Section 22.0011, Human Resources Code:

18 (F) community-based support services identified
19 or provided in accordance with Section 531.02481; and

20 (G) other health and human services programs, as
21 appropriate; and

24 SECTION 2.009. Subchapter A, Chapter 531, Government Code,
25 is amended by adding Section 531.00551 to read as follows:

26 Sec. 531-00551- PROCEDURES FOR ADOPTING RULES AND POLICIES.

27 (a) The executive commissioner shall develop procedures for

1 adopting rules for the health and human services agencies. The
2 procedures must specify the manner in which the health and human
3 services agencies may participate in the rulemaking process.

4 (b) A health and human services agency shall assist the
5 executive commissioner in the development of policies and
6 guidelines needed for the administration of the agency's functions
7 and shall submit any proposed policies and guidelines to the
8 executive commissioner. The agency may implement a proposed policy
9 or guideline only if the executive commissioner approves the policy
10 or guideline.

11 SECTION 2.010. Section 531.006, Government Code, is amended
12 to read as follows:

13 Sec. 531.006. ELIGIBILITY. (a) A person is not eligible
14 for appointment as executive commissioner if the person or the
15 person's spouse is an employee, officer, or paid consultant of a
16 trade association in a field under the commission's jurisdiction.

17 (b) A person who is required to register as a lobbyist under
18 Chapter 305 because of the person's activities for compensation in
19 or on behalf of a profession related to a field under the
20 commission's jurisdiction may not serve as executive commissioner.

21 (c) A person is not eligible for appointment as executive
22 commissioner if the person has a financial interest in a
23 corporation, organization, or association under contract with:

24 (1) the [Texas] Department of State Health Services,
25 if the contract involves mental health services;

26 (2) the Department of Aging and Disability Services
27 [~~Mental Health and Mental Retardation~~], if the contract involves

1 intellectual and developmental disability services;
2 (3) a local mental health or intellectual and
3 developmental disability [~~mental retardation~~] authority;[~~r~~] or
4 (4) a community center.

5 SECTION 2.011. Section 531.007, Government Code, is amended
6 to read as follows:

7 Sec. 531.007. TERM. The executive commissioner serves a
8 two-year term expiring February 1 of each odd-numbered year.

9 SECTION 2.012. Section 531.008(c), Government Code, is
10 amended to read as follows:

11 (c) The executive commissioner shall establish the
12 following divisions and offices within the commission:

13 (1) the eligibility services division to make
14 eligibility determinations for services provided through the
15 commission or a health and human services agency related to:

16 (A) the child health plan program;

17 (B) the financial assistance program under
18 Chapter 31, Human Resources Code;

19 (C) Medicaid [~~the medical assistance program~~
20 ~~under Chapter 32, Human Resources Code~~];

21 (D) the supplemental nutrition [~~nutritional~~]
22 assistance program [~~programs~~] under Chapter 33, Human Resources
23 Code;

24 (E) long-term care services, as defined by
25 Section 22.0011, Human Resources Code;

26 (F) community-based support services identified
27 or provided in accordance with Section 531.02481; and

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6 (3) the office of the ombudsman to:

(A) provide dispute resolution services for the commission and the health and human services agencies; and

9 (B) perform consumer protection functions
10 related to health and human services;

16 SECTION 2.013. Section 531.0081, Government Code, is
17 amended to read as follows:

18 Sec. 531.0081. [OFFICE OF] MEDICAL TECHNOLOGY. [(a) In
19 ~~this section, "office" means the office of medical technology.]~~

20 (b) The commission shall [establish the office of medical
21 technology within the commission. The office shall] explore and
22 evaluate new developments in medical technology and propose
23 implementing the technology in Medicaid [~~the medical assistance~~
24 ~~program under Chapter 32, Human Resources Code~~], if appropriate and
25 cost-effective.

26 (c) Commission [Office] staff implementing this section
27 must have skills and experience in research regarding health care

1 technology.

2 SECTION 2.014. Section 531.0082(d), Government Code, is
3 amended to read as follows:

4 (d) Not later than the 30th day following the end of each
5 calendar quarter, the data analysis unit shall provide an update on
6 the unit's activities and findings to the governor, the lieutenant
7 governor, the speaker of the house of representatives, the chair of
8 the Senate Finance Committee, the chair of the House Appropriations
9 Committee, and the chairs of the standing committees of the senate
10 and house of representatives having jurisdiction over [the]
11 Medicaid [program].

12 SECTION 2.015. Sections 531.009(a), (b), (c), (d), (e), and
13 (g), Government Code, are amended to read as follows:

14 (a) The executive commissioner shall employ a medical
15 director to provide medical expertise to the executive commissioner
16 and the commission and may employ other personnel necessary to
17 administer the commission's duties.

18 (b) The executive commissioner [~~or the commissioner's~~
19 ~~designated representative~~] shall develop an intra-agency career
20 ladder program, one part of which must require the intra-agency
21 posting of all non-entry-level positions concurrently with any
22 public posting.

23 (c) The executive commissioner [~~or the commissioner's~~
24 ~~designated representative~~] shall develop a system of annual
25 performance evaluations based on measurable job tasks. All merit
26 pay for commission employees must be based on the system
27 established under this subsection.

1 (d) The executive commissioner shall provide to commission
2 employees as often as is necessary information regarding their
3 qualifications under this chapter and their responsibilities under
4 applicable laws relating to standards of conduct for state
5 employees.

6 (e) The executive commissioner [~~or the commissioner's~~
7 ~~designated representative~~] shall prepare and maintain a written
8 policy statement that implements a program of equal employment
9 opportunity to ensure that all personnel transactions are made
10 without regard to race, color, disability, sex, religion, age, or
11 national origin.

12 (g) The policy statement described by Subsection (e) must:

13 (1) be updated annually;
14 (2) be reviewed by the Texas Workforce Commission
15 civil rights division [~~state Commission on Human Rights~~] for
16 compliance with Subsection (f)(1); and
17 (3) be filed with the governor's office.

18 SECTION 2.016. Section 531.011(d), Government Code, is
19 amended to read as follows:

20 (d) The executive commissioner by rule shall establish
21 methods by which the public, consumers, and service recipients can
22 be notified of the mailing addresses and telephone numbers of
23 appropriate agency personnel for the purpose of directing
24 complaints to the commission. The commission may provide for that
25 notification:

26 (1) on each registration form, application, or written
27 contract for services of a person regulated by the commission;

1 (2) on a sign prominently displayed in the place of
2 business of each person regulated by the commission; or
3 (3) in a bill for service provided by a person
4 regulated by the commission.

5 SECTION 2.017. Section 531.012, Government Code, is amended
6 to read as follows:

7 Sec. 531.012. ADVISORY COMMITTEES. The executive
8 commissioner may appoint advisory committees as needed.

9 SECTION 2.018. Section 531.020, Government Code, is amended
10 to read as follows:

11 Sec. 531.020. OFFICE OF COMMUNITY ACCESS AND SERVICES
12 [~~COLLABORATION~~]. The executive commissioner shall establish
13 within the commission an office of community access and services
14 [~~collaboration~~]. The office is responsible for:

15 (1) collaborating with community, state, and federal
16 stakeholders to improve the elements of the health care system that
17 are involved in the delivery of Medicaid services; and

18 (2) sharing with Medicaid providers, including
19 hospitals, any best practices, resources, or other information
20 regarding improvements to the health care system.

21 SECTION 2.019. Section 531.021, Government Code, is amended
22 to read as follows:

23 Sec. 531.021. ADMINISTRATION OF MEDICAID [~~PROGRAM~~]. (a)
24 The commission is the state agency designated to administer federal
25 Medicaid [~~medical assistance~~] funds.

26 (b) The commission shall:

27 (1) plan and direct [~~the~~] Medicaid [~~program~~] in each

1 agency that operates a portion of [the] Medicaid [program],
2 including the management of the Medicaid managed care system and
3 the development, procurement, management, and monitoring of
4 contracts necessary to implement the Medicaid managed care system;
5 and

6 (2) [adopt reasonable rules and standards governing
7 the determination of fees, charges, and rates for medical
8 assistance payments under Chapter 32, Human Resources Code, in
9 consultation with the agencies that operate the Medicaid program;
10 and

11 [~~(3)~~] establish requirements for and define the scope
12 of the ongoing evaluation of the Medicaid managed care system
13 conducted in conjunction with the Department of State Health
14 Services [~~Texas Health Care Information Council~~] under Section
15 108.0065, Health and Safety Code.

16 (b-1) The executive commissioner shall adopt reasonable
17 rules and standards governing the determination of fees, charges,
18 and rates for Medicaid payments.

19 (c) The executive commissioner [~~commission~~] in the [~~its~~]
20 adoption of reasonable rules and standards under Subsection (b-1)
21 [~~(b)(2)~~] shall include financial performance standards that, in the
22 event of a proposed rate reduction, provide private ICF-IID
23 [~~ICF-MR~~] facilities and home and community-based services
24 providers with flexibility in determining how to use Medicaid
25 [~~medical assistance~~] payments to provide services in the most
26 cost-effective manner while continuing to meet the state and
27 federal requirements of [the] Medicaid [program].

1 (d) In adopting rules and standards required by Subsection
2 (b-1) [~~(b)(2)~~], the executive commissioner [~~commission~~] may
3 provide for payment of fees, charges, and rates in accordance with:

4 (1) formulas, procedures, or methodologies prescribed
5 by the commission's rules;

6 (2) applicable state or federal law, policies, rules,
7 regulations, or guidelines;

8 (3) economic conditions that substantially and
9 materially affect provider participation in [~~the~~] Medicaid
10 [~~program~~], as determined by the executive commissioner; or

11 (4) available levels of appropriated state and federal
12 funds.

13 (e) Notwithstanding any other provision of Chapter 32,
14 Human Resources Code, Chapter 533, or this chapter, the commission
15 may adjust the fees, charges, and rates paid to Medicaid providers
16 as necessary to achieve the objectives of [~~the~~] Medicaid [~~program~~]
17 in a manner consistent with the considerations described by
18 Subsection (d).

19 (f) In adopting rates for Medicaid [~~medical assistance~~]
20 payments under Subsection (b-1) [~~(b)(2)~~], the executive
21 commissioner may adopt reimbursement rates for appropriate nursing
22 services provided to recipients with certain health conditions if
23 those services are determined to provide a cost-effective
24 alternative to hospitalization. A physician must certify that the
25 nursing services are medically appropriate for the recipient for
26 those services to qualify for reimbursement under this subsection.

27 (g) In adopting rates for Medicaid [~~medical assistance~~]

1 payments under Subsection (b-1) [~~(b)(2)~~], the executive
2 commissioner may adopt cost-effective reimbursement rates for
3 group appointments with Medicaid [~~medical assistance~~] providers
4 for certain diseases and medical conditions specified by rules of
5 the executive commissioner.

6 SECTION 2.020. Sections [531.0211\(a\)](#) and (c), Government
7 Code, are amended to read as follows:

8 (a) In adopting rules to implement a managed care Medicaid
9 program, the executive commissioner [~~commission~~] shall establish
10 guidelines for, and require managed care organizations to provide,
11 education programs for providers and clients using a variety of
12 techniques and mediums.

13 (c) A client education program must present information in a
14 manner that is easy to understand. A program must include
15 information on:

16 (1) a client's rights and responsibilities under the
17 bill of rights and the bill of responsibilities prescribed by
18 Section [531.0212](#);

19 (2) how to access health care services;

20 (3) how to access complaint procedures and the
21 client's right to bypass the managed care organization's internal
22 complaint system and use the notice and appeal procedures otherwise
23 required by [~~the~~] Medicaid [~~program~~];

24 (4) Medicaid policies, procedures, eligibility
25 standards, and benefits;

26 (5) the policies and procedures of the managed care
27 organization; and

1 (6) the importance of prevention, early intervention,
2 and appropriate use of services.

3 SECTION 2.021. Sections 531.02111(a) and (b), Government
4 Code, are amended to read as follows:

5 (a) The commission shall prepare a biennial Medicaid
6 financial report covering each state agency that operates
7 [~~administers~~] any part of [~~the state~~] Medicaid [~~program~~] and each
8 component of [~~the~~] Medicaid [~~programs~~] operated [~~or administered~~]
9 by those agencies.

10 (b) The report must include:

11 (1) for each state agency described by Subsection (a):
12 (A) a description of each of the components of
13 Medicaid [~~programs administered or~~] operated by the agency; and
14 (B) an accounting of all funds related to [~~the~~
15 ~~state~~] Medicaid [~~program~~] received and disbursed by the agency
16 during the period covered by the report, including:

17 (i) the amount of any federal Medicaid
18 [~~medical assistance~~] funds allocated to the agency for the support
19 of each of the Medicaid components [~~programs~~] operated [~~or~~
20 ~~administered~~] by the agency;

21 (ii) the amount of any funds appropriated
22 by the legislature to the agency for each of those components
23 [~~programs~~]; and

24 (iii) the amount of Medicaid [~~medical~~
25 ~~assistance~~] payments and related expenditures made by or in
26 connection with each of those components [~~programs~~]; and

27 (2) for each Medicaid component [~~program~~] identified

1 in the report:

(A) the amount and source of funds or other revenue received by or made available to the agency for the component [program]; and

5 (B) the information required by Section
6 531.02112(b).

7 SECTION 2.022. Sections 531.02112(a) and (b), Government
8 Code, are amended to read as follows:

9 (a) The commission shall prepare a report, on a quarterly
10 basis, regarding the Medicaid expenditures of each state agency
11 that [administers or] operates a component of Medicaid [program].

12 (b) The report must identify each agency's expenditures by
13 Medicaid component [program] and must include for each component
14 [program]:

22 SECTION 2.023. Sections 531.02115(a) and (c), Government
23 Code, are amended to read as follows:

24 (a) A provider participating in [the] Medicaid or the child
25 health plan program, including a provider participating in the
26 network of a managed care organization that contracts with the
27 commission to provide services under [the] Medicaid or the child

1 health plan program, may not engage in any marketing activity,
2 including any dissemination of material or other attempt to
3 communicate, that:

4 (1) involves unsolicited personal contact, including
5 by door-to-door solicitation, solicitation at a child-care
6 facility or other type of facility, direct mail, or telephone, with
7 a Medicaid client or a parent whose child is enrolled in [the]
8 Medicaid or the child health plan program;

9 (2) is directed at the client or parent solely because
10 the client or the parent's child is receiving benefits under [the]
11 Medicaid or the child health plan program; and

12 (3) is intended to influence the client's or parent's
13 choice of provider.

14 (c) Nothing in this section prohibits:

15 (1) a provider participating in [the] Medicaid or the
16 child health plan program from:

17 (A) engaging in a marketing activity, including
18 any dissemination of material or other attempt to communicate, that
19 is intended to influence the choice of provider by a Medicaid client
20 or a parent whose child is enrolled in [the] Medicaid or the child
21 health plan program, if the marketing activity:

22 (i) is conducted at a community-sponsored
23 educational event, health fair, outreach activity, or other similar
24 community or nonprofit event in which the provider participates and
25 does not involve unsolicited personal contact or promotion of the
26 provider's practice; or

27 (ii) involves only the general

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1 dissemination of information, including by television, radio,
2 newspaper, or billboard advertisement, and does not involve
3 unsolicited personal contact;

10 (i) providing an appointment reminder;
11 (ii) distributing promotional health
12 materials;

25 SECTION 2.024. Sections 531.0212(a) and (c), Government
26 Code, are amended to read as follows:

27 (a) The executive commissioner [commission] by rule shall

1 adopt a bill of rights and a bill of responsibilities for each
2 person enrolled in [the] Medicaid [program].

3 (c) The bill of responsibilities must address a client's
4 responsibility to:

5 (1) learn and understand each right the client has
6 under [the] Medicaid [program];

7 (2) abide by the health plan and Medicaid policies and
8 procedures;

9 (3) share information relating to the client's health
10 status with the primary care provider and become fully informed
11 about service and treatment options; and

12 (4) actively participate in decisions relating to
13 service and treatment options, make personal choices, and take
14 action to maintain the client's health.

15 SECTION 2.025. Section 531.0213(d), Government Code, is
16 amended to read as follows:

17 (d) As a part of the support and information services
18 required by this section, the commission or nonprofit organization
19 shall:

20 (1) operate a statewide toll-free assistance
21 telephone number that includes TDD lines and assistance for persons
22 who speak Spanish;

23 (2) intervene promptly with the state Medicaid office,
24 managed care organizations and providers, [the Texas Department of
25 Health,] and any other appropriate entity on behalf of a person who
26 has an urgent need for medical services;

27 (3) assist a person who is experiencing barriers in

1 the Medicaid application and enrollment process and refer the
2 person for further assistance if appropriate;

3 (4) educate persons so that they:

4 (A) understand the concept of managed care;

5 (B) understand their rights under [~~the~~] Medicaid
6 [program], including grievance and appeal procedures; and

7 (C) are able to advocate for themselves;

8 (5) collect and maintain statistical information on a
9 regional basis regarding calls received by the assistance lines and
10 publish quarterly reports that:

11 (A) list the number of calls received by region;

12 (B) identify trends in delivery and access
13 problems;

14 (C) identify recurring barriers in the Medicaid
15 system; and

16 (D) indicate other problems identified with
17 Medicaid managed care; and

18 (6) assist the state Medicaid office and[~~the~~] managed
19 care organizations and providers[~~and the Texas Department of~~
20 ~~Health~~] in identifying and correcting problems, including site
21 visits to affected regions if necessary.

22 SECTION 2.026. Sections 531.0214(a), (c), and (e),
23 Government Code, are amended to read as follows:

24 (a) The commission and each health and human services agency
25 that administers a part of [~~the state~~] Medicaid [program] shall
26 jointly develop a system to coordinate and integrate state Medicaid
27 databases to:

1 (1) facilitate the comprehensive analysis of Medicaid
2 data; and

3 (2) detect fraud perpetrated by a program provider or
4 client.

5 (c) On the request of the executive commissioner, a state
6 agency that administers any part of [~~the state~~] Medicaid [~~program~~]
7 shall assist the commission in developing the system required by
8 this section.

9 (e) The commission shall ensure that the database system is
10 used each month to match [~~bureau of~~] vital statistics unit death
11 records with a list of persons eligible for Medicaid [~~medical~~
12 ~~assistance under Chapter 32, Human Resources Code~~], and that each
13 person who is deceased is promptly removed from the list of persons
14 eligible for Medicaid [~~medical assistance~~].

15 SECTION 2.027. Section 531.02141(a), Government Code, is
16 amended to read as follows:

17 (a) The commission shall make every effort to improve data
18 analysis and integrate available information associated with [~~the~~]
19 Medicaid [~~program~~]. The commission shall use the decision support
20 system in the commission's center for strategic decision support
21 for this purpose and shall modify or redesign the system to allow
22 for the data collected by [~~the~~] Medicaid [~~program~~] to be used more
23 systematically and effectively for Medicaid [~~program~~] evaluation
24 and policy development. The commission shall develop or redesign
25 the system as necessary to ensure that the system:

26 (1) incorporates program enrollment, utilization, and
27 provider data that are currently collected;

1 (2) allows data manipulation and quick analysis to
2 address a large variety of questions concerning enrollment and
3 utilization patterns and trends within the program;

4 (3) is able to obtain consistent and accurate answers
5 to questions;

6 (4) allows for analysis of multiple issues within the
7 program to determine whether any programmatic or policy issues
8 overlap or are in conflict;

9 (5) includes predefined data reports on utilization of
10 high-cost services that allow program management to analyze and
11 determine the reasons for an increase or decrease in utilization
12 and immediately proceed with policy changes, if appropriate;

13 (6) includes any encounter data with respect to
14 recipients that a managed care organization that contracts with the
15 commission under Chapter 533 receives from a health care provider
16 under the organization's provider network; and

17 (7) links Medicaid and non-Medicaid data sets,
18 including data sets related to [the] Medicaid [program], the
19 Temporary Assistance for Needy Families program, the Special
20 Supplemental Nutrition Program for Women, Infants, and Children,
21 vital statistics, and other public health programs.

22 SECTION 2.028. Section [531.0215](#), Government Code, is
23 amended to read as follows:

24 Sec. 531.0215. COMPIILATION OF STATISTICS RELATING TO FRAUD.
25 The commission and each health and human services agency that
26 administers a part of [the state] Medicaid [program] shall maintain
27 statistics on the number, type, and disposition of fraudulent

1 claims for benefits submitted under the part of the program the
2 agency administers.

3 SECTION 2.029. Sections [531.0216\(a\)](#), (d), and (f),
4 Government Code, are amended to read as follows:

5 (a) The executive commissioner [~~commission~~] by rule shall
6 develop and implement a system to reimburse providers of services
7 under [~~the state~~] Medicaid [~~program~~] for services performed using
8 telemedicine medical services or telehealth services.

9 (d) Subject to Section [153.004](#), Occupations Code, the
10 executive commissioner [~~commission~~] may adopt rules as necessary to
11 implement this section. In the rules adopted under this section,
12 the executive commissioner [~~commission~~] shall:

13 (1) refer to the site where the patient is physically
14 located as the patient site; and

15 (2) refer to the site where the physician or health
16 professional providing the telemedicine medical service or
17 telehealth service is physically located as the distant site.

18 (f) Not later than December 1 of each even-numbered year,
19 the commission shall report to the speaker of the house of
20 representatives and the lieutenant governor on the effects of
21 telemedicine medical services, telehealth services, and home
22 telemonitoring services on [~~the~~] Medicaid [~~program~~] in the state,
23 including the number of physicians, health professionals, and
24 licensed health care facilities using telemedicine medical
25 services, telehealth services, or home telemonitoring services,
26 the geographic and demographic disposition of the physicians and
27 health professionals, the number of patients receiving

1 telemedicine medical services, telehealth services, and home
2 telemonitoring services, the types of services being provided, and
3 the cost of utilization of telemedicine medical services,
4 telehealth services, and home telemonitoring services to Medicaid
5 [~~the program~~].

6 SECTION 2.030. Section 531.02161, Government Code, is
7 amended to read as follows:

8 Sec. 531.02161. TELEMEDICINE, TELEHEALTH, AND HOME
9 TELEMONITORING TECHNOLOGY STANDARDS. (b) The executive
10 commissioner [~~commission and the Telecommunications Infrastructure~~
11 ~~Fund Board~~] by [~~joint~~] rule shall establish and adopt minimum
12 standards for an operating system used in the provision of
13 telemedicine medical services, telehealth services, or home
14 telemonitoring services by a health care facility participating in
15 [~~the state~~] Medicaid [~~program~~], including standards for electronic
16 transmission, software, and hardware.

17 (c) In developing standards under this section, the
18 executive commissioner [~~commission and the Telecommunications~~
19 ~~Infrastructure Fund Board~~] shall address:

- 20 (1) authentication and authorization of users;
- 21 (2) authentication of the origin of information;
- 22 (3) the prevention of unauthorized access to the
23 system or information;
- 24 (4) system security, including the integrity of
25 information that is collected, program integrity, and system
26 integrity;
- 27 (5) maintenance of documentation about system and

1 information usage;

2 (6) information storage, maintenance, and
3 transmission; and

4 (7) synchronization and verification of patient
5 profile data.

6 SECTION 2.031. Section 531.02162(b), Government Code, is
7 amended to read as follows:

8 (b) The executive commissioner [commission] by rule shall
9 establish policies that permit reimbursement under [~~the state~~]
10 Medicaid and the child [~~children's~~] health plan [~~insurance~~] program
11 for services provided through telemedicine medical services and
12 telehealth services to children with special health care needs.

13 SECTION 2.032. Sections 531.02163(a), (c), and (d),
14 Government Code, are amended to read as follows:

15 (a) In this section, "health professional" means an
16 individual who:

17 (1) is licensed or certified in this state to perform
18 health care services; and

19 (2) is not a physician, registered nurse, advanced
20 practice registered nurse, or physician assistant.

21 (c) Notwithstanding Section 531.0217, the commission may
22 provide reimbursement under [~~the state~~] Medicaid [~~program~~] for a
23 telemedicine medical service initiated by a trained health
24 professional who complies with the minimum standards adopted under
25 this section.

26 (d) The commission shall provide reimbursement under [~~the~~
27 ~~state~~] Medicaid [~~program~~] to a physician for overseeing a

1 telemedicine consultation at a telemedicine distant site if the
2 telepresenter at the patient site is another physician or is an
3 advanced practice registered nurse, registered nurse, or physician
4 assistant acting under physician delegation and supervision
5 throughout the consultation.

6 SECTION 2.033. Section [531.02164](#), Government Code, is
7 amended to read as follows:

8 Sec. 531.02164. MEDICAID SERVICES PROVIDED THROUGH HOME
9 TELEMONITORING SERVICES. (a) In this section:

10 (1) "Home and community support services [~~health~~]
11 agency" means a person [~~facility~~] licensed under Chapter 142,
12 Health and Safety Code, to provide home health, hospice, or
13 personal assistance services as defined by Section [142.001](#), Health
14 and Safety Code.

15 (2) "Hospital" means a hospital licensed under Chapter
16 241, Health and Safety Code.

17 (b) If the commission determines that establishing a
18 statewide program that permits reimbursement under [~~the state~~]
19 Medicaid [~~program~~] for home telemonitoring services would be
20 cost-effective and feasible, the executive commissioner by rule
21 shall establish the program as provided under this section.

22 (c) The program required under this section must:

23 (1) provide that home telemonitoring services are
24 available only to persons who:

25 (A) are diagnosed with one or more of the
26 following conditions:

27 (i) pregnancy;

(ii) diabetes;

(iii) heart disease;

(iv) cancer;

(v) chronic obstructive pulmonary disease;

(vi) hypertension;

(vii) congestive heart failure;

(viii) mental illness or serious emotional disturbance;

(ix) asthma;

(x) myocardial infarction; or

(xi) stroke; and

(B) exhibit two or more of the following risk factors:

(i) two or more hospitalizations in the prior 12-month period;

(ii) frequent or recurrent emergency room admissions;

(iii) a documented history of poor adherence to ordered medication regimens;

(iv) a documented history of falls in the prior six-month period;

(v) limited or absent informal support systems;

(vi) living alone or being home alone for extended periods of time; and

(vii) a documented history of care access challenges;

1 (2) ensure that clinical information gathered by a
2 home and community support services [~~health~~] agency or hospital
3 while providing home telemonitoring services is shared with the
4 patient's physician; and

5 (3) ensure that the program does not duplicate disease
6 management program services provided under Section [32.057](#), Human
7 Resources Code.

8 (d) If, after implementation, the commission determines
9 that the program established under this section is not
10 cost-effective, the commission may discontinue the program and stop
11 providing reimbursement under [~~the state~~] Medicaid [~~program~~] for
12 home telemonitoring services, notwithstanding Section [531.0216](#) or
13 any other law.

14 (e) The commission shall determine whether the provision of
15 home telemonitoring services to persons who are eligible to receive
16 benefits under both [~~the~~] Medicaid and the Medicare program
17 [~~programs~~] achieves cost savings for the Medicare program.

18 SECTION 2.034. Sections [531.0217](#)(b), (c-1), (c-3), (d),
19 (h), (i), (i-1), and (j), Government Code, are amended to read as
20 follows:

21 (b) The executive commissioner [~~commission~~] by rule shall
22 require each health and human services agency that administers a
23 part of [~~the~~] Medicaid [~~program~~] to provide Medicaid reimbursement
24 for a telemedicine medical service initiated or provided by a
25 physician.

26 (c-1) Notwithstanding Subsection (b) or (c), the commission
27 shall provide for reimbursement under [~~the~~] Medicaid [~~program~~] for

1 an office visit provided through telemedicine by a physician who is
2 assessing and evaluating the patient from a distant site if:

3 (1) a health professional acting under the delegation
4 and supervision of that physician is present with the patient at the
5 time of the visit; and

6 (2) the medical condition, illness, or injury for
7 which the patient is receiving the service is not likely, within a
8 reasonable degree of medical certainty, to undergo material
9 deterioration within the 30-day period following the date of the
10 visit.

11 (c-3) In adopting rules developed under Subsection (c-2),
12 the executive commissioner [commission] shall confer with the
13 Centers for Medicare and Medicaid Services on the legality of
14 allocating reimbursement or establishing a facility fee as
15 described in that subsection. Rules adopted by the executive
16 commissioner [commission] under this subsection or Subsection
17 (c-2) must reflect a policy to build capacity in medically
18 underserved areas of this state.

19 (d) The commission shall require reimbursement for a
20 telemedicine medical service at the same rate as [~~the~~] Medicaid
21 [~~program~~] reimburses for a comparable in-person medical service. A
22 request for reimbursement may not be denied solely because an
23 in-person medical service between a physician and a patient did not
24 occur.

25 (h) The commission in consultation with the Texas Medical
26 Board [~~State Board of Medical Examiners~~] shall monitor and regulate
27 the use of telemedicine medical services to ensure compliance with

1 this section. In addition to any other method of enforcement, the
2 commission may use a corrective action plan to ensure compliance
3 with this section.

4 (i) The Texas Medical Board [State Board of Medical
5 Examiners], in consultation with the commission, as appropriate,
6 may adopt rules as necessary to:

7 (1) ensure that appropriate care, including quality of
8 care, is provided to patients who receive telemedicine medical
9 services;

10 (2) prevent abuse and fraud through the use of
11 telemedicine medical services, including rules relating to filing
12 of claims and records required to be maintained in connection with
13 telemedicine; and

14 (3) define those situations when a face-to-face
15 consultation with a physician is required after a telemedicine
16 medical service.

17 (i-1) The Texas Medical Board [State Board of Medical
18 Examiners], in consultation with the commission and the Department
19 of State Health Services, as appropriate, shall adopt rules to
20 establish supervisory requirements for a physician delegating a
21 service to be performed by an individual who is not a physician,
22 registered nurse, advanced practice registered nurse, or physician
23 assistant, including a health professional who is authorized to be
24 a telepresenter under Section 531.02163. This section may not be
25 construed as authorizing the Texas Medical Board [State Board of
26 Medical Examiners] to regulate another licensed or certified health
27 care provider.

1 (j) The executive commissioner shall establish an advisory
2 committee to coordinate state telemedicine efforts and assist the
3 commission in:

4 (1) evaluating policies for telemedicine medical
5 services under Section 531.0216 and this section;

6 (2) monitoring the types of programs receiving
7 reimbursement under this section; and

8 (3) coordinating the activities of state agencies
9 interested in the use of telemedicine medical services.

10 SECTION 2.035. Sections 531.02172(b) and (c), Government
11 Code, are amended to read as follows:

12 (b) The advisory committee must include:

13 (1) representatives of health and human services
14 agencies and other state agencies concerned with the use of
15 telemedical and telehealth consultations and home telemonitoring
16 services in [the] Medicaid [program] and the state child health
17 plan program, including representatives of:

18 (A) the commission;

19 (B) the Department of State Health Services;

20 (C) the Office [~~Texas Department~~] of Rural
21 Affairs;

22 (D) the Texas Department of Insurance;

23 (E) the Texas Medical Board;

24 (F) the Texas Board of Nursing; and

25 (G) the Texas State Board of Pharmacy;

26 (2) representatives of health science centers in this
27 state;

1 (3) experts on telemedicine, telemedical
2 consultation, and telemedicine medical services or telehealth
3 services;

4 (4) representatives of consumers of health services
5 provided through telemedical consultations and telemedicine
6 medical services or telehealth services; and

7 (5) representatives of providers of telemedicine
8 medical services, telehealth services, and home telemonitoring
9 services.

10 (c) A member of the advisory committee serves at the will of
11 the executive commissioner.

12 SECTION 2.036. Section 531.02173, Government Code, is
13 amended to read as follows:

14 Sec. 531.02173. ALIGNMENT OF MEDICAID TELEMEDICINE
15 REIMBURSEMENT POLICIES WITH MEDICARE REIMBURSEMENT POLICIES. (a)
16 The commission shall periodically review policies regarding
17 reimbursement under [the] Medicaid [program] for telemedicine
18 medical services to identify variations between permissible
19 reimbursement under that program and reimbursement available to
20 providers under the Medicare program.

21 (b) To the extent practicable, and notwithstanding any
22 other state law, after [conducting] a review conducted under
23 Subsection (a) the executive commissioner [commission] may modify
24 rules and procedures applicable to reimbursement under [the]
25 Medicaid [program] for telemedicine medical services as necessary
26 to provide for a reimbursement system that is comparable to the
27 reimbursement system for those services under the Medicare program.

1 (c) The commission and executive commissioner shall perform
2 the [its] duties under this section with assistance from the
3 telemedicine and telehealth advisory committee established under
4 Section 531.02172.

5 SECTION 2.037. Section 531.02174, Government Code, is
6 amended to read as follows:

7 Sec. 531.02174. ADDITIONAL AUTHORITY REGARDING
8 TELEMEDICINE MEDICAL SERVICES. (a) In addition to the authority
9 granted by other law regarding telemedicine medical services, the
10 executive commissioner [~~commission~~] may review rules and
11 procedures applicable to reimbursement of telemedicine medical
12 services provided through any government-funded health program
13 subject to the commission's oversight.

14 (b) The executive commissioner [~~commission~~] may modify
15 rules and procedures described by Subsection (a) as necessary to
16 ensure that reimbursement for telemedicine medical services is
17 provided in a cost-effective manner and only in circumstances in
18 which the provision of those services is clinically effective.

19 (c) This section does not affect the commission's authority
20 or duties under other law regarding reimbursement of telemedicine
21 medical services under [~~the~~] Medicaid [~~program~~].

22 SECTION 2.038. Sections 531.02175(b) and (c), Government
23 Code, are amended to read as follows:

24 (b) Subject to the requirements of this subsection, the
25 executive commissioner by rule may require the commission and each
26 health and human services agency that administers a part of [~~the~~]
27 Medicaid [~~program~~] to provide Medicaid reimbursement for a medical

1 consultation that is provided by a physician or other health care
2 professional using the Internet as a cost-effective alternative to
3 an in-person consultation. The executive commissioner may require
4 the commission or a health and human services agency to provide the
5 reimbursement described by this subsection only if the Centers for
6 Medicare and Medicaid Services develop an appropriate Current
7 Procedural Terminology code for medical services provided using the
8 Internet.

9 (c) The executive commissioner may develop and implement a
10 pilot program in one or more sites chosen by the executive
11 commissioner under which Medicaid reimbursements are paid for
12 medical consultations provided by physicians or other health care
13 professionals using the Internet. The pilot program must be
14 designed to test whether an Internet medical consultation is a
15 cost-effective alternative to an in-person consultation under
16 [the] Medicaid [program]. The executive commissioner may modify
17 the pilot program as necessary throughout its implementation to
18 maximize the potential cost-effectiveness of Internet medical
19 consultations. If the executive commissioner determines from the
20 pilot program that Internet medical consultations are
21 cost-effective, the executive commissioner may expand the pilot
22 program to additional sites or may implement Medicaid
23 reimbursements for Internet medical consultations statewide.

24 SECTION 2.039. Section 531.02176, Government Code, is
25 amended to read as follows:

26 Sec. 531.02176. EXPIRATION OF MEDICAID REIMBURSEMENT FOR
27 PROVISION OF HOME TELEMONITORING SERVICES. Notwithstanding any

1 other law, the commission may not reimburse providers under [the]
2 Medicaid [program] for the provision of home telemonitoring
3 services on or after September 1, 2015.

4 SECTION 2.040. Section 531.0218(b), Government Code, is
5 amended to read as follows:

6 (b) Subsection (a) does not apply to functions of a Section
7 1915(c) waiver program that is operated in conjunction with a
8 federally funded [Medicaid] program of the state under Medicaid
9 that is authorized under Section 1915(b) of the federal Social
10 Security Act (42 U.S.C. Section 1396n(b)).

11 SECTION 2.041. Sections 531.022(a), (b), (d), and (e),
12 Government Code, are amended to read as follows:

13 (a) The executive commissioner shall develop a coordinated,
14 six-year strategic plan for health and human services in this state
15 and shall update the plan biennially.

16 (b) The executive commissioner shall submit each biennial
17 update of the plan to the governor, the lieutenant governor, and the
18 speaker of the house of representatives not later than October 1 of
19 each even-numbered year.

20 (d) In developing a plan and plan updates under this
21 section, the executive commissioner shall consider:

22 (1) existing strategic plans of health and human
23 services agencies;

24 (2) health and human services priorities and plans
25 submitted by governmental entities under Subsection (e);

26 (3) facilitation of pending reorganizations or
27 consolidations of health and human services agencies and programs;

1 (4) public comment, including comment documented
2 through public hearings conducted under Section [531.036](#); and
3 (5) budgetary issues, including projected agency
4 needs and projected availability of funds.

5 (e) The executive commissioner shall identify the
6 governmental entities that coordinate the delivery of health and
7 human services in regions, counties, and municipalities and request
8 that each entity:

9 (1) identify the health and human services priorities
10 in the entity's jurisdiction and the most effective ways to deliver
11 and coordinate services in that jurisdiction;

12 (2) develop a coordinated plan for the delivery of
13 health and human services in the jurisdiction, including transition
14 services that prepare special education students for adulthood; and

15 (3) make the information requested under Subdivisions
16 (1) and (2) available to the commission.

17 SECTION 2.042. Sections [531.0223\(b\)](#), (e), and (o),
18 Government Code, are amended to read as follows:

19 (b) The executive commissioner shall appoint an advisory
20 committee to develop a strategic plan for eliminating the
21 disparities between the Texas-Mexico border region and other areas
22 of the state in:

23 (1) capitation rates under Medicaid managed care and
24 the child health plan program for services provided to persons
25 younger than 19 years of age;

26 (2) fee-for-service per capita expenditures under
27 [~~the~~] Medicaid [~~program~~] and the child health plan program for

1 inpatient and outpatient hospital services for services provided to
2 persons younger than 19 years of age; and

3 (3) total professional services expenditures per
4 Medicaid recipient younger than 19 years of age or per child
5 enrolled in the child health plan program.

6 (e) The executive commissioner shall appoint nine members
7 to the advisory committee in a manner that ensures that the
8 committee:

9 (1) represents the spectrum of geographic areas
10 included in the Texas-Mexico border region;

11 (2) includes persons who are knowledgeable regarding
12 [the] Medicaid [program], including Medicaid managed care, and the
13 child health plan program; and

14 (3) represents the interests of physicians,
15 hospitals, patients, managed care organizations, state agencies
16 involved in the management and delivery of medical resources of any
17 kind, affected communities, and other areas of the state.

18 (o) The commission shall:

19 (1) measure changes occurring from September 1, 2002,
20 to August 31, 2014, in the number of health care providers
21 participating in [the] Medicaid [program] or the child health plan
22 program in the Texas-Mexico border region and resulting effects on
23 consumer access to health care and consumer utilization;

24 (2) determine:

25 (A) the effects, if any, of the changes in rates
26 and expenditures required by Subsection (k); and

27 (B) if funding available and used for changes in

1 rates and expenditures was sufficient to produce measurable
2 effects;

3 (3) make a recommendation regarding whether Medicaid
4 rate increases should be expanded to include Medicaid services
5 provided to adults in the Texas-Mexico border region; and

6 (4) not later than December 1, 2014, submit a report to
7 the legislature.

8 SECTION 2.043. Section [531.0224](#), Government Code, is
9 amended to read as follows:

10 Sec. 531.0224. PLANNING AND POLICY DIRECTION OF TEMPORARY
11 ASSISTANCE FOR NEEDY FAMILIES PROGRAM. (a) The commission shall:

12 (1) plan and direct the financial assistance program
13 under Chapter 31, Human Resources Code, including the procurement,
14 management, and monitoring of contracts necessary to implement the
15 program; and

16 (2) ~~[adopt rules and standards governing the financial~~
17 ~~assistance program under Chapter 31, Human Resources Code; and~~

18 [+] establish requirements for and define the scope
19 of the ongoing evaluation of the financial assistance program under
20 Chapter 31, Human Resources Code.

21 (b) The executive commissioner shall adopt rules and
22 standards governing the financial assistance program under Chapter
23 31, Human Resources Code.

24 SECTION 2.044. Section [531.0226\(a\)](#), Government Code, is
25 amended to read as follows:

26 (a) If feasible and cost-effective, the commission may
27 apply for a waiver from the federal Centers for Medicare and

1 Medicaid Services or another appropriate federal agency to more
2 efficiently leverage the use of state and local funds in order to
3 maximize the receipt of federal Medicaid matching funds by
4 providing benefits under [the] Medicaid [program] to individuals
5 who:

6 (1) meet established income and other eligibility
7 criteria; and

8 (2) are eligible to receive services through the
9 county for chronic health conditions.

10 SECTION 2.045. Sections 531.0235(a) and (c), Government
11 Code, are amended to read as follows:

12 (a) The executive commissioner shall direct and require the
13 Texas [Planning] Council for Developmental Disabilities and the
14 Office for the Prevention of Developmental Disabilities to prepare
15 a joint biennial report on the state of services to persons with
16 disabilities in this state. The Texas [Planning] Council for
17 Developmental Disabilities will serve as the lead agency in
18 convening working meetings and in coordinating and completing the
19 report. Not later than December 1 of each even-numbered year, the
20 agencies shall submit the report to the executive commissioner,
21 governor, lieutenant governor, and speaker of the house of
22 representatives.

23 (c) The commission[, Texas Department of Human Services,]
24 and other health and human services agencies shall cooperate with
25 the agencies required to prepare the report under Subsection (a).

26 SECTION 2.046. Section 531.024(a-1), Government Code, is
27 amended to read as follows:

1 (a-1) To the extent permitted under applicable federal law
2 and notwithstanding any provision of Chapter 191 or 192, Health and
3 Safety Code, the commission and other health and human services
4 agencies shall share data to facilitate patient care coordination,
5 quality improvement, and cost savings in [the] Medicaid [~~program~~],
6 the child health plan program, and other health and human services
7 programs funded using money appropriated from the general revenue
8 fund.

9 SECTION 2.047. Section [531.0241](#), Government Code, is
10 amended to read as follows:

11 Sec. 531.0241. STREAMLINING DELIVERY OF SERVICES. To
12 integrate and streamline service delivery and facilitate access to
13 services, the executive commissioner may request a health and human
14 services agency to take a specific action and may recommend the
15 manner in which the streamlining is to be accomplished, including
16 requesting each health and human services agency to:

17 (1) simplify agency procedures;
18 (2) automate agency procedures;
19 (3) coordinate service planning and management tasks
20 between and among health and human services agencies;
21 (4) reallocate staff resources;
22 (5) [~~adopt rules,~~
23 [~~amend,~~] waive[, or repeal] existing rules; or
24 (6) [~~7~~] take other necessary actions.

25 SECTION 2.048. Section [531.02411](#), Government Code, is
26 amended to read as follows:

27 Sec. 531.02411. STREAMLINING ADMINISTRATIVE PROCESSES.

1 The commission shall make every effort using the commission's
2 existing resources to reduce the paperwork and other administrative
3 burdens placed on Medicaid recipients and providers and other
4 participants in [the] Medicaid [program] and shall use technology
5 and efficient business practices to decrease those burdens. In
6 addition, the commission shall make every effort to improve the
7 business practices associated with the administration of [the]
8 Medicaid [program] by any method the commission determines is
9 cost-effective, including:

10 (1) expanding the utilization of the electronic claims
11 payment system;

12 (2) developing an Internet portal system for prior
13 authorization requests;

14 (3) encouraging Medicaid providers to submit their
15 program participation applications electronically;

16 (4) ensuring that the Medicaid provider application is
17 easy to locate on the Internet so that providers may conveniently
18 apply to the program;

19 (5) working with federal partners to take advantage of
20 every opportunity to maximize additional federal funding for
21 technology in [the] Medicaid [program]; and

22 (6) encouraging the increased use of medical
23 technology by providers, including increasing their use of:

24 (A) electronic communications between patients
25 and their physicians or other health care providers;

26 (B) electronic prescribing tools that provide
27 up-to-date payer formulary information at the time a physician or

1 other health care practitioner writes a prescription and that
2 support the electronic transmission of a prescription;

3 (C) ambulatory computerized order entry systems
4 that facilitate physician and other health care practitioner orders
5 at the point of care for medications and laboratory and
6 radiological tests;

7 (D) inpatient computerized order entry systems
8 to reduce errors, improve health care quality, and lower costs in a
9 hospital setting;

10 (E) regional data-sharing to coordinate patient
11 care across a community for patients who are treated by multiple
12 providers; and

13 (F) electronic intensive care unit technology to
14 allow physicians to fully monitor hospital patients remotely.

15 SECTION 2.049. Section 531.024115, Government Code, is
16 amended to read as follows:

17 Sec. 531.024115. SERVICE DELIVERY AREA
18 ALIGNMENT. Notwithstanding Section 533.0025(e) or any other law,
19 to the extent possible, the commission shall align service delivery
20 areas under [the] Medicaid and the child health plan program
21 [programs].

22 SECTION 2.050. Section 531.02412, Government Code, is
23 amended to read as follows:

24 Sec. 531.02412. SERVICE DELIVERY AUDIT MECHANISMS. (a)
25 The commission shall make every effort to ensure the integrity of
26 [the] Medicaid [program]. To ensure that integrity, the commission
27 shall:

1 (1) perform risk assessments of every element of the
2 [Medicaid] program and audit those elements of the program that are
3 determined to present the greatest risks;

4 (2) ensure that sufficient oversight is in place for
5 the Medicaid medical transportation program;

6 (3) ensure that a quality review assessment of the
7 Medicaid medical transportation program occurs; and

8 (4) evaluate [the] Medicaid [program] with respect to
9 use of the metrics developed through the Texas Health Steps
10 performance improvement plan to guide changes and improvements to
11 the program.

12 SECTION 2.051. Sections 531.02413(a-1) and (b), Government
13 Code, are amended to read as follows:

14 (a-1) If cost-effective and feasible, the commission shall
15 contract to expand the Medicaid billing coordination system
16 described by Subsection (a) to process claims for all other health
17 care services provided through [the] Medicaid [program] in the
18 manner claims for acute care services are processed by the system
19 under Subsection (a). This subsection does not apply to claims for
20 health care services provided through [the] Medicaid [program] if,
21 before September 1, 2009, those claims were being processed by an
22 alternative billing coordination system.

23 (b) If cost-effective, the executive commissioner shall
24 adopt rules for the purpose of enabling the system described by
25 Subsection (a) to identify an entity with primary responsibility
26 for paying a claim that is processed by the system under Subsection
27 (a) and establish reporting requirements for any entity that may

1 have a contractual responsibility to pay for the types of services
2 that are provided under [the] Medicaid [program] and the claims for
3 which are processed by the system under Subsection (a).

4 SECTION 2.052. Section 531.024131(a), Government Code, is
5 amended to read as follows:

6 (a) If cost-effective, the commission may:

7 (1) contract to expand all or part of the billing
8 coordination system established under Section 531.02413 to process
9 claims for services provided through other benefits programs
10 administered by the commission or a health and human services
11 agency;

12 (2) expand any other billing coordination tools and
13 resources used to process claims for health care services provided
14 through [the] Medicaid [program] to process claims for services
15 provided through other benefits programs administered by the
16 commission or a health and human services agency; and

17 (3) expand the scope of persons about whom information
18 is collected under Section 32.042, Human Resources Code, to include
19 recipients of services provided through other benefits programs
20 administered by the commission or a health and human services
21 agency.

22 SECTION 2.053. Section 531.02414(a)(1), Government Code,
23 is amended to read as follows:

24 (1) "Medical transportation program" means the
25 program that provides nonemergency transportation services to and
26 from covered health care services, based on medical necessity, to
27 recipients under [the] Medicaid [program], the children with

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1 special health care needs program, and the transportation for
2 indigent cancer patients program, who have no other means of
3 transportation.

4 SECTION 2.054. The heading to Section [531.024161](#),
5 Government Code, is amended to read as follows:

6 Sec. 531.024161. REIMBURSEMENT CLAIMS FOR CERTAIN MEDICAID
7 OR CHILD HEALTH PLAN [~~CHIP~~] SERVICES INVOLVING SUPERVISED
8 PROVIDERS.

9 SECTION 2.055. Section [531.024161\(a\)](#), Government Code, is
10 amended to read as follows:

11 (a) If a provider, including a nurse practitioner or
12 physician assistant, under [~~the~~] Medicaid or the child health plan
13 program provides a referral for or orders health care services for a
14 recipient or enrollee, as applicable, at the direction or under the
15 supervision of another provider, and the referral or order is based
16 on the supervised provider's evaluation of the recipient or
17 enrollee, the names and associated national provider identifier
18 numbers of the supervised provider and the supervising provider
19 must be included on any claim for reimbursement submitted by a
20 provider based on the referral or order. For purposes of this
21 section, "national provider identifier" means the national
22 provider identifier required under Section 1128J(e), Social
23 Security Act (42 U.S.C. Section 1320a-7k(e)).

24 SECTION 2.056. Section [531.02418](#), Government Code, is
25 amended to read as follows:

26 Sec. 531.02418. MEDICAID AND CHILD HEALTH PLAN PROGRAM
27 ELIGIBILITY DETERMINATIONS FOR CERTAIN INDIVIDUALS. (a) The

1 commission shall enter into a memorandum of understanding with the
2 Texas Juvenile Justice Department [~~Youth Commission~~] to ensure that
3 each individual who is committed, placed, or detained under Title
4 3, Family Code, is assessed by the commission for eligibility for
5 Medicaid [~~the medical assistance program under Chapter 32, Human~~
6 ~~Resources Code,~~] and the child health plan program before that
7 individual's release from commitment.[

8 [(b) ~~The commission shall enter into a memorandum of~~
9 ~~understanding with the Texas Juvenile Probation Commission to~~
10 ~~ensure that each individual who is placed or detained under Title 3,~~
11 ~~Family Code, is assessed by the commission for eligibility for the~~
12 ~~medical assistance program under Chapter 32, Human Resources Code,~~
13 ~~and the child health plan program before the individual's release~~
14 ~~from]~~ placement, or detention. Local juvenile probation
15 departments are subject to the requirements of the memorandum.

16 (c) The [~~Each~~] memorandum of understanding entered into as
17 required by this section must specify:

18 (1) the information that must be provided to the
19 commission;

20 (2) the process by which and time frame within which
21 the information must be provided; and

22 (3) the roles and responsibilities of all parties to
23 the memorandum, which must include a requirement that the
24 commission pursue the actions needed to complete eligibility
25 applications as necessary.

26 (d) The [~~Each~~] memorandum of understanding required by
27 Subsection (a) [~~or (b)~~] must be tailored to achieve the goal of

1 ensuring that an individual described by Subsection (a) [or (b)]
2 who is determined eligible by the commission for coverage under
3 Medicaid [~~the medical assistance program under Chapter 32, Human~~
4 ~~Resources Code,~~] or the child health plan program[~~T~~] is enrolled in
5 the program for which the individual is eligible and may begin
6 receiving services through the program as soon as possible after
7 the eligibility determination is made and, if possible, to achieve
8 the goal of ensuring that the individual may begin receiving those
9 services on the date of the individual's release from placement,
10 detention, or commitment.

11 (e) The executive commissioner may adopt rules as necessary
12 to implement this section.

13 SECTION 2.057. Section 531.024181(a), Government Code, is
14 amended to read as follows:

15 (a) This section applies only with respect to the following
16 benefits programs:

17 (1) the child health plan program under Chapter 62,
18 Health and Safety Code;

19 (2) the financial assistance program under Chapter 31,
20 Human Resources Code;

21 (3) Medicaid [~~the medical assistance program under~~
22 ~~Chapter 32, Human Resources Code~~], and

23 (4) the supplemental nutrition [~~nutritional~~]
24 assistance program under Chapter 33, Human Resources Code.

25 SECTION 2.058. Section 531.024182(b), Government Code, is
26 amended to read as follows:

27 (b) If, at the time of application for benefits, a person

1 stated that the person is a sponsored alien, the commission may, to
2 the extent allowed by federal law, verify information relating to
3 the sponsorship, using an automated system or systems where
4 available, after the person is determined eligible for and begins
5 receiving benefits under any of the following benefits programs:

6 (1) the child health plan program under Chapter 62,
7 Health and Safety Code;

8 (2) the financial assistance program under Chapter 31,
9 Human Resources Code;

10 (3) Medicaid [~~the medical assistance program under~~
11 ~~Chapter 32, Human Resources Code~~]; or

12 (4) the supplemental nutrition [~~nutritional~~]
13 assistance program under Chapter 33, Human Resources Code.

14 SECTION 2.059. Sections 531.0244(c) and (g), Government
15 Code, are amended to read as follows:

16 (c) For purposes of developing the strategies required by
17 Subsection (b)(4), a person with a mental illness who is admitted to
18 a facility of the ~~Texas~~ Department of State Health Services
19 [~~Mental Health and Mental Retardation~~] for inpatient mental health
20 services three or more times during a 180-day period is presumed to
21 be in imminent risk of requiring placement in an institution. The
22 strategies must be developed in a manner that presumes the person's
23 eligibility for and the appropriateness of intensive
24 community-based services and support.

25 (g) Not later than December 1 of each even-numbered year,
26 the executive commissioner shall submit to the governor and the
27 legislature a report on the status of the implementation of the plan

1 required by Subsection (a). The report must include
2 recommendations on any statutory or other action necessary to
3 implement the plan.

4 SECTION 2.060. Sections 531.02441(a), (b), (c), (d), (e),
5 (g), and (i), Government Code, are amended to read as follows:

6 (a) The executive commissioner shall establish an
7 interagency task force to assist the commission and appropriate
8 health and human services agencies in developing a comprehensive,
9 effectively working plan to ensure appropriate care settings for
10 persons with disabilities.

11 (b) The executive commissioner shall determine the number
12 of members of the task force. The executive commissioner shall
13 appoint as members of the task force:

14 (1) representatives of appropriate health and human
15 services agencies, including the [Texas] Department of Aging and
16 Disability [Human] Services and the [Texas] Department of State
17 Health Services [~~Mental Health and Mental Retardation~~];

18 (2) representatives of related work groups, including
19 representatives of the work group [~~groups~~] established under
20 Section [~~Sections 22.034 and~~] 22.035, Human Resources Code;

21 (3) representatives of consumer and family advocacy
22 groups; and

23 (4) representatives of service providers for persons
24 with disabilities.

25 (c) The executive commissioner shall designate a member of
26 the task force to serve as presiding officer. The members of the
27 task force shall elect any other necessary officers.

1 (d) The task force shall meet at the call of the executive
2 commissioner.

3 (e) A member of the task force serves at the will of the
4 executive commissioner.

5 (g) The task force shall study and make recommendations to
6 the commission on[~~-~~

7 [(1)] developing the comprehensive, effectively
8 working plan required by Section 531.0244(a) to ensure appropriate
9 care settings for persons with disabilities[~~,~~ and

10 [(2) identifying appropriate components of the pilot
11 program established under Section 22.037, Human Resources Code, for
12 coordination and integration among the Texas Department of Human
13 Services, the Texas Department of Mental Health and Mental
14 Retardation, and the Department of Protective and Regulatory
15 services].

16 (i) Not later than September 1 of each year, the task force
17 shall submit a report to the executive commissioner on its findings
18 and recommendations required by Subsection (g).

19 SECTION 2.061. Section 531.02442, Government Code, is
20 amended to read as follows:

21 Sec. 531.02442. COMMUNITY LIVING OPTIONS INFORMATION
22 PROCESS FOR CERTAIN PERSONS WITH AN INTELLECTUAL DISABILITY [MENTAL
23 RETARDATION]. (a) In this section:

24 (1) "Department" means the Department of Aging and
25 Disability Services.

26 (1-a) "Institution" means:

27 (A) a residential care facility operated or

1 maintained by the department [Texas Department of Mental Health and
2 ~~Mental Retardation~~] to provide 24-hour services, including
3 residential services, to persons with an intellectual disability
4 [~~mental retardation~~]; or

5 (B) an ICF-IID [~~ICF-MR~~], as defined by Section
6 531.002, Health and Safety Code.

7 (2) "Legally authorized representative" has the
8 meaning assigned by Section 241.151, Health and Safety Code.

9 (3) "Local intellectual and developmental disability
10 [~~mental retardation~~] authority" has the meaning assigned by Section
11 531.002, Health and Safety Code.

12 (b) In addition to providing information regarding care and
13 support options as required by Section 531.042, the department
14 [Texas Department of Mental Health and Mental Retardation] shall
15 implement a community living options information process in each
16 institution to inform persons with an intellectual disability
17 [~~mental retardation~~] who reside in the institution and their
18 legally authorized representatives of alternative community living
19 options.

20 (c) The department shall provide the information required
21 by Subsection (b) through the community living options information
22 process at least annually. The department shall also provide the
23 information at any other time on request by a person with an
24 intellectual disability [~~mental retardation~~] who resides in an
25 institution or the person's legally authorized representative.

26 (d) If a person with an intellectual disability [~~mental~~
27 ~~retardation~~] residing in an institution or the person's legally

1 authorized representative indicates a desire to pursue an
2 alternative community living option after receiving the
3 information provided under this section, the department shall refer
4 the person or the person's legally authorized representative to the
5 local intellectual and developmental disability [~~mental~~
6 ~~retardation~~] authority. The local intellectual and developmental
7 disability [~~mental retardation~~] authority shall place the person in
8 an alternative community living option, subject to the availability
9 of funds, or on a waiting list for those options if the options are
10 not available to the person for any reason on or before the 30th day
11 after the date the person or the person's legally authorized
12 representative is referred to the local intellectual and
13 developmental disability [~~mental retardation~~] authority.

14 (e) The department shall document in the records of each
15 person with an intellectual disability [~~mental retardation~~] who
16 resides in an institution the information provided to the person or
17 the person's legally authorized representative through the
18 community living options information process and the results of
19 that process.

20 SECTION 2.062. Section 531.02443, Government Code, is
21 amended to read as follows:

22 Sec. 531.02443. IMPLEMENTATION OF COMMUNITY LIVING OPTIONS
23 INFORMATION PROCESS AT STATE INSTITUTIONS FOR CERTAIN ADULT
24 RESIDENTS. (a) In this section:

25 (1) "Adult resident" means a person with an
26 intellectual disability [~~mental retardation~~] who:

27 (A) is at least 22 years of age; and

1 (B) resides in a state supported living center
2 [school].

3 (2) "Department" means the Department of Aging and
4 Disability Services.

5 (3) "Legally authorized representative" has the
6 meaning assigned by Section 241.151, Health and Safety Code.

7 (4) "Local intellectual and developmental disability
8 [mental retardation] authority" has the meaning assigned by Section
9 531.002, Health and Safety Code.

10 (5) "State supported living center [school]" has the
11 meaning assigned by Section 531.002, Health and Safety Code.

12 (b) This section applies only to the community living
13 options information process for an adult resident.

14 (c) The department shall contract with local intellectual
15 and developmental disability [mental retardation] authorities to
16 implement the community living options information process
17 required by Section 531.02442 for an adult resident.

18 (d) The contract with the local intellectual and
19 developmental disability [mental retardation] authority must:

20 (1) delegate to the local intellectual and
21 developmental disability [mental retardation] authority the
22 department's duties under Section 531.02442 with regard to the
23 implementation of the community living options information process
24 at a state supported living center [school];

25 (2) include performance measures designed to assist
26 the department in evaluating the effectiveness of a local
27 intellectual and developmental disability [mental retardation]

1 authority in implementing the community living options information
2 process; and

3 (3) ensure that the local intellectual and
4 developmental disability [~~mental retardation~~] authority provides
5 service coordination and relocation services to an adult resident
6 who chooses, is eligible for, and is recommended by the
7 interdisciplinary team for a community living option to facilitate
8 a timely, appropriate, and successful transition from the state
9 supported living center [~~school~~] to the community living option.

10 (e) The department, with the advice and assistance of the
11 interagency task force on ensuring appropriate care settings for
12 persons with disabilities and representatives of family members or
13 legally authorized representatives of adult residents, persons
14 with an intellectual disability [~~mental retardation~~], state
15 supported living centers [~~schools~~], and local intellectual and
16 developmental disability [~~mental retardation~~] authorities, shall:

17 (1) develop an effective community living options
18 information process;

19 (2) create uniform procedures for the implementation
20 of the community living options information process; and

21 (3) minimize any potential conflict of interest
22 regarding the community living options information process between
23 a state supported living center [~~school~~] and an adult resident, an
24 adult resident's legally authorized representative, or a local
25 intellectual and developmental disability [~~mental retardation~~]
26 authority.

27 (f) A state supported living center [~~school~~] shall:

1 (1) allow a local intellectual and developmental
2 disability [~~mental retardation~~] authority to participate in the
3 interdisciplinary planning process involving the consideration of
4 community living options for an adult resident;

5 (2) to the extent not otherwise prohibited by state or
6 federal confidentiality laws, provide a local intellectual and
7 developmental disability [~~mental retardation~~] authority with
8 access to an adult resident and an adult resident's records to
9 assist the authority in implementing the community living options
10 information process; and

11 (3) provide the adult resident or the adult resident's
12 legally authorized representative with accurate information
13 regarding the risks of moving the adult resident to a community
14 living option.

15 SECTION 2.063. Section [531.02444](#), Government Code, as
16 amended by Chapter 34 (S.B. 187), Acts of the 81st Legislature,
17 Regular Session, 2009, is reenacted and amended to read as follows:

18 Sec. 531.02444. MEDICAID BUY-IN PROGRAMS FOR CERTAIN
19 PERSONS WITH DISABILITIES. (a) The executive commissioner shall
20 develop and implement:

21 (1) a Medicaid buy-in program for persons with
22 disabilities as authorized by the Ticket to Work and Work
23 Incentives Improvement Act of 1999 (Pub. L. No. 106-170) or the
24 Balanced Budget Act of 1997 (Pub. L. No. 105-33); and

25 (2) as authorized by the Deficit Reduction Act of 2005
26 (Pub. L. No. 109-171), a Medicaid buy-in program for [~~disabled~~]
27 children with disabilities that is described by 42 U.S.C. Section

1 1396a(cc)(1) whose family incomes do not exceed 300 percent of the
2 applicable federal poverty level.

3 (b) The executive commissioner shall adopt rules in
4 accordance with federal law that provide for:

5 (1) eligibility requirements for each program
6 described by Subsection (a); and

7 (2) requirements for participants in the program to
8 pay premiums or cost-sharing payments, subject to Subsection (c).

9 (c) Rules adopted by the executive commissioner under
10 Subsection (b) with respect to the program for ~~disabled~~ children
11 with disabilities described by Subsection (a)(2) must require a
12 participant to pay monthly premiums according to a sliding scale
13 that is based on family income, subject to the requirements of 42
14 U.S.C. Sections 1396o(i)(2) and (3).

15 SECTION 2.064. Section [531.0246](#), Government Code, is
16 amended to read as follows:

17 Sec. 531.0246. REGIONAL MANAGEMENT OF HEALTH AND HUMAN
18 SERVICES AGENCIES. (a) The [Subject to Section 531.0055(c), the]
19 commission may require a health and human services agency, under
20 the direction of the commission, to:

21 (1) ~~[Locate all or a portion of the agency's employees
and programs in the same building as another health and human
services agency or at a location near or adjacent to the location of
another health and human services agency,~~
22 ~~[2]~~ ensure that the agency's location is accessible
23 to ~~disabled~~ employees with disabilities and agency clients with
disabilities; and

1 (2) [43] consolidate agency support services,
2 including clerical and administrative support services and
3 information resources support services, with support services
4 provided to or by another health and human services agency.

5 (b) The executive commissioner may require a health and
6 human services agency, under the direction of the executive
7 commissioner, to locate all or a portion of the agency's employees
8 and programs in the same building as another health and human
9 services agency or at a location near or adjacent to the location of
10 another health and human services agency.

11 SECTION 2.065. Section 531.0247, Government Code, is
12 amended to read as follows:

13 Sec. 531.0247. ANNUAL BUSINESS PLAN. The [Subject to
14 ~~Section 531.0055(c), the]~~ commission shall develop and implement an
15 annual business services plan for each health and human services
16 region that establishes performance objectives for all health and
17 human services agencies providing services in the region and
18 measures agency effectiveness and efficiency in achieving those
19 objectives.

20 SECTION 2.066. Section 531.0248(d), Government Code, is
21 amended to read as follows:

22 (d) In implementing this section, the commission shall
23 consider models used in other service delivery systems, including
24 the mental health and intellectual disability [~~mental retardation~~]
25 service delivery systems [~~system~~].

26 SECTION 2.067. Sections 531.02481(a), (e), and (f),
27 Government Code, are amended to read as follows:

1 (a) The commission[~~, the Texas Department of Human~~
2 ~~Services,~~] and the Department of Aging and Disability Services
3 [~~Texas Department on Aging~~] shall assist communities in this state
4 in developing comprehensive, community-based support and service
5 delivery systems for long-term care services. At the request of a
6 community-based organization or combination of community-based
7 organizations, the commission may provide a grant to the
8 organization or combination of organizations in accordance with
9 Subsection (g). At the request of a community, the commission shall
10 provide resources and assistance to the community to enable the
11 community to:

12 (1) identify and overcome institutional barriers to
13 developing more comprehensive community support systems, including
14 barriers that result from the policies and procedures of state
15 health and human services agencies;

16 (2) develop a system of blended funds, consistent with
17 the requirements of federal law and the General Appropriations Act,
18 to allow the community to customize services to fit individual
19 community needs; and

20 (3) develop a local system of access and assistance to
21 aid clients in accessing the full range of long-term care services.

22 (e) The executive commissioner shall assure the maintenance
23 of no fewer than 28 area agencies on aging in order to assure the
24 continuation of a local system of access and assistance that is
25 sensitive to the aging population.

26 (f) A community-based organization or a combination of
27 organizations may make a proposal under this section. A

1 community-based organization includes:

2 (1) an area agency on aging;

3 (2) an independent living center;

4 (3) a municipality, county, or other local government;

5 (4) a nonprofit or for-profit organization; or

6 (5) a community mental health and intellectual

7 disability [~~mental retardation~~] center.

8 SECTION 2.068. Section 531.02491, Government Code, is
9 amended to read as follows:

10 Sec. 531.02491. JOINT TRAINING FOR CERTAIN CASEWORKERS.

11 (a) The executive commissioner shall provide for joint training
12 for health and human services caseworkers whose clients are
13 children, including caseworkers employed by:

14 (1) the commission [~~Texas Department of Health~~];
15 (2) the [~~Texas~~] Department of Aging and Disability
16 Human Services; [and]
17 (3) the [~~Texas~~] Department of State Health Services;
18 (4) [~~Mental Health and Mental Retardation,~~] a local
19 mental health authority; and [~~or~~]
20 (5) a local intellectual and developmental disability
21 [~~mental retardation~~] authority.

22 (b) Training provided under this section must be designed to
23 increase a caseworker's knowledge and awareness of the services
24 available to children at each health and human services agency or
25 local mental health or intellectual and developmental disability
26 [~~mental retardation~~] authority, including long-term care programs
27 and services available under a Section 1915(c) waiver program.

1 SECTION 2.069. Section 531.02492, Government Code, is
2 amended to read as follows:

3 Sec. 531.02492. DELIVERY OF HEALTH AND HUMAN SERVICES TO
4 YOUNG TEXANS. ~~[(a) The executive head of each health and human~~
~~services agency shall report annually to the governing body of that~~
~~agency on that agency's efforts to provide health and human~~
~~services to children younger than six years of age, including the~~
~~development of any new programs or the enhancement of existing~~
~~programs. The agency shall submit a copy of the report to the~~
~~commission.]~~

11 (b) The commission shall electronically publish on the
12 commission's Internet website a biennial report and, on or before
13 the date the report is due, shall notify the governor, the
14 lieutenant governor, the speaker of the house of representatives,
15 the comptroller, the Legislative Budget Board, and the appropriate
16 legislative committees that the report is available on the
17 commission's Internet website. The report must address the efforts
18 of the health and human services agencies to provide health and
19 human services to children younger than six years of age. The
20 report may contain recommendations by the commission to better
21 coordinate state agency programs relating to the delivery of health
22 and human services to children younger than six years of age and may
23 propose joint agency collaborative programs.

24 ~~[(c) The commissioner shall adopt rules relating to the~~
~~reports required by Subsection (a), including rules specifying when~~
~~and in what manner a health and human services agency must report~~
~~and the information to be included in the report. Each agency shall~~

1 ~~follow the rules adopted by the commissioner under this section.]~~

2 SECTION 2.070. Section [531.0271](#), Government Code, is
3 amended to read as follows:

4 Sec. 531.0271. HEALTH AND HUMAN SERVICES AGENCIES OPERATING
5 BUDGETS. The commission may, within the limits established by and
6 subject to the General Appropriations Act, transfer amounts
7 appropriated to health and human services agencies among the
8 agencies to:

9 (1) enhance the receipt of federal money under the
10 federal money [~~funds~~] management system established under Section
11 [531.028](#);

12 (2) achieve efficiencies in the administrative
13 support functions of the agencies; and

14 (3) perform the functions assigned to the executive
15 commissioner under Section [531.0055](#).

16 SECTION 2.071. Section [531.0273](#), Government Code, is
17 amended to read as follows:

18 Sec. 531.0273. INFORMATION RESOURCES PLANNING AND
19 MANAGEMENT[; ~~ADVISORY COMMITTEE~~]. (a) The commission is
20 responsible for strategic planning for information resources at
21 each health and human services agency and shall direct the
22 management of information resources at each health and human
23 services agency. The commission shall:

24 (1) develop a coordinated strategic plan for
25 information resources management that:

26 (A) covers a five-year period;

27 (B) defines objectives for information resources

1 management at each health and human services agency;
2 (C) prioritizes information resources projects
3 and implementation of new technology for all health and human
4 services agencies;

5 (D) integrates planning and development of each
6 information resources system used by a health and human services
7 agency into a coordinated information resources management
8 planning and development system established by the commission;

9 (E) establishes standards for information
10 resources system security and that promotes the ability of
11 information resources systems to operate with each other;

12 (F) achieves economies of scale and related
13 benefits in purchasing for health and human services information
14 resources systems; and

15 (G) is consistent with the state strategic plan
16 for information resources developed under Chapter 2054;

20 (3) review and approve the information resources
21 deployment review and biennial operating plan of each health and
22 human services agency.

23 (c) A health and human services agency may not submit its
24 plans to the Department of Information Resources or the Legislative
25 Budget Board under Subchapter E, Chapter 2054, until those plans
26 are approved by the commission.

[(d) The commission shall appoint an advisory committee

1 composed of:

2 [(1) information resources managers for state
3 agencies and for private employers; and
4 [(2) the directors, executive directors, and
5 commissioners of health and human services agencies.

6 [(e) The advisory committee appointed under Subsection (d)
7 shall advise the commission with respect to the implementation of
8 the commission's duties under Subsection (a)(1) and:

9 [(1) shall advise the commission about:

10 [(A) overall goals and objectives for
11 information resources management for all health and human services
12 agencies;

13 [(B) coordination of agency information
14 resources management plans;

15 [(C) development of short-term and long-term
16 strategies for:

17 [(i) implementing information resources
18 management policies, procedures, and technical standards; and
19 [(ii) ensuring compatibility of
20 information resources systems across health and human services
21 agencies as technology changes;

22 [(D) information resources training and skill
23 development for health and human services agency employees and
24 policies to facilitate recruitment and retention of trained
25 employees;

26 [(E) standards for determining:

27 [(i) the circumstances in which obtaining

1 information resources services under contract is appropriate;

2 [(ii) the information resources services

3 functions that must be performed by health and human services

4 agency information resources services employees; and

5 [(iii) the information resources services

6 skills that must be maintained by health and human services agency

7 information resources services employees;

8 [(F) optimization of the use of information

9 resources technology that is in place at health and human services

10 agencies; and

11 [(G) existing and potential future information

12 resources technologies and practices and the usefulness of those

13 technologies and practices to health and human services agencies,

14 and

15 [(2) shall review and make recommendations to the

16 commission relating to the consolidation and improved efficiency of

17 information resources management functions, including:

18 [(A) cooperative leasing of information

19 resources systems equipment;

20 [(B) consolidation of data centers;

21 [(C) improved network operations;

22 [(D) technical support functions, including help

23 desk services, call centers, and data warehouses;

24 [(E) administrative applications;

25 [(F) purchases of standard software;

26 [(G) joint training efforts;

27 [(H) recruitment and retention of trained agency

1 employees;

2 [(I) video conferencing; and

3 [(J) other related opportunities for improved
4 efficiency.

5 [(f) A member of the advisory committee may not receive
6 compensation, but is entitled to reimbursement of the travel
7 expenses incurred by the member while conducting the business of
8 the committee, as provided by the General Appropriations Act.

9 [(g) The advisory committee is not subject to Chapter 2110.]

10 SECTION 2.072. Section 531.028(b), Government Code, is
11 amended to read as follows:

12 (b) The executive commissioner shall establish a federal
13 money management system to coordinate and monitor the use of
14 federal money that is received by health and human services
15 agencies to ensure that the money is spent in the most efficient
16 manner and shall:

17 (1) establish priorities for use of federal money by
18 all health and human services agencies, in coordination with the
19 coordinated strategic plan established under Section 531.022 and
20 the budget prepared under Section 531.026;

21 (2) coordinate and monitor the use of federal money
22 for health and human services to ensure that the money is spent in
23 the most cost-effective manner throughout the health and human
24 services system;

25 (3) review and approve all federal funding plans for
26 health and human services in this state;

27 (4) estimate available federal money, including

1 earned federal money, and monitor unspent money;

2 (5) ensure that the state meets federal requirements
3 relating to receipt of federal money for health and human services,
4 including requirements relating to state matching money and
5 maintenance of effort;

6 (6) transfer appropriated amounts as described by
7 Section [531.0271](#); and

8 (7) ensure that each governmental entity identified
9 under Section [531.022\(e\)](#) has access to complete and timely
10 information about all sources of federal money for health and human
11 services programs and that technical assistance is available to
12 governmental entities seeking grants of federal money to provide
13 health and human services.

14 SECTION 2.073. Section [531.031](#), Government Code, is amended
15 to read as follows:

16 Sec. 531.031. MANAGEMENT INFORMATION AND COST ACCOUNTING
17 SYSTEM. The executive commissioner shall establish a management
18 information system and a cost accounting system for all health and
19 human services that is compatible with and meets the requirements
20 of the uniform statewide accounting project.

21 SECTION 2.074. (a) Section [531.0312\(b\)](#), Government Code, as
22 amended by Chapters 50 (S.B. 397) and 1460 (H.B. 2641), Acts of the
23 76th Legislature, Regular Session, 1999, and Chapter 937 (H.B.
24 3560), Acts of the 80th Legislature, Regular Session, 2007, is
25 reenacted to read as follows:

26 (b) The commission shall cooperate with the Records
27 Management Interagency Coordinating Council and the comptroller to

1 establish a single method of categorizing information about health
2 and human services to be used by the Records Management Interagency
3 Coordinating Council and the Texas Information and Referral
4 Network. The network, in cooperation with the council and the
5 comptroller, shall ensure that:

6 (1) information relating to health and human services
7 is included in each residential telephone directory published by a
8 for-profit publisher and distributed to the public at minimal or no
9 cost; and

10 (2) the single method of categorizing information
11 about health and human services is used in a residential telephone
12 directory described by Subdivision (1).

13 (b) Section [531.0312\(c\)](#), Government Code, as added by
14 Chapter 1460 (H.B. 2641), Acts of the 76th Legislature, Regular
15 Session, 1999, is reenacted to incorporate amendments made to
16 Section [531.0312\(b\)](#), Government Code, by Chapter 50 (S.B. 397),
17 Acts of the 76th Legislature, Regular Session, 1999, and amended to
18 read as follows:

19 (c) A health and human services agency or a public or
20 private entity receiving state-appropriated funds to provide
21 health and human services shall provide the Texas Information and
22 Referral Network and the Records Management Interagency
23 Coordinating Council with information about the health and human
24 services provided by the agency or entity for inclusion in the
25 statewide information and referral network, residential telephone
26 directories described by Subsection (b), and any other materials
27 produced under the direction of the network or the council. The

1 agency or entity shall provide the information in the format
2 required by the Texas Information and Referral Network or the
3 Records Management Interagency Coordinating Council [a form
4 determined by the commissioner] and shall update the information at
5 least quarterly or as required by the network or the council.

6 (c) Section 531.0312(d), Government Code, is amended to
7 read as follows:

8 (d) The Texas Department of Housing and Community Affairs
9 shall provide the Texas Information and Referral Network with
10 information regarding the department's housing and community
11 affairs programs for inclusion in the statewide information and
12 referral network. The department shall provide the information in
13 a form determined by the commission [commissioner] and shall update
14 the information at least quarterly.

15 SECTION 2.075. Section 531.0317(c), Government Code, is
16 amended to read as follows:

17 (c) The Internet site must:

18 (1) contain information that is:

19 (A) in a concise and easily understandable and
20 accessible format; and

21 (B) organized by the type of service provided
22 rather than by the agency or provider delivering the service;

23 (2) contain eligibility criteria for each agency
24 program;

25 (3) contain application forms for each of the public
26 assistance programs administered by health and human services
27 agencies, including application forms for:

S.B. No. 219

1 (A) financial assistance under Chapter 31, Human
2 Resources Code;

3 (B) Medicaid [~~medical assistance under Chapter~~
4 ~~32, Human Resources Code~~]; and

5 (C) nutritional assistance under Chapter 33,
6 Human Resources Code;

7 (4) to avoid duplication of functions and efforts,
8 provide a link that provides access to a site maintained by the
9 Texas Information and Referral Network under Section [531.0313](#);

10 (5) contain the telephone number and, to the extent
11 available, the electronic mail address for each health and human
12 services agency and local provider of health and human services;

13 (6) be designed in a manner that allows a member of the
14 public to send questions about each agency's programs or services
15 electronically and receive responses to the questions from the
16 agency electronically; and

17 (7) be updated at least quarterly.

18 SECTION 2.076. Sections 531.0318(b) and (c), Government
19 Code, are amended to read as follows:

20 (b) The information for consumers required by this section
21 must:

22 (1) be presented in a manner that is easily accessible
23 to, and understandable by, a consumer; and

24 (2) allow a consumer to make informed choices
25 concerning long-term care services and include:

26 (A) an explanation of the manner in which
27 long-term care service delivery is administered in different

1 counties through different programs operated by the commission and
2 by the Department of Aging and Disability Services, so that an
3 individual can easily understand the service options available in
4 the area in which that individual lives; and

5 (B) for the [Medicaid] Star + Plus Medicaid
6 managed care [~~pilot~~] program, information that allows a consumer to
7 evaluate the performance of each participating plan issuer,
8 including for each issuer, in an accessible format such as a table:

12 (iii) a summary of the financial
13 statistical report required under Subchapter A, Chapter 533;

14 (iv) complaint information;
15 (v) any sanction or penalty imposed by any
16 state agency, including a sanction or penalty imposed by the
17 commission or the Texas Department of Insurance;

18 (vi) information concerning consumer
19 satisfaction; and

20 (vii) other data, including relevant data
21 from reports of external quality review organizations, that may be
22 used by the consumer to evaluate the quality of the services
23 provided.

24 (c) In addition to providing the information required by
25 this section through the Internet, the commission or the Department
26 of Aging and Disability Services shall, on request by a consumer
27 without Internet access, provide the consumer with a printed copy

1 of the information from the website. The commission or department
2 may charge a reasonable fee for printing the information. The
3 executive commissioner shall establish the fee by rule.

4 SECTION 2.077. Section 531.033, Government Code, is amended
5 to read as follows:

6 Sec. 531.033. RULES. The executive commissioner shall
7 adopt rules necessary to carry out the commission's duties under
8 this chapter.

9 SECTION 2.078. Section 531.0335(b), Government Code, is
10 amended to read as follows:

11 (b) The executive commissioner by rule shall prohibit a
12 health and human services agency from taking a punitive action
13 against a person responsible for a child's care, custody, or
14 welfare for failure of the person to ensure that the child receives
15 the immunization series prescribed by Section 161.004, Health and
16 Safety Code.

17 SECTION 2.079. Section 531.035, Government Code, is amended
18 to read as follows:

19 Sec. 531.035. DISPUTE ARBITRATION. The executive
20 commissioner shall arbitrate and render the final decision on
21 interagency disputes.

22 SECTION 2.080. The heading to Section 531.0381, Government
23 Code, is amended to read as follows:

24 Sec. 531.0381. CERTAIN GIFTS AND GRANTS TO HEALTH AND HUMAN
25 SERVICES AGENCIES.

26 SECTION 2.081. Sections 531.0381(b) and (c), Government
27 Code, are amended to read as follows:

1 (b) Acceptance of a gift or grant under this section is
2 subject to the written approval of the executive commissioner.
3 Chapter 575 does not apply to a gift or grant under this section.

4 (c) The executive commissioner may adopt rules and
5 procedures to implement this section. The rules must ensure that
6 acceptance of a gift or grant under this section is consistent with
7 any applicable federal law or regulation and does not adversely
8 affect federal financial participation in any state program,
9 including [~~the state~~] Medicaid [~~program~~].

10 SECTION 2.082. Section 531.0392(a), Government Code, is
11 amended to read as follows:

12 (a) In this section, "dually eligible individual" means an
13 individual who is eligible to receive health care benefits under
14 both [~~the~~] Medicaid and the Medicare program [~~programs~~].

15 SECTION 2.083. Section 531.041, Government Code, is amended
16 to read as follows:

17 Sec. 531.041. GENERAL POWERS AND DUTIES. The executive
18 commissioner and the commission have [~~has~~] all the powers and
19 duties necessary to administer this chapter.

20 SECTION 2.084. Section 531.042(a), Government Code, is
21 amended to read as follows:

22 (a) The executive commissioner by rule shall require each
23 health and human services agency to provide to each patient or
24 client of the agency and to at least one family member of the
25 patient or client, if possible, information regarding all care and
26 support options available to the patient or client, including
27 community-based services appropriate to the needs of the patient or

1 client, before the agency allows the patient or client to be placed
2 in a care setting, including a nursing facility [~~home~~],
3 intermediate care facility for individuals with an intellectual
4 disability [~~the mentally retarded~~], or general residential
5 operation for children with an intellectual disability that is
6 [~~institution for the mentally retarded~~] licensed [~~or operated~~] by
7 the Department of Family and Protective [~~and Regulatory~~] Services,
8 to receive care or services provided by the agency or by a person
9 under an agreement with the agency.

10 SECTION 2.085. Section 531.043(a), Government Code, is
11 amended to read as follows:

12 (a) In conjunction with the appropriate state agencies, the
13 executive commissioner shall develop a plan for access to
14 individualized long-term care services for persons with functional
15 limitations or medical needs and their families that assists those
16 persons in achieving and maintaining the greatest possible
17 independence, autonomy, and quality of life.

18 SECTION 2.086. Section 531.044, Government Code, is amended
19 to read as follows:

20 Sec. 531.044. FINANCIAL ASSISTANCE [~~AFDC~~] RECIPIENTS
21 ELIGIBLE FOR FEDERAL PROGRAMS. [(a)] The commission shall assist
22 recipients of financial assistance under Chapter 31, Human
23 Resources Code, who are eligible for assistance under federal
24 programs to apply for benefits under those federal programs. The
25 commission may delegate this responsibility to a health and human
26 services [~~service~~] agency, contract with a unit of local
27 government, or use any other cost-effective method to assist

1 financial assistance recipients who are eligible for federal
2 programs.

3 [(b) The commission shall organize a planning group
4 involving the Texas Department of Human Services, the Texas
5 Education Agency, and the Texas Rehabilitation Commission to:

6 [(1) improve workload coordination between those
7 agencies as necessary to administer this section; and

8 [(2) provide information and help train employees to
9 correctly screen applicants under this section as requested by the
10 commission.]

11 SECTION 2.087. Sections 531.045(b) and (g), Government
12 Code, are amended to read as follows:

13 (b) The task force is composed of:

14 (1) a representative of:

15 (A) the attorney general's office, appointed by
16 the attorney general;

17 (B) the comptroller's office, appointed by the
18 comptroller;

19 (C) the commission, appointed by the executive
20 commissioner;

21 (D) the [Texas] Department of State Health
22 Services, appointed by the commissioner of state health services
23 [public health];

24 (E) the [Texas] Department of Aging and
25 Disability [Human] Services, appointed by the commissioner of aging
26 and disability [human] services;

27 (F) the Texas Workforce Commission, appointed by

1 the executive director of that agency; and

2 (G) the Department of Assistive and
3 Rehabilitative Services [~~Texas Rehabilitation Commission~~],
4 appointed by the commissioner of assistive and rehabilitative
5 services [~~that agency~~]; and

(2) two representatives of each of the following groups, appointed by the comptroller:

(A) retailers who maintain electronic benefits transfer point-of-sale equipment;

10 (B) banks or owners of automatic teller machines;

11 and

12 (C) consumer or client advocacy organizations.

13 (g) The task force shall:

14 (1) serve as this state's counterpoint to the federal
15 electronic benefits transfer task force;

26 (6) ensure efficiency and planning coordination in
27 relation to this state's electronic benefits transfer system;

1 (7) [develop a plan using the experience and expertise
2 of appropriate state agencies for the use of a photograph or other
3 imaging technology on all electronic benefits transfer cards and,
4 if proven to be effective in reducing fraud and misuse, begin using
5 the new cards starting with replacement cards for cards that were
6 used in the program on June 13, 1995;

7 [~~(8)~~] review current and potential fraud problems with
8 electronic benefits transfer and propose methods to prevent or
9 deter fraud;

10 [~~(9)~~ evaluate the feasibility of adding the Medicaid
11 program to the state's electronic benefits transfer system;] and

12 (8) [~~(10)~~] develop a plan to assist beneficiaries of
13 public programs to obtain bank accounts.

14 SECTION 2.088. Section 531.047(a), Government Code, is
15 amended to read as follows:

16 (a) The executive commissioner [~~commission~~], after
17 consulting with representatives from the Department of Family and
18 Protective [~~and Regulatory~~] Services, the Texas Juvenile Justice
19 Department [~~Probation Commission~~], the Department of Aging and
20 Disability Services, and the [~~Texas~~] Department of State Health
21 Services [~~Mental Health and Mental Retardation~~], shall by rule
22 adopt result-oriented standards that a provider of substitute care
23 services for children under the care of the state must achieve.

24 SECTION 2.089. Section 531.048, Government Code, is amended
25 to read as follows:

26 Sec. 531.048. CASELOAD STANDARDS. (a) The executive [~~After~~
27 ~~considering the recommendations of the caseload standards advisory~~

1 committees under Section 531.049(e), the] commissioner may
2 establish caseload standards and other standards relating to
3 caseloads for each category of caseworker employed by the [Texas
4 Department of Human Services or the] Department of Family and
5 Protective [and Regulatory] Services.

6 (b) In establishing standards under this section, the
7 executive commissioner shall:

8 (1) ensure the standards are based on the actual
9 duties of the caseworker;

10 (2) ensure the caseload standards are reasonable and
11 achievable;

12 (3) ensure the standards are consistent with existing
13 professional caseload standards;

14 (4) consider standards developed by other states for
15 caseworkers in similar positions of employment; and

16 (5) ensure the standards are consistent with existing
17 caseload standards of other state agencies.

18 (c) Subject to the availability of funds appropriated by the
19 legislature, [the commissioner of human services and] the
20 commissioner [executive director] of the Department of Family and
21 Protective [and Regulatory] Services shall use the standards
22 established by the executive commissioner under this section to
23 determine the number of personnel to assign as caseworkers for the
24 department [their respective agencies].

25 (d) Subject to the availability of funds appropriated by the
26 legislature, the [Texas Department of Human Services and the]
27 Department of Family and Protective [and Regulatory] Services shall

1 use the standards established by the executive commissioner to
2 assign caseloads to individual caseworkers employed by the
3 department [~~those agencies~~].

4 ~~[(e) The commissioner shall include a recommendation made~~
5 ~~to the commissioner by a caseload standards advisory committee~~
6 ~~under Section 531.049(e) in the strategic plan of the agency that is~~
7 ~~the subject of the recommendation.]~~

8 (f) Nothing in this section may be construed to create a
9 cause of action.

10 ~~[(g) The executive commissioner shall develop and, subject~~
11 ~~to the availability of funds, implement a caseload management~~
12 ~~reduction plan to reduce, not later than January 1, 2011, caseloads~~
13 ~~for caseworkers employed by the adult protective services division~~
14 ~~of the Department of Family and Protective Services to a level that~~
15 ~~does not exceed professional caseload standards by more than five~~
16 ~~cases per caseworker. The plan must provide specific annual~~
17 ~~targets for caseload reduction.]~~

18 SECTION 2.090. Section 531.050, Government Code, is amended
19 to read as follows:

20 Sec. 531.050. MINIMUM COLLECTION GOAL. (a) Before August
21 31 of each year, the executive commissioner [~~commission, after~~
22 ~~consulting with the Texas Department of Human Services,~~] by rule
23 shall set a minimum goal for the commission [~~Texas Department of~~
24 ~~Human Services~~] that specifies the percentage of the amount of
25 benefits granted by the commission [~~department~~] in error under the
26 supplemental nutrition assistance [~~food stamp~~] program or the
27 program of financial assistance under Chapter 31, Human Resources

1 Code, that the commission [department] should recover. The
2 executive commissioner [commission] shall set the percentage based
3 on comparable recovery rates reported by other states or other
4 appropriate factors identified by the executive commissioner
5 [commission and the department].

6 (b) If the commission [department] fails to meet the goal
7 set under Subsection (a) for the fiscal year, the executive
8 commissioner shall notify the comptroller, and the comptroller
9 shall reduce the commission's [department's] general revenue
10 appropriation by an amount equal to the difference between the
11 amount of state funds the commission [department] would have
12 collected had the commission [department] met the goal and the
13 amount of state funds the commission [department] actually
14 collected.

15 (c) The executive commissioner [commission], the governor,
16 and the Legislative Budget Board shall monitor the commission's
17 [department's] performance in meeting the goal set under this
18 section. The commission [department] shall cooperate by providing
19 to [the commission] the governor[~~r~~] and the Legislative Budget
20 Board, on request, information concerning the commission's
21 [department's] collection efforts.

22 SECTION 2.091. Section 531.051(c), Government Code, is
23 amended to read as follows:

24 (c) In adopting rules for the consumer direction models, the
25 executive commissioner [commission] shall:

26 (1) with assistance from the work group established
27 under Section 531.052, determine which services are appropriate and

1 suitable for delivery through consumer direction;

2 (2) ensure that each consumer direction model is
3 designed to comply with applicable federal and state laws;

4 (3) maintain procedures to ensure that a potential
5 consumer or the consumer's legally authorized representative has
6 adequate and appropriate information, including the
7 responsibilities of a consumer or representative under each service
8 delivery option, to make an informed choice among the types of
9 consumer direction models;

10 (4) require each consumer or the consumer's legally
11 authorized representative to sign a statement acknowledging
12 receipt of the information required by Subdivision (3);

13 (5) maintain procedures to monitor delivery of
14 services through consumer direction to ensure:

15 (A) adherence to existing applicable program
16 standards;

17 (B) appropriate use of funds; and

18 (C) consumer satisfaction with the delivery of
19 services;

20 (6) ensure that authorized program services that are
21 not being delivered to a consumer through consumer direction are
22 provided by a provider agency chosen by the consumer or the
23 consumer's legally authorized representative; and

24 (7) work in conjunction with the work group
25 established under Section 531.052 to set a timetable to complete
26 the implementation of the consumer direction models.

27 SECTION 2.092. Sections 531.055(a) and (e), Government

1 Code, are amended to read as follows:

2 (a) Each health and human services agency, the Texas
3 Correctional Office [~~Council~~] on Offenders with Medical or Mental
4 Impairments, the Texas Department of Criminal Justice, the Texas
5 Department of Housing and Community Affairs, the Texas Education
6 Agency, the Texas Workforce Commission, and the Texas Juvenile
7 Justice Department [~~Youth Commission~~] shall enter into [~~adopt~~] a
8 joint memorandum of understanding to promote a system of
9 local-level interagency staffing groups to coordinate services for
10 persons needing multiagency services.

11 (e) The agencies shall ensure that a state-level
12 interagency staffing group provides a biennial report to the
13 administrative head [~~executive director~~] of each agency, the
14 legislature, and the governor that includes:

15 (1) the number of persons served through the
16 local-level interagency staffing groups and the outcomes of the
17 services provided;

18 (2) a description of any barriers identified to the
19 state's ability to provide effective services to persons needing
20 multiagency services; and

21 (3) any other information relevant to improving the
22 delivery of services to persons needing multiagency services.

23 SECTION 2.093. Section 531.056, Government Code, is amended
24 to read as follows:

25 Sec. 531.056. REVIEW OF SURVEY PROCESS IN CERTAIN
26 INSTITUTIONS AND FACILITIES. (a) The commission shall adopt
27 procedures to review:

1 (1) citations or penalties assessed for a violation of
2 a rule or law against an institution or facility licensed under
3 Chapter 242, 247, or 252, Health and Safety Code, or certified to
4 participate in Medicaid administered in accordance with Chapter 32,
5 Human Resources Code, considering:

6 (A) the number of violations by geographic
7 region;

8 (B) the patterns of violations in each region;
9 and

10 (C) the outcomes following the assessment of a
11 penalty or citation; and

12 (2) the performance of duties by employees and agents
13 of a [~~the Texas Department of Human Services or another~~] state
14 agency responsible for licensing, inspecting, surveying, or
15 investigating institutions and facilities licensed under Chapter
16 242, 247, or 252, Health and Safety Code, or certified to
17 participate in Medicaid administered in accordance with Chapter 32,
18 Human Resources Code, related to:

19 (A) complaints received by the commission; or

20 (B) any standards or rules violated by an
21 employee or agent of a state agency.

22 SECTION 2.094. Section 531.057, Government Code, is amended
23 to read as follows:

24 Sec. 531.057. VOLUNTEER ADVOCATE PROGRAM FOR THE ELDERLY.

25 (a) In this section:

26 (1) "Designated caregiver" means:

27 (A) a person designated as a caregiver by an

1 elderly individual receiving services from or under the direction
2 of the commission or a health and human services agency; or

3 (B) a court-appointed guardian of an elderly
4 individual receiving services from or under the direction of the
5 commission or a health and human services agency.

6 (2) "Elderly" means individuals who are at least 60
7 years of age.

8 (3) "Program" means the volunteer advocate program
9 created under this section for the elderly receiving services from
10 or under the direction of the commission or a health and human
11 services agency [created under this section].

12 (4) "Volunteer advocate" means a person who
13 successfully completes the volunteer advocate curriculum described
14 by Subsection (c)(2).

15 [(b) The executive commissioner shall coordinate with the
16 advisory committee established under Section 531.0571 to develop a
17 volunteer advocate program for the elderly receiving services from
18 or under the direction of the commission or a health and human
19 services agency.]

20 (c) The [In developing the] program[, the executive
21 commissioner and the advisory committee] shall adhere to the
22 following principles:

23 (1) the intent of the program is to evaluate, through
24 operation of pilot projects, whether providing the services of a
25 trained volunteer advocate selected by an elderly individual or the
26 individual's designated caregiver is effective in achieving the
27 following goals:

1 (A) extend the time the elderly individual can
2 remain in an appropriate home setting;

3 (B) maximize the efficiency of services
4 delivered to the elderly individual by focusing on services needed
5 to sustain family caregiving;

6 (C) protect the elderly individual by providing a
7 knowledgeable third party to review the quality of care and
8 services delivered to the individual and the care options available
9 to the individual and the individual's family; and

10 (D) facilitate communication between the elderly
11 individual or the individual's designated caregiver and providers
12 of health care and other services;

13 (2) a volunteer advocate curriculum must be maintained
14 [established] that incorporates best practices as determined and
15 recognized by a professional organization recognized in the elder
16 health care field;

17 (3) the use of pro bono assistance from qualified
18 professionals must be maximized in modifying [developing] the
19 volunteer advocate curriculum and [designing] the program;

20 (4) trainers must be certified on the ability to
21 deliver training;

22 (5) training shall be offered through multiple
23 community-based organizations; and

24 (6) participation in the program is voluntary and must
25 be initiated by the elderly individual or the individual's
26 designated caregiver.

27 (d) The executive commissioner may enter into agreements

1 with appropriate nonprofit organizations for the provision of
2 services under the program. A nonprofit organization is eligible
3 to provide services under the program if the organization:

4 (1) has significant experience in providing services
5 to elderly individuals;

6 (2) has the capacity to provide training and
7 supervision for individuals interested in serving as volunteer
8 advocates; and

9 (3) meets any other criteria prescribed by the
10 executive commissioner.

11 (e) The commission shall fund the program, including the
12 design and evaluation of pilot projects, modification
13 [~~development~~] of the volunteer advocate curriculum, and training of
14 volunteers, through existing appropriations to the commission.

15 (f) Notwithstanding Subsection (e), the commission may
16 accept gifts, grants, or donations for the program from any public
17 or private source to:

18 (1) carry out the design of the program;

19 (2) develop criteria for evaluation of any proposed
20 pilot projects operated under the program;

21 (3) modify [~~develop~~] a volunteer advocate training
22 curriculum;

23 (4) conduct training for volunteer advocates; and

24 (5) develop a request for offers to conduct any
25 proposed pilot projects under the program.

26 (g) The executive commissioner may adopt rules as necessary
27 to implement the program.

1 SECTION 2.095. Sections 531.0571(a) and (b), Government
2 Code, are amended to read as follows:

3 (a) The executive commissioner shall appoint an advisory
4 committee composed of the following members:

5 (1) a representative of the Department of Aging and
6 Disability Services;

7 (2) a representative of the Department of Assistive
8 and Rehabilitative Services;

9 (3) a representative of the Department of State Health
10 Services;

11 (4) a representative of the Texas Silver-Haired
12 Legislature;

13 (5) a representative of an area agency on aging;

14 (6) a representative of United Ways of Texas;

15 (7) a home health provider;

16 (8) an assisted living provider;

17 (9) a nursing facility [home] provider;

18 (10) a representative of Texas CASA;

19 (11) a licensed gerontologist; and

20 (12) a representative of AARP.

21 (b) The advisory committee shall advise the executive
22 commissioner on [~~the development of~~] the volunteer advocate program
23 for the elderly [developed] under Section 531.057, including
24 reviewing and commenting on:

25 (1) program design and selection of any pilot sites
26 operated under the program;

27 (2) the volunteer advocate training curriculum;

1 (3) requests for oversight requirements for any pilot
2 projects operated under the program;

3 (4) evaluation of any pilot projects operated under
4 the program;

5 (5) requirements for periodic reports to the elderly
6 individual or the individual's designated caregiver and providers
7 of health care or other services; and

8 (6) other issues as requested by the executive
9 commissioner.

10 SECTION 2.096. Sections [531.058\(a\)](#), (b), and (d),
11 Government Code, are amended to read as follows:

12 (a) The executive commissioner [commission] by rule shall
13 establish an informal dispute resolution process in accordance with
14 this section. The process must provide for adjudication by an
15 appropriate disinterested person of disputes relating to a proposed
16 enforcement action or related proceeding of the commission [Texas
17 Department of Human Services] under Section [32.021\(d\)](#), Human
18 Resources Code, or the Department of Aging and Disability Services
19 under Chapter 242, 247, or 252, Health and Safety Code. The
20 informal dispute resolution process must require:

21 (1) an institution or facility to request informal
22 dispute resolution not later than the 10th calendar day after
23 notification by the commission or department, as applicable, of the
24 violation of a standard or standards; and

25 (2) the commission to complete the process not later
26 than:

27 (A) the 30th calendar day after receipt of a

1 request from an institution or facility, other than an assisted
2 living facility, for informal dispute resolution; or

3 (B) the 90th calendar day after receipt of a
4 request from an assisted living facility for informal dispute
5 resolution.

6 (b) The executive commissioner [~~commission~~] shall adopt
7 rules to adjudicate claims in contested cases.

8 (d) The executive commissioner [~~commission~~] shall use a
9 negotiated rulemaking process and engage a qualified impartial
10 third party as provided by Section 2009.053, with the goal of the
11 executive commissioner adopting rules that are fair and impartial
12 to all parties not later than January 1, 2015. This subsection
13 expires September 1, 2015.

14 SECTION 2.097. Section 531.059, Government Code, is amended
15 to read as follows:

16 Sec. 531.059. VOUCHER PROGRAM FOR TRANSITIONAL LIVING
17 ASSISTANCE FOR PERSONS WITH DISABILITIES. (a) In this section:

18 (1) "Institutional housing" means:

19 (A) an ICF-IID [~~ICF-MR~~], as defined by Section
20 531.002, Health and Safety Code;

21 (B) a nursing facility;

22 (C) a state hospital, state supported living
23 center [~~school~~], or state center maintained and managed by the
24 [~~Texas~~] Department of State Health Services or the Department of
25 Aging and Disability Services [~~Mental Health and Mental~~
26 ~~Retardation~~];

27 (D) a general residential operation for children

1 with an intellectual disability that is [an institution for the
2 mentally retarded] licensed [~~or operated~~] by the Department of
3 Family and Protective Services; or

4 (E) a general residential operation, as defined
5 by Section [42.002](#), Human Resources Code.

6 (2) "Integrated housing" means housing in which a
7 person with a disability resides or may reside that is found in the
8 community but that is not exclusively occupied by persons with
9 disabilities and their care providers.

10 (b) Subject to the availability of funds, the commission
11 shall coordinate with the [~~Texas Department of Human Services, the~~]
12 Texas Department of Housing and Community Affairs, the Department
13 of State Health Services, and the [Texas] Department of Aging and
14 Disability Services [~~Mental Health and Mental Retardation~~] to
15 develop a housing assistance program to assist persons with
16 disabilities in moving from institutional housing to integrated
17 housing. In developing the program, the agencies shall address:

18 (1) eligibility requirements for assistance;
19 (2) the period during which a person with a disability
20 may receive assistance;

21 (3) the types of housing expenses to be covered under
22 the program; and

23 (4) the locations at which the program will be
24 operated.

25 (c) Subject to the availability of funds, the Department of
26 Aging and Disability Services [~~commission~~] shall [~~require the Texas~~
27 ~~Department of Human Services to implement and~~] administer the

1 housing assistance program under this section. The department
2 shall coordinate with the Texas Department of Housing and Community
3 Affairs in [implementing and] administering the program,
4 determining the availability of funding from the United States
5 Department of Housing and Urban Development, and obtaining those
6 funds.

7 (d) The [Texas Department of Human Services and the] Texas
8 Department of Housing and Community Affairs and the Department of
9 Aging and Disability Services shall provide information to the
10 commission as necessary to facilitate the administration
11 [development and implementation] of the housing assistance
12 program.

13 SECTION 2.098. Sections 531.060(c)(3) and (4), Government
14 Code, are amended to read as follows:

15 (3) "Institution" means any congregate care facility,
16 including:

17 (A) a nursing facility [~~home~~];
18 (B) an ICF-IID [~~ICF-MR facility~~], as defined by
19 Section 531.002, Health and Safety Code;

20 (C) a group home operated by the [Texas]
21 Department of Aging and Disability Services [~~Mental Health and~~
22 ~~Mental Retardation~~]; and

23 (D) a general residential operation for children
24 with an intellectual disability that is [~~an institution for the~~
25 ~~mentally retarded~~] licensed by the Department of Family and
26 Protective [~~and Regulatory~~] Services.

27 (4) "Waiver services" means services provided under:

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15 SECTION 2.099. Sections 531.062(a) and (b), Government
16 Code, are amended to read as follows:

17 (a) Notwithstanding any other law, the commission may
18 establish one or more pilot projects through which reimbursement
19 under Medicaid [~~the medical assistance program under Chapter 32,~~
20 ~~Human Resources Code,~~] is made to demonstrate the applications of
21 technology in providing services under that program.

22 (b) A pilot project established under this section may
23 relate to providing rehabilitation services, services for the aging
24 or persons with disabilities [disabled], or long-term care
25 services, including community care services and support.

26 SECTION 2.100. Sections 531.063(a) and (i), Government
27 Code, are amended to read as follows:

1 (a) The executive commissioner [~~commission~~] by rule[~~r~~]
2 shall establish at least one but not more than four call centers for
3 purposes of determining and certifying or recertifying a person's
4 eligibility and need for services related to the programs listed
5 under Section 531.008(c), if cost-effective. [~~The commission must~~
6 ~~conduct a public hearing before establishing the initial call~~
7 ~~center.~~]

8 (i) Notwithstanding Subsection (a), the executive
9 commissioner shall develop and implement policies that provide an
10 applicant for services related to the programs listed under Section
11 531.008(c) with an opportunity to appear in person to establish
12 initial eligibility or to comply with periodic eligibility
13 recertification requirements if the applicant requests a personal
14 interview. In implementing the policies, the commission shall
15 maintain offices to serve applicants who request a personal
16 interview. This subsection does not affect a law or rule that
17 requires an applicant to appear in person to establish initial
18 eligibility or to comply with periodic eligibility recertification
19 requirements.

20 SECTION 2.101. Section 531.064(a), Government Code, is
21 amended to read as follows:

22 (a) In this section, "vaccines for children program" means
23 the program operated by the [~~Texas~~] Department of State Health
24 Services under authority of 42 U.S.C. Section 1396s, as amended.

25 SECTION 2.102. Sections 531.067(a), (b), (d), and (g),
26 Government Code, are amended to read as follows:

27 (a) The commission shall appoint a Public Assistance Health

1 Benefit Review and Design Committee. The committee consists of
2 nine representatives of health care providers participating in
3 [the] Medicaid [program] or the child health plan program, or both.
4 The committee membership must include at least three
5 representatives from each program.

6 (b) The executive commissioner shall designate one member
7 to serve as presiding officer for a term of two years.

8 (d) The committee shall review and provide recommendations
9 to the commission regarding health benefits and coverages provided
10 under [the state] Medicaid [program], the child health plan
11 program, and any other income-based health care program
12 administered by the commission or a health and human services
13 agency. In performing its duties under this subsection, the
14 committee must:

15 (1) review benefits provided under each of the
16 programs; and

17 (2) review procedures for addressing high utilization
18 of benefits by recipients.

19 (g) In performing the duties under this section, the
20 commission may design and implement a program to improve and
21 monitor clinical and functional outcomes of a recipient of services
22 under Medicaid or the state child health plan [~~or medical~~
23 ~~assistance~~] program. The program may use financial, clinical, and
24 other criteria based on pharmacy, medical services, and other
25 claims data related to Medicaid or the child health plan [~~or the~~
26 ~~state medical assistance~~] program. The commission must report to
27 the committee on the fiscal impact, including any savings

1 associated with the strategies utilized under this section.

2 SECTION 2.103. Section 531.068, Government Code, is amended
3 to read as follows:

4 Sec. 531.068. MEDICAID OR OTHER HEALTH BENEFIT COVERAGE.

5 In adopting rules or standards governing [~~the state~~] Medicaid
6 [~~program~~] or rules or standards for the development or
7 implementation of health benefit coverage for a program
8 administered by the commission or a health and human services
9 agency, the executive commissioner [~~commission and each health and~~
10 ~~human services agency, as appropriate,~~] may take into consideration
11 any recommendation made with respect to health benefits provided
12 under [~~their respective programs or the state~~] Medicaid or another
13 of those programs [~~program~~] by the Public Assistance Health Benefit
14 Review and Design Committee established under Section 531.067.

15 SECTION 2.104. Section 531.0691(a)(1), Government Code, is
16 amended to read as follows:

17 (1) "Medicaid Drug Utilization Review Program" means
18 the program operated by the vendor drug program to improve the
19 quality of pharmaceutical care under [~~the~~] Medicaid [~~program~~].

20 SECTION 2.105. Section 531.0693(a), Government Code, is
21 amended to read as follows:

22 (a) The commission shall monitor and analyze prescription
23 drug use and expenditure patterns in [~~the~~] Medicaid [~~program~~]. The
24 commission shall identify the therapeutic prescription drug
25 classes and individual prescription drugs that are most often
26 prescribed to patients or that represent the greatest expenditures.

27 SECTION 2.106. Section 531.0694, Government Code, is

1 amended to read as follows:

2 Sec. 531.0694. PERIOD OF VALIDITY FOR PRESCRIPTION. In the
3 [its] rules and standards governing the vendor drug program, the
4 executive commissioner [~~commission~~], to the extent allowed by
5 federal law and laws regulating the writing and dispensing of
6 prescription medications, shall ensure that a prescription written
7 by an authorized health care provider under [the] Medicaid
8 [program] is valid for the lesser of the period for which the
9 prescription is written or one year. This section does not apply to
10 a prescription for a controlled substance, as defined by Chapter
11 481, Health and Safety Code.

12 SECTION 2.107. Section 531.0697(a), Government Code, is
13 amended to read as follows:

14 (a) This section applies to:

15 (1) the vendor drug program for [the] Medicaid and the
16 child health plan program [~~programs~~];

17 (2) the kidney health care program;

18 (3) the children with special health care needs
19 program; and

20 (4) any other state program administered by the
21 commission that provides prescription drug benefits.

22 SECTION 2.108. Sections 531.070(b), (c), and (m),
23 Government Code, are amended to read as follows:

24 (b) For purposes of this section, the term "supplemental
25 rebates" means cash rebates paid by a manufacturer to the state on
26 the basis of appropriate quarterly health and human services
27 program utilization data relating to the manufacturer's products,

1 pursuant to a state supplemental rebate agreement negotiated with
2 the manufacturer and, if necessary, approved by the federal
3 government under Section 1927 of the federal Social Security Act
4 (42 U.S.C. Section 1396r-8).

5 (c) The commission may enter into a written agreement with a
6 manufacturer to accept certain program benefits in lieu of
7 supplemental rebates, as defined by this section, only if:

8 (1) the program benefit yields savings that are at
9 least equal to the amount the manufacturer would have provided
10 under a state supplemental rebate agreement during the current
11 biennium as determined by the written agreement;

12 (2) the manufacturer posts a performance bond
13 guaranteeing savings to the state, and agrees that if the savings
14 are not achieved in accordance with the written agreement, the
15 manufacturer will forfeit the bond to the state less any savings
16 that were achieved; and

17 (3) the program benefit is in addition to other
18 program benefits currently offered by the manufacturer to
19 recipients of Medicaid [~~medical assistance~~] or related programs.

20 (m) In negotiating terms for a supplemental rebate, the
21 commission shall use the average manufacturer price (AMP), as
22 defined in 42 U.S.C. Section 1396r-8(k)(1) [~~Section 1396r-8(k)(1)~~
23 ~~of the Omnibus Budget Reconciliation Act of 1990~~], as the cost basis
24 for the product.

25 SECTION 2.109. Section 531.071(a), Government Code, is
26 amended to read as follows:

27 (a) Notwithstanding any other state law, information obtained

1 or maintained by the commission regarding prescription drug rebate
2 negotiations or a supplemental Medicaid [medical assistance] or other
3 rebate agreement, including trade secrets, rebate amount, rebate
4 percentage, and manufacturer or labeler pricing, is confidential and
5 not subject to disclosure under Chapter 552.

6 SECTION 2.110. Sections 531.073(a), (a-1), (c), and (d),
7 Government Code, are amended to read as follows:

8 (a) The executive commissioner [~~commission~~], in the [~~its~~]
9 rules and standards governing the Medicaid vendor drug program and
10 the child health plan program, shall require prior authorization
11 for the reimbursement of a drug that is not included in the
12 appropriate preferred drug list adopted under Section 531.072,
13 except for any drug exempted from prior authorization requirements
14 by federal law. The executive commissioner [~~commission~~] may
15 require prior authorization for the reimbursement of a drug
16 provided through any other state program administered by the
17 commission or a state health and human services agency, including a
18 community mental health center and a state mental health hospital
19 if the commission adopts preferred drug lists under Section 531.072
20 that apply to those facilities and the drug is not included in the
21 appropriate list. The executive commissioner [~~commission~~] shall
22 require that the prior authorization be obtained by the prescribing
23 physician or prescribing practitioner.

24 (a-1) Until the commission has completed a study evaluating
25 the impact of a requirement of prior authorization on recipients of
26 certain drugs, the executive commissioner [~~commission~~] shall delay
27 requiring prior authorization for drugs that are used to treat

1 patients with illnesses that:

- 2 (1) are life-threatening;
3 (2) are chronic; and
4 (3) require complex medical management strategies.

5 (c) The commission shall ensure that a prescription drug
6 prescribed before implementation of a prior authorization
7 requirement for that drug for a recipient under the child health
8 plan program, [the] Medicaid [program], or another state program
9 administered by the commission or a health and human services
10 agency or for a person who becomes eligible under the child health
11 plan program, [the] Medicaid [program], or another state program
12 administered by the commission or a health and human services
13 agency is not subject to any requirement for prior authorization
14 under this section unless the recipient has exhausted all the
15 prescription, including any authorized refills, or a period
16 prescribed by the commission has expired, whichever occurs first.

17 (d) The commission shall implement procedures to ensure
18 that a recipient under the child health plan program, [the]
19 Medicaid [program], or another state program administered by the
20 commission or a person who becomes eligible under the child health
21 plan program, [the] Medicaid [program], or another state program
22 administered by the commission or a health and human services
23 agency receives continuity of care in relation to certain
24 prescriptions identified by the commission.

25 SECTION 2.111. Sections 531.074(b), (c), (f), (i), and
26 (i-1), Government Code, are amended to read as follows:

27 (b) The committee consists of the following members

1 appointed by the governor:

2 (1) six physicians licensed under Subtitle B, Title 3,
3 Occupations Code, and participating in [~~the~~] Medicaid [~~program~~], at
4 least one of whom is a licensed physician who is actively engaged in
5 mental health providing care and treatment to persons with severe
6 mental illness and who has practice experience in the state
7 Medicaid plan; and

8 (2) five pharmacists licensed under Subtitle J, Title 3,
9 Occupations Code, and participating in the Medicaid vendor drug program.

10 (c) In making appointments to the committee under
11 Subsection (b), the governor shall ensure that the committee
12 includes physicians and pharmacists who:

13 (1) represent different specialties and provide
14 services to all segments of the [~~Medicaid program's~~] diverse
15 population served by Medicaid;

16 (2) have experience in either developing or practicing
17 under a preferred drug list; and

18 (3) do not have contractual relationships, ownership
19 interests, or other conflicts of interest with a pharmaceutical
20 manufacturer or labeler or with an entity engaged by the commission
21 to assist in the development of the preferred drug lists or the
22 administration of the prior authorization system.

23 (f) The [~~committee shall meet at least monthly during the~~
24 ~~six-month period following establishment of the committee to enable~~
25 ~~the committee to develop recommendations for the initial preferred~~
26 ~~drug lists. After that period, the]~~ committee shall meet at least
27 quarterly and at other times at the call of the presiding officer or

1 a majority of the committee members.

2 (i) The executive commissioner [~~commission~~] shall adopt
3 rules governing the operation of the committee, including rules
4 governing the procedures used by the committee for providing notice
5 of a meeting and rules prohibiting the committee from discussing
6 confidential information described by Section 531.071 in a public
7 meeting. The committee shall comply with the rules adopted under
8 this subsection and Subsection (i-1).

9 (i-1) In addition to the rules under Subsection (i), the
10 executive commissioner [~~commission~~] by rule shall require the
11 committee or the committee's designee to present a summary of any
12 clinical efficacy and safety information or analyses regarding a
13 drug under consideration for a preferred drug list that is provided
14 to the committee by a private entity that has contracted with the
15 commission to provide the information. The committee or the
16 committee's designee shall provide the summary in electronic form
17 before the public meeting at which consideration of the drug
18 occurs. Confidential information described by Section 531.071
19 must be omitted from the summary. The summary must be posted on the
20 commission's Internet website.

21 SECTION 2.112. The heading to Section 531.077, Government
22 Code, is amended to read as follows:

23 Sec. 531.077. RECOVERY OF CERTAIN [~~MEDICAL~~] ASSISTANCE.

24 SECTION 2.113. Section 531.077(a), Government Code, is
25 amended to read as follows:

26 (a) The executive commissioner shall ensure that [~~the state~~]
27 Medicaid [~~program~~] implements 42 U.S.C. Section 1396p(b)(1).

1 SECTION 2.114. Section 531.078(a), Government Code, is
2 amended to read as follows:

3 (a) In this section, "gross receipts" means money received as
4 compensation for services under an intermediate care facility
5 [~~facilities~~] for individuals with an intellectual disability [~~the~~
6 ~~mentally retarded~~] waiver program such as a home and community
7 services waiver or a community living assistance and support services
8 waiver. The term does not include a charitable contribution, revenues
9 received for services or goods other than waivers, or any money
10 received from consumers or their families as reimbursement for
11 services or goods not normally covered by the waivers.

12 SECTION 2.115. Section 531.079, Government Code, is amended
13 to read as follows:

14 Sec. 531.079. WAIVER PROGRAM QUALITY ASSURANCE FEE ACCOUNT.
15 (a) The waiver program quality assurance fee account is a dedicated
16 account in the general revenue fund. The account is exempt from the
17 application of Section 403.095. [~~Interest earned on money in the~~
18 ~~account shall be credited to the account.~~]

19 (b) The account consists of fees collected under Section
20 531.078 [~~and interest earned on money in the account~~].

21 (c) Subject to legislative appropriation and state and
22 federal law, money in the account may be appropriated only to the
23 Department of Aging and Disability Services to increase
24 reimbursement rates paid under the home and community services
25 waiver program or the community living assistance and support
26 services waiver program or to offset allowable expenses under [~~the~~
27 ~~state~~] Medicaid [program].

1 SECTION 2.116. Section 531.081, Government Code, is amended
2 to read as follows:

3 Sec. 531.081. INVALIDITY; FEDERAL FUNDS. If any portion of
4 Sections 531.078-531.080 is held invalid by a final order of a court
5 that is not subject to appeal, or if the commission determines that
6 the imposition of the quality assurance fee and the expenditure of
7 the money collected as provided by those sections will not entitle
8 this state to receive additional federal money under [the] Medicaid
9 [program], the commission shall:

10 (1) stop collection of the quality assurance fee; and
11 (2) not later than the 30th day after the date the
12 collection of the quality assurance fee is stopped, return any
13 money collected under Section 531.078, but not spent under Section
14 531.080, to the persons who paid the fees in proportion to the total
15 amount paid by those persons.

16 SECTION 2.117. Section 531.084(a), Government Code, is
17 amended to read as follows:

18 (a) The commission shall make every effort to achieve cost
19 efficiencies within the Medicaid long-term care program. To
20 achieve those efficiencies, the commission shall:

21 (1) establish a fee schedule for reimbursable incurred
22 medical expenses for dental services controlled in long-term care
23 facilities;

24 (2) implement a fee schedule for reimbursable incurred
25 medical expenses for durable medical equipment in nursing
26 facilities and ICF-IID [~~ICF-MR~~] facilities;

27 (3) implement a durable medical equipment fee schedule

1 action plan;

2 (4) establish a system for private contractors to
3 secure and coordinate the collection of Medicare funds for
4 recipients who are dually eligible for Medicare and Medicaid;

5 (5) create additional partnerships with
6 pharmaceutical companies to obtain discounted prescription drugs
7 for Medicaid recipients; and

8 (6) develop and implement a system for auditing the
9 Medicaid hospice care system that provides services in long-term
10 care facilities to ensure correct billing for pharmaceuticals.

11 SECTION 2.118. Section 531.085, Government Code, is amended
12 to read as follows:

13 Sec. 531.085. HOSPITAL EMERGENCY ROOM USE REDUCTION
14 INITIATIVES. The commission shall develop and implement a
15 comprehensive plan to reduce the use of hospital emergency room
16 services by recipients under Medicaid [~~the medical assistance~~
17 ~~program~~]. The plan may include:

18 (1) a pilot program designed to facilitate program
19 participants in accessing an appropriate level of health care,
20 which may include as components:

21 (A) providing program participants access to
22 bilingual health services providers; and

23 (B) giving program participants information on
24 how to access primary care physicians, advanced practice registered
25 nurses, and local health clinics;

26 (2) a pilot program under which health care providers,
27 other than hospitals, are given financial incentives for treating

1 recipients outside of normal business hours to divert those
2 recipients from hospital emergency rooms;

3 (3) payment of a nominal referral fee to hospital
4 emergency rooms that perform an initial medical evaluation of a
5 recipient and subsequently refer the recipient, if medically
6 stable, to an appropriate level of health care, such as care
7 provided by a primary care physician, advanced practice registered
8 nurse, or local clinic;

9 (4) a program under which the commission or a managed
10 care organization that enters into a contract with the commission
11 under Chapter 533 contacts, by telephone or mail, a recipient who
12 accesses a hospital emergency room three times during a six-month
13 period and provides the recipient with information on ways the
14 recipient may secure a medical home to avoid unnecessary treatment
15 at hospital emergency rooms;

16 (5) a health care literacy program under which the
17 commission develops partnerships with other state agencies and
18 private entities to:

19 (A) assist the commission in developing
20 materials that:

21 (i) contain basic health care information
22 for parents of young children who are recipients under Medicaid
23 [~~the medical assistance program~~] and who are participating in
24 public or private child-care or prekindergarten programs,
25 including federal Head Start programs; and

26 (ii) are written in a language
27 understandable to those parents and specifically tailored to be

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1 applicable to the needs of those parents;

2 (B) distribute the materials developed under

3 Paragraph (A) to those parents; and

4 (C) otherwise teach those parents about the health
5 care needs of their children and ways to address those needs; and

(6) other initiatives developed and implemented in other states that have shown success in reducing the incidence of unnecessary treatment in hospital emergency rooms.

9 SECTION 2.119. Sections 531.0861(a) and (b), Government
10 Code, are amended to read as follows:

11 (a) If cost-effective, the executive commissioner by rule
12 shall establish a physician incentive program designed to reduce
13 the use of hospital emergency room services for non-emergent
14 conditions by recipients under Medicaid [~~the medical assistance~~
15 ~~program~~].

16 (b) In establishing the physician incentive program under
17 Subsection (a), the executive commissioner may include only the
18 program components identified as cost-effective in the study
19 conducted under former Section 531.086.

20 SECTION 2.120. Section 531.087(a), Government Code, is
21 amended to read as follows:

22 (a) The commission shall ensure that educational materials
23 relating to the federal earned income tax credit are provided in
24 accordance with this section to each person receiving assistance or
25 benefits under:

26 (1) the child health plan program;

27 (2) the financial assistance program under Chapter 31,

1 Human Resources Code;

2 (3) Medicaid [~~the medical assistance program under~~
3 ~~Chapter 32, Human Resources Code~~];

4 (4) the supplemental nutrition assistance [~~food~~
5 ~~stamp~~] program under Chapter 33, Human Resources Code; or

6 (5) another appropriate health and human services
7 program.

8 SECTION 2.121. Section 531.089(b), Government Code, is
9 amended to read as follows:

10 (b) The executive commissioner [~~of the Health and Human~~
11 ~~Services Commission~~] may adopt rules as necessary to implement this
12 section.

13 SECTION 2.122. Section 531.090(a), Government Code, is
14 amended to read as follows:

15 (a) Subject to Subsection (b), the commission and each
16 health and human services agency authorized by the executive
17 commissioner may enter into an agreement with one or more other
18 states for the joint bulk purchasing of prescription drugs and
19 other medications to be used in [~~the~~] Medicaid [~~program~~], the state
20 child health plan, or another program under the authority of the
21 commission.

22 SECTION 2.123. Section 531.091(b), Government Code, is
23 amended to read as follows:

24 (b) The method may:

25 (1) provide for the use of a single integrated
26 benefits issuance card or multiple cards capable of integrating
27 benefits issuance or other program functions;

1 (2) incorporate a fingerprint image identifier to
2 enable personal identity verification at a point of service and
3 reduce fraud [~~as permitted by Section 531.1063~~];

4 (3) enable immediate electronic verification of
5 recipient eligibility; and

6 (4) replace multiple forms, cards, or other methods
7 used for fraud reduction or provision of health and human services
8 benefits, including:

9 (A) electronic benefits transfer cards; and

10 (B) smart cards used in [~~the~~] Medicaid [~~program~~].

11 SECTION 2.124. Section 531.097, Government Code, is amended
12 to read as follows:

13 Sec. 531.097. TAILORED BENEFIT PACKAGES FOR CERTAIN
14 CATEGORIES OF THE MEDICAID POPULATION. (a) The executive
15 commissioner may seek a waiver under Section 1115 of the federal
16 Social Security Act (42 U.S.C. Section 1315) to develop and,
17 subject to Subsection (c), implement tailored benefit packages
18 designed to:

19 (1) provide Medicaid benefits that are customized to
20 meet the health care needs of recipients within defined categories
21 of the Medicaid population through a defined system of care;

22 (2) improve health outcomes for those recipients;

23 (3) improve those recipients' access to services;

24 (4) achieve cost containment and efficiency; and

25 (5) reduce the administrative complexity of
26 delivering Medicaid benefits.

27 (b) The commission:

1 (1) shall develop a tailored benefit package that is
2 customized to meet the health care needs of Medicaid recipients who
3 are children with special health care needs, subject to approval of
4 the waiver described by Subsection (a); and

5 (2) may develop tailored benefit packages that are
6 customized to meet the health care needs of other categories of
7 Medicaid recipients.

8 (c) If the commission develops tailored benefit packages
9 under Subsection (b)(2), the commission shall submit a report to
10 the standing committees of the senate and house of representatives
11 having primary jurisdiction over [the] Medicaid [program] that
12 specifies, in detail, the categories of Medicaid recipients to
13 which each of those packages will apply and the services available
14 under each package. ~~[The commission may not implement a package~~
~~developed under Subsection (b)(2) before September 1, 2009.]~~

16 (d) Except as otherwise provided by this section and subject
17 to the terms of the waiver authorized by this section, the
18 commission has broad discretion to develop the tailored benefit
19 packages under this section and determine the respective categories
20 of Medicaid recipients to which the packages apply in a manner that
21 preserves recipients' access to necessary services and is
22 consistent with federal requirements.

23 (e) Each tailored benefit package developed under this
24 section must include:

25 (1) a basic set of benefits that are provided under all
26 tailored benefit packages; and

27 (2) to the extent applicable to the category of

1 Medicaid recipients to which the package applies:

6 (f) In addition to the benefits required by Subsection (e),
7 a tailored benefit package developed under this section that
8 applies to Medicaid recipients who are children must provide at
9 least the services required by federal law under the early and
10 periodic screening, diagnosis, and treatment program.

11 (g) A tailored benefit package developed under this section
12 may include any service available under the state Medicaid plan or
13 under any federal Medicaid waiver, including any preventive health
14 or wellness service.

15 (g-1) A tailored benefit package developed under this
16 section must increase the state's flexibility with respect to the
17 state's use of Medicaid funding and may not reduce the benefits
18 available under the Medicaid state plan to any Medicaid recipient
19 population.

20 (h) In developing the tailored benefit packages, the
21 commission shall consider similar benefit packages established in
22 other states as a guide.

23 (i) The executive commissioner, by rule, shall define each
24 category of recipients to which a tailored benefit package applies
25 and a mechanism for appropriately placing recipients in specific
26 categories. Recipient categories must include children with
27 special health care needs and may include:

- 1 (1) persons with disabilities or special health needs;
2 (2) elderly persons;
3 (3) children without special health care needs; and
4 (4) working-age parents and caretaker relatives.

5 [~~(j) This section does not apply to a tailored benefit~~

6 ~~package or similar package of benefits if, before September 1,~~
7 ~~2007.~~

8 [~~(1) a federal waiver was requested to implement the~~
9 ~~package of benefits;~~

10 [~~(2) the package of benefits is being developed, as~~
11 ~~directed by the legislature; or~~

12 [~~(3) the package of benefits has been implemented.~~]

13 SECTION 2.125. Sections 531.099(a) and (b), Government

14 Code, are amended to read as follows:

15 (a) The commission shall review forms and requirements
16 under [~~the~~] Medicaid [~~program~~] regarding written orders for
17 diabetic equipment and supplies to identify variations between
18 permissible ordering procedures under that program and ordering
19 procedures available to providers under the Medicare program.

20 (b) To the extent practicable, and in conformity with

21 Chapter 157, Occupations Code, and Chapter 483, Health and Safety
22 Code, after conducting a review under Subsection (a) the commission
23 or executive commissioner, as appropriate, shall modify only forms,
24 rules, and procedures applicable to orders for diabetic equipment
25 and supplies under [~~the~~] Medicaid [~~program~~] to provide for an
26 ordering system that is comparable to the ordering system for
27 diabetic equipment and supplies under the Medicare program. The

1 ordering system must permit a diabetic equipment or supplies
2 supplier to complete the forms by hand or to enter by electronic
3 format medical information or supply orders into any form as
4 necessary to provide the information required to dispense diabetic
5 equipment or supplies.

6 SECTION 2.126. Section 531.0995(a), Government Code, is
7 amended to read as follows:

8 (a) This section applies to individuals receiving benefits
9 under:

10 (1) the financial assistance program under Chapter 31,
11 Human Resources Code;
12 (2) Medicaid [~~the medical assistance program under~~
13 ~~Chapter 32, Human Resources Code~~]; or
14 (3) the supplemental nutrition assistance program
15 under Chapter 33, Human Resources Code.

16 SECTION 2.127. Section 531.0996(a), Government Code, is
17 amended to read as follows:

18 (a) The commission shall develop and implement a pilot
19 program in Harris County to create pregnancy medical homes that
20 provide coordinated evidence-based maternity care management to
21 women who reside in the pilot program area and are recipients of
22 Medicaid [~~medical assistance~~] through a Medicaid managed care model
23 or arrangement under Chapter 533.

24 SECTION 2.128. Section 531.0998(e), Government Code, is
25 amended to read as follows:

26 (e) Not later than October 1 of each year, the commission,
27 the Texas Veterans Commission, the Veterans' Land Board, and the

1 Department of Aging and Disability Services collectively shall
2 submit to the legislature, the governor, and the Legislative Budget
3 Board a report describing:

4 (1) interagency progress in identifying and obtaining
5 United States Department of Veterans Affairs benefits for veterans
6 receiving Medicaid and other public benefit programs;

7 (2) the number of veterans benefits claims awarded,
8 the total dollar amount of veterans benefits claims awarded, and
9 the costs to the state that were avoided as a result of state
10 agencies' use of the system;

11 (3) efforts to expand the use of the system and improve
12 the effectiveness of shifting veterans from Medicaid and other
13 public benefits to United States Department of Veterans Affairs
14 benefits, including any barriers and how state agencies have
15 addressed those barriers; and

16 (4) the extent to which the Texas Veterans Commission
17 has targeted specific populations of veterans, including
18 populations in rural counties and in specific age and
19 service-connected disability categories, in order to maximize
20 benefits for veterans and savings to the state.

21 SECTION 2.129. Sections [531.101](#)(a) and (b), Government
22 Code, are amended to read as follows:

23 (a) The commission may grant an award to an individual who
24 reports activity that constitutes fraud or abuse of funds in [~~the~~
25 ~~state~~] Medicaid [~~program~~] or reports overcharges in Medicaid [~~the~~
26 ~~program~~] if the commission determines that the disclosure results
27 in the recovery of an administrative penalty imposed under Section

1 32.039, Human Resources Code. The commission may not grant an award
2 to an individual in connection with a report if the commission or
3 attorney general had independent knowledge of the activity reported
4 by the individual.

5 (b) The commission shall determine the amount of an award.
6 The award may not exceed five percent of the amount of the
7 administrative penalty imposed under Section 32.039, Human
8 Resources Code, that resulted from the individual's disclosure. In
9 determining the amount of the award, the commission shall consider
10 how important the disclosure is in ensuring the fiscal integrity of
11 Medicaid [the program]. The commission may also consider whether
12 the individual participated in the fraud, abuse, or overcharge.

13 SECTION 2.130. Sections 531.1011(1), (6), (9), and (10),
14 Government Code, are amended to read as follows:

15 (1) "Abuse" means:

16 (A) a practice by a provider that is inconsistent
17 with sound fiscal, business, or medical practices and that results
18 in:

19 (i) an unnecessary cost to [the] Medicaid
20 [program]; or

21 (ii) the reimbursement of services that are
22 not medically necessary or that fail to meet professionally
23 recognized standards for health care; or

24 (B) a practice by a recipient that results in an
25 unnecessary cost to [the] Medicaid [program].

26 (6) "Payment hold" means the temporary denial of
27 reimbursement under [the] Medicaid [program] for items or services

1 furnished by a specified provider.

2 (9) "Program exclusion" means the suspension of a
3 provider from being authorized under [~~the~~] Medicaid [~~program~~] to
4 request reimbursement of items or services furnished by that
5 specific provider.

6 (10) "Provider" means a person, firm, partnership,
7 corporation, agency, association, institution, or other entity
8 that was or is approved by the commission to:

9 (A) provide Medicaid services [~~medical~~
10 ~~assistance~~] under a contract or provider agreement with the
11 commission; or

12 (B) provide third-party billing vendor services
13 under a contract or provider agreement with the commission.

14 SECTION 2.131. Sections 531.102(e), (f), (m), and (n),
15 Government Code, are amended to read as follows:

16 (e) The executive commissioner [~~commission~~], in
17 consultation with the inspector general, by rule shall set specific
18 claims criteria that, when met, require the office to begin an
19 investigation.

20 (f)(1) If the commission receives a complaint or allegation
21 of Medicaid fraud or abuse from any source, the office must conduct
22 a preliminary investigation as provided by Section 531.118(c) to
23 determine whether there is a sufficient basis to warrant a full
24 investigation. A preliminary investigation must begin not later
25 than the 30th day after the date the commission receives a complaint
26 or allegation or has reason to believe that fraud or abuse has
27 occurred. A preliminary investigation shall be completed not later

1 than the 90th day after it began.

2 (2) If the findings of a preliminary investigation
3 give the office reason to believe that an incident of fraud or abuse
4 involving possible criminal conduct has occurred in [the] Medicaid
5 [program], the office must take the following action, as
6 appropriate, not later than the 30th day after the completion of the
7 preliminary investigation:

8 (A) if a provider is suspected of fraud or abuse
9 involving criminal conduct, the office must refer the case to the
10 state's Medicaid fraud control unit, provided that the criminal
11 referral does not preclude the office from continuing its
12 investigation of the provider, which investigation may lead to the
13 imposition of appropriate administrative or civil sanctions; or

14 (B) if there is reason to believe that a
15 recipient has defrauded [the] Medicaid [program], the office may
16 conduct a full investigation of the suspected fraud, subject to
17 Section 531.118(c).

18 (m) The office shall employ a dental director who is a
19 licensed dentist under Subtitle D, Title 3, Occupations Code, and
20 the rules adopted under that subtitle by the State Board of Dental
21 Examiners, and who preferably has significant knowledge of [the]
22 Medicaid [program]. The dental director shall ensure that any
23 investigative findings based on the necessity of dental services or
24 the quality of dental care have been reviewed by a qualified expert
25 as described by the Texas Rules of Evidence before the office
26 imposes a payment hold or seeks recoupment of an overpayment,
27 damages, or penalties.

1 (n) To the extent permitted under federal law, the executive
2 commissioner, on behalf of the office, ~~[acting through the~~
3 ~~commission,~~] shall adopt rules establishing the criteria for
4 initiating a full-scale fraud or abuse investigation, conducting
5 the investigation, collecting evidence, accepting and approving a
6 provider's request to post a surety bond to secure potential
7 recoupments in lieu of a payment hold or other asset or payment
8 guarantee, and establishing minimum training requirements for
9 Medicaid provider fraud or abuse investigators.

10 SECTION 2.132. Section 531.102(1), Government Code, as
11 added by Chapter 622 (S.B. 1803), Acts of the 83rd Legislature,
12 Regular Session, 2013, is amended to read as follows:

13 (1) The office shall employ a medical director who is a
14 licensed physician under Subtitle B, Title 3, Occupations Code, and
15 the rules adopted under that subtitle by the Texas Medical Board,
16 and who preferably has significant knowledge of [the] Medicaid
17 [program]. The medical director shall ensure that any
18 investigative findings based on medical necessity or the quality of
19 medical care have been reviewed by a qualified expert as described
20 by the Texas Rules of Evidence before the office imposes a payment
21 hold or seeks recoupment of an overpayment, damages, or penalties.

22 SECTION 2.133. Subsection (1), Section 531.102, Government
23 Code, as added by Chapter 1311 (S.B. 8), Acts of the 83rd
24 Legislature, Regular Session, 2013, is redesignated as Subsection
25 (o), Section 531.102, Government Code, to read as follows:

26 (o) [~~(1)~~] Nothing in this section limits the authority of
27 any other state agency or governmental entity.

1 SECTION 2.134. Section 531.1021(a), Government Code, is
2 amended to read as follows:

3 (a) The office of inspector general may request that the
4 executive commissioner or the executive commissioner's designee
5 approve the issuance by the office of a subpoena in connection with
6 an investigation conducted by the office. If the request is
7 approved, the office may issue a subpoena to compel the attendance
8 of a relevant witness or the production, for inspection or copying,
9 of relevant evidence that is in this state.

10 SECTION 2.135. Section 531.1022(a), Government Code, is
11 amended to read as follows:

12 (a) The commission's office of inspector general shall
13 employ and commission not more than five peace officers at any given
14 time for the purpose of assisting the office in carrying out the
15 duties of the office relating to the investigation of fraud, waste,
16 and abuse in [the] Medicaid [program].

17 SECTION 2.136. Sections 531.103(a) and (c), Government
18 Code, are amended to read as follows:

19 (a) The commission, acting through the commission's office
20 of inspector general, and the office of the attorney general shall
21 enter into a memorandum of understanding to develop and implement
22 joint written procedures for processing cases of suspected fraud,
23 waste, or abuse, as those terms are defined by state or federal law,
24 or other violations of state or federal law under [the state]
25 Medicaid [program] or another [~~other~~] program administered by the
26 commission or a health and human services agency, including the
27 financial assistance program under Chapter 31, Human Resources

1 Code, the supplemental nutrition [~~a nutritional~~] assistance
2 program under Chapter 33, Human Resources Code, and the child
3 health plan program. The memorandum of understanding shall
4 require:

5 (1) the office of inspector general and the office of
6 the attorney general to set priorities and guidelines for referring
7 cases to appropriate state agencies for investigation,
8 prosecution, or other disposition to enhance deterrence of fraud,
9 waste, abuse, or other violations of state or federal law,
10 including a violation of Chapter 102, Occupations Code, in the
11 programs and maximize the imposition of penalties, the recovery of
12 money, and the successful prosecution of cases;

13 (1-a) the office of inspector general to refer each
14 case of suspected provider fraud, waste, or abuse to the office of
15 the attorney general not later than the 20th business day after the
16 date the office of inspector general determines that the existence
17 of fraud, waste, or abuse is reasonably indicated;

18 (1-b) the office of the attorney general to take
19 appropriate action in response to each case referred to the
20 attorney general, which action may include direct initiation of
21 prosecution, with the consent of the appropriate local district or
22 county attorney, direct initiation of civil litigation, referral to
23 an appropriate United States attorney, a district attorney, or a
24 county attorney, or referral to a collections agency for initiation
25 of civil litigation or other appropriate action;

26 (2) the office of inspector general to keep detailed
27 records for cases processed by that office or the office of the

1 attorney general, including information on the total number of
2 cases processed and, for each case:

3 (A) the agency and division to which the case is
4 referred for investigation;

5 (B) the date on which the case is referred; and

6 (C) the nature of the suspected fraud, waste, or
7 abuse;

8 (3) the office of inspector general to notify each
9 appropriate division of the office of the attorney general of each
10 case referred by the office of inspector general;

11 (4) the office of the attorney general to ensure that
12 information relating to each case investigated by that office is
13 available to each division of the office with responsibility for
14 investigating suspected fraud, waste, or abuse;

15 (5) the office of the attorney general to notify the
16 office of inspector general of each case the attorney general
17 declines to prosecute or prosecutes unsuccessfully;

18 (6) representatives of the office of inspector general
19 and of the office of the attorney general to meet not less than
20 quarterly to share case information and determine the appropriate
21 agency and division to investigate each case; and

22 (7) the office of inspector general and the office of
23 the attorney general to submit information requested by the
24 comptroller about each resolved case for the comptroller's use in
25 improving fraud detection.

26 (c) The commission and the office of the attorney general
27 shall jointly prepare and submit an annual report to the governor,

1 lieutenant governor, and speaker of the house of representatives
2 concerning the activities of those agencies in detecting and
3 preventing fraud, waste, and abuse under [~~the state~~] Medicaid
4 [~~program~~] or another [~~other~~] program administered by the commission
5 or a health and human services agency. The report may be
6 consolidated with any other report relating to the same subject
7 matter the commission or office of the attorney general is required
8 to submit under other law.

9 SECTION 2.137. Section 531.1031(a)(2), Government Code, is
10 amended to read as follows:

11 (2) "Participating agency" means:
12 (A) the Medicaid fraud enforcement divisions of
13 the office of the attorney general;
14 (B) each board or agency with authority to
15 license, register, regulate, or certify a health care professional
16 or managed care organization that may participate in [~~the state~~]
17 Medicaid [~~program~~]; and
18 (C) the commission's office of inspector
19 general.

20 SECTION 2.138. Section 531.1031(b), Government Code, is
21 amended to read as follows:

22 (b) This section applies only to criminal history record
23 information held by a participating agency that relates to a health
24 care professional and information held by a participating agency
25 that relates to a health care professional or managed care
26 organization that is the subject of an investigation by a
27 participating agency for alleged fraud or abuse under [~~the state~~]

1 Medicaid [program].

2 SECTION 2.139. Section 531.105, Government Code, is amended
3 to read as follows:

4 Sec. 531.105. FRAUD DETECTION TRAINING. (a) The
5 commission shall develop and implement a program to provide annual
6 training to contractors who process Medicaid claims and to
7 appropriate staff of the health and human services agencies [~~Texas~~
8 ~~Department of Health and the Texas Department of Human Services~~] in
9 identifying potential cases of fraud, waste, or abuse under [~~the~~
10 ~~state~~] Medicaid [program]. The training provided to the
11 contractors and staff must include clear criteria that specify:

12 (1) the circumstances under which a person should
13 refer a potential case to the commission; and

14 (2) the time by which a referral should be made.

15 (b) The health and human services agencies [~~Texas~~
16 ~~Department of Health and the Texas Department of Human Services~~],
17 in cooperation with the commission, shall periodically set a goal
18 of the number of potential cases of fraud, waste, or abuse under
19 [~~the state~~] Medicaid [program] that each agency will attempt to
20 identify and refer to the commission. The commission shall include
21 information on the agencies' goals and the success of each agency in
22 meeting the agency's goal in the report required by Section
23 531.103(c).

24 SECTION 2.140. Sections 531.106(a), (d), (f), and (g),
25 Government Code, are amended to read as follows:

26 (a) The commission shall use learning or neural network
27 technology to identify and deter fraud in [~~the~~] Medicaid [program]

1 throughout this state.

2 (d) The commission shall require each health and human
3 services agency that performs any aspect of [~~the state~~] Medicaid
4 [~~program~~] to participate in the implementation and use of the
5 technology.

6 (f) The commission shall refer cases identified by the
7 technology to the commission's office of inspector general
8 [~~investigations and enforcement~~] or the office of the attorney
9 general, as appropriate.

10 (g) Each month, the learning or neural network technology
11 implemented under this section must match [~~bureau of~~] vital
12 statistics unit death records with Medicaid claims filed by a
13 provider. If the commission determines that a provider has filed a
14 claim for services provided to a person after the person's date of
15 death, as determined by the [~~bureau of~~] vital statistics unit death
16 records, the commission shall refer the case for investigation to
17 the commission's office of inspector general [~~investigations and~~
18 ~~enforcement~~].

19 SECTION 2.141. Sections 531.1061(a) and (c), Government
20 Code, are amended to read as follows:

21 (a) The commission shall use an automated fraud
22 investigation tracking system through the commission's office of
23 inspector general [~~investigations and enforcement~~] to monitor the
24 progress of an investigation of suspected fraud, abuse, or
25 insufficient quality of care under [~~the state~~] Medicaid [~~program~~].

26 (c) The commission shall require each health and human
27 services agency that performs any aspect of [~~the state~~] Medicaid

1 [program] to participate in the implementation and use of the
2 automated fraud investigation tracking system.

3 SECTION 2.142. Section 531.1062(a), Government Code, is
4 amended to read as follows:

5 (a) The commission shall use an automated recovery
6 monitoring system to monitor the collections process for a settled
7 case of fraud, abuse, or insufficient quality of care under [the
8 state] Medicaid [program].

9 SECTION 2.143. Sections 531.107(a), (b), and (f),
10 Government Code, are amended to read as follows:

11 (a) The Medicaid and Public Assistance Fraud Oversight Task
12 Force advises and assists the commission and the commission's
13 office of inspector general [~~investigations and enforcement~~] in
14 improving the efficiency of fraud investigations and collections.

15 (b) The task force is composed of a representative of the:

16 (1) attorney general's office, appointed by the
17 attorney general;

18 (2) comptroller's office, appointed by the
19 comptroller;

20 (3) Department of Public Safety, appointed by the
21 public safety director;

22 (4) state auditor's office, appointed by the state
23 auditor;

24 (5) commission, appointed by the executive
25 commissioner [~~of health and human services~~];

26 (6) [Texas] Department of Aging and Disability [~~Human~~
27 Services, appointed by the commissioner of aging and disability

1 [human] services;

2 (7) Texas Department of Insurance, appointed by the
3 commissioner of insurance; [~~and~~]

4 (8) [~~Texas~~] Department of State Health Services,
5 appointed by the commissioner of state [~~public~~] health services;
6 and

7 (9) commission's office of inspector general,
8 appointed by the executive commissioner.

9 (f) At least once each fiscal quarter, the commission's
10 office of inspector general [~~investigations and enforcement~~] shall
11 provide to the task force:

12 (1) information detailing:

13 (A) the number of fraud referrals made to the
14 office and the origin of each referral;

15 (B) the time spent investigating each case;

16 (C) the number of cases investigated each month,
17 by program and region;

18 (D) the dollar value of each fraud case that
19 results in a criminal conviction; and

20 (E) the number of cases the office rejects and
21 the reason for rejection, by region; and

22 (2) any additional information the task force
23 requires.

24 SECTION 2.144. Sections 531.108(a) and (b), Government
25 Code, are amended to read as follows:

26 (a) The commission's office of inspector general
27 [~~investigations and enforcement~~] shall compile and disseminate

1 accurate information and statistics relating to:
2 (1) fraud prevention; and
3 (2) post-fraud referrals received and accepted or
4 rejected from the commission's case management system or the case
5 management system of a health and human services agency.

6 (b) The commission shall:

7 (1) aggressively publicize successful fraud
8 prosecutions and fraud-prevention programs through all available
9 means, including the use of statewide press releases [~~issued in~~
10 ~~coordination with the Texas Department of Human Services~~]; and
11 (2) ensure that a toll-free hotline for reporting
12 suspected fraud in programs administered by the commission or a
13 health and human services agency is maintained and promoted, either
14 by the commission or by a health and human services agency.

15 SECTION 2.145. Section 531.109(a), Government Code, is
16 amended to read as follows:

17 (a) The commission shall annually select and review a
18 random, statistically valid sample of all claims for reimbursement
19 under [~~the state~~] Medicaid [~~program~~], including under the vendor
20 drug program, for potential cases of fraud, waste, or abuse.

21 SECTION 2.146. Sections 531.110(a), (b), (c), and (e),
22 Government Code, are amended to read as follows:

23 (a) The commission shall conduct electronic data matches
24 for a Medicaid recipient [~~of assistance under the state Medicaid~~
25 ~~program~~] at least quarterly to verify the identity, income,
26 employment status, and other factors that affect the eligibility of
27 the recipient.

1 (b) To verify eligibility of a recipient for [assistance
2 ~~under the state~~] Medicaid [~~program~~], the electronic data matching
3 must match information provided by the recipient with information
4 contained in databases maintained by appropriate federal and state
5 agencies.

6 (c) The health and human services agencies [~~Texas~~
7 ~~Department of Human Services~~] shall cooperate with the commission
8 by providing data or any other assistance necessary to conduct the
9 electronic data matches required by this section.

10 (e) The executive commissioner shall establish procedures
11 by which the commission, or a health and human services agency
12 designated by the commission, verifies [~~by rule shall establish~~
13 ~~procedures to verify~~] the electronic data matches conducted by the
14 commission under this section. Not later than the 20th day after
15 the date the electronic data match is verified, the commission
16 [~~Texas Department of Human Services~~] shall remove from eligibility
17 a recipient who is determined to be ineligible for [assistance
18 ~~under the state~~] Medicaid [~~program~~].

19 SECTION 2.147. Section 531.111, Government Code, is amended
20 to read as follows:

21 Sec. 531.111. FRAUD DETECTION TECHNOLOGY. The commission
22 may contract with a contractor who specializes in developing
23 technology capable of identifying patterns of fraud exhibited by
24 Medicaid recipients to:

25 (1) develop and implement the fraud detection
26 technology; and

27 (2) determine if a pattern of fraud by Medicaid

1 recipients is present in the recipients' eligibility files
2 maintained by the commission [~~Texas Department of Human Services~~].

3 SECTION 2.148. Section 531.1112(a), Government Code, is
4 amended to read as follows:

5 (a) The commission and the commission's office of inspector
6 general shall jointly study the feasibility of increasing the use
7 of technology to strengthen the detection and deterrence of fraud
8 in [~~the state~~] Medicaid [~~program~~]. The study must include the
9 determination of the feasibility of using technology to verify a
10 person's citizenship and eligibility for coverage.

11 SECTION 2.149. Section 531.112(a)(1), Government Code, is
12 amended to read as follows:

13 (1) "Chemical dependency" has the meaning assigned by
14 Section 461A.002 [~~461.002~~], Health and Safety Code.

15 SECTION 2.150. Section 531.112(b), Government Code, is
16 amended to read as follows:

17 (b) Following the final conviction of a chemical dependency
18 treatment provider for an offense, an element of which involves
19 submitting a fraudulent claim for reimbursement for services under
20 [~~the state~~] Medicaid [~~program~~], the commission or other health and
21 human services agency that operates a portion of [~~the state~~]
22 Medicaid [~~program~~] shall expunge or provide for the expunction of a
23 diagnosis of chemical dependency in a child that has been made by
24 the treatment provider and entered in any:

25 (1) appropriate official record of the commission or
26 agency;

27 (2) applicable medical record that is in the

1 commission's or agency's custody; and

(3) applicable record of a company that the commission contracts with for the processing and payment of claims under [the state] Medicaid [program].

5 SECTION 2.151. Sections 531.113(a) and (e), Government
6 Code, are amended to read as follows:

7 (a) Each managed care organization that provides or
8 arranges for the provision of health care services to an individual
9 under a government-funded program, including [the] Medicaid
10 [program] and the child health plan program, shall:

18 (e) The executive commissioner shall adopt rules as
19 necessary to accomplish the purposes of this section.

20 SECTION 2.152. Section 531.1131(a), Government Code, is
21 amended to read as follows:

22 (a) If a managed care organization's special investigative
23 unit under Section 531.113(a)(1) or the entity with which the
24 managed care organization contracts under Section 531.113(a)(2)
25 discovers fraud or abuse in [the] Medicaid [program] or the child
26 health plan program, the unit or entity shall:

27 (1) immediately and contemporaneously notify the

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1 commission's office of inspector general and the office of the
2 attorney general;

8 SECTION 2.153. Section 531.114(g), Government Code, is
9 amended to read as follows:

10 (g) The executive commissioner [commission] shall adopt
11 rules as necessary to implement this section.

12 SECTION 2.154. Section 531.116, Government Code, is amended
13 to read as follows:

14 Sec. 531.116. COMPLIANCE WITH LAW PROHIBITING
15 SOLICITATION. A provider who furnishes services under [the]
16 Medicaid [~~program~~] or the child health plan program is subject to
17 Chapter 102, Occupations Code, and the provider's compliance with
18 that chapter is a condition of the provider's eligibility to
19 participate as a provider under those programs.

20 SECTION 2.155. Section 531.117, Government Code, is amended
21 to read as follows:

Sec. 531.117. RECOVERY AUDIT CONTRACTORS. To the extent required under Section 1902(a)(42), Social Security Act (42 U.S.C. Section 1396a(a)(42)), the commission shall establish a program under which the commission contracts with one or more recovery audit contractors for purposes of identifying underpayments and overpayments under [the] Medicaid [program] and recovering the

1 overpayments.

2 SECTION 2.156. Sections 531.121(2), (4), and (6),
3 Government Code, are amended to read as follows:

4 (2) "Guardian" has the meaning assigned by Section
5 1002.012, Estates [601, Texas Probate] Code.

6 (4) "Incapacitated individual" means an incapacitated
7 person as defined by Section 1002.017, Estates [601, Texas Probate]
8 Code.

9 (6) "Statutory probate court" has the meaning assigned
10 by Section 1002.008(b), Estates [601, Texas Probate] Code.

11 SECTION 2.157. Sections 531.122(c) and (f), Government
12 Code, are amended to read as follows:

13 (c) To be eligible for an appointment under this section, an
14 individual must have demonstrated experience working with:

15 (1) a guardianship program;

16 (2) an organization that advocates on behalf of or in
17 the interest of elderly individuals or individuals with mental
18 illness or an intellectual disability [mental retardation]; or

19 (3) incapacitated individuals.

20 (f) Sections 2110.002 and 2110.008 [~~2 and 8, Article~~
21 ~~6252-33, Revised Statutes,~~] do not apply to the advisory board.

22 SECTION 2.158. Section 531.125(a), Government Code, is
23 amended to read as follows:

24 (a) The commission in accordance with commission rules [by
25 rule] may award grants to:

26 (1) a local guardianship program, subject to the
27 requirements of this section; and

1 (2) a local legal guardianship program to enable
2 low-income family members and friends to have legal representation
3 in court if they are willing and able to be appointed guardians of
4 proposed wards who are indigent.

5 SECTION 2.159. Section 531.151(3), Government Code, is
6 amended to read as follows:

7 (3) "Institution" means:

8 (A) an ICF-IID [~~ICF-MR~~], as defined by Section
9 531.002, Health and Safety Code;

10 (B) a group home operated under the authority of
11 the [Texas] Department of Aging and Disability Services [~~Mental~~
12 ~~Health and Mental Retardation~~], including a residential service
13 provider under a Medicaid waiver program authorized under Section
14 1915(c) of the federal Social Security Act (42 U.S.C. Section
15 1396n), as amended, that provides services at a residence other
16 than the child's home or foster home;

17 (C) a foster group home or an agency foster group
18 home as defined by Section 42.002, Human Resources Code;

19 (D) a nursing facility;

20 (E) a general residential operation for children
21 with an intellectual disability that is [an institution for the
22 mentally retarded] licensed by the Department of Family and
23 Protective [and Regulatory] Services; or

24 (F) another residential arrangement other than a
25 foster home as defined by Section 42.002, Human Resources Code,
26 that provides care to four or more children who are unrelated to
27 each other.

1 SECTION 2.160. Sections 531.1521(a) and (b), Government
2 Code, are amended to read as follows:

3 (a) The executive commissioner by rule shall develop and
4 implement a system by which the Department of Aging and Disability
5 Services ensures that, for each child with respect to whom the
6 department or a local intellectual and developmental disability
7 [~~mental retardation~~] authority is notified of a request for
8 placement in an institution, the child's parent or guardian is
9 fully informed before the child is placed in the institution of all
10 community-based services and any other service and support options
11 for which the child may be eligible. The system must be designed to
12 ensure that the department provides the information through:

13 (1) a local intellectual and developmental disability
14 [~~mental retardation~~] authority;

15 (2) any private entity that has knowledge and
16 expertise regarding the needs of and full spectrum of care options
17 available to children with disabilities as well as the philosophy
18 and purpose of permanency planning; or

19 (3) a department employee.

20 (b) An institution in which a child's parent or guardian is
21 considering placing the child may provide information required
22 under Subsection (a), but the information must also be provided by a
23 local intellectual and developmental disability [~~mental~~
24 ~~retardation~~] authority, private entity, or employee of the
25 Department of Aging and Disability Services as required by
26 Subsection (a).

27 SECTION 2.161. Sections 531.153(b), (d), (d-1), and (e),

1 Government Code, are amended to read as follows:

2 (b) The Department of Family and Protective [and
3 ~~Regulatory~~] Services shall develop a permanency plan as required by
4 this subchapter for each child who resides in an institution in this
5 state for whom the department has been appointed permanent managing
6 conservator. The department is not required to develop a
7 permanency plan under this subchapter for a child for whom the
8 department has been appointed temporary managing conservator, but
9 may incorporate the requirements of this subchapter in a permanency
10 plan developed for the child under Section [263.3025](#), Family Code.

11 (d) In implementing permanency planning procedures under
12 Subsection (a) to develop a permanency plan for each child, the
13 Department of Aging and Disability Services shall:

14 (1) delegate the department's duty to develop a
15 permanency plan to a local intellectual and developmental
16 disability [~~mental retardation~~] authority, as defined by Section
17 [531.002](#), Health and Safety Code, or enter into a memorandum of
18 understanding with the local intellectual and developmental
19 disability [~~mental retardation~~] authority to develop the
20 permanency plan for each child who resides in an institution in this
21 state or with respect to whom the department is notified in advance
22 that institutional care is sought;

23 (2) contract with a private entity, other than an
24 entity that provides long-term institutional care, to develop a
25 permanency plan for a child who resides in an institution in this
26 state or with respect to whom the department is notified in advance
27 that institutional care is sought; or

(3) perform the department's duties regarding permanency planning procedures using department personnel.

3 (d-1) A contract or memorandum of understanding under
4 Subsection (d) must include performance measures by which the
5 Department of Aging and Disability Services may evaluate the
6 effectiveness of a local intellectual and developmental disability
7 [~~mental retardation~~] authority's or private entity's permanency
8 planning efforts.

9 (e) The commission, the Department of Aging and Disability
10 Services, [~~Texas Department of Human Services, the Texas Department~~
11 ~~of Mental Health and Mental Retardation,~~] and the Department of
12 Family and Protective [~~and Regulatory~~] Services may solicit and
13 accept gifts, grants, and donations to support the development of
14 permanency plans for children residing in institutions by
15 individuals or organizations not employed by or affiliated with
16 those institutions.

17 SECTION 2.162. Section 531.1531, Government Code, is
18 amended to read as follows:

19 Sec. 531.1531. ASSISTANCE WITH PERMANENCY PLANNING
20 EFFORTS. An institution in which a child resides shall assist with
21 providing effective permanency planning for the child by:

22 (1) cooperating with the health and human services
23 agency, local intellectual and developmental disability [~~mental~~
24 ~~retardation~~] authority, or private entity responsible for
25 developing the child's permanency plan; and

26 (2) participating in meetings to review the child's
27 permanency plan as requested by a health and human services agency.

1 local intellectual and developmental disability [~~mental~~
2 ~~retardation~~] authority, or private entity responsible for
3 developing the child's permanency plan.

4 SECTION 2.163. Section 531.154, Government Code, is amended
5 to read as follows:

6 Sec. 531.154. NOTIFICATION REQUIRED. (a) Not later than
7 the third day after the date a child is initially placed in an
8 institution, the institution shall notify:

9 (1) the Department of Aging and Disability Services
10 [~~Texas Department of Human Services~~], if the child is placed in a
11 nursing facility [~~home~~];

12 (2) the local intellectual and developmental
13 disability [~~mental retardation~~] authority, as defined by Section
14 531.002, Health and Safety Code, where the institution is located,
15 if the child:

16 (A) is placed in an ICF-IID [~~ICF-MR~~], as defined
17 by Section 531.002, Health and Safety Code; or

18 (B) is placed by a [~~state or local~~] child
19 protective services agency in a general residential operation for
20 children with an intellectual disability that is [~~an institution~~
21 ~~for the mentally retarded~~] licensed by the Department of Family and
22 Protective [~~and Regulatory~~] Services;

23 (3) the community resource coordination group in the
24 county of residence of a parent or guardian of the child;

25 (4) if the child is at least three years of age, the
26 school district for the area in which the institution is located;
27 and

1 (5) if the child is less than three years of age, the
2 local early childhood intervention program for the area in which
3 the institution is located.

4 (b) The [Texas] Department of Aging and Disability [Human]
5 Services shall notify the local intellectual and developmental
6 disability [mental retardation] authority, as defined by Section
7 531.002, Health and Safety Code, of a child's placement in a nursing
8 facility [home] if the child is known or suspected to have an
9 intellectual disability [suffer from mental retardation] or
10 another disability for which the child may receive services through
11 the [Texas] Department of Aging and Disability Services [Mental
12 Health and Mental Retardation].

13 SECTION 2.164. Section 531.156, Government Code, is amended
14 to read as follows:

15 Sec. 531.156. DESIGNATION OF ADVOCATE. (a) The Department
16 of Aging and Disability Services [Except as provided by Subsection
17 (b), the Texas Department of Human Services] shall designate a
18 person, including a member of a community-based organization, to
19 serve as a volunteer advocate for a child residing in an institution
20 to assist in developing a permanency plan for the child if:

21 (1) the child's parent or guardian requests the
22 assistance of an advocate; [~~or~~]

23 (2) the institution in which the child is placed
24 cannot locate the child's parent or guardian; or [~~or~~]

25 (3) [~~(b)~~] The Texas Department of Mental Health and
26 Mental Retardation shall designate the person to serve as a
27 volunteer advocate for a child in accordance with Subsection (a)

1 ~~if~~] the child resides in an institution operated by the department.

2 (b) [~~(c)~~] The person designated [~~by the Texas Department of~~
3 ~~Human Services or the Texas Department of Mental Health and Mental~~
4 ~~Retardation~~] to serve as the child's volunteer advocate under this
5 section may be:

6 (1) a person selected by the child's parent or
7 guardian, except that the person may not be employed by or under a
8 contract with the institution in which the child resides;

9 (2) an adult relative of the child; or

10 (3) a representative of a child advocacy group.

11 (c) [~~(d)~~] The [~~Texas Department of Human Services or the~~
12 ~~Texas~~] Department of Aging and Disability Services [~~Mental Health~~
13 ~~and Mental Retardation, as appropriate,~~] shall provide to each
14 person designated to serve as a child's volunteer advocate
15 information regarding permanency planning under this subchapter.

16 SECTION 2.165. Sections 531.159(b), (c), (d), (e), and (f),
17 Government Code, are amended to read as follows:

18 (b) The chief executive officer of each appropriate health
19 and human services agency or the officer's designee must approve
20 the placement of a child in an institution. The initial placement
21 of the child in the institution is temporary and may not exceed six
22 months unless the appropriate chief executive officer or the
23 officer's designee approves an extension of an additional six
24 months after conducting a review of documented permanency planning
25 efforts to unite the child with a family in a permanent living
26 arrangement. After the initial six-month extension of a child's
27 placement in an institution approved under this subsection, the

1 chief executive officer or the officer's designee shall conduct a
2 review of the child's placement in the institution at least
3 semiannually to determine whether a continuation of that placement
4 is warranted. If, based on the review, the chief executive officer
5 or the officer's designee determines that an additional extension
6 is warranted, the officer or the officer's designee shall recommend
7 to the executive commissioner that the child continue residing in
8 the institution.

9 (c) On receipt of a recommendation made under Subsection (b)
10 for an extension of a child's placement, the executive
11 commissioner, the executive commissioner's designee, or another
12 person with whom the commission contracts shall conduct a review of
13 the child's placement. Based on the results of the review, the
14 executive commissioner or the executive commissioner's designee
15 may approve a six-month extension of the child's placement if the
16 extension is appropriate.

17 (d) The child may continue residing in the institution after
18 the six-month extension approved under Subsection (c) only if the
19 chief executive officer of the appropriate health and human
20 services agency or the officer's designee makes subsequent
21 recommendations as provided by Subsection (b) for each additional
22 six-month extension and the executive commissioner or the executive
23 commissioner's designee approves each extension as provided by
24 Subsection (c).

25 (e) The executive commissioner or the executive
26 commissioner's designee shall conduct a semiannual review of data
27 received from health and human services agencies regarding all

1 children who reside in institutions in this state. The executive
2 commissioner, the executive commissioner's designee, or a person
3 with whom the commission contracts shall also review the
4 recommendations of the chief executive officers of each appropriate
5 health and human services agency or the officer's designee if the
6 officer or the officer's designee repeatedly recommends that
7 children continue residing in an institution.

8 (f) The executive commissioner [commission] by rule shall
9 develop procedures by which to conduct the reviews required by
10 Subsections (c), (d), and (e). In developing the procedures, the
11 commission may seek input from the work group on children's
12 long-term services, health services, and mental health services
13 established under Section 22.035, Human Resources Code.

14 SECTION 2.166. Section 531.160, Government Code, is amended
15 to read as follows:

16 Sec. 531.160. INSPECTIONS. As part of each inspection,
17 survey, or investigation of an institution, including a nursing
18 facility [~~home~~], general residential operation for children with an
19 intellectual disability that is [~~institution for the mentally~~
20 ~~retarded~~] licensed by the Department of Family and Protective [~~and~~
21 ~~Regulatory~~] Services, or ICF-IID [~~ICF-MR~~], as defined by Section
22 531.002, Health and Safety Code, in which a child resides, the
23 agency or the agency's designee shall determine the extent to which
24 the nursing facility [~~home~~], general residential operation
25 [~~institution~~], or ICF-IID [~~ICF-MR~~] is complying with the permanency
26 planning requirements under this subchapter.

27 SECTION 2.167. Section 531.161, Government Code, is amended

1 to read as follows:

2 Sec. 531.161. ACCESS TO RECORDS. Each institution in which
3 a child resides shall allow the following to have access to the
4 child's records to assist in complying with the requirements of
5 this subchapter:

6 (1) the commission;

7 (2) appropriate health and human services agencies;

8 and

9 (3) to the extent not otherwise prohibited by state or
10 federal confidentiality laws, a local intellectual and
11 developmental disability [~~mental retardation~~] authority or private
12 entity that enters into a contract or memorandum of understanding
13 under Section 531.153(d) to develop a permanency plan for the
14 child.

15 SECTION 2.168. Section 531.162(b), Government Code, is
16 amended to read as follows:

17 (b) The executive commissioner shall submit a semiannual
18 report to the governor and the committees of each house of the
19 legislature that have primary oversight jurisdiction over health
20 and human services agencies regarding:

21 (1) the number of children residing in institutions in
22 this state and, of those children, the number for whom a
23 recommendation has been made for a transition to a community-based
24 residence but who have not yet made that transition;

25 (2) the circumstances of each child described by
26 Subdivision (1), including the type of institution and name of the
27 institution in which the child resides, the child's age, the

1 residence of the child's parents or guardians, and the length of
2 time in which the child has resided in the institution;

3 (3) the number of permanency plans developed for
4 children residing in institutions in this state, the progress
5 achieved in implementing those plans, and barriers to implementing
6 those plans;

7 (4) the number of children who previously resided in
8 an institution in this state and have made the transition to a
9 community-based residence;

10 (5) the number of children who previously resided in
11 an institution in this state and have been reunited with their
12 families or placed with alternate families;

13 (6) the community supports that resulted in the
14 successful placement of children described by Subdivision (5) with
15 alternate families; and

16 (7) the community supports that are unavailable but
17 necessary to address the needs of children who continue to reside in
18 an institution in this state after being recommended to make a
19 transition from the institution to an alternate family or
20 community-based residence.

21 SECTION 2.169. Sections 531.164(b), (e), (f), (g), and (h),
22 Government Code, are amended to read as follows:

23 (b) An institution described by Section 531.151(3)(A) or
24 (B) shall notify the local intellectual and developmental
25 disability [~~mental retardation~~] authority for the region in which
26 the institution is located of a request for placement of a child in
27 the institution. An institution described by Section 531.151(3)(D)

1 shall notify the Department of Aging and Disability Services of a
2 request for placement of a child in the institution.

3 (e) Except as otherwise provided by Subsection (f):

4 (1) an ICF-IID [~~ICF-MR~~] must:

5 (A) attempt to notify the parent or guardian of a
6 child who resides in the ICF-IID [~~ICF-MR~~] in writing of a periodic
7 permanency planning meeting or annual service plan review and
8 reauthorization meeting not later than the 21st day before the date
9 the meeting is scheduled to be held; and

10 (B) request a response from the parent or
11 guardian; and

12 (2) a nursing facility must:

13 (A) attempt to notify the parent or guardian of a
14 child who resides in the facility in writing of an annual service
15 plan review and reauthorization meeting not later than the 21st day
16 before the date the meeting is scheduled to be held; and

17 (B) request a response from the parent or
18 guardian.

19 (f) If an emergency situation involving a child residing in
20 an ICF-IID [~~ICF-MR~~] or nursing facility occurs, the ICF-IID
21 [~~ICF-MR~~] or nursing facility, as applicable, must:

22 (1) attempt to notify the child's parent or guardian as
23 soon as possible; and

24 (2) request a response from the parent or guardian.

25 (g) If a child's parent or guardian does not respond to a
26 notice under Subsection (e) or (f), the ICF-IID [~~ICF-MR~~] or nursing
27 facility, as applicable, must attempt to locate the parent or

1 guardian by contacting another person whose information was
2 provided by the parent or guardian under Section 531.1533(1)(B).

3 (h) Not later than the 30th day after the date an ICF-IID
4 [~~ICF-MR~~] or nursing facility determines that it is unable to locate
5 a child's parent or guardian for participation in activities listed
6 under Subsection (e)(1) or (2), the ICF-IID [~~ICF-MR~~] or nursing
7 facility must notify the Department of Aging and Disability
8 Services of that determination and request that the department
9 initiate a search for the child's parent or guardian.

10 SECTION 2.170. Section 531.171, Government Code, is amended
11 to read as follows:

12 Sec. 531.171. COMMITTEE DUTIES. (a) The standing or other
13 committees of the house of representatives and the senate that have
14 jurisdiction over the commission [~~Health and Human Services~~
15 ~~Commission~~] and other agencies relating to implementation of this
16 chapter, as identified by the speaker of the house of
17 representatives and the lieutenant governor, shall:

18 (1) monitor the commission's implementation of Section
19 531.0055 and the commission's other duties in consolidating and
20 integrating health and human services to ensure implementation
21 consistent with law;

22 (2) recommend, as needed, adjustments to the
23 implementation of Section 531.0055 and the commission's other
24 duties in consolidating and integrating health and human services;
25 and

26 (3) review the rulemaking process used by the
27 commission, including the commission's plan for obtaining public

1 input.

2 (b) The commission shall provide copies of all required
3 reports to the committees and shall provide the committees with
4 copies of proposed rules before the rules are published in the Texas
5 Register. At the request of a committee or the executive
6 commissioner, a health and human services agency shall provide
7 other information to the committee, including information relating
8 to the health and human services system, and shall report on agency
9 progress in implementing statutory directives identified by the
10 committee and the directives of the commission.

11 SECTION 2.171. Section 531.191(a), Government Code, is
12 amended to read as follows:

13 (a) The commission, subject to the approval of the governor
14 and the Legislative Budget Board, shall develop and implement a
15 plan for the integration of services and functions relating to
16 eligibility determination and service delivery by health and human
17 services agencies, the Texas Workforce Commission, and other
18 agencies. The plan must include a reengineering of eligibility
19 determination business processes, streamlined service delivery, a
20 unified and integrated process for the transition from welfare to
21 work, and improved access to benefits and services for clients. In
22 developing and implementing the plan, the commission:

23 (1) shall give priority to the design and development
24 of computer hardware and software for and provide technical support
25 relating to the integrated eligibility determination system;

26 (2) shall consult with agencies whose programs are
27 included in the plan, including the [Texas] Department of Aging and

1 Disability [Human] Services, the Department of State Health
2 Services [Texas Department of Health], and the Texas Workforce
3 Commission;

4 (3) may contract for appropriate professional and
5 technical assistance; and

6 (4) may use the staff and resources of agencies whose
7 programs are included in the plan.

8 SECTION 2.172. Sections 531.251(a-1) and (a-2), Government
9 Code, are amended to read as follows:

10 (a-1) The consortium must include:

11 (1) representatives of the Department of State Health
12 Services, Department of Family and Protective Services,
13 commission's [~~Health and Human Services Commission's~~] Medicaid
14 program, Texas Education Agency, Texas Juvenile Justice
15 Department, and Texas Correctional Office on Offenders with Medical
16 or Mental Impairments; and

17 (2) one member who is:

18 (A) a youth or young adult who has a serious
19 emotional disturbance and has received mental health services and
20 supports; or

21 (B) [~~(3)~~] a family member of a youth or young
22 adult described by Paragraph (A) [Subdivision (2)].

23 (a-2) The consortium may coordinate with the Children's
24 Policy Council for the purposes of including the representation
25 required by Subsection [Subsections] (a-1)(2) [and (3)].

26 SECTION 2.173. The heading to Subchapter H, Chapter 531,
27 Government Code, is amended to read as follows:

1 SUBCHAPTER H. OFFICE OF HEALTH [~~EARLY CHILDHOOD~~] COORDINATION AND
2 CONSUMER SERVICES

3 SECTION 2.174. Section 531.281, Government Code, is amended
4 to read as follows:

5 Sec. 531.281. DEFINITION [~~DEFINITIONS~~]. In this chapter,
6 "office" [+]

7 [+(1) "Office"] means the Office of Health [~~Early~~
8 ~~Childhood~~] Coordination and Consumer Services.

9 [+(2) "Advisory committee" means the ~~Office of Early~~
10 ~~Childhood Coordination Advisory Committee.~~]

11 SECTION 2.175. Sections 531.282(a) and (b), Government
12 Code, are amended to read as follows:

13 (a) The Office of Health [~~Early Childhood~~] Coordination and
14 Consumer Services is an office within the commission.

15 (b) The executive commissioner shall employ staff as needed
16 to carry out the duties of the office.

17 SECTION 2.176. Section 531.284(b), Government Code, is
18 amended to read as follows:

19 (b) In developing the statewide strategic plan, the office
20 shall:

21 (1) consider existing programs and models to serve
22 children younger than six years of age, including:

23 (A) community resource coordination groups;
24 (B) the Texas System of Care [~~Integrated Funding~~
25 ~~Initiative~~];

26 (C) the Texas Information and Referral Network;
27 and

1 (D) efforts to create a 2-1-1 telephone number
2 for access to human services;

3 (2) attempt to maximize federal funds and local
4 existing infrastructure and funds; and

5 (3) provide for local participation to the greatest
6 extent possible.

7 SECTION 2.177. Section [531.285\(a\)](#), Government Code, is
8 amended to read as follows:

9 (a) The office shall identify:

10 (1) gaps in early childhood services by functional
11 area and geographical area;

12 (2) state policies, rules, and service procedures that
13 prevent or inhibit children younger than six years of age from
14 accessing available services;

15 (3) sources of funds for early childhood services,
16 including federal, state, and private-public ventures;

17 (4) opportunities for collaboration between the Texas
18 Education Agency and health and human services agencies to better
19 serve the needs of children younger than six years of age;

20 (5) methods for coordinating the provision of early
21 childhood services provided by the Texas Head Start State
22 [~~Start State~~] Collaboration Office [~~Project~~], the Texas Education
23 Agency, and the Texas Workforce Commission;

24 (6) quantifiable benchmarks for success within early
25 childhood service delivery; and

26 (7) national best practices in early care and
27 educational delivery models.

1 SECTION 2.178. Sections 531.301(a) and (b), Government
2 Code, are amended to read as follows:

3 (a) The commission shall develop and implement a state
4 prescription drug program that operates in the same manner as the
5 vendor drug program operates in providing prescription drug
6 benefits to Medicaid recipients [~~of medical assistance under~~
7 ~~Chapter 32, Human Resources Code~~].

8 (b) A person is eligible for prescription drug benefits
9 under the state program if the person is:

10 (1) a qualified Medicare beneficiary, as defined by 42
11 U.S.C. Section 1396d(p)(1), as amended;

12 (2) a specified low-income Medicare beneficiary who is
13 eligible for [~~medical~~] assistance under Medicaid for Medicare
14 cost-sharing payments under 42 U.S.C. Section
15 1396a(a)(10)(E)(iii), as amended;

16 (3) a qualified disabled and working individual, as
17 defined by 42 U.S.C. Section 1396d(s), as amended; or

18 (4) a qualifying individual who is eligible for that
19 assistance under 42 U.S.C. Section 1396a(a)(10)(E)(iv)
20 [~~1396a(a)(10)(E)(iv)(I), as amended; or~~

21 [~~(5) a qualifying individual who is eligible for that~~
22 ~~assistance under 42 U.S.C. Section 1396a(a)(10)(E)(iv)(II), as~~
23 ~~amended~~].

24 SECTION 2.179. Section 531.302, Government Code, is amended
25 to read as follows:

26 Sec. 531.302. RULES. (a) The executive commissioner
27 [~~commission~~] shall adopt all rules necessary for implementation of

1 the state prescription drug program.

2 (b) In adopting rules for the state prescription drug
3 program, the executive commissioner [~~commission~~] may:

4 (1) require a person who is eligible for prescription
5 drug benefits to pay a cost-sharing payment;

6 (2) authorize the use of a prescription drug formulary
7 to specify which prescription drugs the state program will cover;

8 (3) to the extent possible, require clinically
9 appropriate prior authorization for prescription drug benefits in
10 the same manner as prior authorization is required under the vendor
11 drug program; and

12 (4) establish a drug utilization review program to
13 ensure the appropriate use of prescription drugs under the state
14 program.

15 (c) In adopting rules for the state prescription drug
16 program, the executive commissioner [~~commission~~] shall consult
17 with an advisory panel composed of an equal number of physicians,
18 pharmacists, and pharmacologists appointed by the executive
19 commissioner.

20 SECTION 2.180. Section 531.303, Government Code, is amended
21 to read as follows:

22 Sec. 531.303. GENERIC EQUIVALENT AUTHORIZED. In adopting
23 rules under the state program, the executive commissioner
24 [~~commission~~] may require that, unless the practitioner's signature
25 on a prescription clearly indicates that the prescription must be
26 dispensed as written, the pharmacist may select a generic
27 equivalent of the prescribed drug.

1 SECTION 2.181. Section 531.304, Government Code, is amended
2 to read as follows:

3 Sec. 531.304. PROGRAM FUNDING PRIORITIES. If money
4 available for the state prescription drug program is insufficient
5 to provide prescription drug benefits to all persons who are
6 eligible under Section 531.301(b), the commission shall limit the
7 number of enrollees based on available funding and shall provide
8 the prescription drug benefits to eligible persons in the following
9 order of priority:

- 10 (1) persons eligible under Section 531.301(b)(1);
11 (2) persons eligible under Section 531.301(b)(2); and
12 (3) persons eligible under Sections 531.301(b)(3) and
13 [~~7~~] (4) [~~, and (5)~~].

14 SECTION 2.182. Section 531.402(b), Government Code, is
15 amended to read as follows:

16 (b) The council is composed of nine members of the public
17 appointed by the governor with the advice and consent of the senate.
18 To be eligible for appointment to the council, a person must have
19 demonstrated an interest in and knowledge of problems and available
20 services related to Medicaid, the child health plan program, the
21 financial assistance program under Chapter 31, Human Resources
22 Code, [~~the medical assistance program under Chapter 32, Human~~
23 ~~Resources Code,~~] or the supplemental nutrition assistance program
24 [~~nutritional assistance programs~~] under Chapter 33, Human
25 Resources Code.

26 SECTION 2.183. Sections 531.421(1), (2), and (3),
27 Government Code, are amended to read as follows:

1 (1) "Children with severe emotional disturbances"
2 includes:

3 (A) children who are at risk of incarceration or
4 placement in a residential mental health facility;

5 (B) children for whom a court may appoint the
6 Department of Family and Protective [~~and Regulatory~~] Services as
7 managing conservator;

8 (C) children who are students in a special
9 education program under Subchapter A, Chapter 29, Education Code;
10 and

11 (D) children who have a substance abuse disorder
12 or a developmental disability.

13 (2) "Community resource coordination group" means a
14 coordination group established under a memorandum of understanding
15 adopted under Section 531.055 [, as added by Chapter 114, Acts of the
16 ~~77th Legislature, Regular Session, 2001~~].

17 (3) "Consortium" means the Texas System of Care
18 Consortium established under Subchapter G-1 [~~consortium that~~
19 ~~oversees the Texas Integrated Funding Initiative under Subchapter~~
20 ~~G, Chapter 531, as added by Chapter 446, Acts of the 76th~~
21 ~~Legislature, Regular Session, 1999~~].

22 SECTION 2.184. The heading to Section 531.423, Government
23 Code, is amended to read as follows:

24 Sec. 531.423. SUMMARY REPORT BY [~~TEXAS INTEGRATED FUNDING~~
25 ~~INITIATIVE~~] CONSORTIUM.

26 SECTION 2.185. Section 531.423(c), Government Code, is
27 amended to read as follows:

1 (c) The consortium may include in the report created under
2 this section recommendations for the statewide expansion of sites
3 participating in the Texas System of Care [~~Integrated Funding~~
4 ~~Initiative under Subchapter G, Chapter 531, as added by Chapter~~
5 ~~446, Acts of the 76th Legislature, Regular Session, 1999,~~] and the
6 integration of services provided at those sites with services
7 provided by community resource coordination groups.

8 SECTION 2.186. Section 531.424, Government Code, is amended
9 to read as follows:

10 Sec. 531.424. AGENCY IMPLEMENTATION OF RECOMMENDATIONS. As
11 appropriate, the person or entity responsible for adopting rules
12 for an [An] agency described by Section 531.423(a) shall[, ~~as~~
13 ~~appropriate,~~] adopt rules, and the agency shall implement policy
14 changes[, ~~and~~ enter into memoranda of understanding with other
15 agencies, to implement the recommendations in the report created
16 under Section 531.423.

17 SECTION 2.187. Section 531.551(a), Government Code, is
18 amended to read as follows:

19 (a) The executive commissioner shall adopt rules providing
20 for:

21 (1) a standard definition of "uncompensated hospital
22 care";

23 (2) a methodology to be used by hospitals in this state
24 to compute the cost of that care that incorporates a [the] standard
25 set of adjustments to a hospital's initial computation of the cost
26 of uncompensated hospital care that account for all funding streams
27 that:

1 (A) are not patient-specific; and
2 (B) are used to offset the hospital's initially
3 computed amount of uncompensated care [described by Section
4 531.552(g)(4)]; and

5 (3) procedures to be used by those hospitals to report
6 the cost of that care to the commission and to analyze that cost.

7 SECTION 2.188. The heading to Section 531.652, Government
8 Code, is amended to read as follows:

9 Sec. 531.652. OPERATION [~~ESTABLISHMENT~~] OF NURSE-FAMILY
10 PARTNERSHIP COMPETITIVE GRANT PROGRAM.

11 SECTION 2.189. Section 531.652(a), Government Code, is
12 amended to read as follows:

13 (a) The commission shall operate [~~establish~~] a nurse-family
14 partnership competitive grant program through which the commission
15 will award grants for the implementation of nurse-family
16 partnership programs, or the expansion of existing programs, and
17 for the operation of those programs for a period of not less than
18 two years.

19 SECTION 2.190. Section 531.659(a), Government Code, is
20 amended to read as follows:

21 (a) The commission, with the assistance of the Nurse-Family
22 Partnership National Service Office, shall:

23 (1) adopt performance indicators that are designed to
24 measure a grant recipient's performance with respect to the
25 partnership program standards adopted by the executive
26 commissioner [~~commission~~] under Section 531.656;

27 (2) use the performance indicators to continuously

1 monitor and formally evaluate on an annual basis the performance of
2 each grant recipient; and

3 (3) prepare and submit an annual report, not later
4 than December 1 of each year, to the Senate Health and Human
5 Services Committee, or its successor, and the House Human Services
6 Committee, or its successor, regarding the performance of each
7 grant recipient during the preceding state fiscal year with respect
8 to providing partnership program services.

9 SECTION 2.191. Section 531.706(c), Government Code, is
10 amended to read as follows:

11 (c) The advisory committee shall:

12 (1) develop strategies for implementing the
13 regulation of health care interpreters and health care translators;

14 (2) make recommendations to the commission for any
15 legislation necessary to establish and enforce qualifications for
16 health care interpreters and health care translators or for the
17 adoption of rules by or for state agencies regulating health care
18 practitioners, hospitals, physician offices, and health care
19 facilities that hire health care interpreters or health care
20 translators; and

21 (3) perform other activities assigned by the
22 commission related to health care interpreters or health care
23 translators.

24 SECTION 2.192. Section 531.754, Government Code, is amended
25 to read as follows:

26 Sec. 531.754. TRAINING PROGRAM. The commission shall
27 develop and administer a training program for navigators. The

1 program must include training on:

2 (1) how to complete an online application for public
3 assistance benefits through the Texas Integrated Eligibility
4 Redesign System (TIERS);

5 (2) the importance of maintaining the confidentiality
6 of information handled by a navigator;

7 (3) the importance of obtaining and submitting
8 complete and accurate information when completing an application
9 for public assistance benefits online through the Texas Integrated
10 Eligibility Redesign System (TIERS);

11 (4) the financial assistance program, the
12 supplemental nutrition assistance program, Medicaid [~~the medical~~
13 ~~assistance program~~], the child health plan program, and any other
14 public assistance benefits program for which an individual may
15 complete an online application through the Texas Integrated
16 Eligibility Redesign System (TIERS); and

17 (5) how an individual may apply for other public
18 assistance benefits for which an individual may not complete an
19 online application through the Texas Integrated Eligibility
20 Redesign System (TIERS).

21 SECTION 2.193. Sections 531.802(c), (d), and (g),
22 Government Code, are amended to read as follows:

23 (c) Subject to Subsection (d), the council is composed of
24 the following:

25 (1) the executive commissioner;

26 (2) the commissioner of state health services;

27 (3) the commissioner of the Department of Family and

1 Protective Services;

2 (4) the commissioner of aging and disability services;

3 (5) the commissioner of assistive and rehabilitative

4 services;

5 (6) the commissioner of education;

6 (7) the executive director of the Texas Juvenile

7 Justice Department [Probation Commission];

8 (8) ~~[the executive commissioner of the Texas Youth~~

9 ~~Commission,~~

10 ~~(9)~~ the executive director of the Texas Workforce

11 Commission;

12 ~~(9) (10)~~ the director of the Texas Correctional

13 Office on Offenders with Medical or Mental Impairments;

14 ~~(10) (11)~~ two public representatives who are

15 parents of children who have received services from an agency

16 represented on the council, appointed by the executive

17 commissioner; and

18 ~~(11) (12)~~ two representatives who are young adults

19 or adolescents who have received services from an agency

20 represented on the council, appointed by the executive

21 commissioner.

22 (d) An individual listed in Subsections (c)(1)-(9)

23 ~~(c)(1)-(10)~~ may designate another individual as having authority

24 to act on behalf of the individual at council meetings and with

25 respect to council functions.

26 (g) The council is administratively attached to the

27 commission but is independent of direction by the commission or the

1 executive commissioner. The commission, through the commission's
2 Office of Health [Program] Coordination and Consumer Services [~~for~~
3 ~~Children and Youth~~], shall provide administrative support and
4 resources to the council as necessary to enable the council to
5 perform its duties.

6 SECTION 2.194. The heading to Subchapter U, Chapter 531,
7 Government Code, is amended to read as follows:

8 SUBCHAPTER U. MORTALITY REVIEW FOR CERTAIN INDIVIDUALS WITH AN
9 INTELLECTUAL OR DEVELOPMENTAL DISABILITY [~~DISABILITIES~~]

10 SECTION 2.195. Section 531.8501, Government Code, is
11 amended to read as follows:

12 Sec. 531.8501. DEFINITION. In this subchapter, "contracted
13 organization" means an entity that contracts with the commission
14 [~~Health and Human Services Commission~~] for the provision of
15 services as described by Section 531.851(c).

16 SECTION 2.196. Sections 531.851(a), (c), and (e),
17 Government Code, are amended to read as follows:

18 (a) The executive commissioner shall establish an
19 independent mortality review system to review the death of a person
20 with an intellectual or developmental disability who, at the time
21 of the person's death or at any time during the 24-hour period
22 before the person's death:

23 (1) resided in or received services from:

24 (A) an ICF-IID [~~intermediate care facility for~~
25 ~~persons with an intellectual or developmental disability~~
26 (~~ICF/IID~~)] operated or licensed by the Department of Aging and
27 Disability Services or a community center; or

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(B) the ICF-IID [~~ICF/IID~~] component of the Rio
Grande State Center; or

6 (c) The executive commissioner shall contract with an
7 institution of higher education or a health care organization or
8 association with experience in conducting research-based mortality
9 studies to conduct independent mortality reviews of persons with an
10 intellectual or developmental disability. The contract must
11 require the contracted organization to form a review team
12 consisting of:

22 (4) any other appropriate person as provided by the
23 executive commissioner.

24 (e) To ensure consistency across mortality review systems,
25 a review under this section must collect information consistent
26 with the information required to be collected by any other
27 independent mortality review process established specifically for

1 persons with an intellectual or developmental disability
2 [~~disabilities~~].

3 SECTION 2.197. Section 531.854(a), Government Code, is
4 amended to read as follows:

5 (a) The commission may use or publish information under this
6 subchapter only to advance statewide practices regarding the
7 treatment and care of individuals with an intellectual or [~~and~~]
8 developmental disability [~~disabilities~~]. A summary of the data in
9 the contracted organization's reports or a statistical compilation
10 of data reports may be released by the commission for general
11 publication if the summary or statistical compilation does not
12 contain any information that would permit the identification of an
13 individual or that is confidential or privileged under this
14 subchapter or other state or federal law.

15 SECTION 2.198. Section 531.901(4), Government Code, is
16 amended to read as follows:

17 (4) "Local or regional health information exchange"
18 means a health information exchange operating in this state that
19 securely exchanges electronic health information, including
20 information for patients receiving services under the child health
21 plan program or Medicaid [~~program~~], among hospitals, clinics,
22 physicians' offices, and other health care providers that are not
23 owned by a single entity or included in a single operational unit or
24 network.

25 SECTION 2.199. Sections 531.903(a) and (c), Government
26 Code, are amended to read as follows:

27 (a) The commission shall develop an electronic health

1 information exchange system to improve the quality, safety, and
2 efficiency of health care services provided under the child health
3 plan program and Medicaid [~~programs~~]. In developing the system,
4 the commission shall ensure that:

5 (1) the confidentiality of patients' health
6 information is protected and the privacy of those patients is
7 maintained in accordance with applicable federal and state law,
8 including:

9 (A) Section 1902(a)(7), Social Security Act (42
10 U.S.C. Section 1396a(a)(7));

11 (B) the Health Insurance Portability and
12 Accountability Act of 1996 (Pub. L. No. 104-191);

13 (C) Chapter 552 [~~, Government Code~~];

14 (D) Subchapter G, Chapter 241, Health and Safety
15 Code;

16 (E) Section 12.003, Human Resources Code; and

17 (F) federal and state rules and regulations,

18 including:

19 (i) 42 C.F.R. Part 431, Subpart F; and

20 (ii) 45 C.F.R. Part 164;

21 (2) appropriate information technology systems used
22 by the commission and health and human services agencies are
23 interoperable;

24 (3) the system and external information technology
25 systems are interoperable in receiving and exchanging appropriate
26 electronic health information as necessary to enhance:

27 (A) the comprehensive nature of the information

1 contained in electronic health records; and

(B) health care provider efficiency by supporting integration of the information into the electronic health record used by health care providers;

8 (5) the system has the elements described by
9 Subsection (b).

10 (c) The commission shall implement the health information
11 exchange system in stages as described by this chapter [Sections
12 ~~531.905 through 531.908~~], except that the commission may deviate
13 from those stages if technological advances make a deviation
14 advisable or more efficient.

15 SECTION 2.200. Section 531.904(b), Government Code, is
16 amended to read as follows:

17 (b) The executive commissioner shall appoint to the
18 advisory committee at least 12 and not more than 16 members who have
19 an interest in health information technology and who have
20 experience in serving persons receiving health care through the
21 child health plan program and Medicaid [programs].

22 SECTION 2.201. Sections 531.906(a) and (d), Government
23 Code, are amended to read as follows:

24 (a) In stage one of implementing the health information
25 exchange system, the commission shall support and coordinate
26 electronic prescribing tools used by health care providers and
27 health care facilities under the child health plan program and

1 Medicaid [programs].

2 (d) The commission shall apply for and actively pursue any
3 waiver to the child health plan program or the state Medicaid plan
4 from the federal Centers for Medicare and Medicaid Services or any
5 other federal agency as necessary to remove an identified
6 impediment to supporting and implementing electronic prescribing
7 tools under this section, including the requirement for handwritten
8 certification of certain drugs under 42 C.F.R. Section 447.512. If
9 the commission, with assistance from the Legislative Budget Board,
10 determines that the implementation of operational modifications in
11 accordance with a waiver obtained as required by this subsection
12 has resulted in cost increases in the child health plan program or
13 Medicaid [program], the commission shall take the necessary actions
14 to reverse the operational modifications.

15 SECTION 2.202. Section 531.907(a), Government Code, is
16 amended to read as follows:

17 (a) Based on the recommendations of the advisory committee
18 established under Section 531.904 and feedback provided by
19 interested parties, the commission in stage two of implementing the
20 health information exchange system may expand the system by:

21 (1) providing an electronic health record for each
22 child enrolled in the child health plan program;

23 (2) including state laboratory results information in
24 an electronic health record, including the results of newborn
25 screenings and tests conducted under the Texas Health Steps
26 program, based on the system developed for the health passport
27 under Section 266.006, Family Code;

1 (3) improving data-gathering capabilities for an
2 electronic health record so that the record may include basic
3 health and clinical information in addition to available claims
4 information, as determined by the executive commissioner;

5 (4) using evidence-based technology tools to create a
6 unique health profile to alert health care providers regarding the
7 need for additional care, education, counseling, or health
8 management activities for specific patients; and

9 (5) continuing to enhance the electronic health record
10 created for each Medicaid recipient [~~under Section 531.905~~] as
11 technology becomes available and interoperability capabilities
12 improve.

13 SECTION 2.203. Section 531.911, Government Code, is amended
14 to read as follows:

15 Sec. 531.911. RULES. The executive commissioner may adopt
16 rules to implement Sections 531.903 through 531.909 [531.910].

17 SECTION 2.204. Sections 531.912(a), (b), and (c),
18 Government Code, are amended to read as follows:

19 (a) In this section, "nursing facility" means a
20 convalescent or nursing home or related institution licensed under
21 Chapter 242, Health and Safety Code, that provides long-term care
22 services, as defined by Section 22.0011, Human Resources Code, to
23 Medicaid [~~medical assistance~~] recipients.

24 (b) If feasible, the executive commissioner by rule may
25 establish an incentive payment program for nursing facilities that
26 choose to participate. The program must be designed to improve the
27 quality of care and services provided to Medicaid [~~medical~~

1 ~~assistance~~] recipients. Subject to Subsection (f), the program
2 may provide incentive payments in accordance with this section to
3 encourage facilities to participate in the program.

4 (c) In establishing an incentive payment program under this
5 section, the executive commissioner shall, subject to Subsection
6 (d), adopt common performance measures to be used in evaluating
7 nursing facilities that are related to structure, process, and
8 outcomes that positively correlate to nursing facility quality and
9 improvement. The common performance measures:

10 (1) must be:

11 (A) recognized by the executive commissioner as
12 valid indicators of the overall quality of care received by
13 Medicaid [~~medical assistance~~] recipients; and

14 (B) designed to encourage and reward
15 evidence-based practices among nursing facilities; and

16 (2) may include measures of:

17 (A) quality of care, as determined by clinical
18 performance ratings published by the federal Centers for Medicare
19 and Medicaid Services, the Agency for Healthcare Research and
20 Quality, or another federal agency;

21 (B) direct-care staff retention and turnover;

22 (C) recipient satisfaction, including the
23 satisfaction of recipients who are short-term and long-term
24 residents of facilities, and family satisfaction, as determined by
25 the Nursing Home Consumer Assessment of Healthcare [~~Health~~]
26 Providers and Systems surveys [~~survey~~] relied upon by the federal
27 Centers for Medicare and Medicaid Services;

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- (D) employee satisfaction and engagement;
- (E) the incidence of preventable acute care emergency room services use;
- (F) regulatory compliance;
- (G) level of person-centered care; and
- (H) direct-care staff training, including a facility's utilization of independent distance learning programs for the continuous training of direct-care staff.

9 SECTION 2.205. The heading to Section 531.982, Government
10 Code, is amended to read as follows:

11 Sec. 531.982. IMPLEMENTATION [~~ESTABLISHMENT~~] OF TEXAS HOME
12 VISITING PROGRAM.

13 SECTION 2.206. Section 531.982(a), Government Code, is
14 amended to read as follows:

15 (a) The commission shall maintain [~~create~~] a strategic plan
16 to serve at-risk pregnant women and families with children under
17 the age of six through home visiting programs that improve outcomes
18 for parents and families.

19 SECTION 2.207. Section 531.988, Government Code, is amended
20 to read as follows:

21 Sec. 531.988. RULES. The executive commissioner
22 [commission] may adopt rules as necessary to implement this
23 subchapter.

24 SECTION 2.208. The heading to Chapter 533, Government Code,
25 is amended to read as follows:

26 CHAPTER 533. [IMPLEMENTATION OF] MEDICAID MANAGED CARE PROGRAM

27 SECTION 2.209. Sections 533.001(2) and (6), Government

1 Code, are amended to read as follows:

2 (2) "Executive commissioner" [~~"Commissioner"~~] means
3 the executive commissioner of the Health and Human Services
4 Commission [~~health and human services~~].

5 (6) "Recipient" means a recipient of Medicaid [~~medical~~
6 ~~assistance under Chapter 32, Human Resources Code~~].

7 SECTION 2.210. Section 533.002, Government Code, is amended
8 to read as follows:

9 Sec. 533.002. PURPOSE. The commission shall implement the
10 Medicaid managed care program [~~as part of the health care delivery~~
11 ~~system developed under Chapter 532~~] by contracting with managed
12 care organizations in a manner that, to the extent possible:

13 (1) improves the health of Texans by:

14 (A) emphasizing prevention;
15 (B) promoting continuity of care; and
16 (C) providing a medical home for recipients;

17 (2) ensures that each recipient receives high quality,
18 comprehensive health care services in the recipient's local
19 community;

20 (3) encourages the training of and access to primary
21 care physicians and providers;

22 (4) maximizes cooperation with existing public health
23 entities, including local departments of health;

24 (5) provides incentives to managed care organizations
25 to improve the quality of health care services for recipients by
26 providing value-added services; and

27 (6) reduces administrative and other nonfinancial

1 barriers for recipients in obtaining health care services.

2 SECTION 2.211. Sections 533.0025(b), (c), (d), (e), (f),
3 and (h), Government Code, are amended to read as follows:

4 (b) Except as otherwise provided by this section and
5 notwithstanding any other law, the commission shall provide
6 Medicaid [medical assistance for] acute care services through the
7 most cost-effective model of Medicaid capitated managed care as
8 determined by the commission. The commission shall require
9 mandatory participation in a Medicaid capitated managed care
10 program for all persons eligible for Medicaid acute care [medical
11 assistance] benefits, but may implement alternative models or
12 arrangements, including a traditional fee-for-service arrangement,
13 if the commission determines the alternative would be more
14 cost-effective or efficient.

15 (c) In determining whether a model or arrangement described
16 by Subsection (b) is more cost-effective, the executive
17 commissioner must consider:

18 (1) the scope, duration, and types of health benefits
19 or services to be provided in a certain part of this state or to a
20 certain population of recipients;

21 (2) administrative costs necessary to meet federal and
22 state statutory and regulatory requirements;

23 (3) the anticipated effect of market competition
24 associated with the configuration of Medicaid service delivery
25 models determined by the commission; and

26 (4) the gain or loss to this state of a tax collected
27 under Chapter 222, Insurance Code.

1 (d) If the commission determines that it is not more
2 cost-effective to use a Medicaid managed care model to provide
3 certain types of Medicaid [~~medical assistance for~~] acute care in a
4 certain area or to certain [~~medical assistance~~] recipients as
5 prescribed by this section, the commission shall provide Medicaid
6 [~~medical assistance for~~] acute care through a traditional
7 fee-for-service arrangement.

8 (e) The commission shall determine the most cost-effective
9 alignment of managed care service delivery areas. The executive
10 commissioner may consider the number of lives impacted, the usual
11 source of health care services for residents in an area, and other
12 factors that impact the delivery of health care services in the
13 area.

14 (f) The commission shall:

15 (1) conduct a study to evaluate the feasibility of
16 automatically enrolling applicants determined eligible for
17 benefits under Medicaid [~~the medical assistance program~~] in a
18 Medicaid managed care plan chosen by the applicant; and

19 (2) report the results of the study to the legislature
20 not later than December 1, 2014.

21 (h) If the commission determines that it is feasible, the
22 commission may, notwithstanding any other law, implement an
23 automatic enrollment process under which applicants determined
24 eligible for Medicaid [~~medical assistance~~] benefits are
25 automatically enrolled in a Medicaid managed care plan chosen by
26 the applicant. The commission may elect to implement the automatic
27 enrollment process as to certain populations of recipients [~~under~~

1 ~~the medical assistance program].~~

2 SECTION 2.212. Section 533.00251(a)(3), Government Code,
3 is amended to read as follows:

4 (3) "Nursing facility" means a convalescent or nursing
5 home or related institution licensed under Chapter 242, Health and
6 Safety Code, that provides long-term services and supports to
7 [Medicaid] recipients.

8 SECTION 2.213. Sections 533.00251(b), (c), and (d),
9 Government Code, are amended to read as follows:

10 (b) Subject to Section 533.0025, the commission shall
11 expand the STAR + PLUS Medicaid managed care program to all areas of
12 this state to serve individuals eligible for acute care services
13 and long-term services and supports under Medicaid [~~the medical~~
14 ~~assistance program~~].

15 (c) Subject to Section 533.0025 and notwithstanding any
16 other law, the commission, in consultation with the advisory
17 committee, shall provide benefits under Medicaid [~~the medical~~
18 ~~assistance program~~] to recipients who reside in nursing facilities
19 through the STAR + PLUS Medicaid managed care program. In
20 implementing this subsection, the commission shall ensure:

21 (1) that the commission is responsible for setting the
22 minimum reimbursement rate paid to a nursing facility under the
23 managed care program, including the staff rate enhancement paid to
24 a nursing facility that qualifies for the enhancement;

25 (2) that a nursing facility is paid not later than the
26 10th day after the date the facility submits a clean claim;

27 (3) the appropriate utilization of services

1 consistent with criteria established [adopted] by the commission;

2 (4) a reduction in the incidence of potentially

3 preventable events and unnecessary institutionalizations;

4 (5) that a managed care organization providing

5 services under the managed care program provides discharge

6 planning, transitional care, and other education programs to

7 physicians and hospitals regarding all available long-term care

8 settings;

9 (6) that a managed care organization providing

10 services under the managed care program:

11 (A) assists in collecting applied income from

12 recipients; and

13 (B) provides payment incentives to nursing

14 facility providers that reward reductions in preventable acute care

15 costs and encourage transformative efforts in the delivery of

16 nursing facility services, including efforts to promote a

17 resident-centered care culture through facility design and

18 services provided;

19 (7) the establishment of a portal that is in

20 compliance with state and federal regulations, including standard

21 coding requirements, through which nursing facility providers

22 participating in the STAR + PLUS Medicaid managed care program may

23 submit claims to any participating managed care organization;

24 (8) that rules and procedures relating to the

25 certification and decertification of nursing facility beds under

26 Medicaid [~~the medical assistance program~~] are not affected; and

27 (9) that a managed care organization providing

1 services under the managed care program, to the greatest extent
2 possible, offers nursing facility providers access to:

3 (A) acute care professionals; and
4 (B) telemedicine, when feasible and in
5 accordance with state law, including rules adopted by the Texas
6 Medical Board.

7 (d) Subject to Subsection (e), the commission shall ensure
8 that a nursing facility provider authorized to provide services
9 under Medicaid [~~the medical assistance program~~] on September 1,
10 2013, is allowed to participate in the STAR + PLUS Medicaid managed
11 care program through August 31, 2017.

12 SECTION 2.214. Section 533.002515(a), Government Code, is
13 amended to read as follows:

14 (a) The commission shall develop a plan in preparation for
15 implementing the requirement under Section 533.00251(c) that the
16 commission provide benefits under Medicaid [~~the medical assistance~~
17 ~~program~~] to recipients who reside in nursing facilities through the
18 STAR + PLUS Medicaid managed care program. The plan required by
19 this section must be completed in two phases as follows:

20 (1) phase one: contract planning phase; and
21 (2) phase two: initial testing phase.

22 SECTION 2.215. Section 533.00252(a), Government Code, is
23 amended to read as follows:

24 (a) The STAR + PLUS Nursing Facility Advisory Committee is
25 established to advise the commission on the implementation of and
26 other activities related to the provision of Medicaid [~~medical~~
27 ~~assistance~~] benefits to recipients who reside in nursing facilities

1 through the STAR + PLUS Medicaid managed care program under Section
2 [533.00251](#), including advising the commission regarding its duties
3 with respect to:

4 (1) developing quality-based outcomes and process
5 measures for long-term services and supports provided in nursing
6 facilities;

7 (2) developing quality-based long-term care payment
8 systems and quality initiatives for nursing facilities;

9 (3) transparency of information received from managed
10 care organizations;

11 (4) the reporting of outcome and process measures;

12 (5) the sharing of data among health and human
13 services agencies; and

14 (6) patient care coordination, quality of care
15 improvement, and cost savings.

16 SECTION 2.216. Section [533.00253\(a\)\(2\)](#), Government Code,
17 is amended to read as follows:

18 (2) "Health home" means a primary care provider
19 practice, or, if appropriate, a specialty care provider practice,
20 incorporating several features, including comprehensive care
21 coordination, family-centered care, and data management, that are
22 focused on improving outcome-based quality of care and increasing
23 patient and provider satisfaction under Medicaid [~~the medical~~
24 ~~assistance program~~].

25 SECTION 2.217. Sections [533.00253\(b\), \(d\), and \(e\)](#),
26 Government Code, are amended to read as follows:

27 (b) Subject to Section [533.0025](#), the commission shall, in

1 consultation with the advisory committee and the Children's Policy
2 Council established under Section [22.035](#), Human Resources Code,
3 establish a mandatory STAR Kids capitated managed care program
4 tailored to provide Medicaid [~~medical assistance~~] benefits to
5 children with disabilities. The managed care program developed
6 under this section must:

7 (1) provide Medicaid [~~medical assistance~~] benefits
8 that are customized to meet the health care needs of recipients
9 under the program through a defined system of care;

10 (2) better coordinate care of recipients under the
11 program;

12 (3) improve the health outcomes of recipients;

13 (4) improve recipients' access to health care
14 services;

15 (5) achieve cost containment and cost efficiency;

16 (6) reduce the administrative complexity of
17 delivering Medicaid [~~medical assistance~~] benefits;

18 (7) reduce the incidence of unnecessary
19 institutionalizations and potentially preventable events by
20 ensuring the availability of appropriate services and care
21 management;

22 (8) require a health home; and

23 (9) coordinate and collaborate with long-term care
24 service providers and long-term care management providers, if
25 recipients are receiving long-term services and supports outside of
26 the managed care organization.

27 (d) The commission shall provide Medicaid [~~medical~~

1 ~~assistance~~] benefits through the STAR Kids managed care program
2 established under this section to children who are receiving
3 benefits under the medically dependent children (MDCP) waiver
4 program. The commission shall ensure that the STAR Kids managed
5 care program provides all of the benefits provided under the
6 medically dependent children (MDCP) waiver program to the extent
7 necessary to implement this subsection.

8 (e) The commission shall ensure that there is a plan for
9 transitioning the provision of Medicaid ~~[program]~~ benefits to
10 recipients 21 years of age or older from under the STAR Kids program
11 to under the STAR + PLUS Medicaid managed care program that protects
12 continuity of care. The plan must ensure that coordination between
13 the programs begins when a recipient reaches 18 years of age.

14 SECTION 2.218. Section [533.0026\(a\)](#), Government Code, is
15 amended to read as follows:

16 (a) Notwithstanding any other law, the commission shall
17 ensure that a managed care plan offered by a managed care
18 organization that contracts with the commission under this chapter
19 and any other Medicaid managed care model or arrangement
20 implemented under this chapter allow a ~~Medicaid~~ recipient who
21 receives services through the plan or other model or arrangement
22 to, in the manner and to the extent required by Section [32.072](#),
23 Human Resources Code:

24 (1) select an in-network ophthalmologist or
25 therapeutic optometrist in the managed care network to provide eye
26 health care services, other than surgery; and

27 (2) have direct access to the selected in-network

1 ophthalmologist or therapeutic optometrist for the provision of the
2 nonsurgical services.

3 SECTION 2.219. Section 533.0028, Government Code, is
4 amended to read as follows:

5 Sec. 533.0028. EVALUATION OF CERTAIN STAR + PLUS MEDICAID
6 MANAGED CARE PROGRAM SERVICES. The external quality review
7 organization shall periodically conduct studies and surveys to
8 assess the quality of care and satisfaction with health care
9 services provided to enrollees in the STAR + PLUS Medicaid managed
10 care program who are eligible to receive health care benefits under
11 both [the] Medicaid and the Medicare program [programs].

12 SECTION 2.220. Section 533.00281(d), Government Code, is
13 amended to read as follows:

14 (d) In conjunction with the commission's office of contract
15 management, the commission shall provide a report to the standing
16 committees of the senate and house of representatives with
17 jurisdiction over [the] Medicaid [program] not later than December
18 1 of each year. The report must:

19 (1) summarize the results of the utilization reviews
20 conducted under this section during the preceding fiscal year;

21 (2) provide analysis of errors committed by each
22 reviewed managed care organization; and

23 (3) extrapolate those findings and make
24 recommendations for improving the efficiency of the program.

25 SECTION 2.221. Section 533.003(b), Government Code, is
26 amended to read as follows:

27 (b) The commission, in considering approval of a

1 subcontract between a managed care organization and a pharmacy
2 benefit manager for the provision of prescription drug benefits
3 under [the] Medicaid [program], shall review and consider whether
4 the pharmacy benefit manager has been in the preceding three years:

5 (1) convicted of an offense involving a material
6 misrepresentation or an act of fraud or of another violation of
7 state or federal criminal law;

8 (2) adjudicated to have committed a breach of
9 contract; or

10 (3) assessed a penalty or fine in the amount of
11 \$500,000 or more in a state or federal administrative proceeding.

12 SECTION 2.222. Section 533.005(a), Government Code, is
13 amended to read as follows:

14 (a) A contract between a managed care organization and the
15 commission for the organization to provide health care services to
16 recipients must contain:

17 (1) procedures to ensure accountability to the state
18 for the provision of health care services, including procedures for
19 financial reporting, quality assurance, utilization review, and
20 assurance of contract and subcontract compliance;

21 (2) capitation rates that ensure the cost-effective
22 provision of quality health care;

23 (3) a requirement that the managed care organization
24 provide ready access to a person who assists recipients in
25 resolving issues relating to enrollment, plan administration,
26 education and training, access to services, and grievance
27 procedures;

1 (4) a requirement that the managed care organization
2 provide ready access to a person who assists providers in resolving
3 issues relating to payment, plan administration, education and
4 training, and grievance procedures;

5 (5) a requirement that the managed care organization
6 provide information and referral about the availability of
7 educational, social, and other community services that could
8 benefit a recipient;

9 (6) procedures for recipient outreach and education;

10 (7) a requirement that the managed care organization
11 make payment to a physician or provider for health care services
12 rendered to a recipient under a managed care plan on any claim for
13 payment that is received with documentation reasonably necessary
14 for the managed care organization to process the claim:

15 (A) not later than:

16 (i) the 10th day after the date the claim is
17 received if the claim relates to services provided by a nursing
18 facility, intermediate care facility, or group home;

19 (ii) the 30th day after the date the claim
20 is received if the claim relates to the provision of long-term
21 services and supports not subject to Subparagraph (i); and

22 (iii) the 45th day after the date the claim
23 is received if the claim is not subject to Subparagraph (i) or (ii);
24 or

25 (B) within a period, not to exceed 60 days,
26 specified by a written agreement between the physician or provider
27 and the managed care organization;

1 (7-a) a requirement that the managed care organization
2 demonstrate to the commission that the organization pays claims
3 described by Subdivision (7)(A)(ii) on average not later than the
4 21st day after the date the claim is received by the organization;

5 (8) a requirement that the commission, on the date of a
6 recipient's enrollment in a managed care plan issued by the managed
7 care organization, inform the organization of the recipient's
8 Medicaid certification date;

9 (9) a requirement that the managed care organization
10 comply with Section [533.006](#) as a condition of contract retention
11 and renewal;

12 (10) a requirement that the managed care organization
13 provide the information required by Section [533.012](#) and otherwise
14 comply and cooperate with the commission's office of inspector
15 general and the office of the attorney general;

16 (11) a requirement that the managed care
17 organization's usages of out-of-network providers or groups of
18 out-of-network providers may not exceed limits for those usages
19 relating to total inpatient admissions, total outpatient services,
20 and emergency room admissions determined by the commission;

21 (12) if the commission finds that a managed care
22 organization has violated Subdivision (11), a requirement that the
23 managed care organization reimburse an out-of-network provider for
24 health care services at a rate that is equal to the allowable rate
25 for those services, as determined under Sections [32.028](#) and
26 [32.0281](#), Human Resources Code;

27 (13) a requirement that, notwithstanding any other

1 law, including Sections [843.312](#) and [1301.052](#), Insurance Code, the
2 organization:

3 (A) use advanced practice registered nurses and
4 physician assistants in addition to physicians as primary care
5 providers to increase the availability of primary care providers in
6 the organization's provider network; and

7 (B) treat advanced practice registered nurses
8 and physician assistants in the same manner as primary care
9 physicians with regard to:

10 (i) selection and assignment as primary
11 care providers;

12 (ii) inclusion as primary care providers in
13 the organization's provider network; and

14 (iii) inclusion as primary care providers
15 in any provider network directory maintained by the organization;

16 (14) a requirement that the managed care organization
17 reimburse a federally qualified health center or rural health
18 clinic for health care services provided to a recipient outside of
19 regular business hours, including on a weekend day or holiday, at a
20 rate that is equal to the allowable rate for those services as
21 determined under Section [32.028](#), Human Resources Code, if the
22 recipient does not have a referral from the recipient's primary
23 care physician;

24 (15) a requirement that the managed care organization
25 develop, implement, and maintain a system for tracking and
26 resolving all provider appeals related to claims payment, including
27 a process that will require:

- 1 (A) a tracking mechanism to document the status
2 and final disposition of each provider's claims payment appeal;
- 3 (B) the contracting with physicians who are not
4 network providers and who are of the same or related specialty as
5 the appealing physician to resolve claims disputes related to
6 denial on the basis of medical necessity that remain unresolved
7 subsequent to a provider appeal;
- 8 (C) the determination of the physician resolving
9 the dispute to be binding on the managed care organization and
10 provider; and
- 11 (D) the managed care organization to allow a
12 provider with a claim that has not been paid before the time
13 prescribed by Subdivision (7)(A)(ii) to initiate an appeal of that
14 claim;
- 15 (16) a requirement that a medical director who is
16 authorized to make medical necessity determinations is available to
17 the region where the managed care organization provides health care
18 services;
- 19 (17) a requirement that the managed care organization
20 ensure that a medical director and patient care coordinators and
21 provider and recipient support services personnel are located in
22 the South Texas service region, if the managed care organization
23 provides a managed care plan in that region;
- 24 (18) a requirement that the managed care organization
25 provide special programs and materials for recipients with limited
26 English proficiency or low literacy skills;
- 27 (19) a requirement that the managed care organization

1 develop and establish a process for responding to provider appeals
2 in the region where the organization provides health care services;
3 (20) a requirement that the managed care organization:
4 (A) develop and submit to the commission, before
5 the organization begins to provide health care services to
6 recipients, a comprehensive plan that describes how the
7 organization's provider network will provide recipients sufficient
8 access to:

9 (i) preventive care;
10 (ii) primary care;
11 (iii) specialty care;
12 (iv) after-hours urgent care;
13 (v) chronic care;
14 (vi) long-term services and supports;
15 (vii) nursing services; and
16 (viii) therapy services, including
17 services provided in a clinical setting or in a home or
18 community-based setting; and

19 (B) regularly, as determined by the commission,
20 submit to the commission and make available to the public a report
21 containing data on the sufficiency of the organization's provider
22 network with regard to providing the care and services described
23 under Paragraph (A) and specific data with respect to Paragraphs
24 (A)(iii), (vi), (vii), and (viii) on the average length of time
25 between:

26 (i) the date a provider makes a referral for
27 the care or service and the date the organization approves or denies

1 the referral; and

2 (ii) the date the organization approves a
3 referral for the care or service and the date the care or service is
4 initiated;

5 (21) a requirement that the managed care organization
6 demonstrate to the commission, before the organization begins to
7 provide health care services to recipients, that:

8 (A) the organization's provider network has the
9 capacity to serve the number of recipients expected to enroll in a
10 managed care plan offered by the organization;

11 (B) the organization's provider network
12 includes:

13 (i) a sufficient number of primary care
14 providers;

15 (ii) a sufficient variety of provider
16 types;

17 (iii) a sufficient number of providers of
18 long-term services and supports and specialty pediatric care
19 providers of home and community-based services; and

20 (iv) providers located throughout the
21 region where the organization will provide health care services;
22 and

23 (C) health care services will be accessible to
24 recipients through the organization's provider network to a
25 comparable extent that health care services would be available to
26 recipients under a fee-for-service or primary care case management
27 model of Medicaid managed care;

21 (C) that includes the prior authorization
22 procedures and requirements prescribed by or implemented under
23 Sections 531.073(b), (c), and (g) for the vendor drug program;

24 (D) for purposes of which the managed care
25 organization:

1 formulary; and

2 (ii) may not receive drug rebate or pricing
3 information that is confidential under Section [531.071](#);

4 (E) that complies with the prohibition under
5 Section [531.089](#);

6 (F) under which the managed care organization may
7 not prohibit, limit, or interfere with a recipient's selection of a
8 pharmacy or pharmacist of the recipient's choice for the provision
9 of pharmaceutical services under the plan through the imposition of
10 different copayments;

11 (G) that allows the managed care organization or
12 any subcontracted pharmacy benefit manager to contract with a
13 pharmacist or pharmacy providers separately for specialty pharmacy
14 services, except that:

15 (i) the managed care organization and
16 pharmacy benefit manager are prohibited from allowing exclusive
17 contracts with a specialty pharmacy owned wholly or partly by the
18 pharmacy benefit manager responsible for the administration of the
19 pharmacy benefit program; and

20 (ii) the managed care organization and
21 pharmacy benefit manager must adopt policies and procedures for
22 reclassifying prescription drugs from retail to specialty drugs,
23 and those policies and procedures must be consistent with rules
24 adopted by the executive commissioner and include notice to network
25 pharmacy providers from the managed care organization;

26 (H) under which the managed care organization may
27 not prevent a pharmacy or pharmacist from participating as a

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1 provider if the pharmacy or pharmacist agrees to comply with the
2 financial terms and conditions of the contract as well as other
3 reasonable administrative and professional terms and conditions of
4 the contract;

15 (i) to place a drug on a maximum allowable
16 cost list, must ensure that:

17 (a) the drug is listed as "A" or "B"
18 rated in the most recent version of the United States Food and Drug
19 Administration's Approved Drug Products with Therapeutic
20 Equivalence Evaluations, also known as the Orange Book, has an "NR"
21 or "NA" rating or a similar rating by a nationally recognized
22 reference; and

23 (b) the drug is generally available
24 for purchase by pharmacies in the state from national or regional
25 wholesalers and is not obsolete;

26 (ii) must provide to a network pharmacy
27 provider, at the time a contract is entered into or renewed with the

1 network pharmacy provider, the sources used to determine the
2 maximum allowable cost pricing for the maximum allowable cost list
3 specific to that provider;

4 (iii) must review and update maximum
5 allowable cost price information at least once every seven days to
6 reflect any modification of maximum allowable cost pricing;

7 (iv) must, in formulating the maximum
8 allowable cost price for a drug, use only the price of the drug and
9 drugs listed as therapeutically equivalent in the most recent
10 version of the United States Food and Drug Administration's
11 Approved Drug Products with Therapeutic Equivalence Evaluations,
12 also known as the Orange Book;

13 (v) must establish a process for
14 eliminating products from the maximum allowable cost list or
15 modifying maximum allowable cost prices in a timely manner to
16 remain consistent with pricing changes and product availability in
17 the marketplace;

18 (vi) must:

19 (a) provide a procedure under which a
20 network pharmacy provider may challenge a listed maximum allowable
21 cost price for a drug;

22 (b) respond to a challenge not later
23 than the 15th day after the date the challenge is made;

24 (c) if the challenge is successful,
25 make an adjustment in the drug price effective on the date the
26 challenge is resolved, and make the adjustment applicable to all
27 similarly situated network pharmacy providers, as determined by the

1 managed care organization or pharmacy benefit manager, as
2 appropriate;

3 (d) if the challenge is denied,
4 provide the reason for the denial; and

5 (e) report to the commission every 90
6 days the total number of challenges that were made and denied in the
7 preceding 90-day period for each maximum allowable cost list drug
8 for which a challenge was denied during the period;

9 (vii) must notify the commission not later
10 than the 21st day after implementing a practice of using a maximum
11 allowable cost list for drugs dispensed at retail but not by mail;
12 and

13 (viii) must provide a process for each of
14 its network pharmacy providers to readily access the maximum
15 allowable cost list specific to that provider;

16 (24) a requirement that the managed care organization
17 and any entity with which the managed care organization contracts
18 for the performance of services under a managed care plan disclose,
19 at no cost, to the commission and, on request, the office of the
20 attorney general all discounts, incentives, rebates, fees, free
21 goods, bundling arrangements, and other agreements affecting the
22 net cost of goods or services provided under the plan; and

23 (25) a requirement that the managed care organization
24 not implement significant, nonnegotiated, across-the-board
25 provider reimbursement rate reductions unless:

26 (A) subject to Subsection (a-3), the
27 organization has the prior approval of the commission to make the

1 reduction; or

2 (B) the rate reductions are based on changes to
3 the Medicaid fee schedule or cost containment initiatives
4 implemented by the commission.

5 SECTION 2.223. Section 533.0051(d), Government Code, is
6 amended to read as follows:

7 (d) Subject to Subsection (f), the commission shall assess
8 the feasibility and cost-effectiveness of including provisions in a
9 contract described by Subsection (a) that require the health
10 maintenance organization to provide to the providers in the
11 organization's provider network pay-for-performance opportunities
12 that support quality improvements in the care of [Medicaid]
13 recipients. Pay-for-performance opportunities may include
14 incentives for providers to provide care after normal business
15 hours and to participate in the early and periodic screening,
16 diagnosis, and treatment program and other activities that improve
17 [Medicaid] recipients' access to care. If the commission
18 determines that the provisions are feasible and may be
19 cost-effective, the commission shall develop and implement a pilot
20 program in at least one health care service region under which the
21 commission will include the provisions in contracts with health
22 maintenance organizations offering managed care plans in the
23 region.

24 SECTION 2.224. Section 533.0055(b), Government Code, is
25 amended to read as follows:

26 (b) The provider protection plan required under this
27 section must provide for:

1 (1) prompt payment and proper reimbursement of
2 providers by managed care organizations;

3 (2) prompt and accurate adjudication of claims
4 through:

5 (A) provider education on the proper submission
6 of clean claims and on appeals;

7 (B) acceptance of uniform forms, including HCFA
8 Forms 1500 and UB-92 and subsequent versions of those forms,
9 through an electronic portal; and

10 (C) the establishment of standards for claims
11 payments in accordance with a provider's contract;

12 (3) adequate and clearly defined provider network
13 standards that are specific to provider type, including physicians,
14 general acute care facilities, and other provider types defined in
15 the commission's network adequacy standards in effect on January 1,
16 2013, and that ensure choice among multiple providers to the
17 greatest extent possible;

18 (4) a prompt credentialing process for providers;

19 (5) uniform efficiency standards and requirements for
20 managed care organizations for the submission and tracking of
21 preauthorization requests for services provided under [the]
22 Medicaid [program];

23 (6) establishment of an electronic process, including
24 the use of an Internet portal, through which providers in any
25 managed care organization's provider network may:

26 (A) submit electronic claims, prior
27 authorization requests, claims appeals and reconsiderations,

1 clinical data, and other documentation that the managed care
2 organization requests for prior authorization and claims
3 processing; and

4 (B) obtain electronic remittance advice,
5 explanation of benefits statements, and other standardized
6 reports;

7 (7) the measurement of the rates of retention by
8 managed care organizations of significant traditional providers;

9 (8) the creation of a work group to review and make
10 recommendations to the commission concerning any requirement under
11 this subsection for which immediate implementation is not feasible
12 at the time the plan is otherwise implemented, including the
13 required process for submission and acceptance of attachments for
14 claims processing and prior authorization requests through an
15 electronic process under Subdivision (6) and, for any requirement
16 that is not implemented immediately, recommendations regarding the
17 expected:

18 (A) fiscal impact of implementing the
19 requirement; and

20 (B) timeline for implementation of the
21 requirement; and

22 (9) any other provision that the commission determines
23 will ensure efficiency or reduce administrative burdens on
24 providers participating in a Medicaid managed care model or
25 arrangement.

26 SECTION 2.225. Section 533.006, Government Code, is amended
27 to read as follows:

1 Sec. 533.006. PROVIDER NETWORKS. (a) The commission shall
2 require that each managed care organization that contracts with the
3 commission to provide health care services to recipients in a
4 region:

5 (1) seek participation in the organization's provider
6 network from:

7 (A) each health care provider in the region who
8 has traditionally provided care to [Medicaid] recipients;

9 (B) each hospital in the region that has been
10 designated as a disproportionate share hospital under [~~the state~~]
11 Medicaid [~~program~~]; and

12 (C) each specialized pediatric laboratory in the
13 region, including those laboratories located in children's
14 hospitals; and

15 (2) include in its provider network for not less than
16 three years:

17 (A) each health care provider in the region who:

18 (i) previously provided care to Medicaid
19 and charity care recipients at a significant level as prescribed by
20 the commission;

21 (ii) agrees to accept the prevailing
22 provider contract rate of the managed care organization; and

23 (iii) has the credentials required by the
24 managed care organization, provided that lack of board
25 certification or accreditation by The [~~the~~] Joint Commission [~~on~~
26 Accreditation of Healthcare Organizations] may not be the sole
27 ground for exclusion from the provider network;

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(B) each accredited primary care residency program in the region; and

6 (b) A contract between a managed care organization and the
7 commission for the organization to provide health care services to
8 recipients in a health care service region that includes a rural
9 area must require that the organization include in its provider
10 network rural hospitals, physicians, home and community support
11 services agencies, and other rural health care providers who:

12 (1) are sole community providers;

15 (3) agree to accept the prevailing provider contract
16 rate of the managed care organization; and

22 SECTION 2.226. Sections 533.007(b), (d), and (e),
23 Government Code, are amended to read as follows:

24 (b) Each managed care organization that contracts with the
25 commission to provide health care services to recipients in a
26 health care service region shall submit an implementation plan not
27 later than the 90th day before the date on which the managed care

1 organization [~~commission~~] plans to begin to provide health care
2 services to recipients in that region through managed care. The
3 implementation plan must include:

4 (1) specific staffing patterns by function for all
5 operations, including enrollment, information systems, member
6 services, quality improvement, claims management, case management,
7 and provider and recipient training; and

8 (2) specific time frames for demonstrating
9 preparedness for implementation before the date on which the
10 managed care organization [~~commission~~] plans to begin to provide
11 health care services to recipients in that region through managed
12 care.

13 (d) Each managed care organization that contracts with the
14 commission to provide health care services to recipients in a
15 region shall submit status reports on the implementation plan not
16 later than the 60th day and the 30th day before the date on which the
17 managed care organization [~~commission~~] plans to begin to provide
18 health care services to recipients in that region through managed
19 care and every 30th day after that date until the 180th day after
20 that date.

21 (e) The commission shall conduct a compliance and readiness
22 review of each managed care organization that contracts with the
23 commission not later than the 15th day before the date on which the
24 process of enrolling recipients in a managed care plan issued by the
25 managed care organization is to begin [~~commission plans to begin~~
26 ~~the enrollment process~~] in a region and again not later than the
27 15th day before the date on which the managed care organization

1 [commission] plans to begin to provide health care services to
2 recipients in that region through managed care. The review must
3 include an on-site inspection and tests of service authorization
4 and claims payment systems, including the ability of the managed
5 care organization to process claims electronically, complaint
6 processing systems, and any other process or system required by the
7 contract.

8 SECTION 2.227. Section 533.0075, Government Code, is
9 amended to read as follows:

10 Sec. 533.0075. RECIPIENT ENROLLMENT. The commission shall:

11 (1) encourage recipients to choose appropriate
12 managed care plans and primary health care providers by:

13 (A) providing initial information to recipients
14 and providers in a region about the need for recipients to choose
15 plans and providers not later than the 90th day before the date on
16 which a managed care organization [the commission] plans to begin
17 to provide health care services to recipients in that region
18 through managed care;

19 (B) providing follow-up information before
20 assignment of plans and providers and after assignment, if
21 necessary, to recipients who delay in choosing plans and providers;
22 and

23 (C) allowing plans and providers to provide
24 information to recipients or engage in marketing activities under
25 marketing guidelines established by the commission under Section
26 533.008 after the commission approves the information or
27 activities;

1 (2) consider the following factors in assigning
2 managed care plans and primary health care providers to recipients
3 who fail to choose plans and providers:

4 (A) the importance of maintaining existing
5 provider-patient and physician-patient relationships, including
6 relationships with specialists, public health clinics, and
7 community health centers;

8 (B) to the extent possible, the need to assign
9 family members to the same providers and plans; and

10 (C) geographic convenience of plans and
11 providers for recipients;

12 (3) retain responsibility for enrollment and
13 disenrollment of recipients in managed care plans, except that the
14 commission may delegate the responsibility to an independent
15 contractor who receives no form of payment from, and has no
16 financial ties to, any managed care organization;

17 (4) develop and implement an expedited process for
18 determining eligibility for and enrolling pregnant women and
19 newborn infants in managed care plans; and

20 (5) ensure immediate access to prenatal services and
21 newborn care for pregnant women and newborn infants enrolled in
22 managed care plans, including ensuring that a pregnant woman may
23 obtain an appointment with an obstetrical care provider for an
24 initial maternity evaluation not later than the 30th day after the
25 date the woman applies for Medicaid.

26 SECTION 2.228. Section 533.009(c), Government Code, is
27 amended to read as follows:

1 (c) The executive commissioner, by rule, shall prescribe
2 the minimum requirements that a managed care organization, in
3 providing a disease management program, must meet to be eligible to
4 receive a contract under this section. The managed care
5 organization must, at a minimum, be required to:

6 (1) provide disease management services that have
7 performance measures for particular diseases that are comparable to
8 the relevant performance measures applicable to a provider of
9 disease management services under Section 32.057 [32.059], Human
10 Resources Code[~~, as added by Chapter 208, Acts of the 78th~~
11 ~~Legislature, Regular Session, 2003~~]; and

12 (2) show evidence of ability to manage complex
13 diseases in the Medicaid population.

14 SECTION 2.229. Section 533.012(c), Government Code, is
15 amended to read as follows:

16 (c) The commission's office of inspector general
17 [~~investigations and enforcement~~] or the office of the attorney
18 general, as applicable, shall review the information submitted
19 under this section as appropriate in the investigation of fraud in
20 the Medicaid managed care program.

21 SECTION 2.230. Sections 533.013(a) and (b), Government
22 Code, are amended to read as follows:

23 (a) In determining premium payment rates paid to a managed
24 care organization under a managed care plan, the commission shall
25 consider:

26 (1) the regional variation in costs of health care
27 services;

1 (2) the range and type of health care services to be
2 covered by premium payment rates;

3 (3) the number of managed care plans in a region;

4 (4) the current and projected number of recipients in
5 each region, including the current and projected number for each
6 category of recipient;

7 (5) the ability of the managed care plan to meet costs
8 of operation under the proposed premium payment rates;

9 (6) the applicable requirements of the federal
10 Balanced Budget Act of 1997 and implementing regulations that
11 require adequacy of premium payments to managed care organizations
12 participating in [~~the state~~] Medicaid [~~program~~];

13 (7) the adequacy of the management fee paid for
14 assisting enrollees of Supplemental Security Income (SSI) (42
15 U.S.C. Section 1381 et seq.) who are voluntarily enrolled in the
16 managed care plan;

17 (8) the impact of reducing premium payment rates for
18 the category of recipients who are pregnant; and

19 (9) the ability of the managed care plan to pay under
20 the proposed premium payment rates inpatient and outpatient
21 hospital provider payment rates that are comparable to the
22 inpatient and outpatient hospital provider payment rates paid by
23 the commission under a primary care case management model or a
24 partially capitated model.

25 (b) In determining the maximum premium payment rates paid to
26 a managed care organization that is licensed under Chapter 843,
27 Insurance Code, the commission shall consider and adjust for the

1 regional variation in costs of services under the traditional
2 fee-for-service component of [the state] Medicaid [program],
3 utilization patterns, and other factors that influence the
4 potential for cost savings. For a service area with a service area
5 factor of .93 or less, or another appropriate service area factor,
6 as determined by the commission, the commission may not discount
7 premium payment rates in an amount that is more than the amount
8 necessary to meet federal budget neutrality requirements for
9 projected fee-for-service costs unless:

10 (1) a historical review of managed care financial
11 results among managed care organizations in the service area served
12 by the organization demonstrates that additional savings are
13 warranted;

14 (2) a review of Medicaid fee-for-service delivery in
15 the service area served by the organization has historically shown
16 a significant overutilization by recipients of certain services
17 covered by the premium payment rates in comparison to utilization
18 patterns throughout the rest of the state; or

19 (3) a review of Medicaid fee-for-service delivery in
20 the service area served by the organization has historically shown
21 an above-market cost for services for which there is substantial
22 evidence that Medicaid managed care delivery will reduce the cost
23 of those services.

24 SECTION 2.231. Section 533.01315(a), Government Code, is
25 amended to read as follows:

26 (a) This section applies only to a recipient receiving
27 benefits [medical assistance] through any Medicaid managed care

1 model or arrangement.

2 SECTION 2.232. Sections [533.014](#)(a) and (b), Government
3 Code, are amended to read as follows:

4 (a) The executive commissioner [~~commission~~] shall adopt
5 rules regarding the sharing of profits earned by a managed care
6 organization through a managed care plan providing health care
7 services under a contract with the commission under this chapter.

8 (b) Except as provided by Subsection (c), any amount
9 received by the state under this section shall be deposited in the
10 general revenue fund [~~for the purpose of funding the state Medicaid~~
11 ~~program~~].

12 SECTION 2.233. Section [533.015](#), Government Code, is amended
13 to read as follows:

14 Sec. 533.015. COORDINATION OF EXTERNAL OVERSIGHT
15 ACTIVITIES. To the extent possible, the commission shall
16 coordinate all external oversight activities to minimize
17 duplication of oversight of managed care plans under [~~the state~~]
18 Medicaid [~~program~~] and disruption of operations under those plans.

19 SECTION 2.234. Section [533.020](#)(a), Government Code, is
20 amended to read as follows:

21 (a) The Texas Department of Insurance, in conjunction with
22 the commission, shall establish fiscal solvency standards and
23 complaint system guidelines for managed care organizations that
24 serve [~~Medicaid~~] recipients.

25 SECTION 2.235. Section [533.021](#), Government Code, is amended
26 to read as follows:

27 Sec. 533.021. MEDICAID MANAGED CARE ADVISORY COMMITTEES

1 [APPOINTMENT]. A [Not later than the 180th day before the date the
2 commission plans to begin to provide health care services to
3 recipients in a health care service region through managed care,
4 the commission, in consultation with health and human services
5 agencies, shall appoint a] Medicaid managed care advisory committee
6 exists for each health care service [for that] region. The
7 commission, in consultation with health and human services
8 agencies, appoints the committee members.

9 SECTION 2.236. Section 533.023, Government Code, is amended
10 to read as follows:

11 Sec. 533.023. PRESIDING OFFICER; SUBCOMMITTEES. The
12 executive commissioner or the executive commissioner's designated
13 representative serves as the presiding officer of a committee. The
14 presiding officer may appoint subcommittees as necessary.

15 SECTION 2.237. Section 533.028, Government Code, is amended
16 to read as follows:

17 Sec. 533.028. OTHER LAW. Except as provided by this
18 chapter, a committee is subject to Chapter 2110 [Article 6252-33,
19 Revised Statutes].

20 SECTION 2.238. Sections 533.041(a) and (d), Government
21 Code, are amended to read as follows:

22 (a) The executive commissioner shall appoint a state
23 Medicaid managed care advisory committee. The advisory committee
24 consists of representatives of:

25 (1) hospitals;

26 (2) managed care organizations and participating
27 health care providers;

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1 of long-term services and supports or other Medicaid [program]
2 service delivery, including:

- 3 (A) independent living centers;
- 4 (B) area agencies on aging;
- 5 (C) aging and disability resource centers
6 established under the Aging and Disability Resource Center
7 initiative funded in part by the federal Administration on Aging
8 and the Centers for Medicare and Medicaid Services;
- 9 (D) community mental health and intellectual
10 disability centers; and
- 11 (E) the NorthSTAR Behavioral Health Program
12 provided under Chapter 534, Health and Safety Code.

13 (d) To the greatest extent possible, the executive
14 commissioner shall appoint members of the advisory committee who
15 reflect the geographic diversity of the state and include members
16 who represent rural [Medicaid program] recipients.

17 SECTION 2.239. Section 533.045(b), Government Code, is
18 amended to read as follows:

19 (b) A member of the advisory committee who is a [Medicaid
20 program] recipient or the relative of a [Medicaid program]
21 recipient is entitled to a per diem allowance and reimbursement at
22 rates established in the General Appropriations Act.

23 SECTION 2.240. The heading to Chapter 534, Government Code,
24 is amended to read as follows:

25 CHAPTER 534. SYSTEM REDESIGN FOR DELIVERY OF MEDICAID ACUTE CARE
26 SERVICES AND LONG-TERM SERVICES AND SUPPORTS TO PERSONS WITH AN
27 INTELLECTUAL OR [AND] DEVELOPMENTAL DISABILITY [DISABILITIES]

1 SECTION 2.241. Sections 534.001(6), (7), (8), and (11),
2 Government Code, are amended to read as follows:

3 (6) "ICF-IID" means the [Medicaid] program under
4 Medicaid serving individuals with an intellectual or [and]
5 developmental disability [disabilities] who receive care in
6 intermediate care facilities other than a state supported living
7 center.

8 (7) "ICF-IID program" means a program under [the]
9 Medicaid [program] serving individuals with an intellectual or
10 [and] developmental disability [disabilities] who reside in and
11 receive care from:

12 (A) intermediate care facilities licensed under
13 Chapter 252, Health and Safety Code; or

14 (B) community-based intermediate care facilities
15 operated by local intellectual and developmental disability
16 authorities.

17 (8) "Local intellectual and developmental disability
18 authority" has the meaning assigned [means an authority defined] by
19 Section 531.002 [Section 531.002(11)], Health and Safety Code.

20 (11) "Medicaid waiver program" means only the
21 following programs that are authorized under Section 1915(c) of the
22 federal Social Security Act (42 U.S.C. Section 1396n(c)) for the
23 provision of services to persons with an intellectual or [and]
24 developmental disability [disabilities]:

25 (A) the community living assistance and support
26 services (CLASS) waiver program;

27 (B) the home and community-based services (HCS)

1 waiver program;

2 (C) the deaf-blind with multiple disabilities

3 (DBMD) waiver program; and

4 (D) the Texas home living (TxHmL) waiver program.

5 SECTION 2.242. Section 534.051, Government Code, is amended
6 to read as follows:

7 Sec. 534.051. ACUTE CARE SERVICES AND LONG-TERM SERVICES
8 AND SUPPORTS SYSTEM FOR INDIVIDUALS WITH AN INTELLECTUAL OR [AND]
9 DEVELOPMENTAL DISABILITY [DISABILITIES]. In accordance with this
10 chapter, the commission and the department shall jointly design and
11 implement an acute care services and long-term services and
12 supports system for individuals with an intellectual or [and]
13 developmental disability [disabilities] that supports the
14 following goals:

15 (1) provide Medicaid services to more individuals in a
16 cost-efficient manner by providing the type and amount of services
17 most appropriate to the individuals' needs;

18 (2) improve individuals' access to services and
19 supports by ensuring that the individuals receive information about
20 all available programs and services, including employment and least
21 restrictive housing assistance, and how to apply for the programs
22 and services;

23 (3) improve the assessment of individuals' needs and
24 available supports, including the assessment of individuals'
25 functional needs;

26 (4) promote person-centered planning, self-direction,
27 self-determination, community inclusion, and customized,

1 integrated, competitive employment;

2 (5) promote individualized budgeting based on an
3 assessment of an individual's needs and person-centered planning;

4 (6) promote integrated service coordination of acute
5 care services and long-term services and supports;

6 (7) improve acute care and long-term services and
7 supports outcomes, including reducing unnecessary
8 institutionalization and potentially preventable events;

9 (8) promote high-quality care;

10 (9) provide fair hearing and appeals processes in
11 accordance with applicable federal law;

12 (10) ensure the availability of a local safety net
13 provider and local safety net services;

14 (11) promote independent service coordination and
15 independent ombudsmen services; and

16 (12) ensure that individuals with the most significant
17 needs are appropriately served in the community and that processes
18 are in place to prevent inappropriate institutionalization of
19 individuals.

20 SECTION 2.243. Section 534.052, Government Code, is amended
21 to read as follows:

22 Sec. 534.052. IMPLEMENTATION OF SYSTEM REDESIGN. The
23 commission and department shall, in consultation with the advisory
24 committee, jointly implement the acute care services and long-term
25 services and supports system for individuals with an intellectual
26 or [and] developmental disability [~~disabilities~~] in the manner and
27 in the stages described in this chapter.

1 SECTION 2.244. Sections 534.053(a), (b), and (e),
2 Government Code, are amended to read as follows:

3 (a) The Intellectual and Developmental Disability System
4 Redesign Advisory Committee shall [~~is established to~~] advise the
5 commission and the department on the implementation of the acute
6 care services and long-term services and supports system redesign
7 under this chapter. Subject to Subsection (b), the executive
8 commissioner and the commissioner of aging and disability services
9 [~~the department~~] shall jointly appoint members of the advisory
10 committee who are stakeholders from the intellectual and
11 developmental disabilities community, including:

12 (1) individuals with an intellectual or [~~and~~]
13 developmental disability [~~disabilities~~] who are recipients of
14 services under the Medicaid waiver programs, individuals with an
15 intellectual or [~~and~~] developmental disability [~~disabilities~~] who
16 are recipients of services under the ICF-IID program, and
17 individuals who are advocates of those recipients, including at
18 least three representatives from intellectual and developmental
19 disability advocacy organizations;

20 (2) representatives of Medicaid managed care and
21 nonmanaged care health care providers, including:

22 (A) physicians who are primary care providers and
23 physicians who are specialty care providers;

24 (B) nonphysician mental health professionals;
25 and

26 (C) providers of long-term services and
27 supports, including direct service workers;

(3) representatives of entities with responsibilities for the delivery of Medicaid long-term services and supports or other Medicaid [program] service delivery, including:

11 (C) representatives of and service coordinators
12 or case managers from private and public home and community-based
13 services providers that serve individuals with an intellectual or
14 [and] developmental disability [disabilities]; and

15 (D) representatives of private and public
16 ICF-IID providers; and

20 (b) To the greatest extent possible, the executive
21 commissioner and the commissioner of aging and disability services
22 [~~the department~~] shall appoint members of the advisory committee
23 who reflect the geographic diversity of the state and include
24 members who represent rural Medicaid [~~program~~] recipients.

25 (e) A member of the advisory committee serves without
26 compensation. A member of the advisory committee who is a Medicaid
27 [program] recipient or the relative of a Medicaid [program]

1 recipient is entitled to a per diem allowance and reimbursement at
2 rates established in the General Appropriations Act.

3 SECTION 2.245. Section 534.054(a), Government Code, is
4 amended to read as follows:

5 (a) Not later than September 30 of each year, the commission
6 shall submit a report to the legislature regarding:

7 (1) the implementation of the system required by this
8 chapter, including appropriate information regarding the provision
9 of acute care services and long-term services and supports to
10 individuals with an intellectual or [and] developmental disability
11 [~~disabilities~~] under [~~the~~] Medicaid [~~program~~]; and

12 (2) recommendations, including recommendations
13 regarding appropriate statutory changes to facilitate the
14 implementation.

15 SECTION 2.246. Section 534.055(a), Government Code, is
16 amended to read as follows:

17 (a) The commission and department shall submit a report to
18 the legislature not later than December 1, 2014, that includes the
19 following information:

20 (1) the percentage of services provided by each local
21 intellectual and developmental disability authority to individuals
22 receiving ICF-IID or Medicaid waiver program services, compared to
23 the percentage of those services provided by private providers;

24 (2) the types of evidence provided by local
25 intellectual and developmental disability authorities to the
26 department to demonstrate the lack of available private providers
27 in areas of the state where local authorities provide services to

1 more than 40 percent of the Texas home living (TxHmL) waiver program
2 clients or 20 percent of the home and community-based services
3 (HCS) waiver program clients;

4 (3) the types and amounts of services received by
5 clients from local intellectual and developmental disability
6 authorities compared to the types and amounts of services received
7 by clients from private providers;

8 (4) the provider capacity of each local intellectual
9 and developmental disability authority as determined under Section
10 533A.0355(d) [~~Section 533.0355(d)~~], Health and Safety Code;

11 (5) the number of individuals served above or below
12 the applicable provider capacity by each local intellectual and
13 developmental disability authority; and

14 (6) if a local intellectual and developmental
15 disability authority is serving clients over the authority's
16 provider capacity, the length of time the local authority has
17 served clients above the authority's approved provider capacity.

18 SECTION 2.247. Section 534.101(2), Government Code, is
19 amended to read as follows:

20 (2) "Provider" means a person with whom the commission
21 contracts for the provision of long-term services and supports
22 under [the] Medicaid [~~program~~] to a specific population based on
23 capitation.

24 SECTION 2.248. Section 534.102, Government Code, is amended
25 to read as follows:

26 Sec. 534.102. PILOT PROGRAMS TO TEST MANAGED CARE
27 STRATEGIES BASED ON CAPITATION. The commission and the department

1 may develop and implement pilot programs in accordance with this
2 subchapter to test one or more service delivery models involving a
3 managed care strategy based on capitation to deliver long-term
4 services and supports under [the] Medicaid [program] to individuals
5 with an intellectual or [and] developmental disability
6 [disabilities].

7 SECTION 2.249. Sections 534.104(a) and (f), Government
8 Code, are amended to read as follows:

9 (a) The department shall identify private services
10 providers that are good candidates to develop a service delivery
11 model involving a managed care strategy based on capitation and to
12 test the model in the provision of long-term services and supports
13 under [the] Medicaid [program] to individuals with an intellectual
14 or [and] developmental disability [disabilities] through a pilot
15 program established under this subchapter.

16 (f) For each pilot program service provider, the department
17 shall develop and implement a pilot program. Under a pilot
18 program, the pilot program service provider shall provide long-term
19 services and supports under [the] Medicaid [program] to persons
20 with an intellectual or [and] developmental disability
21 [disabilities] to test its managed care strategy based on
22 capitation.

23 SECTION 2.250. Section 534.107, Government Code, is amended
24 to read as follows:

25 Sec. 534.107. COORDINATING SERVICES. In providing
26 long-term services and supports under [the] Medicaid [program] to
27 individuals with an intellectual or [and] developmental disability

1 [disabilities], a pilot program service provider shall:

2 (1) coordinate through the pilot program
3 institutional and community-based services available to the
4 individuals, including services provided through:

5 (A) a facility licensed under Chapter 252, Health
6 and Safety Code;

7 (B) a Medicaid waiver program; or

8 (C) a community-based ICF-IID operated by local
9 authorities;

10 (2) collaborate with managed care organizations to
11 provide integrated coordination of acute care services and
12 long-term services and supports, including discharge planning from
13 acute care services to community-based long-term services and
14 supports;

15 (3) have a process for preventing inappropriate
16 institutionalizations of individuals; and

17 (4) accept the risk of inappropriate
18 institutionalizations of individuals previously residing in
19 community settings.

20 SECTION 2.251. Section 534.109, Government Code, is amended
21 to read as follows:

22 Sec. 534.109. PERSON-CENTERED PLANNING. The commission,
23 in cooperation with the department, shall ensure that each
24 individual with an intellectual or developmental disability who
25 receives services and supports under [the] Medicaid [program]
26 through a pilot program established under this subchapter, or the
27 individual's legally authorized representative, has access to a

1 facilitated, person-centered plan that identifies outcomes for the
2 individual and drives the development of the individualized
3 budget. The consumer direction model, as defined by Section
4 [531.051](#), may be an outcome of the plan.

5 SECTION 2.252. Section [534.110](#), Government Code, is amended
6 to read as follows:

7 Sec. 534.110. TRANSITION BETWEEN PROGRAMS. The commission
8 shall ensure that there is a comprehensive plan for transitioning
9 the provision of Medicaid [program] benefits between a Medicaid
10 waiver program or an ICF-IID program and a pilot program under this
11 subchapter to protect continuity of care.

12 SECTION 2.253. Section [534.151](#), Government Code, is amended
13 to read as follows:

14 Sec. 534.151. DELIVERY OF ACUTE CARE SERVICES FOR
15 INDIVIDUALS WITH AN INTELLECTUAL OR [AND] DEVELOPMENTAL DISABILITY
16 [~~DISABILITIES~~]. Subject to Section [533.0025](#), the commission shall
17 provide acute care Medicaid [program] benefits to individuals with
18 an intellectual or [and] developmental disability [~~disabilities~~]
19 through the STAR + PLUS Medicaid managed care program or the most
20 appropriate integrated capitated managed care program delivery
21 model and monitor the provision of those benefits.

22 SECTION 2.254. Sections [534.152\(a\), \(b\), \(c\), \(e\), and \(f\)](#),
23 Government Code, are amended to read as follows:

24 (a) The commission shall:

25 (1) implement the most cost-effective option for the
26 delivery of basic attendant and habilitation services for
27 individuals with an intellectual or [and] developmental disability

1 [disabilities] under the STAR + PLUS Medicaid managed care program
2 that maximizes federal funding for the delivery of services for
3 that program and other similar programs; and

4 (2) provide voluntary training to individuals
5 receiving services under the STAR + PLUS Medicaid managed care
6 program or their legally authorized representatives regarding how
7 to select, manage, and dismiss personal attendants providing basic
8 attendant and habilitation services under the program.

9 (b) The commission shall require that each managed care
10 organization that contracts with the commission for the provision
11 of basic attendant and habilitation services under the STAR + PLUS
12 Medicaid managed care program in accordance with this section:

13 (1) include in the organization's provider network for
14 the provision of those services:

15 (A) home and community support services agencies
16 licensed under Chapter 142, Health and Safety Code, with which the
17 department has a contract to provide services under the community
18 living assistance and support services (CLASS) waiver program; and

19 (B) persons exempted from licensing under
20 Section 142.003(a)(19), Health and Safety Code, with which the
21 department has a contract to provide services under:

22 (i) the home and community-based services
23 (HCS) waiver program; or

24 (ii) the Texas home living (TxHmL) waiver
25 program;

26 (2) review and consider any assessment conducted by a
27 local intellectual and developmental disability authority

1 providing intellectual and developmental disability service
2 coordination under Subsection (c); and

3 (3) enter into a written agreement with each local
4 intellectual and developmental disability authority in the service
5 area regarding the processes the organization and the authority
6 will use to coordinate the services of individuals with an
7 intellectual or [and] developmental disability [disabilities].

8 (c) The department shall contract with and make contract
9 payments to local intellectual and developmental disability
10 authorities to conduct the following activities under this section:

11 (1) provide intellectual and developmental disability
12 service coordination to individuals with an intellectual or [and]
13 developmental disability [disabilities] under the STAR + PLUS
14 Medicaid managed care program by assisting those individuals who
15 are eligible to receive services in a community-based setting,
16 including individuals transitioning to a community-based setting;

17 (2) provide an assessment to the appropriate managed
18 care organization regarding whether an individual with an
19 intellectual or developmental disability needs attendant or
20 habilitation services, based on the individual's functional need,
21 risk factors, and desired outcomes;

22 (3) assist individuals with an intellectual or [and]
23 developmental disability [disabilities] with developing the
24 individuals' plans of care under the STAR + PLUS Medicaid managed
25 care program, including with making any changes resulting from
26 periodic reassessments of the plans;

27 (4) provide to the appropriate managed care

1 organization and the department information regarding the
2 recommended plans of care with which the authorities provide
3 assistance as provided by Subdivision (3), including documentation
4 necessary to demonstrate the need for care described by a plan; and

5 (5) on an annual basis, provide to the appropriate
6 managed care organization and the department a description of
7 outcomes based on an individual's plan of care.

8 (e) During the first three years basic attendant and
9 habilitation services are provided to individuals with an
10 intellectual or [and] developmental disability [~~disabilities~~]
11 under the STAR + PLUS Medicaid managed care program in accordance
12 with this section, providers eligible to participate in the home
13 and community-based services (HCS) waiver program, the Texas home
14 living (TxHmL) waiver program, or the community living assistance
15 and support services (CLASS) waiver program on September 1, 2013,
16 are considered significant traditional providers.

17 (f) A local intellectual and developmental disability
18 authority with which the department contracts under Subsection (c)
19 may subcontract with an eligible person, including a nonprofit
20 entity, to coordinate the services of individuals with an
21 intellectual or [and] developmental disability [~~disabilities~~]
22 under this section. The executive commissioner by rule shall
23 establish minimum qualifications a person must meet to be
24 considered an "eligible person" under this subsection.

25 SECTION 2.255. Sections 534.201(a), (b), (e), and (f),
26 Government Code, are amended to read as follows:

27 (a) This section applies to individuals with an

1 intellectual or [and] developmental disability [~~disabilities~~] who
2 are receiving long-term services and supports under the Texas home
3 living (TxHmL) waiver program on the date the commission implements
4 the transition described by Subsection (b).

5 (b) Not later than September 1, 2017, the commission shall
6 transition the provision of Medicaid [~~program~~] benefits to
7 individuals to whom this section applies to the STAR + PLUS Medicaid
8 managed care program delivery model or the most appropriate
9 integrated capitated managed care program delivery model, as
10 determined by the commission based on cost-effectiveness and the
11 experience of the STAR + PLUS Medicaid managed care program in
12 providing basic attendant and habilitation services and of the
13 pilot programs established under Subchapter C, subject to
14 Subsection (c)(1).

15 (e) The commission shall ensure that there is a
16 comprehensive plan for transitioning the provision of Medicaid
17 [~~program~~] benefits under this section that protects the continuity
18 of care provided to individuals to whom this section applies.

19 (f) In addition to the requirements of Section [533.005](#), a
20 contract between a managed care organization and the commission for
21 the organization to provide Medicaid [~~program~~] benefits under this
22 section must contain a requirement that the organization implement
23 a process for individuals with an intellectual or [and]
24 developmental disability [~~disabilities~~] that:

25 (1) ensures that the individuals have a choice among
26 providers;

27 (2) to the greatest extent possible, protects those

1 individuals' continuity of care with respect to access to primary
2 care providers, including the use of single-case agreements with
3 out-of-network providers; and

4 (3) provides access to a member services phone line
5 for individuals or their legally authorized representatives to
6 obtain information on and assistance with accessing services
7 through network providers, including providers of primary,
8 specialty, and other long-term services and supports.

9 SECTION 2.256. Sections [534.202](#)(a), (b), (e), (f), and (i),
10 Government Code, are amended to read as follows:

11 (a) This section applies to individuals with an
12 intellectual or [and] developmental disability [disabilities] who,
13 on the date the commission implements the transition described by
14 Subsection (b), are receiving long-term services and supports
15 under:

16 (1) a Medicaid waiver program other than the Texas
17 home living (TxHmL) waiver program; or
18 (2) an ICF-IID program.

19 (b) After implementing the transition required by Section
20 [534.201](#) but not later than September 1, 2020, the commission shall
21 transition the provision of Medicaid [program] benefits to
22 individuals to whom this section applies to the STAR + PLUS Medicaid
23 managed care program delivery model or the most appropriate
24 integrated capitated managed care program delivery model, as
25 determined by the commission based on cost-effectiveness and the
26 experience of the transition of Texas home living (TxHmL) waiver
27 program recipients to a managed care program delivery model under

1 Section 534.201, subject to Subsections (c)(1) and (g).

2 (e) The commission shall ensure that there is a
3 comprehensive plan for transitioning the provision of Medicaid
4 [program] benefits under this section that protects the continuity
5 of care provided to individuals to whom this section applies.

6 (f) Before transitioning the provision of Medicaid
7 [program] benefits for children under this section, a managed care
8 organization providing services under the managed care program
9 delivery model selected by the commission must demonstrate to the
10 satisfaction of the commission that the organization's network of
11 providers has experience and expertise in the provision of services
12 to children with an intellectual or [and] developmental disability
13 [disabilities]. Before transitioning the provision of Medicaid
14 [program] benefits for adults with an intellectual or [and]
15 developmental disability [disabilities] under this section, a
16 managed care organization providing services under the managed care
17 program delivery model selected by the commission must demonstrate
18 to the satisfaction of the commission that the organization's
19 network of providers has experience and expertise in the provision
20 of services to adults with an intellectual or [and] developmental
21 disability [disabilities].

22 (i) In addition to the requirements of Section 533.005, a
23 contract between a managed care organization and the commission for
24 the organization to provide Medicaid [program] benefits under this
25 section must contain a requirement that the organization implement
26 a process for individuals with an intellectual or [and]
27 developmental disability [disabilities] that:

1 (1) ensures that the individuals have a choice among
2 providers;

3 (2) to the greatest extent possible, protects those
4 individuals' continuity of care with respect to access to primary
5 care providers, including the use of single-case agreements with
6 out-of-network providers; and

7 (3) provides access to a member services phone line
8 for individuals or their legally authorized representatives to
9 obtain information on and assistance with accessing services
10 through network providers, including providers of primary,
11 specialty, and other long-term services and supports.

12 SECTION 2.257. Section 535.051(b), Government Code, is
13 amended to read as follows:

14 (b) The chief administrative officer of each of the
15 following state agencies, in consultation with the governor, shall
16 designate one employee from the agency to serve as a liaison for
17 faith- and community-based organizations:

18 (1) ~~[the Texas Department of Rural Affairs,~~

19 ~~(2)~~ the Texas Commission on Environmental Quality;

20 ~~(2)~~ ~~(3)~~ the Texas Department of Criminal Justice;

21 ~~(3)~~ ~~(4)~~ the Texas Department of Housing and
22 Community Affairs;

23 ~~(4)~~ ~~(5)~~ the Texas Juvenile Justice Department;

24 ~~(5)~~ ~~(6)~~ the Texas Veterans Commission;

25 ~~(6)~~ ~~(7)~~ the Texas Workforce Commission;

26 ~~(7)~~ ~~(8)~~ the office of the governor;

27 ~~(8)~~ ~~(9)~~ the Department of Public Safety;

1 (9) [+] the Texas Department of Insurance;
2 (10) [+] the Public Utility Commission of Texas;
3 (11) [+] the office of the attorney general;
4 (12) [+] the Department of Agriculture;
5 (13) [+] the office of the comptroller;
6 (14) [+] the Department of Information Resources;
7 (15) [+] the Office of State-Federal Relations;
8 (16) [+] the office of the secretary of state; and
9 (17) [+] other state agencies as determined by the
10 governor.

11 SECTION 2.258. Section 535.103(b), Government Code, is
12 amended to read as follows:

13 (b) The account consists of:

14 (1) all money appropriated for the purposes of this
15 subchapter; and

16 (2) any gifts, grants, or donations received for the
17 purposes of this subchapter [+] and

18 [+] interest earned on money in the account].

19 SECTION 2.259. The heading to Chapter 536, Government Code,
20 is amended to read as follows:

21 CHAPTER 536. MEDICAID AND THE CHILD HEALTH PLAN PROGRAM [~~PROGRAMS~~]:

22 QUALITY-BASED OUTCOMES AND PAYMENTS

23 SECTION 2.260. Section 536.002(a), Government Code, is
24 amended to read as follows:

25 (a) The Medicaid and CHIP Quality-Based Payment Advisory
26 Committee advises [~~is established to advise~~] the commission on
27 establishing, for purposes of the child health plan program and

1 Medicaid [programs administered by the commission or a health and
2 ~~human services agency~~] :

3 (1) reimbursement systems used to compensate
4 physicians or other health care providers under those programs that
5 reward the provision of high-quality, cost-effective health care
6 and quality performance and quality of care outcomes with respect
7 to health care services;

8 (2) standards and benchmarks for quality performance,
9 quality of care outcomes, efficiency, and accountability by managed
10 care organizations and physicians and other health care providers;

11 (3) programs and reimbursement policies that
12 encourage high-quality, cost-effective health care delivery models
13 that increase appropriate provider collaboration, promote wellness
14 and prevention, and improve health outcomes; and

15 (4) outcome and process measures under Section
16 **536.003.**

17 SECTION 2.261. Sections **536.003(a), (b), (d), and (e)**,
18 Government Code, are amended to read as follows:

19 (a) The commission, in consultation with the advisory
20 committee, shall develop quality-based outcome and process
21 measures that promote the provision of efficient, quality health
22 care and that can be used in the child health plan program and
23 Medicaid [programs] to implement quality-based payments for acute
24 care services and long-term services and supports across all
25 delivery models and payment systems, including fee-for-service and
26 managed care payment systems. Subject to Subsection (a-1), the
27 commission, in developing outcome and process measures under this

1 section, must include measures that are based on potentially
2 preventable events and that advance quality improvement and
3 innovation. The commission may change measures developed:

4 (1) to promote continuous system reform, improved
5 quality, and reduced costs; and

6 (2) to account for managed care organizations added to
7 a service area.

8 (b) To the extent feasible, the commission shall develop
9 outcome and process measures:

10 (1) consistently across all child health plan program
11 and Medicaid [program] delivery models and payment systems;

12 (2) in a manner that takes into account appropriate
13 patient risk factors, including the burden of chronic illness on a
14 patient and the severity of a patient's illness;

15 (3) that will have the greatest effect on improving
16 quality of care and the efficient use of services, including acute
17 care services and long-term services and supports;

18 (4) that are similar to outcome and process measures
19 used in the private sector, as appropriate;

20 (5) that reflect effective coordination of acute care
21 services and long-term services and supports;

22 (6) that can be tied to expenditures; and

23 (7) that reduce preventable health care utilization
24 and costs.

25 (d) The executive commissioner by rule may require managed
26 care organizations and physicians and other health care providers
27 participating in the child health plan program and Medicaid

1 [programs] to report to the commission in a format specified by the
2 executive commissioner information necessary to develop outcome
3 and process measures under this section.

4 (e) If the commission increases physician and other health
5 care provider reimbursement rates under the child health plan
6 program or Medicaid [program] as a result of an increase in the
7 amounts appropriated for the programs for a state fiscal biennium
8 as compared to the preceding state fiscal biennium, the commission
9 shall, to the extent permitted under federal law and to the extent
10 otherwise possible considering other relevant factors, correlate
11 the increased reimbursement rates with the quality-based outcome
12 and process measures developed under this section.

13 SECTION 2.262. Sections 536.004(a), (c), and (e),
14 Government Code, are amended to read as follows:

15 (a) Using quality-based outcome and process measures
16 developed under Section 536.003 and subject to this section, the
17 commission, after consulting with the advisory committee and other
18 appropriate stakeholders with an interest in the provision of acute
19 care and long-term services and supports under the child health
20 plan program and Medicaid [programs], shall develop quality-based
21 payment systems, and require managed care organizations to develop
22 quality-based payment systems, for compensating a physician or
23 other health care provider participating in the child health plan
24 program or Medicaid [program] that:

25 (1) align payment incentives with high-quality,
26 cost-effective health care;
27 (2) reward the use of evidence-based best practices;

1 (3) promote the coordination of health care;
2 (4) encourage appropriate physician and other health
3 care provider collaboration;
4 (5) promote effective health care delivery models; and
5 (6) take into account the specific needs of the child
6 health plan program enrollee and Medicaid recipient populations.

7 (c) In developing quality-based payment systems under this
8 chapter, the commission shall examine and consider implementing:

9 (1) an alternative payment system;
10 (2) any existing performance-based payment system
11 used under the Medicare program that meets the requirements of this
12 chapter, modified as necessary to account for programmatic
13 differences, if implementing the system would:

14 (A) reduce unnecessary administrative burdens;
15 and

16 (B) align quality-based payment incentives for
17 physicians and other health care providers with the Medicare
18 program; and

19 (3) alternative payment methodologies within the
20 system that are used in the Medicare program, modified as necessary
21 to account for programmatic differences, and that will achieve cost
22 savings and improve quality of care in the child health plan program
23 and Medicaid [programs].

24 (e) The commission may modify a quality-based payment
25 system developed under this chapter to account for programmatic
26 differences between the child health plan program and Medicaid
27 [programs] and delivery systems under those programs.

1 SECTION 2.263. Sections 536.005(a) and (c), Government
2 Code, are amended to read as follows:

3 (a) To the extent possible, the commission shall convert
4 hospital reimbursement systems under the child health plan program
5 and Medicaid [programs] to a diagnosis-related groups (DRG)
6 methodology that will allow the commission to more accurately
7 classify specific patient populations and account for severity of
8 patient illness and mortality risk.

9 (c) Notwithstanding Subsection (a) and to the extent
10 possible, the commission shall convert outpatient hospital
11 reimbursement systems under the child health plan program and
12 Medicaid [programs] to an appropriate prospective payment system
13 that will allow the commission to:

14 (1) more accurately classify the full range of
15 outpatient service episodes;

16 (2) more accurately account for the intensity of
17 services provided; and

18 (3) motivate outpatient service providers to increase
19 efficiency and effectiveness.

20 SECTION 2.264. Section 536.051(a), Government Code, is
21 amended to read as follows:

22 (a) Subject to Section 1903(m)(2)(A), Social Security Act
23 (42 U.S.C. Section 1396b(m)(2)(A)), and other applicable federal
24 law, the commission shall base a percentage of the premiums paid to
25 a managed care organization participating in the child health plan
26 program or Medicaid [program] on the organization's performance
27 with respect to outcome and process measures developed under

1 Section 536.003 that address potentially preventable events. The
2 percentage of the premiums paid may increase each year.

3 SECTION 2.265. Sections 536.052(a) and (d), Government
4 Code, are amended to read as follows:

5 (a) The commission may allow a managed care organization
6 participating in the child health plan program or Medicaid
7 [~~program~~] increased flexibility to implement quality initiatives
8 in a managed care plan offered by the organization, including
9 flexibility with respect to financial arrangements, in order to:

10 (1) achieve high-quality, cost-effective health care;
11 (2) increase the use of high-quality, cost-effective
12 delivery models;

13 (3) reduce the incidence of unnecessary
14 institutionalization and potentially preventable events; and

15 (4) increase the use of alternative payment systems,
16 including shared savings models, in collaboration with physicians
17 and other health care providers.

18 (d) In awarding contracts to managed care organizations
19 under the child health plan program and Medicaid [~~programs~~], the
20 commission shall, in addition to considerations under Section
21 533.003 of this code and Section 62.155, Health and Safety Code,
22 give preference to an organization that offers a managed care plan
23 that successfully implements quality initiatives under Subsection
24 (a) as determined by the commission based on data or other evidence
25 provided by the organization or meets quality of care and
26 cost-efficiency benchmarks under Subsection (b).

27 SECTION 2.266. Section 536.101(1), Government Code, is

1 amended to read as follows:

2 (1) "Health home" means a primary care provider
3 practice or, if appropriate, a specialty care provider practice,
4 incorporating several features, including comprehensive care
5 coordination, family-centered care, and data management, that are
6 focused on improving outcome-based quality of care and increasing
7 patient and provider satisfaction under the child health plan
8 program and Medicaid [programs].

9 SECTION 2.267. Section 536.151(b), Government Code, is
10 amended to read as follows:

11 (b) The commission shall establish a program to provide a
12 confidential report to each hospital in this state that
13 participates in the child health plan program or Medicaid [program]
14 regarding the hospital's performance with respect to each
15 potentially preventable event described under Subsection (a). To
16 the extent possible, a report provided under this section should
17 include all potentially preventable events across all child health
18 plan program and Medicaid [program] payment systems. A hospital
19 shall distribute the information contained in the report to
20 physicians and other health care providers providing services at
21 the hospital.

22 SECTION 2.268. Section 536.203(c), Government Code, is
23 amended to read as follows:

24 (c) The commission may limit a payment initiative to:
25 (1) one or more regions in this state;
26 (2) one or more organized networks of physicians and
27 other health care providers; or

1 (3) specified types of services provided under the
2 child health plan program or Medicaid [program], or specified types
3 of enrollees or recipients under those programs.

4 SECTION 2.269. Section 536.253(b), Government Code, is
5 amended to read as follows:

6 (b) The commission shall establish a program to provide a
7 report to each Medicaid long-term services and supports provider in
8 this state regarding the provider's performance with respect to
9 potentially preventable admissions, potentially preventable
10 readmissions, and potentially preventable emergency room
11 visits. To the extent possible, a report provided under this
12 section should include applicable potentially preventable events
13 information across all Medicaid [program] payment systems.

14 SECTION 2.270. Section 537.002(b), Government Code, is
15 amended to read as follows:

16 (b) The waiver under this section must be designed to
17 achieve the following objectives regarding [the] Medicaid
18 [program] and alternatives to Medicaid [~~the program~~]:

19 (1) provide flexibility to determine Medicaid
20 eligibility categories and income levels;

21 (2) provide flexibility to design Medicaid benefits
22 that meet the demographic, public health, clinical, and cultural
23 needs of this state or regions within this state;

24 (3) encourage use of the private health benefits
25 coverage market rather than public benefits systems;

26 (4) encourage people who have access to private
27 employer-based health benefits to obtain or maintain those

1 benefits;

2 (5) create a culture of shared financial
3 responsibility, accountability, and participation in [the]
4 Medicaid [program] by:

5 (A) establishing and enforcing copayment
6 requirements similar to private sector principles for all
7 eligibility groups;

8 (B) promoting the use of health savings accounts
9 to influence a culture of individual responsibility; and

10 (C) promoting the use of vouchers for
11 consumer-directed services in which consumers manage and pay for
12 health-related services provided to them using program vouchers;

13 (6) consolidate federal funding streams, including
14 funds from the disproportionate share hospitals and upper payment
15 limit supplemental payment programs and other federal Medicaid
16 funds, to ensure the most effective and efficient use of those
17 funding streams;

18 (7) allow flexibility in the use of state funds used to
19 obtain federal matching funds, including allowing the use of
20 intergovernmental transfers, certified public expenditures, costs
21 not otherwise matchable, or other funds and funding mechanisms to
22 obtain federal matching funds;

23 (8) empower individuals who are uninsured to acquire
24 health benefits coverage through the promotion of cost-effective
25 coverage models that provide access to affordable primary,
26 preventive, and other health care on a sliding scale, with fees paid
27 at the point of service; and

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(9) allow for the redesign of long-term care services and supports to increase access to patient-centered care in the most cost-effective manner.

4 SECTION 2.271. Section 538.002, Government Code, is amended
5 to read as follows:

6 Sec. 538.002. EFFECT OF CHAPTER; AUTHORITY OF
7 COMMISSION. This chapter does not affect or give the commission
8 additional authority to:

19 (4) implement any initiative that would expand
20 eligibility for benefits under [the] Medicaid [program].

21 SECTION 2.272. Section 538.051, Government Code, is amended
22 to read as follows:

23 Sec. 538.051. MEDICAID QUALITY IMPROVEMENT PROCESS. The
24 commission shall, according to the provisions of this chapter,
25 develop and implement a quality improvement process by which the
26 commission:

27 (1) receives suggestions for clinical initiatives

1 designed to improve:

2 (A) the quality of care provided under [the]
3 Medicaid [program]; and

4 (B) the cost-effectiveness of [the] Medicaid
5 [program];

14 SECTION 2.273. Section 538.052(a), Government Code, is
15 amended to read as follows:

16 (a) Subject to Subsection (b), the commission shall solicit
17 and accept suggestions for clinical initiatives, in either written
18 or electronic form, from:

19 (1) a member of the state legislature;

20 (2) the executive commissioner;

21 (3) the commissioner of aging and disability services
22 [the Department of Aging and Disability Services];

23 (4) the commissioner of state health

24 ~~Department of State Health Services~~] ;

27 (6) the commissioner of assistive and rehabilitative

1 services [the Department of Assistive and Rehabilitative
2 Services];

3 (7) the medical care advisory committee established
4 under Section 32.022, Human Resources Code;

5 (8) the physician payment advisory committee created
6 under Section 32.022(d), Human Resources Code; and

7 (9) the Electronic Health Information Exchange System
8 Advisory Committee established under Section 531.904.

9 SECTION 2.274. Section 538.054, Government Code, is amended
10 to read as follows:

11 Sec. 538.054. ANALYSIS OF CLINICAL INITIATIVES. The
12 commission shall conduct an analysis of each clinical initiative
13 selected by the commission after having conducted the commission's
14 preliminary review under Section 538.053(4). The analysis
15 required under this section must include a review of:

16 (1) any public comments and submitted research
17 relating to the initiative;

18 (2) the available clinical research and historical
19 utilization information relating to the initiative;

20 (3) published medical literature relating to the
21 initiative;

22 (4) any adoption of the initiative by medical
23 societies or other clinical groups;

24 (5) whether the initiative has been implemented under:

25 (A) the Medicare program;

26 (B) another state medical assistance program; or

27 (C) a state-operated health care program,

1 including the child health plan program;

2 (6) the results of reports, research, pilot programs,
3 or clinical studies relating to the initiative conducted by:

4 (A) institutions of higher education, including
5 related medical schools;

6 (B) governmental entities and agencies; and

7 (C) private and nonprofit think tanks and
8 research groups;

9 (7) the impact that the initiative would have on [the]
10 Medicaid [program] if the initiative were implemented in this
11 state, including:

12 (A) an estimate of the number of recipients under
13 [the] Medicaid [program] that would be impacted by implementation
14 of the initiative; and

15 (B) a description of any potential cost savings
16 to the state that would result from implementation of the
17 initiative; and

18 (8) any statutory barriers to implementation of the
19 initiative.

20 SECTION 2.275. Section 538.055, Government Code, is amended
21 to read as follows:

22 Sec. 538.055. FINAL REPORT ON CLINICAL INITIATIVE. The
23 commission shall prepare a final report based on the commission's
24 analysis of a clinical initiative under Section 538.054. The final
25 report must include:

26 (1) a final determination of:

27 (A) the feasibility of implementing the

1 initiative;

(B) the likely impact implementing the initiative would have on the quality of care provided under [the] Medicaid [program]; and

5 (C) the anticipated cost savings to the state
6 that would result from implementing the initiative;

(2) a summary of the public comments, including a description of any opposition to the initiative;

11 (4) if the initiative is not implemented, an
12 explanation of the decision not to implement the initiative.

13 SECTION 2.276. Section 538.057, Government Code, is amended
14 to read as follows:

15 Sec. 538.057. ACTION ON CLINICAL INITIATIVE BY
16 COMMISSION. After the commission conducts an analysis of a
17 clinical initiative under Section 538.054:

23 (B) if implementation requires a change in law,
24 submit a copy of the final report together with recommendations
25 relating to the initiative's implementation to the standing
26 committees of the senate and house of representatives having
27 jurisdiction over [the] Medicaid [program]; and

5 SECTION 2.277. Section 539.001, Government Code, is amended
6 to read as follows:

7 Sec. 539.001. DEFINITION [DEFINITIONS]. In this chapter,
8 "department" [÷

9 [(1) "Department"] means the Department of State
10 Health Services.

11 [(2) "Executive commissioner" means the executive
12 ~~commissioner of the Health and Human Services Commission.~~]

13 SECTION 2.278. Sections 2105.001(1) and (4), Government
14 Code, are amended to read as follows:

15 (1) "Agency" means:

16 (A) the Health and Human Services Commission
17 [Texas Department of Human Services];

18 (B) the [Texas] Department of State Health
19 Services;

20 (C) the Texas Department of Housing and Community
21 Affairs;

(D) the Texas Education Agency;

(E) the [Texas] Department of Aging and
Disability Services [Mental Health and Mental Retardation]; or

25 (F) [the Texas Department on Aging; or

[C]) any other commission, board, department,
or state agency designated to receive block grant funds.

1 (4) "Provider" means a public or private organization
2 that receives block grant funds or may be eligible to receive block
3 grant funds to provide services or benefits to the public,
4 including:

5 (A) a local government unit;
6 (B) a council of government;
7 (C) a community action agency; or
8 (D) a private new community developer or
9 nonprofit community association in a community originally
10 established as a new community development program under the former
11 Urban Growth and New Community Development Act of 1970 (42 U.S.C.
12 Section 4511 et seq.).

13 SECTION 2.279. Section 2105.002, Government Code, is
14 amended to read as follows:

15 Sec. 2105.002. COMBINATION OF PROGRAMS NOT INTENDED TO
16 REDUCE SERVICES. The process of combining categorical federal
17 assistance programs into block grants should not have an overall
18 effect of reducing the relative proportion of services and benefits
19 made available to low-income individuals, elderly individuals,
20 [~~disabled~~] individuals with disabilities, and migrant and seasonal
21 agricultural workers.

22 SECTION 2.280. Section 2105.005(c), Government Code, is
23 amended to read as follows:

24 (c) To the extent consistent with the purpose of the block
25 grant, an agency's rules [~~agency by rule~~] shall ensure that
26 providers use block grant funds to the maximum benefit of
27 low-income recipients and intended recipients.

1 SECTION 2.281. Section 2105.009, Government Code, is
2 amended to read as follows:

3 Sec. 2105.009. PRIMARY CARE BLOCK GRANT. (a) The [Texas]
4 Department of State Health Services shall administer a [~~the~~]
5 primary care block grant if that grant is authorized and if the
6 department satisfies federal requirements relating to the
7 designation of an agency to administer the grant.

8 (b) In administering the primary care block grant, the
9 department may:

10 (1) receive the primary care block grant funds on
11 behalf of the state;

12 (2) spend primary care block grant funds and state
13 funds specifically appropriated by the legislature to match funds
14 received under a primary care block grant;

15 (3) make grants to, advance funds to, contract with,
16 and take other actions through community health centers that meet
17 the requirements of 42 U.S.C. Section 254c(e)(3) to provide for the
18 delivery of primary and supplemental health services to medically
19 underserved populations of the state; and

20 (4) [~~adopt necessary rules; and~~

21 [~~5~~] perform other activities necessary to
22 administer the primary care block grant.

23 (b-1) The executive commissioner of the Health and Human
24 Services Commission may adopt necessary rules for administering the
25 primary care block grant.

26 (c) In this section:

27 (1) "Community health center" has the meaning assigned

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1 by 42 U.S.C. Section 254c(a), as that law existed on April 23, 1986.

2 (2) "Medically underserved population," "primary

3 health services," and "supplemental health services" have the

4 meanings assigned by 42 U.S.C. Section 254c(b), as that law existed

5 on April 23, 1986.

6 SECTION 2.282. Section 2105.058(d), Government Code, is
7 amended to read as follows:

8 (d) An agency's rules [agency by rule] may require a
9 provider to undertake other reasonable efforts to seek public
10 participation.

11 SECTION 2.283. Section 2105.152, Government Code, is
12 amended to read as follows:

13 Sec. 2105.152. HEALTH AND [DEPARTMENT OF] HUMAN SERVICES
14 COMMISSION PROCEDURES FOR FAIR HEARING. The Health and Human
15 Services Commission [~~Texas Department of Human Services~~] shall use
16 procedures for conducting a fair hearing under this subchapter.

17 SECTION 2.284. Section 2105.202(a), Government Code, is
18 amended to read as follows:

19 (a) The individual or entity responsible for adopting rules
20 for an [An] agency shall adopt specific rules for the agency that
21 define [~~defining~~] good cause for nonrenewal of a provider's
22 contract or reduction of a provider's funding.

23 SECTION 2.285. Section 2165.301, Government Code, is
24 amended by amending Subdivision (2) and adding Subdivision (2-a) to
25 read as follows:

1 (2-a) "Executive commissioner" means the executive
2 commissioner of the Health and Human Services Commission.

3 SECTION 2.286. Sections 2165.302(a), (d), and (e),
4 Government Code, are amended to read as follows:

5 (a) Except as provided by Section 2165.303:

6 (1) the commission shall refer matters related to the
7 investigation and testing of indoor air quality in state buildings
8 under the charge and control of the commission to the department
9 [~~Texas Department of Health~~]; and

10 (2) the department shall conduct any necessary
11 investigation and testing of indoor air quality in state buildings,
12 on request or referral of an entity with charge and control of the
13 state building.

14 (d) The executive commissioner by rule [~~department~~] may
15 establish a system of charges for indoor air quality investigation
16 and testing in state buildings. A system established by the
17 executive commissioner [~~department~~] shall ensure that the
18 department is reimbursed for the cost of providing the services by
19 the agency or agencies occupying the portions of a building that are
20 investigated or tested.

21 (e) The executive commissioner [~~department~~] shall adopt
22 rules and procedures relating to the investigation and testing of
23 indoor air quality in state buildings.

24 SECTION 2.287. The following provisions of the Government
25 Code are repealed:

26 (1) Section 531.02131;
27 (2) Section 531.0222;

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ARTICLE 3. HEALTH AND SAFETY CODE

20 SECTION 3.0001. The heading to Subtitle A, Title 2, Health
21 and Safety Code, is amended to read as follows:

SUBTITLE A. [TEXAS] DEPARTMENT OF STATE HEALTH SERVICES

23 SECTION 3.0002. The heading to Chapter 11, Health and
24 Safety Code, is amended to read as follows:

25 CHAPTER 11. GENERAL PROVISIONS [~~ORGANIZATION OF TEXAS DEPARTMENT~~
26 ~~OF HEALTH~~]

27 SECTION 3.0003. Section [11.001](#), Health and Safety Code, is

1 amended to read as follows:

2 Sec. 11.001. DEFINITIONS. In this title:

3 (1) "Commission" means the Health and Human Services
4 Commission [~~"Board"~~ means the Texas Board of Health].

5 (2) "Commissioner" means the commissioner of state
6 [public] health services.

7 (3) "Department" means the [Texas] Department of State
8 Health Services.

9 (4) "Executive commissioner" means the executive
10 commissioner of the Health and Human Services Commission.

11 SECTION 3.0004. Sections 11.003(b) and (c), Health and
12 Safety Code, are amended to read as follows:

13 (b) In the review of the department [~~Department of State~~
14 ~~Health Services~~] by the Sunset Advisory Commission, as required by
15 [~~this section and~~] Section 1001.003, the sunset commission shall
16 review the powers and duties exercised by the department under
17 Chapter 108 and determine whether the department, under that
18 chapter, is:

19 (1) achieving the legislature's intent of empowering
20 consumers with information to make informed health care decisions;

21 (2) maintaining appropriate privacy and security
22 standards for patient information; and

23 (3) limiting the patient information the department
24 collects to the information necessary for performing the
25 department's duties under Chapter 108.

26 (c) The Sunset Advisory Commission shall report its
27 findings to the legislature in the report required by Section

1 325.010, Government Code. This section expires [~~subsection and~~
2 ~~subsection (b) expire~~] September 1, 2015.

3 SECTION 3.0005. (a) Section 11.004(b), Health and Safety
4 Code, is transferred to Section 1001.071, Health and Safety Code,
5 redesignated as Section 1001.071(a), Health and Safety Code, and
6 amended to read as follows:

7 (a) [~~(b)~~] The department is the state agency with primary
8 responsibility to administer or provide [~~for providing~~] health
9 services, including:

10 (1) disease prevention;
11 (2) health promotion;
12 (3) indigent health care;
13 (4) certain acute care services;
14 (5) [~~health care facility regulation, excluding~~
15 ~~long-term care facilities,~~

16 [~~(6)~~] licensing of certain health professions; and
17 (6) [~~(7)~~] other health-related services as provided
18 by law.

19 (b) Section 1001.071, Health and Safety Code, is amended to
20 read as follows:

21 Sec. 1001.071. GENERAL POWERS AND DUTIES OF DEPARTMENT
22 RELATED TO HEALTH CARE. (b) The department is responsible for
23 administering human services programs regarding the public health,
24 including:

25 (1) implementing the state's public health care
26 delivery programs under the authority of the department;
27 (2) administering state health facilities, hospitals,

1 and health care systems;

2 (3) developing and providing health care services, as
3 directed by law;

4 (4) providing for the prevention and control of
5 communicable diseases;

6 (5) providing public education on health-related
7 matters, as directed by law;

8 (6) compiling and reporting health-related
9 information, as directed by law;

10 (7) acting as the lead agency for implementation of
11 state policies regarding the human immunodeficiency virus and
12 acquired immunodeficiency syndrome and administering programs
13 related to the human immunodeficiency virus and acquired
14 immunodeficiency syndrome;

15 (8) investigating the causes of injuries and methods
16 of prevention;

17 (9) administering a grant program to provide
18 appropriated money to counties, municipalities, public health
19 districts, and other political subdivisions for their use to
20 provide or pay for essential public health services;

21 (10) administering the registration of vital
22 statistics;

23 (11) licensing, inspecting, and enforcing regulations
24 regarding health facilities, other than long-term care facilities
25 regulated by the Department of Aging and Disability Services;

26 (12) implementing established standards and
27 procedures for the management and control of sanitation and for

1 health protection measures;

(13) enforcing regulations regarding radioactive materials;

(14) enforcing regulations regarding food, bottled and vended drinking water, drugs, cosmetics, and health devices;

(16) enforcing regulations controlling hazardous substances in households and workplaces; and

(17) implementing a mental health program for veterans.

13 SECTION 3.0006. Sections 11.012(a), (b), (c), (d), and (f),
14 Health and Safety Code, are transferred to Section 1001.051, Health
15 and Safety Code, redesignated respectively as Sections
16 1001.051(a-1), (a-2), (a-3), (a-4), and (b-1), Health and Safety
17 Code, and amended to read as follows:

18 (a-1) [-(a)] The executive commissioner [~~of health and human~~
19 ~~services~~] shall employ the commissioner in accordance with Section
20 [531.0056](#), Government Code.

21 (a-2) [(-b)] Except as provided in Subsection (a-3) [(-c)],
22 the commissioner must:

27 (a-3) [~~c~~] The executive commissioner [~~of health and human~~

1 services] may, based on the qualifications and experience in
2 administering public health systems, employ a person other than a
3 physician as the commissioner.

4 (a-4) [~~d~~] If the executive commissioner [~~of health and~~
5 ~~human services~~] employs a person as commissioner who is not a
6 physician, then the executive commissioner [~~board~~] shall designate
7 a person licensed to practice medicine in this state as chief
8 medical executive.

9 (b-1) [~~f~~] The executive commissioner [~~board~~] may
10 supplement the salary of the commissioner with the approval of the
11 governor. The salary may not exceed 1.5 times the salary of the
12 governor, from funds appropriated to the department. The use of
13 funds from other sources are not limited by this subsection.

14 SECTION 3.0007. Section 11.014, Health and Safety Code, is
15 transferred to Subchapter B, Chapter 1001, Health and Safety Code,
16 redesignated as Section 1001.034, Health and Safety Code, and
17 amended to read as follows:

18 Sec. 1001.034 [~~11.014~~]. INVESTIGATION OF DEPARTMENT. The
19 executive commissioner [~~board~~] shall investigate the conduct of the
20 work of the department. For that purpose, the executive
21 commissioner [~~board~~] shall have access at any time to all
22 department books and records and may require an officer or employee
23 of the department to furnish written or oral information.

24 SECTION 3.0008. Section 11.016, Health and Safety Code, is
25 transferred to Subchapter B, Chapter 1001, Health and Safety Code,
26 redesignated as Section 1001.035, Health and Safety Code, and
27 amended to read as follows:

1 Sec. 1001.035 [11.016]. ADVISORY COMMITTEES. (a) The
2 executive commissioner [board] may appoint advisory committees to
3 assist the executive commissioner and department [board] in
4 performing [its] duties related to department functions.

5 (b) If the executive commissioner appoints [~~The board shall~~
6 ~~appoint~~] an advisory committee under this section, the appointment
7 must be made in a manner that provides for:

- 8 (1) a balanced representation of persons with
9 knowledge and interest in the committee's field of work;
10 (2) the inclusion on the committee of at least two
11 members who represent the interests of the public; and
12 (3) a balanced representation of the geographic
13 regions of the state.

14 (d) A [~~Except as otherwise provided by law and contingent on~~
15 ~~the availability of department funds for this purpose, a~~] member of
16 an advisory committee appointed under this section may [~~by the~~
17 ~~board is entitled to~~] receive reimbursement for[, ~~with regard to~~]
18 travel expenses as provided by Section 2110.004, Government Code[,
19 ~~the per diem and travel allowance authorized by the General~~
20 ~~Appropriations Act for state employees~~].

21 (e) The executive commissioner [board] shall specify each
22 committee's purpose, powers, and duties, and shall require each
23 committee to report to the executive commissioner or department
24 [board] in the manner specified by the executive commissioner
25 [board] concerning the committee's activities and the results of
26 its work.

27 (f) The executive commissioner [board] shall establish

1 procedures for receiving reports relating to the activities and
2 accomplishments of an advisory committee established by statute to
3 advise the [board or] department or executive commissioner on
4 matters related to department functions. The executive
5 commissioner [board] may appoint additional members to those
6 advisory committees and may establish additional duties of those
7 committees as the executive commissioner [board] determines to be
8 necessary.

9 (g) The executive commissioner [board] shall adopt rules to
10 implement this section.

11 SECTION 3.0009. The heading to Chapter 12, Health and
12 Safety Code, is amended to read as follows:

13 CHAPTER 12. POWERS AND DUTIES OF [TEXAS] DEPARTMENT OF
14 STATE HEALTH SERVICES

15 SECTION 3.0010. Subchapter A, Chapter 12, Health and Safety
16 Code, is amended to read as follows:

17 SUBCHAPTER A. GENERAL POWERS AND DUTIES [OF BOARD]
18 Sec. 12.0001. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF
19 CONFLICT WITH OTHER LAW [OF COMMISSIONER OF HEALTH AND HUMAN
20 SERVICES]. [~~The commissioner of health and human services has the~~
21 ~~powers and duties relating to the board and commissioner as~~
22 ~~provided by Section 531.0055, Government Code.~~] To the extent a
23 power or duty given to the [board or] commissioner by this title or
24 another law conflicts with Section 531.0055, Government Code,
25 Section 531.0055 controls.

26 Sec. 12.001. GENERAL POWERS AND DUTIES OF EXECUTIVE
27 COMMISSIONER. (a) The executive commissioner [board] has general

1 supervision and control over all matters relating to the health of
2 the citizens of this state.

3 (b) The executive commissioner [board] shall[+
4 [(-1)] adopt rules for [~~its procedure and for~~] the
5 performance of each duty imposed by law on the executive
6 commissioner [board], the department, or the commissioner and file
7 a copy of those rules with the department.

8 Sec. 12.0011. INVESTIGATIONS IN GENERAL. Subject to the
9 oversight of the executive commissioner, the department shall[; and
10 [(-2)] examine, investigate, enter, and inspect any
11 public place or public building as the department [board]
12 determines necessary for the discovery and suppression of disease
13 and the enforcement of any health or sanitation law of this state.

14 [(c) The board has all the powers, duties, and functions
15 granted by law to:

16 [(-1) ~~the Texas Board of Health;~~
17 [(-2) ~~the state commissioner of health;~~
18 [(-3) ~~the Texas Department of Health;~~
19 [(-4) ~~the Texas Board of Health Resources; and~~
20 [(-5) ~~the Texas Department of Health Resources.]~~

21 Sec. 12.002. CERTAIN PROCEDURES FOR [BOARD]
22 INVESTIGATIONS. (a) The commissioner or the commissioner's
23 designee [~~A member of the board~~] may administer oaths, summon
24 witnesses, and compel the attendance of witnesses in any matter
25 proper for [board] investigation by the department, subject to the
26 executive commissioner's oversight, including the determination of
27 nuisances and the investigation of:

1 (1) public water supplies;
2 (2) sanitary conditions;
3 (3) the existence of infection; or
4 (4) any matter that requires the department [board] to
5 exercise its discretionary powers and that is within the general
6 scope of its authority under this subchapter.

7 (b) Each district court shall aid the department [board] in
8 its investigations and in compelling compliance with this
9 subchapter. If a witness summoned by the commissioner or the
10 commissioner's designee [board] is disobedient or disrespectful to
11 the department's [board's] lawful authority, the district court of
12 the county in which the witness is summoned to appear shall punish
13 the witness in the manner provided for contempt of court.

14 Sec. 12.003. LEGAL REPRESENTATION. (a) A suit brought by
15 the department [board] must be brought in the name of the state.

16 (b) The attorney general shall assign a special assistant to
17 attend to the department's [board's] legal matters, and on the
18 department's [board's] request shall furnish necessary assistance
19 to the department [board] relating to its legal requirements.

20 [Sec. 12.004. DEVELOPMENT OF PROPOSED RULES.] (a) This
21 section applies to the process by which the department develops
22 proposed rules for the board's consideration before the proposed
23 rules are published in the Texas Register and before the board,
24 commissioner, or department complies with the rulemaking
25 requirements of the administrative procedure law, Chapter 2001,
26 Government Code. This section does not affect the duty of the
27 board, commissioner, or department to comply with the rulemaking

1 requirements of that law.

2 [(b) The board shall require the department to establish a
3 checklist of methods that, to the extent appropriate, the
4 department will follow to obtain early in the rule development
5 process the advice and opinions of the public and of persons who
6 will be most affected by a proposed rule. The checklist must
7 include methods for identifying persons who will be most affected
8 and for soliciting at a minimum the advice and opinions of affected
9 local health departments, of recipients and providers of affected
10 services, and of advocates for affected recipients or providers.

11 [(c) The checklist may include negotiated rulemaking,
12 informal conferences, advisory committees, and any other
13 appropriate method.

14 [(d) A rule adopted by the board may not be challenged on the
15 grounds that the board, commissioner, or department did not comply
16 with this section. If the department was unable to solicit a
17 significant amount of advice and opinion from the public or from
18 affected persons early in the rule development process, the
19 department shall state in writing to the board the reasons why the
20 department was unable to do so.

21 [Sec. 12.005. MEDICAL DIRECTOR: MEDICAID MANAGED CARE AND
22 CHIPS PROGRAMS. (a) In addition to any other medical director
23 employed by the department, the board shall require the department
24 to employ a separate medical director whose duties consist of
25 acting as the medical director for the children's health insurance
26 program created under Title XXI of the Social Security Act (42
27 U.S.C. Section 1397aa et seq.) and also as the medical director for

1 ~~the Medicaid managed care program, to the extent that those~~
2 ~~programs are administered by the department.~~

3 ~~[(b) The medical director shall be primarily responsible~~
4 ~~for implementing and maintaining policies and systems for the~~
5 ~~programs that relate to clinical and professional medical issues,~~
6 ~~including clinical oversight.~~

7 ~~[(c) The medical director must be a physician licensed to~~
8 ~~practice medicine in this state.]~~

9 SECTION 3.0011. Sections [12.0111](#)(b) and (c), Health and
10 Safety Code, are amended to read as follows:

11 (b) Notwithstanding other law, the executive commissioner
12 by rule shall adopt and the department shall collect [charge] a fee
13 for issuing or renewing a license that is in an amount designed to
14 allow the department to recover from its license holders all of the
15 department's direct and indirect costs in administering and
16 enforcing the applicable licensing program.

17 (c) Notwithstanding other law, each regulatory board or
18 other agency that is under the jurisdiction of the department or
19 administratively attached to the department and that issues
20 licenses shall adopt by rule and collect [charge] a fee for issuing
21 or renewing a license that is in an amount designed to allow the
22 department and the regulatory board or agency to recover from the
23 license holders all of the direct and indirect costs to the
24 department and to the regulatory board or agency in administering
25 and enforcing the applicable licensing program.

26 SECTION 3.0012. Sections [12.0115](#)(a), (e), and (h), Health
27 and Safety Code, are amended to read as follows:

1 (a) In this section, "health care delivery programs"
2 includes the department's primary health care services program, its
3 program to improve maternal and infant health, its services program
4 for [~~chronically ill and disabled~~] children with special health
5 care needs, any aspects of health care delivery under the state
6 Medicaid program assigned to the department by law or by the
7 commission [~~Health and Human Services Commission~~], and the part of
8 any other department program concerned with the department's
9 responsibility for the delivery of health care services.

10 (e) One of the primary goals of the department in
11 integrating the administration of [~~its~~] contracts entered into by
12 the executive commissioner or the executive commissioner's
13 designee on behalf of the department with providers of health care
14 services shall be designing an integrated contract administration
15 system that reduces the administrative and paperwork burden on
16 providers while still providing the department with the information
17 it needs to effectively administer the contracts. The department's
18 integration of contract administration must include:

19 (1) the integration of the initial procurement process
20 within and across programs, at least in part by efficiently
21 combining requests for bids or proposals within or across programs
22 to the extent it reduces the administrative burden for providers;

23 (2) the establishment of uniform contract terms,
24 including:

25 (A) contract terms that require information from
26 providers, or that prescribe performance standards for providers,
27 that could be made uniform within or across programs while

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1 remaining effective as contract terms;

2 (B) the establishment of a procedure under which
3 a contractor or a person responding to a request for bids or
4 proposals may supply the department with requested information
5 whenever possible by referencing current and correct information
6 previously supplied to and on file with the department; and

(C) contract terms regarding incentives for contractors to meet or exceed contract requirements;

(4) the integration of reimbursement methods:

17 (B) including the application across programs of
18 the most effective and efficient reimbursement technologies or
19 methods that are available to the department under any of its
20 programs.

21 (h) The department may not integrate health care delivery
22 programs under this section in a way that affects the single state
23 agency status of another state agency for federal purposes without
24 obtaining the approval of the commission [Health and Human Services
25 Commission] and any necessary federal approval.

26 SECTION 3.0013. Sections 12.0121(b) and (d), Health and
27 Safety Code, are amended to read as follows:

1 (b) The executive commissioner [board] by rule shall adopt a
2 list of categories of licensed, certified, registered, or otherwise
3 authorized providers to whom the department may award a grant for
4 professional services under this section or with whom the
5 department may contract or otherwise engage to perform professional
6 services under this section.

7 (d) The department may award a grant, enter into a contract,
8 or otherwise engage an individual or a group or association of
9 individuals to perform professional services without complying
10 with Subsection (c) if the executive commissioner by order
11 [~~ratified by the board at its next regular meeting~~] determines that
12 an emergency exists that necessitates the use of different
13 procedures. A grant, contract, or engagement under this subsection
14 is effective only for the period specified by the executive
15 commissioner's order.

16 SECTION 3.0014. Section 12.0122(d), Health and Safety Code,
17 is amended to read as follows:

18 (d) The executive commissioner [department] by rule may
19 establish fees that the department may collect [charges] for the
20 sale of laboratory services.

21 SECTION 3.0015. Section 12.01221, Health and Safety Code,
22 is transferred to Subchapter B, Chapter 33, Health and Safety Code,
23 redesignated as Section 33.0165, Health and Safety Code, and
24 amended to read as follows:

25 Sec. 33.0165 [~~12.01221~~]. MUTUAL AID AGREEMENT FOR NEWBORN
26 SCREENING LABORATORY SERVICES. (a) In this section, "newborn
27 screening laboratory services" means the performance of tests to

1 analyze specimens collected as part of the newborn screenings
2 performed under this subchapter [Subchapter B, Chapter 33].

3 (b) Notwithstanding Section 12.0122 or other law, the
4 department may enter into a mutual aid agreement to provide newborn
5 screening laboratory services to another state and to receive
6 newborn screening laboratory services from another state in the
7 event of an unexpected interruption of service, including an
8 interruption caused by a disaster.

9 (c) Each mutual aid agreement under Subsection (b) shall
10 include provisions:

11 (1) to address the confidentiality of the identity of
12 the newborn child and the newborn child's family; and

13 (2) to ensure the return of blood specimens and
14 related records to the state that received the newborn screening
15 laboratory services.

16 SECTION 3.0016. Section 12.0123, Health and Safety Code, as
17 added by Chapter 1411 (H.B. 2085), Acts of the 76th Legislature,
18 Regular Session, 1999, is transferred to Subchapter B, Chapter 32,
19 Human Resources Code, redesignated as Section 32.0705, Human
20 Resources Code, amended to conform to Section 12.0123, Health and
21 Safety Code, as added by Chapters 1447 (H.B. 2896) and 1460 (H.B.
22 2641), Acts of the 76th Legislature, Regular Session, 1999, and
23 further amended to read as follows:

24 Sec. 32.0705 [12.0123]. EXTERNAL AUDITS OF CERTAIN
25 MEDICAID CONTRACTORS BASED ON RISK. (a) In this section, "Medicaid
26 contractor" means an entity that:

27 (1) is not a health and human services agency as

1 defined by Section [531.001](#), Government Code; and

2 (2) under a contract with the commission or otherwise
3 on behalf of the commission [department], performs one or more
4 administrative services in relation to the commission's
5 [department's] operation of [~~a part of the state~~] Medicaid
6 [program], such as claims processing, utilization review, client
7 enrollment, provider enrollment, quality monitoring, or payment of
8 claims.

9 (b) The commission [department] shall contract with an
10 independent auditor to perform annual independent external
11 financial and performance audits of any Medicaid contractor used
12 [~~by the department~~] in the commission's [department's] operation of
13 [~~a part of the state~~] Medicaid [program]. The commission
14 [department] regularly shall review the [~~its~~] Medicaid contracts
15 and ensure that:

16 (1) the frequency and extent of audits of a Medicaid
17 contractor under this section are based on the amount of risk to the
18 state involved in the administrative services being performed by
19 the contractor;

20 (2) audit procedures related to financial audits and
21 performance audits are used consistently in audits under this
22 section; and

23 (3) to the extent possible, audits under this section
24 are completed in a timely manner.

25 (c) If another state agency succeeds to the commission's
26 [department's] operation of a part of [~~the state~~] Medicaid
27 [program] for which the commission [department] used a Medicaid

1 contractor, the successor agency shall comply with this section
2 with regard to the Medicaid contractor, including the requirement
3 to contract with an independent auditor to perform the external
4 financial and performance audits required by this section.

5 (d) An audit required by this section must be completed
6 before the end of the fiscal year immediately following the fiscal
7 year for which the audit is performed.

8 SECTION 3.0017. Section 12.0124, Health and Safety Code, is
9 transferred to Subchapter B, Chapter 32, Human Resources Code,
10 redesignated as Section 32.0316, Human Resources Code, and amended
11 to read as follows:

12 Sec. 32.0316 [12.0124]. ELECTRONIC TRANSACTIONS; [~~STATE~~]
13 MEDICAID [~~PROGRAM~~]. The executive commissioner shall adopt and the
14 commission [~~department or the department's successor in function in~~
15 ~~relation to the department's operation of a part of the state~~
16 ~~Medicaid program~~] shall implement policies that encourage the use
17 of electronic transactions in Medicaid. The policies shall require
18 payment to Medicaid [~~service~~] providers by electronic funds
19 transfer, including electronic remittance and status reports. The
20 policies shall also include the establishment of incentives to
21 submit claims electronically and of disincentives to submit claims
22 on paper that are reasonably based on the higher administrative
23 costs to process claims submitted on paper.

24 SECTION 3.0018. Sections 12.0125(a) and (c), Health and
25 Safety Code, are amended to read as follows:

26 (a) The department shall develop a voluntary drug
27 manufacturer rebate program for drugs purchased by or on behalf of a

1 client of the Kidney Health Care Program or the Children with
2 Special Health Care Needs [~~Chronically Ill and Disabled Children's~~] Services Program for which rebates are not available under the
4 Medicaid drug manufacturer rebate program.

5 (c) Amounts received by the department under the drug rebate
6 program established under this section may be appropriated only for
7 the Kidney Health Care Program or the Children with Special Health
8 Care Needs [~~Chronically Ill and Disabled Children's~~] Services
9 Program.

10 SECTION 3.0019. Section 12.0128, Health and Safety Code, is
11 amended to read as follows:

12 Sec. 12.0128. HEALTH ALERT NETWORK. The department shall
13 include local health officials [~~the Texas Association of Local~~
14 ~~Health Officials~~], the Texas Association of Community Health
15 Centers, and the Texas Organization of Rural and Community
16 Hospitals in the department's Texas Health Alert Network to the
17 extent federal funds for bioterrorism preparedness are available
18 for that purpose.

19 SECTION 3.0020. Section 12.014(b), Health and Safety Code,
20 is amended to read as follows:

21 (b) The executive commissioner [~~board~~] by rule may adopt
22 reasonable registration fees to cover the costs of establishing and
23 maintaining a registry and may adopt other rules as necessary to
24 administer this section.

25 SECTION 3.0021. Sections 12.0145(a), (d), and (g), Health
26 and Safety Code, are amended to read as follows:

27 (a) The department shall publish and provide information in

1 accordance with this section regarding each final enforcement
2 action taken by the department or[~~or~~] commissioner[~~, or board~~]
3 against a person or facility regulated by the department in which
4 any kind of sanction is imposed, including:

5 (1) the imposition of a reprimand, a period of
6 probation, a monetary penalty, or a condition on a person's
7 continued practice or a facility's continued operation; and

8 (2) the refusal to renew or the suspension, probation,
9 or revocation of a license or other form of permission to engage in
10 an activity.

11 (d) The department shall publish and provide the
12 information promptly after the sanction has been imposed or, when
13 applicable, promptly after the period during which the sanction is
14 imposed has begun. The executive commissioner [~~department~~] by rule
15 shall establish the length of time during which the required
16 information will be published and provided under this section based
17 on the executive commissioner's [~~department's~~] determination
18 regarding the types of services provided by regulated entities and
19 the length of time for which information about a category of
20 enforcement actions is useful to a member of the public.

21 (g) A determination that the department is not required to
22 publish and provide information under this section does not affect
23 a determination regarding whether the information is subject to
24 required disclosure under the open records law, Chapter 552,
25 Government Code. The executive commissioner's [~~department's~~]
26 determination regarding the length of the period during which
27 information should continue to be published and provided under this

1 section does not affect a determination regarding the period for
2 which the information must be preserved under Chapter 441,
3 Government Code, or under another law.

4 SECTION 3.0022. Section 12.015(a), Health and Safety Code,
5 is amended to read as follows:

6 (a) If the department determines that a person is not
7 eligible for a level of care in a nursing facility [~~home~~], the
8 department shall inform the person that community services might be
9 available under a [~~the~~] community care for the aged and disabled
10 program administered by the [~~Texas~~] Department of Aging and
11 Disability [~~Human~~] Services.

12 SECTION 3.0023. Section 12.016(d), Health and Safety Code,
13 is amended to read as follows:

14 (d) An applicant for a license, permit, registration, or
15 similar form of permission required by law to be obtained from the
16 department may not amend the application after the 31st day before
17 the date on which a public hearing on the application is scheduled
18 to begin. If an amendment of an application would be necessary
19 within that period, the applicant shall resubmit the application to
20 the department and must again comply with notice requirements and
21 any other requirements of law or department [~~board~~] rule as though
22 the application were originally submitted to the department on that
23 date.

24 SECTION 3.0024. Section 12.019(a), Health and Safety Code,
25 is amended to read as follows:

26 (a) The executive commissioner by rule may set a fee to be
27 collected by the department [~~may charge~~] for providing genetic

1 counseling services. The fee may not exceed the actual cost of
2 providing the services.

3 SECTION 3.0025. Section 12.020(e), Health and Safety Code,
4 is amended to read as follows:

5 (e) The executive commissioner shall institute intellectual
6 property policies for the department that establish minimum
7 standards for:

8 (1) the public disclosure or availability of products,
9 technology, and scientific information, including inventions,
10 discoveries, trade secrets, and computer software;

11 (2) review by the department of products, technology,
12 and scientific information, including consideration of ownership
13 and appropriate legal protection;

14 (3) the licensing of products, technology, and
15 scientific information;

16 (4) the identification of ownership and licensing
17 responsibilities for each class of intellectual property; and

18 (5) royalty participation by inventors and the
19 department.

20 SECTION 3.0026. Section 12.032, Health and Safety Code, is
21 amended to read as follows:

22 Sec. 12.032. FEES FOR PUBLIC HEALTH SERVICES. (a) The
23 executive commissioner [board] by rule may adopt [~~charge~~] fees to
24 be collected by the department from [~~to~~] a person who receives
25 public health services from the department.

26 (b) The executive commissioner [board] by rule may require
27 department contractors to collect [~~charge~~] fees for public health

1 services provided by department contractors participating in the
2 department's programs. A department contractor shall retain a fee
3 collected under this subsection and shall use the fee in accordance
4 with the contract provisions.

5 (c) The amount of a fee collected [~~charged~~] for a public
6 health service may not exceed the cost to the department of
7 providing the service.

8 (d) The executive commissioner by rule [~~board~~] may
9 establish a fee schedule. In establishing the schedule, the
10 executive commissioner [~~board~~] shall consider a person's ability to
11 pay the entire amount of a fee.

12 (e) The executive commissioner [~~board~~] may not deny public
13 health services to a person because of the person's inability to pay
14 for the services.

15 SECTION 3.0027. Sections [12.033\(a\), \(b\), and \(c\)](#), Health
16 and Safety Code, are amended to read as follows:

17 (a) Except as otherwise provided by this section, the
18 executive commissioner [~~board~~] by rule shall adopt [~~charge~~] fees to
19 be collected by the department for the distribution and
20 administration of vaccines and sera provided under:

21 (1) Section [38.001](#), Education Code;
22 (2) Section [42.043](#), Human Resources Code;
23 (3) Chapter 826 (Rabies Control Act of 1981);
24 (4) Chapter 81 (Communicable Disease Prevention and
25 Control Act); and
26 (5) Section [161.005](#).

27 (b) Except as otherwise provided by this section, the

1 executive commissioner [board] by rule may require a department
2 contractor to collect [charge] fees for public health services
3 provided by a contractor participating in a department program
4 under the laws specified by Subsection (a).

5 (c) Provided the executive commissioner [board] finds that
6 the monetary savings of this subsection are greater than any costs
7 associated with administering it, the executive commissioner
8 [board] by rule shall establish a fee schedule for fees under this
9 section. In establishing the fee schedule, the executive
10 commissioner [board] shall consider a person's financial ability to
11 pay all or part of the fee, including the availability of health
12 insurance coverage. In the event the fee schedule conflicts with
13 any federal law or regulation, the executive commissioner [board]
14 shall seek a waiver from the applicable federal law or regulation to
15 permit the fee schedule. In the event the waiver is denied, the fee
16 schedule shall not go into effect.

17 SECTION 3.0028. Sections 12.034(a), (c), and (d), Health
18 and Safety Code, are amended to read as follows:

19 (a) The executive commissioner [board] shall establish
20 procedures for the collection of fees for public health services.
21 The procedures shall be used by the department and by those
22 department contractors required by the executive commissioner
23 [board] to collect [charge] fees.

24 (c) The department shall make a reasonable effort to collect
25 fees billed after services are performed. However, the executive
26 commissioner [board] by rule may waive the collection procedures if
27 the administrative costs exceed the fees to be collected.

1 (d) If the executive commissioner [board] elects to require
2 cash payments by program participants, the money received shall be
3 deposited locally at the end of each day and retained by the
4 department for not more than seven days. At the end of that time,
5 the money shall be deposited in the state treasury.

6 SECTION 3.0029. Section 12.035, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 12.035. PUBLIC HEALTH SERVICES FEE ACCOUNT [~~FUND~~].
9 (a) The department shall deposit all money collected for fees and
10 charges collected under Sections 12.0122(d) and 12.032(a) in the
11 state treasury to the credit of the [~~Texas Department of Health~~]
12 public health services fee account in the general revenue fund.

13 (b) The department shall maintain proper accounting records
14 to allocate the money [~~fund~~] among the state and federal programs
15 generating the fees and administrative costs incurred in collecting
16 the fees.

17 [(c) ~~The public health services fee fund is exempt from~~
18 ~~Section 403.095(b), Government Code.~~]

19 SECTION 3.0030. Sections 12.036(c) and (d), Health and
20 Safety Code, are amended to read as follows:

21 (c) The executive commissioner [board] or the executive
22 commissioner's [board's] designee may waive the department's right
23 of subrogation in whole or in part if the executive commissioner
24 [board] or the designee determines that:

25 (1) enforcement of the right would tend to defeat the
26 purpose of the department's program; or

27 (2) the administrative expense of the enforcement

1 would be greater than the expected recovery.

2 (d) The executive commissioner [board] may adopt rules for
3 the enforcement of the department's right of subrogation.

4 SECTION 3.0031. Section 12.037(b), Health and Safety Code,
5 is amended to read as follows:

6 (b) The executive commissioner [board] by rule shall
7 prescribe the criteria for department action under this section.

8 SECTION 3.0032. Section 12.038, Health and Safety Code, is
9 amended to read as follows:

10 Sec. 12.038. RULES. The executive commissioner [board] may
11 adopt rules necessary to implement this subchapter.

12 SECTION 3.0033. Sections 12.055(b) and (d), Health and
13 Safety Code, are amended to read as follows:

14 (b) A state agency or local unit of government under
15 Subsection (a)(3) shall acquire goods or services by any
16 procurement method approved by the commission [~~Health and Human~~
17 ~~Services Commission~~] that provides the best value to the state
18 agency or local unit of government. The state agency or local unit
19 of government shall document that the state agency or local unit of
20 government considered all relevant factors under Subsection (c) in
21 making the acquisition.

22 (d) If a state agency to which this section applies acquires
23 goods or services with a value that exceeds \$100,000, the state
24 agency shall consult with and receive approval from the commission
25 [~~Health and Human Services Commission~~] before considering factors
26 other than price and meeting specifications.

27 SECTION 3.0034. Subchapter F, Chapter 12, Health and Safety

1 Code, is amended to read as follows:

2 SUBCHAPTER F. OFFICE OF BORDER [~~TEXAS-MEXICO~~] HEALTH

3 [~~AND ENVIRONMENTAL ISSUES~~]

4 Sec. 12.071. OFFICE OF BORDER [~~TEXAS-MEXICO~~] HEALTH [~~AND~~
5 ~~ENVIRONMENTAL ISSUES~~]. The department shall establish and maintain
6 an office in the department to coordinate and promote health and
7 environmental issues between this state and Mexico.

8 SECTION 3.0035. Section 12.091, Health and Safety Code, is
9 amended to read as follows:

10 Sec. 12.091. DEFINITION [~~DEFINITIONS~~]. In this subchapter,

11 "panel"[~~+~~

12 [~~(1) "Medical standards division" means the Medical~~
13 ~~Standards on Motor Vehicle Operations Division of the department.~~

14 [~~(2) "Panel"~~] means a panel of the medical advisory
15 board.

16 SECTION 3.0036. Section 12.092(a), Health and Safety Code,
17 is amended to read as follows:

18 (a) The commissioner shall appoint the medical advisory
19 board members from:

20 (1) persons licensed to practice medicine in this
21 state, including physicians who are board certified in internal
22 medicine, psychiatry, neurology, physical medicine, or
23 ophthalmology and who are jointly recommended by the department
24 [~~Texas Department of Health~~] and the Texas Medical Association; and

25 (2) persons licensed to practice optometry in this
26 state who are jointly recommended by the department and the Texas
27 Optometric Association.

1 SECTION 3.0037. Section 12.093, Health and Safety Code, is
2 amended to read as follows:

3 Sec. 12.093. ADMINISTRATION[; RULES]. (a) The medical
4 advisory board is administratively attached to the department
5 [~~medical standards division~~].

6 (b) The department [~~medical standards division~~] :

7 (1) shall provide administrative support for the
8 medical advisory board and panels of the medical advisory board;
9 and

10 (2) may collect and maintain the individual medical
11 records necessary for use by the medical advisory board and the
12 panels under this section from a physician, hospital, or other
13 health care provider.

14 SECTION 3.0038. Section 12.094(a), Health and Safety Code,
15 is amended to read as follows:

16 (a) The executive commissioner [~~board~~] :

17 (1) may adopt rules to govern the activities of the
18 medical advisory board;

19 (2) by rule may establish a reasonable fee to pay a
20 member of the medical advisory board for the member's professional
21 consultation services; and

22 (3) if appropriate, may authorize reimbursement for
23 [~~per diem and~~] travel expenses as provided by Section 2110.004,
24 Government Code, [~~allowances~~] for each meeting a member attends[~~not to exceed the amounts authorized for state employees by the~~
25 ~~General Appropriations Act~~].

27 SECTION 3.0039. Section 12.097(b), Health and Safety Code,

1 is amended to read as follows:

2 (b) In a subsequent proceeding under Subchapter H, Chapter
3 411, Government Code, or Subchapter N, Chapter 521, Transportation
4 Code, the department [~~medical standards division~~] may provide a
5 copy of the report of the medical advisory board or panel and a
6 medical record or report relating to an applicant or license holder
7 to:

8 (1) the Department of Public Safety of the State of
9 Texas;

10 (2) the applicant or license holder; and
11 (3) the officer who presides at the hearing.

12 SECTION 3.0040. Section [12.113\(a\)](#), Health and Safety Code,
13 is amended to read as follows:

14 (a) Volunteers recruited under this subchapter may include
15 students in high school or an institution of higher education,
16 senior citizens, participants in the TANF [~~AFDC~~] job opportunities
17 and basic skills (JOBS) training program, VISTA and AmeriCorps
18 volunteers, and volunteers from business and community networks.

19 SECTION 3.0041. Section [12.133\(b\)](#), Health and Safety Code,
20 is amended to read as follows:

21 (b) Subject to the approval of the advisory committee, the
22 executive commissioner [~~board~~] shall adopt rules governing the
23 collection of information under Subsection (a). The rules may
24 provide for regular audits of randomly selected political
25 subdivisions and may govern the manner in which a political
26 subdivision is selected for an audit and the selection of an
27 auditor.

1 SECTION 3.0042. Section 12.134(a), Health and Safety Code,
2 is amended to read as follows:

3 (a) Subject to the approval of the advisory committee, the
4 executive commissioner [board] shall adopt rules under which a
5 political subdivision or agency of this state may dispute
6 information submitted by a political subdivision under Section
7 12.133.

8 SECTION 3.0043. Section 12.136(a), Health and Safety Code,
9 is amended to read as follows:

10 (a) If the department, pursuant to rules adopted by the
11 executive commissioner, [board] finds, after an audit conducted
12 under Section 12.133 or 12.134, that a political subdivision has
13 overstated unreimbursed health care expenditures in the
14 information submitted under Section 12.133 for any year, the
15 department shall report that fact to the comptroller and shall
16 reduce that political subdivision's percentage of the subsequent
17 annual distribution of the earnings from the account appropriately.

18 SECTION 3.0044. Sections 12.137(a) and (b), Health and
19 Safety Code, are amended to read as follows:

20 (a) The tobacco settlement permanent trust account
21 administration advisory committee shall advise the department
22 [board] on the implementation of the department's duties under this
23 subchapter.

24 (b) The advisory committee is composed of 11 members
25 appointed as follows:

26 (1) one member appointed by the executive commissioner
27 [board] to represent a public hospital or hospital district located

1 in a county with a population of 50,000 or less or a public hospital
2 owned or maintained by a municipality;

3 (2) one member appointed by the political subdivision
4 that, in the year preceding the appointment, received the largest
5 annual distribution paid from the account;

6 (3) one member appointed by the political subdivision
7 that, in the year preceding the appointment, received the second
8 largest annual distribution paid from the account;

9 (4) four members appointed by the Texas Conference of
10 Urban Counties from nominations received from political
11 subdivisions that in the year preceding the appointment, received
12 the 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, or 12th largest
13 annual distribution paid from the account;

14 (5) one member appointed by the County Judges and
15 Commissioners Association of Texas;

16 (6) one member appointed by the North and East Texas
17 County Judges and Commissioners Association;

18 (7) one member appointed by the South Texas County
19 Judges and Commissioners Association; and

20 (8) one member appointed by the West Texas County
21 Judges and Commissioners Association.

22 SECTION 3.0045. Section [12.138](#), Health and Safety Code, is
23 amended to read as follows:

24 Sec. 12.138. APPROVAL OF RULES. A rule to be adopted by the
25 executive commissioner [board] relating to certification of a
26 percentage of an annual distribution under Section [12.132](#) or
27 collection of information under Sections [12.132](#), [12.133](#), and [12.134](#)

1 must be submitted to the advisory committee and may not become
2 effective before the rule is approved by the advisory committee. If
3 the advisory committee disapproves a proposed rule, the advisory
4 committee shall provide the executive commissioner [board] the
5 specific reasons that the rule was disapproved.

6 SECTION 3.0046. Section 12.139, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 12.139. ANNUAL REVIEW. The advisory committee shall
9 annually:

10 (1) review the results of any audit conducted under
11 this subchapter and the results of any dispute filed under Section
12 12.134; and

13 (2) review the rules adopted by the executive
14 commissioner [board] under this subchapter and propose any
15 amendments to the rules the advisory committee considers necessary.

16 SECTION 3.0047. The heading to Chapter 13, Health and
17 Safety Code, is amended to read as follows:

18 CHAPTER 13. [HEALTH] DEPARTMENT HOSPITALS AND RESPIRATORY
19 FACILITIES

20 SECTION 3.0048. The heading to Subchapter A, Chapter 13,
21 Health and Safety Code, is amended to read as follows:

22 SUBCHAPTER A. CARE AND TREATMENT IN [HEALTH] DEPARTMENT HOSPITALS

23 SECTION 3.0049. Sections 13.002(a), (c), and (d), Health
24 and Safety Code, are amended to read as follows:

25 (a) The department [board] may admit to any hospital under
26 its supervision a patient who:

27 (1) is eligible to receive patient services under a

1 department program; and

2 (2) will benefit from hospitalization.

3 (c) The executive commissioner [board] may adopt rules and
4 the department may enter into contracts as necessary to implement
5 this section.

6 (d) This section does not require the executive
7 commissioner [board] or department to:

8 (1) admit a patient to a particular hospital;

9 (2) guarantee the availability of space at any
10 hospital; or

11 (3) provide treatment for a particular medical need at
12 any hospital.

13 SECTION 3.0050. Section 13.003(b), Health and Safety Code,
14 is amended to read as follows:

15 (b) The department [board] may establish at the Rio Grande
16 State Center:

17 (1) cancer screening;

18 (2) diagnostic services;

19 (3) educational services;

20 (4) obstetrical services;

21 (5) gynecological services;

22 (6) other inpatient health care services; and

23 (7) outpatient health care services, including
24 diagnostic, treatment, disease management, and supportive care
25 services.

26 SECTION 3.0051. The heading to Section 13.004, Health and
27 Safety Code, is amended to read as follows:

1 Sec. 13.004. TREATMENT OF CERTAIN PERSONS WITH MENTAL
2 ILLNESS OR AN INTELLECTUAL DISABILITY [~~MENTALLY ILL OR MENTALLY~~
3 ~~RETARDED PERSONS~~].

4 SECTION 3.0052. Section 13.004(a), Health and Safety Code,
5 is amended to read as follows:

6 (a) The department or the Department of Aging and Disability
7 Services, as appropriate, [~~Texas Department of Mental Health and~~
8 Mental Retardation] may transfer a [~~mentally ill or mentally~~
9 ~~retarded~~] person with mental illness or an intellectual disability
10 who is infected with tuberculosis to a public health hospital as
11 defined by Section 13.033 [~~the Texas Center for Infectious~~
12 Disease].

13 SECTION 3.0053. Section 13.005, Health and Safety Code, is
14 amended to read as follows:

15 Sec. 13.005. CARE AND TREATMENT OF CERTAIN PATIENTS. (a)
16 The department [~~board~~] shall fully develop essential services
17 needed for the control of tuberculosis. To provide those services,
18 the department [~~board~~] may contract for the support, maintenance,
19 care, and treatment of tuberculosis patients:

20 (1) admitted to facilities under the department's
21 [~~board's~~] jurisdiction; or

22 (2) otherwise subject to the department's [~~board's~~]
23 jurisdiction.

24 (b) The department [~~board~~] may contract with:

25 (1) municipal, county, or state hospitals;

26 (2) private physicians;

27 (3) licensed nursing facilities [~~homes~~] and

1 hospitals; and

2 (4) hospital districts.

3 (c) The department [board] may contract for diagnostic and
4 other services available in a community or region as necessary to
5 prevent further spread of tuberculosis.

6 (d) A contract may not include the assignment of any lien
7 accruing to the state.

8 (e) The department [board] may establish and operate
9 outpatient clinics as necessary to provide follow-up treatment on
10 discharged patients. A person who receives treatment as an
11 outpatient is financially liable in the manner provided for
12 inpatients.

13 SECTION 3.0054. Sections 13.033(3) and (5), Health and
14 Safety Code, are amended to read as follows:

15 (3) "Physician" means a person licensed by the Texas
16 [State Board of] Medical Board [Examiners] to practice medicine in
17 this state.

18 (5) "Public health [~~state chest~~] hospital" means a
19 hospital operated by the department to provide services under this
20 subchapter, including the Texas Center for Infectious Disease [~~and~~
21 ~~the Rio Grande State Center~~].

22 SECTION 3.0055. Section 13.034, Health and Safety Code, is
23 amended to read as follows:

24 Sec. 13.034. [BOARD] DUTIES OF EXECUTIVE COMMISSIONER AND
25 DEPARTMENT. (a) The executive commissioner [board] shall adopt
26 rules [~~and bylaws~~] relating to:

27 (1) the management of public health [~~state chest~~]

1 hospitals;

2 (2) the duties of officers and employees of those
3 hospitals; and

4 (3) the enforcement of necessary discipline and
5 restraint of patients.

6 (a-1) The executive commissioner may adopt rules as
7 necessary for the proper and efficient hospitalization of
8 tuberculosis patients.

9 (b) The department [board] shall supply each hospital with
10 the necessary personnel for the operation and maintenance of the
11 hospital.

12 (c) The department [board] may:

13 (1) prescribe the form and content of applications,
14 certificates, records, and reports provided for under this
15 subchapter;

16 (2) require reports from the administrator of a public
17 health [~~state chest~~] hospital relating to the admission,
18 examination, diagnosis, release, or discharge of a patient;

19 (3) visit each hospital regularly to review admitting
20 procedures and the care and treatment of all new patients admitted
21 since the last visit; and

22 (4) investigate by personal visit a complaint made by
23 a patient or by another person on behalf of a patient [~~+ and~~

24 [~~(5) adopt rules as necessary for the proper and~~
25 ~~efficient hospitalization of tuberculosis patients~~].

26 (d) The board may delegate a power or duty of the board to
27 an employee. The delegation does not relieve the board from its

1 responsibility.]

2 SECTION 3.0056. Section 13.035(a), Health and Safety Code,
3 is amended to read as follows:

4 (a) The department shall employ a qualified hospital
5 administrator for each public health [state chest] hospital.

6 SECTION 3.0057. Sections 13.036(a) and (c), Health and
7 Safety Code, are amended to read as follows:

8 (a) A resident of this state who has tuberculosis may be
9 admitted to a public health [state chest] hospital. A person who is
10 not a resident of this state and who has tuberculosis may be
11 admitted to a public health [state chest] hospital in accordance
12 with Section 13.046.

13 (c) An application for admission to a public health [state
14 chest] hospital shall be accompanied by a certificate issued by a
15 physician stating that the physician has thoroughly examined the
16 applicant and that the applicant has tuberculosis. In the case of an
17 applicant who is not a resident of this state, the certificate may
18 be issued by a physician who holds a license to practice medicine in
19 the state of residence of the applicant.

20 SECTION 3.0058. Section 13.038(a), Health and Safety Code,
21 is amended to read as follows:

22 (a) A patient admitted to a public health [state chest]
23 hospital is a public patient and classified as indigent,
24 nonindigent, or nonresident.

25 SECTION 3.0059. Section 13.039(b), Health and Safety Code,
26 is amended to read as follows:

27 (b) The action shall be brought on the written request of

1 the public health [~~state chest~~] hospital administrator,
2 accompanied by a certificate as to the amount owed to the state. In
3 any action, the certificate is sufficient evidence of the amount
4 owed to the state for the support of that patient.

5 SECTION 3.0060. Sections [13.041](#)(a) and (c), Health and
6 Safety Code, are amended to read as follows:

7 (a) The department [~~board~~] may:

8 (1) return a nonresident patient admitted to a public
9 health [~~state chest~~] hospital to the proper agency of the state of
10 the patient's residence; and

11 (2) permit the return of a resident of this state who
12 has been admitted to a tuberculosis hospital in another state.

13 (c) The department [~~board~~] may enter into reciprocal
14 agreements with the proper agencies of other states to facilitate
15 the return to the states of their residence of nonresident patients
16 admitted to tuberculosis [~~state chest~~] hospitals in other states.

17 SECTION 3.0061. Section [13.042](#), Health and Safety Code, is
18 amended to read as follows:

19 Sec. 13.042. DISCRIMINATION PROHIBITED. (a) A public
20 health [~~state chest~~] hospital may not discriminate against a
21 patient.

22 (b) Each patient is entitled to equal facilities,
23 attention, and treatment. However, a public health [~~state chest~~]
24 hospital may provide different care and treatment of patients
25 because of differences in the condition of the individual patients.

26 SECTION 3.0062. Sections [13.043](#)(a) and (c), Health and
27 Safety Code, are amended to read as follows:

1 (a) A patient in a public health [~~state chest~~] hospital may
2 not offer an officer, agent, or employee of the hospital a tip,
3 payment, or reward of any kind.

4 (c) The department [~~board~~] shall strictly enforce this
5 section.

6 SECTION 3.0063. Sections 13.044(a), (d), and (e), Health
7 and Safety Code, are amended to read as follows:

8 (a) On the request of any charitable organization in this
9 state, the department [~~board~~] may permit the erection, furnishing,
10 and maintenance by the charitable organization of accommodations on
11 the grounds of a public health [~~state chest~~] hospital for persons
12 who have tuberculosis and who are:

13 (1) members of the charitable organization;

14 (2) members of the families of persons who are members
15 of the charitable organization; or

16 (3) surviving spouses or minor children of deceased
17 persons who are members of the charitable organization.

18 (d) The officers or a board or committee of the charitable
19 organization and the department [~~board~~] must enter into a written
20 agreement relating to the location, construction, style, and
21 character, and terms of existence of buildings, and other questions
22 arising in connection with the grant of permission to erect and
23 maintain private accommodations. The department must maintain as a
24 record a copy of the written agreement [~~must be recorded in the~~
25 ~~minutes of the board~~].

26 (e) Except for the preferential right to occupy vacant
27 accommodations erected by the person's charitable organization, a

1 person described by Subsection (a) shall be classified in the same
2 manner as other public health [~~state chest~~] hospital patients and
3 shall be admitted, maintained, cared for, and treated in those
4 hospitals in the same manner and under the same conditions and rules
5 that apply to other patients.

6 SECTION 3.0064. Section 13.045(a), Health and Safety Code,
7 is amended to read as follows:

8 (a) A county may donate and convey land to the state in
9 consideration of the establishment of a public health [~~state chest~~]
10 hospital by the executive commissioner [~~board~~].

11 SECTION 3.0065. Section 13.046, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 13.046. ADMISSION OF NONRESIDENT PATIENTS. (a) The
14 department may enter into an agreement with an agency of another
15 state responsible for the care of residents of that state who have
16 tuberculosis under which:

17 (1) residents of the other state who have tuberculosis
18 may be admitted to a public health [~~state chest~~] hospital, subject
19 to the availability of appropriate space after the needs of
20 eligible tuberculosis and chronic respiratory disease patients who
21 are residents of this state have been met; and

22 (2) the other state is responsible for paying all
23 costs of the hospitalization and treatment of patients admitted
24 under the agreement.

25 (b) Section 13.041 does not apply to the return of a
26 nonresident patient admitted to a public health [~~state chest~~]
27 hospital in accordance with an agreement entered into under this

1 section. The return of that patient to the state of residence is
2 governed by the agreement.

3 SECTION 3.0066. Section 31.002(a)(3), Health and Safety
4 Code, is amended to read as follows:

5 (3) "Other benefit" means a benefit, other than a
6 benefit provided under this chapter, to which an individual is
7 entitled for payment of the costs of primary health care services,
8 including benefits available from:

9 (A) an insurance policy, group health plan, or
10 prepaid medical care plan;

11 (B) Title XVIII or XIX of the Social Security Act
12 (42 U.S.C. Section 1395 et seq. or Section 1396 et seq.);

13 (C) the United States Department of Veterans
14 Affairs [Administration];

15 (D) the TRICARE program of the United States
16 Department of Defense [Civilian Health and Medical Program of the
17 Uniformed Services];

18 (E) workers' compensation or any other
19 compulsory employers' insurance program;

20 (F) a public program created by federal or state
21 law, or by an ordinance or rule of a municipality or political
22 subdivision of the state, excluding benefits created by the
23 establishment of a municipal or county hospital, a joint
24 municipal-county hospital, a county hospital authority, a hospital
25 district, or the facilities of a publicly supported medical school;
26 or

27 (G) a cause of action for medical, facility, or

1 medical transportation expenses, or a settlement or judgment based
2 on the cause of action, if the expenses are related to the need for
3 services provided under this chapter.

4 SECTION 3.0067. Section 31.002(b), Health and Safety Code,
5 is amended to read as follows:

6 (b) The executive commissioner [board] by rule may define a
7 word or term not defined by Subsection (a) as necessary to
8 administer this chapter. The executive commissioner [board] may
9 not define a word or term so that the word or term is inconsistent or
10 in conflict with the purposes of this chapter, or is in conflict
11 with the definition and conditions of practice governing a provider
12 who is required to be licensed, registered, certified, identified,
13 or otherwise sanctioned under the laws of this state.

14 SECTION 3.0068. Sections 31.003(a), (b), (c), (d), (e), and
15 (g), Health and Safety Code, are amended to read as follows:

16 (a) The executive commissioner [board] may establish a
17 program in the department to provide primary health care services
18 to eligible individuals.

19 (b) If the program is established, the executive
20 commissioner [board] shall adopt rules relating to:

21 (1) the type, amount, and duration of services to be
22 provided under this chapter; and

23 (2) the determination by the department of the
24 services needed in each service area.

25 (c) If budgetary limitations exist, the executive
26 commissioner [board] by rule shall establish a system of priorities
27 relating to the types of services provided, geographic areas

1 covered, or classes of individuals eligible for services.

2 (d) The executive commissioner [board] shall adopt rules
3 under Subsection (c) relating to the geographic areas covered and
4 the classes of individuals eligible for services according to a
5 statewide determination of the need for services.

6 (e) The executive commissioner [board] shall adopt rules
7 under Subsection (c) relating to the types of services provided
8 according to the set of service priorities established under this
9 subsection. Initial service priorities shall focus on the funding
10 of, provision of, and access to:

11 (1) diagnosis and treatment;
12 (2) emergency services;
13 (3) family planning services;
14 (4) preventive health services, including
15 immunizations;
16 (5) health education; and
17 (6) laboratory, X-ray, nuclear medicine, or other
18 appropriate diagnostic services.

19 (g) The executive commissioner [board] should require that
20 the services provided under this chapter be reserved to the
21 greatest extent possible for low-income individuals who are not
22 eligible for similar services through any other publicly funded
23 program.

24 SECTION 3.0069. Sections 31.004(a) and (b), Health and
25 Safety Code, are amended to read as follows:

26 (a) The executive commissioner [board] shall adopt rules
27 necessary to administer this chapter, and the department shall

1 administer the program in accordance with those [board] rules.

2 (b) The executive commissioner [~~with the advice and~~
3 ~~assistance of the commissioner and the department, the board~~] by
4 rule shall:

5 (1) establish the administrative structure of the
6 program;

7 (2) establish a plan of areawide administration to
8 provide authorized services;

9 (3) designate, if possible, local public and private
10 resources as providers; and

11 (4) prevent duplication by coordinating authorized
12 primary health care services with existing federal, state, and
13 local programs.

14 SECTION 3.0070. Sections 31.005(a), (b), (c), and (e),
15 Health and Safety Code, are amended to read as follows:

16 (a) The executive commissioner [board] shall adopt rules
17 relating to the department's determination of whether program
18 services are to be provided through a network of approved
19 providers, directly by the department, or by a combination of the
20 department and approved providers as prescribed by this section.

21 (b) The department shall provide services only as
22 prescribed by department [board] rule.

23 (c) The department may provide primary health care services
24 directly to eligible individuals to the extent that the department
25 [board] determines that existing private or public providers or
26 other resources in the service area are unavailable or unable to
27 provide those services. In making that determination, the

1 department shall:

2 (1) initially determine the proposed need for services
3 in the service area;

4 (2) notify existing private and public providers and
5 other resources in the service area of the department's initial
6 determination of need and the services the department proposes to
7 provide directly to eligible individuals;

8 (3) provide existing private and public providers and
9 other resources in the service area a reasonable opportunity to
10 comment on the department's initial determination of need and the
11 availability and ability of existing private or public providers or
12 other resources in the service area to satisfy the need;

13 (4) provide existing private and public providers and
14 other resources in the service area a reasonable opportunity to
15 obtain approval as providers under the program; and

16 (5) eliminate, reduce, or otherwise modify the
17 proposed scope or type of services the department proposes to
18 provide directly to the extent that those services may be provided
19 by existing private or public providers or other resources in the
20 service area that meet the executive commissioner's [board's]
21 criteria for approval as providers.

22 (e) If after a review the department [board] determines that
23 a private or public provider or other resource is available to
24 provide services and has been approved as a provider, the
25 department shall, immediately after approving the provider,
26 eliminate, reduce, or modify the scope and type of services the
27 department provides directly to the extent the private or public

1 provider or other resource is available and able to provide the
2 service.

3 SECTION 3.0071. Sections 31.006(a), (b), (d), (f), and (i),
4 Health and Safety Code, are amended to read as follows:

5 (a) The executive commissioner [board] shall adopt rules
6 relating to:

7 (1) the selection and expedited selection of
8 providers, including physicians, registered nurses, and
9 facilities; and

10 (2) the denial, modification, suspension, and
11 termination of program participation.

12 (b) The department shall select and approve providers to
13 participate in the program according to the criteria and following
14 the procedures prescribed by department [board] rules.

15 (d) The executive commissioner [board] may not adopt
16 facility approval criteria that discriminate against a facility
17 solely because it is operated for profit.

18 (f) The department [board] shall provide a due process
19 hearing procedure in accordance with department rules for the
20 resolution of conflicts between the department and a provider.
21 Chapter 2001, Government Code, does [do] not apply to conflict
22 resolution procedures adopted under this section.

23 (i) The notice and hearing required by this section do not
24 apply if a grant or contract:

25 (1) is canceled by the department because of
26 exhaustion of funds or because insufficient funds require the
27 executive commissioner [board] to adopt service priorities; or

2 SECTION 3.0072. Sections 31.007(a), (c), (d), and (e),

3 Health and Safety Code, are amended to read as follows:

4 (a) The executive commissioner [board] shall adopt rules
5 relating to application procedures for admission to the program.

6 (c) The application form must be accompanied by:

(2) any other assurances from the applicant or any documentary evidence required by department rules [the board] that is necessary to support the applicant's eligibility.

14 (d) Except as permitted by department [~~program~~] rules, the
15 department may not provide services or authorize payment for
16 services delivered to an individual before the eligibility date
17 assigned to the individual by the department.

18 (e) The department shall determine or cause to be determined
19 the eligibility date in accordance with department [board] rules.
20 The date may not be later than the date on which the individual
21 submits a properly completed application form and all supporting
22 documents required by this chapter or department [board] rules.

23 SECTION 3.0073. Section 31.008, Health and Safety Code, is
24 amended to read as follows:

25 Sec. 31.008. ELIGIBILITY FOR SERVICES. (a) The executive
26 commissioner [board] shall adopt rules relating to eligibility
27 criteria for an individual to receive services under the program.

1 including health, medical, and financial criteria. The department
2 shall determine or cause to be determined an applicant's
3 eligibility in accordance with this chapter and department [board]
4 rules.

5 (b) Except as modified by other rules adopted under this
6 chapter, the executive commissioner [board] by rule shall provide
7 that to be eligible to receive services, the individual must be a
8 resident of this state.

9 SECTION 3.0074. Sections 31.009(c), (d), and (f), Health
10 and Safety Code, are amended to read as follows:

11 (c) The executive commissioner [board] by rule shall
12 provide criteria for action by the department under this section.

13 (d) Chapter 2001, Government Code, does [do] not apply to
14 the granting, denial, modification, suspension, or termination of
15 services. The department shall conduct hearings in accordance with
16 the department's [board's] due process hearing rules.

17 (f) The notice and hearing required by this section do not
18 apply if the department restricts program services to conform to
19 budgetary limitations that require the executive commissioner
20 [board] to establish service priorities.

21 SECTION 3.0075. Sections 31.010(b) and (e), Health and
22 Safety Code, are amended to read as follows:

23 (b) Except as provided by department [board] rules, an
24 individual is not eligible to receive services under this chapter
25 to the extent that the individual, or a person with a legal
26 obligation to support the individual, is eligible for some other
27 benefit that would pay for all or part of the services.

1 (e) The department [commissioner] may waive enforcement of
2 Subsections (b)-(d) [~~of this section~~] as prescribed by department
3 [~~board~~] rules in certain individually considered cases in which
4 enforcement will deny services to a class of otherwise eligible
5 individuals because of conflicting federal, state, or local laws or
6 rules.

7 SECTION 3.0076. Section 31.012, Health and Safety Code, is
8 amended to read as follows:

9 Sec. 31.012. FEES. (a) The department [~~board~~] may charge
10 fees for the services provided directly by the department or
11 through approved providers in accordance with Subchapter D, Chapter
12 12.

13 (b) The executive commissioner by rule [~~board~~] shall adopt
14 standards and procedures to develop and implement a schedule of
15 allowable charges for program services.

16 SECTION 3.0077. Section 31.013(a), Health and Safety Code,
17 is amended to read as follows:

18 (a) Except as provided by this chapter or by other law, the
19 department [~~board~~] may seek, receive, and spend funds received
20 through an appropriation, grant, donation, or reimbursement from
21 any public or private source to administer this chapter.

22 SECTION 3.0078. Sections 31.015(b) and (d), Health and
23 Safety Code, are amended to read as follows:

24 (b) The executive commissioner [~~board~~] shall adopt rules
25 relating to the information a provider is required to report to the
26 department and shall adopt procedures to prevent unnecessary and
27 duplicative reporting of data.

1 (d) The report required under Subsection (c) must include:
2 (1) the number of individuals receiving care under
3 this chapter;
4 (2) the total cost of the program, including a
5 delineation of the total administrative costs and the total cost
6 for each service authorized under Section 31.003(e);
7 (3) the average cost per recipient of services;
8 (4) the number of individuals who received services in
9 each public health region; and
10 (5) any other information required by the executive
11 commissioner [board].

12 SECTION 3.0079. Section 32.002(a)(8), Health and Safety
13 Code, is amended to read as follows:

14 (8) "Other benefit" means a benefit, other than a
15 benefit provided under this chapter, to which an individual is
16 entitled for payment of the costs of maternal and infant health
17 improvement services, ancillary services, educational services, or
18 transportation services, including benefits available from:

19 (A) an insurance policy, group health plan, or
20 prepaid medical care plan;

21 (B) Title XVIII of the Social Security Act (42
22 U.S.C. Section 1395 et seq.);

23 (C) the United States Department of Veterans
24 Affairs [Administration];

25 (D) the TRICARE program of the United States
26 Department of Defense [Civilian Health and Medical Program of the
27 Uniformed Services];

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(E) workers' compensation or any other compulsory employers' insurance program;

10 or
11 (G) a cause of action for medical, facility, or
12 medical transportation expenses, or a settlement or judgment based
13 on the cause of action, if the expenses are related to the need for
14 services provided under this chapter.

15 SECTION 3.0080. Section 32.002(b), Health and Safety Code,
16 is amended to read as follows:

17 (b) The executive commissioner [board] by rule may define a
18 word or term not defined by Subsection (a) as necessary to
19 administer this chapter. The executive commissioner [board] may
20 not define a word or term so that the word or term is inconsistent or
21 in conflict with the purposes of this chapter, or is in conflict
22 with the definition and conditions of practice governing a provider
23 who is required to be licensed, registered, certified, identified,
24 or otherwise sanctioned under the laws of this state.

25 SECTION 3.0081. Section 32.003, Health and Safety Code, is
26 amended to read as follows:

27 Sec. 32-003. MATERNAL AND INFANT HEALTH IMPROVEMENT

1 SERVICES PROGRAM. (a) The executive commissioner [board] may
2 establish a maternal and infant health improvement services program
3 in the department to provide comprehensive maternal and infant
4 health improvement services and ancillary services to eligible
5 women and infants.

6 (b) If the program is established, the executive
7 commissioner [board] shall adopt rules relating to:

8 (1) the type, amount, and duration of services to be
9 provided under this chapter; and

10 (2) the determination by the department of the
11 services needed in each service area.

12 (c) If budgetary limitations exist, the executive
13 commissioner [board] by rule shall establish a system of priorities
14 relating to the types of services provided, geographic areas
15 covered, or classes of individuals eligible for services.

16 (d) The executive commissioner [board] shall adopt the
17 rules according to a statewide determination of the need for
18 services.

19 (e) In structuring the program and adopting rules, the
20 department and executive commissioner [board] shall attempt to
21 maximize the amount of federal matching funds available for
22 maternal and infant health improvement services while continuing to
23 serve targeted populations.

24 (f) If necessary, the executive commissioner [board] by
25 rule may coordinate services and other parts of the program with the
26 medical assistance program. However, the executive commissioner
27 [board] may not adopt rules relating to the services under either

1 program that would:

2 (1) cause the program established under this chapter
3 not to conform with federal law to the extent that federal matching
4 funds would not be available; or

5 (2) affect the status of the single state agency to
6 administer the medical assistance program.

7 SECTION 3.0082. Section 32.006(a), Health and Safety Code,
8 is amended to read as follows:

9 (a) The executive commissioner [board] shall adopt rules
10 necessary to administer this chapter, and the department shall
11 administer the program in accordance with those [board] rules.

12 SECTION 3.0083. Sections 32.011(b), (c), (d), and (e),
13 Health and Safety Code, are amended to read as follows:

14 (b) The executive commissioner [board] by rule shall
15 provide criteria for action by the department under this section.

16 (c) Chapter 2001, Government Code, does not apply to the
17 granting, denial, modification, suspension, or termination of
18 services. The department shall provide [~~conduct~~] hearings in
19 accordance with the department's [board's] due process hearing
20 rules.

21 (d) The department shall render the final administrative
22 decision following [~~in~~] a due process hearing to deny, modify,
23 suspend, or terminate the receipt of services.

24 (e) The notice and hearing required by this section do not
25 apply if the department restricts program services to conform to
26 budgetary limitations that require the executive commissioner
27 [board] to establish service priorities.

1 SECTION 3.0084. Sections 32.012(b) and (e), Health and
2 Safety Code, are amended to read as follows:

3 (b) Except as provided by department [board] rules, an
4 individual is not eligible to receive services under this chapter
5 to the extent that the individual or a person with a legal
6 obligation to support the individual is eligible for some other
7 benefit that would pay for all or part of the services.

8 (e) The department [~~commissioner~~] may waive enforcement of
9 Subsections (b)-(d) [~~of this section~~] as prescribed by department
10 [board] rules in certain individually considered cases in which
11 enforcement will deny services to a class of otherwise eligible
12 individuals because of conflicting federal, state, or local laws or
13 rules.

14 SECTION 3.0085. Section 32.014, Health and Safety Code, is
15 amended to read as follows:

16 Sec. 32.014. FEES. (a) Except as prohibited by federal law
17 or regulation, the department [board] may collect [~~charge~~] fees for
18 the services provided directly by the department or through
19 approved providers in accordance with Subchapter D, Chapter 12.

20 (b) The executive commissioner by rule [board] shall adopt
21 standards and procedures to develop and implement a schedule of
22 allowable charges for program services.

23 SECTION 3.0086. Section 32.015(a), Health and Safety Code,
24 is amended to read as follows:

25 (a) Except as provided by this chapter or by other law, the
26 department [board] may seek, receive, and spend funds received
27 through an appropriation, grant, donation, or reimbursement from

1 any public or private source to administer this chapter.

2 SECTION 3.0087. Section 32.017(b), Health and Safety Code,
3 is amended to read as follows:

4 (b) The executive commissioner [board] shall adopt rules
5 relating to the information a provider is required to report to the
6 department and shall adopt procedures to prevent unnecessary and
7 duplicative reporting of data.

8 SECTION 3.0088. The heading to Section 32.021, Health and
9 Safety Code, is amended to read as follows:

10 Sec. 32.021. REQUIREMENTS REGARDING THE WOMEN, INFANTS, AND
11 CHILDREN PROGRAM.

12 SECTION 3.0089. Section 32.021(a), Health and Safety Code,
13 is amended to read as follows:

14 (a) An agency, organization, or other entity that contracts
15 with the Special Supplemental Nutrition Program for Women, Infants,
16 and Children shall each month provide the clinical and nutritional
17 services supported by that program during extended hours, as
18 defined by the department.

19 SECTION 3.0090. The heading to Section 32.0211, Health and
20 Safety Code, is amended to read as follows:

21 Sec. 32.0211. WOMEN, INFANTS, AND CHILDREN PROGRAM OUTREACH
22 CAMPAIGN TO PROMOTE FATHERS' INVOLVEMENT.

23 SECTION 3.0091. Sections 32.0211(a), (c), and (d), Health
24 and Safety Code, are amended to read as follows:

25 (a) The attorney general shall:

26 (1) subject to Subsections (b) and (c), develop and
27 periodically update a publication that:

1 (A) describes the importance and long-term
2 positive effects on children of a father's involvement during a
3 mother's pregnancy; and

4 (B) provides guidance to prospective fathers on
5 the positive actions that they can take to support the pregnant
6 mother during pregnancy and the effect those actions have on
7 pregnancy outcomes; and

8 (2) make the publication described by Subdivision (1)
9 available to any agency, organization, or other entity that
10 contracts with the Special Supplemental Nutrition Program for
11 Women, Infants, and Children and on the attorney general's Internet
12 website in a format that allows the public to download and print the
13 publication.

14 (c) In developing the publication required by Subsection
15 (a), the attorney general shall consult with:

16 (1) the department as the state agency responsible for
17 administering the Special Supplemental Nutrition Program for
18 Women, Infants, and Children and this state's program under the
19 Maternal and Child Health Services Block Grant Act (42 U.S.C.
20 Section 701 et seq.); and

21 (2) the Texas Council on Family Violence.

22 (d) An agency, organization, or other entity that contracts
23 with the Special Supplemental Nutrition Program for Women, Infants,
24 and Children shall make the publication described by Subsection (a)
25 available to each client receiving clinical or nutritional services
26 under the program.

27 SECTION 3.0092. The heading to Section 32.042, Health and

1 Safety Code, is amended to read as follows:

2 Sec. 32.042. DUTIES OF EXECUTIVE COMMISSIONER [BOARD];

3 RULES.

4 SECTION 3.0093. Section 32.042(a), Health and Safety Code,
5 is amended to read as follows:

6 (a) The executive commissioner [board] by rule shall adopt:

7 (1) minimum standards and objectives to implement
8 voluntary perinatal health care systems; and

9 (2) policies for health promotion and education, risk
10 assessment, access to care, and perinatal system structure,
11 including the transfer and transportation of pregnant women and
12 infants.

13 SECTION 3.0094. Section 32.044(a), Health and Safety Code,
14 is amended to read as follows:

15 (a) Each voluntary perinatal health care system must have:

16 (1) a coordinating board responsible for ensuring,
17 providing, or coordinating planning access to services, data
18 collection, and provider education;

19 (2) access to appropriate emergency medical services;

20 (3) risk assessment, transport, and transfer
21 protocols for perinatal patients;

22 (4) one or more health care facilities categorized
23 according to perinatal care capabilities using standards adopted by
24 department [board] rule; and

25 (5) documentation of broad-based participation in
26 planning by providers of perinatal services and community
27 representatives throughout the defined geographic region.

1 SECTION 3.0095. Sections 32.045(b) and (c), Health and
2 Safety Code, are amended to read as follows:

3 (b) The executive commissioner [board] by rule shall
4 establish eligibility criteria for awarding the grants. The rules
5 must require the department to consider:

6 (1) the need of an area and the extent to which the
7 grant would meet the identified need;

8 (2) the availability of personnel and training
9 programs;

10 (3) the availability of other funding sources;

11 (4) the assurance of providing quality services;

12 (5) the need for emergency transportation of perinatal
13 patients and the extent to which the system meets the identified
14 needs; and

15 (6) the stage of development of a perinatal health
16 care system.

17 (c) The department may approve grants according to rules
18 adopted by the executive commissioner [board]. A grant awarded
19 under this section is governed by Chapter 783, Government Code, and
20 rules adopted under that chapter.

21 SECTION 3.0096. Section 32.062, Health and Safety Code, is
22 amended to read as follows:

23 Sec. 32.062. ESTABLISHMENT; PRESIDING OFFICER. (a) The
24 task force is composed of 25 members appointed by the executive
25 commissioner [~~of the Health and Human Services Commission~~] as
26 follows:

27 (1) four representatives of family violence centers,

1 as defined by Section 51.002, Human Resources Code, from different
2 geographic regions in this state, including both rural and urban
3 areas;

4 (2) one representative of a statewide family violence
5 advocacy organization;

6 (3) one representative of a statewide association of
7 obstetricians and gynecologists;

8 (4) two representatives of the family and community
9 health programs in the department [Department of State Health
10 Services];

11 (5) one representative of a statewide sexual assault
12 advocacy organization;

13 (6) one representative of the commission's [Health and
14 Human Services Commission] Texas Home Visiting Program;

15 (7) one representative of a statewide association of
16 midwifery;

17 (8) one representative of a statewide family
18 physician's association;

19 (9) one representative of a statewide nursing
20 association;

21 (10) one representative of a statewide hospital
22 association;

23 (11) one representative of a statewide pediatric
24 medical association;

25 (12) one representative of a statewide medical
26 association;

27 (13) one representative of The University of Texas

1 School of Social Work Institute on Domestic Violence and Sexual
2 Assault;

3 (14) one representative of The University of Texas
4 School of Law Domestic Violence Clinic;

5 (15) one representative of the governor's EMS and
6 Trauma Advisory Council;

7 (16) one representative of a Department of Family and
8 Protective Services prevention and early intervention program;

9 (17) one representative of a statewide osteopathic
10 medical association;

11 (18) one representative of a statewide association of
12 community health centers;

13 (19) one representative of the office of the attorney
14 general;

15 (20) one representative from a medical school or a
16 teaching hospital in the state who is either an attending physician
17 of the hospital or a faculty member of the medical school; and

18 (21) one representative of the commission's [~~Health~~
19 ~~and Human Services Commission's~~] Family Violence Program.

20 (b) The executive commissioner [~~of the Health and Human~~
21 ~~Services Commission~~] shall appoint a task force member to serve as
22 presiding officer of the task force.

23 SECTION 3.0097. Section 32.064, Health and Safety Code, is
24 amended to read as follows:

25 Sec. 32.064. REPORT. Not later than September 1, 2015, the
26 task force shall submit a report to the governor, the lieutenant
27 governor, the speaker of the house of representatives, the

1 presiding officers of the standing committees of the legislature
2 having primary jurisdiction over health and human services, the
3 executive commissioner [of the Health and Human Services
4 Commission], and the commissioner [of state health services]
5 containing:

6 (1) the findings and legislative, policy, and research
7 recommendations of the task force; and
8 (2) a description of the activities of the task force.

9 SECTION 3.0098. Section 33.001(3), Health and Safety Code,
10 is amended to read as follows:

11 (3) "Other benefit" means a benefit, other than a
12 benefit under this chapter, to which an individual is entitled for
13 the payment of the costs of services. The term includes:

14 (A) benefits available under:

15 (i) an insurance policy, group health plan,
16 or prepaid medical care plan;

17 (ii) Title XVIII of the Social Security Act
18 (42 U.S.C. Section 1395 et seq.);

19 (iii) Title XIX of the Social Security Act
20 (42 U.S.C. Section 1396 et seq.);

21 (iv) the United States Department of
22 Veterans Affairs [Veterans' Administration];

23 (v) the TRICARE program of the United
24 States Department of Defense [Civilian Health and Medical Program
25 of the Uniformed Services]; or

26 (vi) workers' compensation or any other
27 compulsory employers insurance program;

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12 SECTION 3.0099. Section 33.002(b), Health and Safety Code,
13 is amended to read as follows:

14 (b) The executive commissioner [board] shall adopt rules
15 necessary to carry out the program, including a rule specifying
16 other heritable diseases covered by this chapter.

17 SECTION 3.0100. Section 33.004, Health and Safety Code, is
18 amended to read as follows:

19 Sec. 33.004. [STUDY ON] NEWBORN SCREENING PROGRAM; FEES
20 [METHODOLOGY AND EQUIPMENT]. [(a) Not later than March 1, 2006,
21 the department shall:

22 [(1) conduct a study to determine the most
23 cost-effective method of conducting newborn screening, including
24 screening for disorders listed in the core uniform panel of newborn
25 screening conditions recommended in the 2005 report by the American
26 College of Medical Genetics entitled "Newborn Screening: Toward a
27 Uniform Screening Panel and System" or another report determined by

1 the department to provide more appropriate newborn screening
2 guidelines, to protect the health and welfare of this state's
3 newborns and to maximize the number of newborn screenings that may
4 be conducted with the funding available for the screening;

5 [(2) determine the disorders to be studied under
6 Subdivision (1) and ensure the study does not examine screening and
7 services provided under Chapter 47; and

8 [(3) obtain proposals or information regarding the
9 conduct of newborn screening and compare the costs of the
10 department performing newborn screening services to the costs of
11 outsourcing screening to a qualified laboratory with at least two
12 years' experience performing newborn screening tests.]

13 (b) In accordance with rules adopted by the executive
14 commissioner [of the Health and Human Services Commission], the
15 department shall [may] implement a newborn screening program.

16 (c) In implementing the newborn screening program [If the
17 department determines under Subsection (a) that the department's
18 performance of newborn screening services is more cost-effective
19 than outsourcing newborn screening], the department shall obtain
20 the use of screening methodologies[, including tandem mass
21 spectrometers,] and hire the employees necessary to administer
22 newborn screening under this chapter.

23 [(d) If the department determines under Subsection (a) that
24 outsourcing of newborn screening is more cost-effective, the
25 department shall contract for the resources and services necessary
26 to conduct newborn screening using a competitive procurement
27 process.]

1 (e) The department shall periodically review the newborn
2 screening program [~~as revised under this section~~] to determine the
3 efficacy and cost-effectiveness of the program and determine
4 whether adjustments to the program are necessary to protect the
5 health and welfare of this state's newborns and to maximize the
6 number of newborn screenings that may be conducted with the funding
7 available for the screening.

8 (f) The executive commissioner by rule [~~department~~] may
9 establish [~~adjust~~] the amounts charged for newborn screening fees,
10 including fees assessed for follow-up services, tracking
11 confirmatory testing, and diagnosis.

12 SECTION 3.0101. Section 33.011(a-1), Health and Safety
13 Code, is amended to read as follows:

14 (a-1) Except as provided by this subsection and to the
15 extent funding is available for the screening, the department shall
16 require newborn screening tests to screen for disorders listed as
17 core and secondary conditions in the [~~December 2011~~] Recommended
18 Uniform Screening Panel of the Secretary's Advisory Committee on
19 Heritable Disorders in Newborns and Children or another report
20 determined by the department to provide more stringent newborn
21 screening guidelines to protect the health and welfare of this
22 state's newborns. The department, with the advice of the Newborn
23 Screening Advisory Committee, may require additional newborn
24 screening tests under this subsection to screen for other disorders
25 or conditions. The department may exclude from the newborn
26 screening tests required under this subsection screenings for
27 galactose epimerase and galactokinase.

1 SECTION 3.0102. Section 33.0112, Health and Safety Code, is
2 amended to read as follows:

3 Sec. 33.0112. DESTRUCTION OF GENETIC MATERIAL. (a) The
4 department shall destroy any genetic material obtained from a child
5 under this chapter not later than the second anniversary of the date
6 the department receives the genetic material unless a parent,
7 managing conservator, or guardian of the child consents to
8 disclosure under Section 33.018(c-1) [~~33.017(c-1)~~].

9 (b) The department shall destroy any genetic material
10 obtained from a child under this chapter not later than the second
11 anniversary of the date the department receives the genetic
12 material if:

13 (1) a parent, managing conservator, or guardian of the
14 child consents to disclosure under Section 33.018(c-1)
15 [~~33.017(c-1)~~];

16 (2) the parent, managing conservator, or guardian who
17 consented to the disclosure revokes the consent under Section
18 33.018(i) [~~33.017(i)~~]; and

19 (3) the department receives the written revocation of
20 consent under Section 33.018(i) [~~33.017(i)~~] not later than the
21 second anniversary of the date the department received the genetic
22 material.

23 (c) The department shall destroy any genetic material
24 obtained from a child under this chapter not later than the 60th day
25 after the date the department receives a written revocation of
26 consent under Section 33.018(i) [~~33.017(i)~~] if:

27 (1) a parent, managing conservator, or guardian of the

1 child consented to disclosure under Section 33.018(c-1)
2 [~~33.017(c-1)~~];

3 (2) the parent, managing conservator, or guardian who
4 consented to the disclosure or the child revokes the consent under
5 Section 33.018(i) [~~33.017(i)~~]; and

6 (3) the department receives the written revocation of
7 consent later than the second anniversary of the date the
8 department received the genetic material.

9 ~~[(d) A reference in this section to Section 33.017 means~~
10 ~~Section 33.017 as added by Chapter 179 (H.B. 1672), Acts of the 81st~~
11 ~~Legislature, Regular Session, 2009.]~~

12 SECTION 3.0103. Sections 33.016(a), (d), and (f), Health
13 and Safety Code, are amended to read as follows:

14 (a) The department may develop a program to approve any
15 laboratory that wishes to perform the tests required to be
16 administered under this chapter. To the extent that they are not
17 otherwise provided in this chapter, the executive commissioner
18 [~~board~~] may adopt rules prescribing procedures and standards for
19 the conduct of the program.

20 (d) The department may extend or renew any approval in
21 accordance with reasonable procedures prescribed by the executive
22 commissioner [~~board~~].

23 (f) Hearings under this section shall be conducted in
24 accordance with the department's hearing rules [~~adopted by the~~
25 ~~board~~] and the applicable provisions of Chapter 2001, Government
26 Code.

27 SECTION 3.0104. Sections 33.017(b) and (f), Health and

1 Safety Code, are amended to read as follows:

2 (b) The advisory committee consists of members appointed by
3 the commissioner [~~of state health services~~]. The advisory
4 committee must include the following members:

5 (1) at least four physicians licensed to practice
6 medicine in this state, including at least two physicians
7 specializing in neonatal-perinatal medicine;

8 (2) at least two hospital representatives;

9 (3) at least two persons who have family members
10 affected by a condition for which newborn screening is or may be
11 required under this subchapter; and

12 (4) at least two health care providers who are
13 involved in the delivery of newborn screening services, follow-up,
14 or treatment in this state.

15 (f) The advisory committee shall meet at least three times
16 each year and at other times at the call of the commissioner [~~of~~
17 ~~state health services~~].

18 SECTION 3.0105. Section 33.032, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 33.032. PROGRAM SERVICES. (a) Within the limits of
21 funds available for this purpose and in cooperation with the
22 individual's physician, the department may provide services
23 directly or through approved providers to individuals of any age
24 who meet the eligibility criteria specified by department [~~board~~]
25 rules on the confirmation of a positive test for phenylketonuria,
26 other heritable diseases, hypothyroidism, or another disorder for
27 which the screening tests are required.

1 (b) The executive commissioner [board] may adopt:

2 (1) rules specifying the type, amount, and duration of
3 program services to be offered;

4 (2) rules establishing the criteria for eligibility
5 for services, including the medical and financial criteria;

6 (3) rules establishing the procedures necessary to
7 determine the medical, financial, and other eligibility of the
8 individual;

9 (4) substantive and procedural rules for applying for
10 program services and processing those applications;

11 (5) rules for providing services according to a
12 sliding scale of financial eligibility;

13 (6) substantive and procedural rules for the denial,
14 modification, suspension, and revocation of an individual's
15 approval to receive services; and

16 (7) substantive and procedural rules for the approval
17 of providers to furnish program services.

18 (c) The department may select providers according to the
19 criteria in the department's [board's] rules.

20 (d) The executive commissioner by rule [board] may
21 establish [charge] fees to be collected by the department for the
22 provision of services, except that services may not be denied to an
23 individual because of the individual's inability to pay the fees.

24 SECTION 3.0106. Section 33.035(d), Health and Safety Code,
25 is amended to read as follows:

26 (d) The executive commissioner [board] by rule shall
27 provide criteria for actions taken under this section.

1 SECTION 3.0107. Section 33.036(c), Health and Safety Code,
2 is amended to read as follows:

3 (c) Chapter 2001, Government Code, does [do] not apply to
4 the notice and hearing required by this section.

5 SECTION 3.0108. Section 33.037(a), Health and Safety Code,
6 is amended to read as follows:

7 (a) The department [board] may require an individual or, if
8 the individual is a minor, the minor's parent, managing
9 conservator, or guardian, or other person with a legal obligation
10 to support the individual to pay or reimburse the department for all
11 or part of the cost of the services provided.

12 SECTION 3.0109. Sections 33.038(b) and (d), Health and
13 Safety Code, are amended to read as follows:

14 (b) This section creates a separate and distinct cause of
15 action, and the department [commissioner] may request the attorney
16 general to bring suit in the appropriate court of Travis County on
17 behalf of the department.

18 (d) The executive commissioner [board] by rule shall
19 provide criteria for actions taken under this section.

20 SECTION 3.0110. Sections 35.0021(6), (7), (10), (11), and
21 (12), Health and Safety Code, are amended to read as follows:

22 (6) "Other benefit" means a benefit, other than a
23 benefit provided under this chapter, to which a person is entitled
24 for payment of the costs of services provided under the program,
25 including benefits available from:

26 (A) an insurance policy, group health plan,
27 health maintenance organization, or prepaid medical or dental care

1 plan;

2 (B) Title XVIII, Title XIX, or Title XXI of the

3 Social Security Act (42 U.S.C. Sec. 1395 et seq., 42 U.S.C. Sec.

4 1396 et seq., and 42 U.S.C. Sec. 1397aa et seq.), as amended;

5 (C) the United States Department of Veterans

6 Affairs;

7 (D) the TRICARE program of the United States

8 Department of Defense [~~Civilian Health and Medical Program of the~~

9 ~~Uniformed Services~~];

10 (E) workers' compensation or any other

11 compulsory employers' insurance program;

12 (F) a public program created by federal or state

13 law or the ordinances or rules of a municipality or other political

14 subdivision of the state, excluding benefits created by the

15 establishment of a municipal or county hospital, a joint

16 municipal-county hospital, a county hospital authority, a hospital

17 district, or the facilities of a publicly supported medical school;

18 or

19 (G) a cause of action for the cost of care,

20 including medical care, dental care, facility care, and medical

21 supplies, required for a person applying for or receiving services

22 from the department, or a settlement or judgment based on the cause

23 of action, if the expenses are related to the need for services

24 provided under this chapter.

25 (7) "Physician" means a person licensed by the Texas

26 [~~State Board of~~] Medical Board [~~Examiners~~] to practice medicine in

27 this state.

1 (10) "Rehabilitation services" means the process of
2 the physical restoration, improvement, or maintenance of a body
3 function destroyed or impaired by congenital defect, disease, or
4 injury and includes:

5 (A) facility care, medical and dental care, and
6 occupational, speech, and physical therapy;

7 (B) the provision of braces, artificial
8 appliances, durable medical equipment, and other medical supplies;
9 and

10 (C) other types of care specified by department
11 [~~the board in the program~~] rules.

12 (11) "Services" means the care, activities, and
13 supplies provided under this chapter or department [~~program~~] rules,
14 including medical care, dental care, facility care, medical
15 supplies, occupational, physical, and speech therapy, and other
16 care specified by department [~~program~~] rules.

17 (12) "Specialty center" means a facility and staff
18 that meet minimum standards established under the program and are
19 designated by the department [~~board~~] for program use in the
20 comprehensive diagnostic and treatment services for a specific
21 medical condition.

22 SECTION 3.0111. Sections 35.003(b) and (c), Health and
23 Safety Code, are amended to read as follows:

24 (b) The executive commissioner [~~board~~] by rule shall:

25 (1) specify the type, amount, and duration of services
26 to be provided under this chapter; and

27 (2) permit the payment of insurance premiums for

1 eligible children.

2 (c) If budgetary limitations exist, the executive
3 commissioner [board] by rule shall establish a system of priorities
4 relating to the types of services or the classes of persons eligible
5 for the services. A waiting list of eligible persons may be
6 established if necessary for the program to remain within the
7 budgetary limitations. The department shall collect from each
8 applicant for services who is placed on a waiting list appropriate
9 information to facilitate contacting the applicant when services
10 become available and to allow efficient enrollment of the applicant
11 in those services. The information collected must include:

12 (1) the applicant's name, address, and phone number;

13 (2) the name, address, and phone number of a contact
14 person other than the applicant;

15 (3) the date of the applicant's earliest application
16 for services;

17 (4) the applicant's functional needs;

18 (5) the range of services needed by the applicant; and

19 (6) a date on which the applicant is scheduled for
20 reassessment.

21 SECTION 3.0112. Section 35.0033(b), Health and Safety Code,
22 is amended to read as follows:

23 (b) Except as required by [the] department rule, a health
24 benefits plan provider under this chapter is not subject to a law
25 that requires coverage or the offer of coverage of a health care
26 service or benefit.

27 SECTION 3.0113. Sections 35.004(a), (b), (d), (e), (f),

1 (h), and (i), Health and Safety Code, are amended to read as
2 follows:

3 (a) The executive commissioner [board] shall adopt
4 substantive and procedural rules for the selection of providers to
5 participate in the program, including rules for the selection of
6 specialty centers and rules requiring that providers accept program
7 payments as payment in full for services provided.

8 (b) The department [board] shall approve physicians,
9 dentists, licensed dietitians, facilities, specialty centers, and
10 other providers to participate in the program according to the
11 criteria and following the procedures prescribed by department
12 rules [~~the board~~].

13 (d) Except as specified in the department [~~program~~] rules, a
14 recipient of services may select any provider approved by the
15 department [board]. If the recipient is a minor, the person legally
16 authorized to consent to the treatment may select the provider.

17 (e) The executive commissioner [board] shall adopt
18 substantive and procedural rules for the modification, suspension,
19 or termination of the approval of a provider.

20 (f) The department [board] shall provide a due process
21 hearing procedure in accordance with department rules for the
22 resolution of conflicts between the department and a provider.
23 Chapter 2001, Government Code, does [~~do~~] not apply to conflict
24 resolution procedures adopted under this section.

25 (h) Subsection (f) does not apply if a contract:

26 (1) is canceled by the department because services are
27 restricted to conform to budgetary limitations and service

1 priorities are adopted by the executive commissioner [board]
2 regarding types of services to be provided; or
3 (2) expires according to its terms.

11 SECTION 3.0114. Sections 35.0041(a) and (c), Health and
12 Safety Code, are amended to read as follows:

13 (a) The executive commissioner [department] by rule shall
14 develop and the department shall implement policies permitting
15 reimbursement of a provider for services under the program
16 performed using telemedicine medical services.

17 (c) In developing and implementing the policies required by
18 this section, the executive commissioner and the department shall
19 consult with:

(2) Texas Tech University Health Sciences Center;

23 (3) the commission [Health and Human Services]
24 Commission], including the state Medicaid office;

25 (4) providers of telemedicine medical services and
26 telehealth services hub sites in this state;

27 (5) providers of services to children with special

1 health care needs; and

2 (6) representatives of consumer or disability groups
3 affected by changes to services for children with special health
4 care needs.

5 SECTION 3.0115. Section 35.005, Health and Safety Code, is
6 amended to read as follows:

7 Sec. 35.005. ELIGIBILITY FOR SERVICES. (a) The executive
8 commissioner [~~board~~] by rule shall:

9 (1) define medical, financial, and other criteria for
10 eligibility to receive services; and

11 (2) establish a system for verifying eligibility
12 information submitted by an applicant for or recipient of services.

13 (b) In defining medical and financial criteria for
14 eligibility under Subsection (a), the executive commissioner
15 [~~board~~] may not:

16 (1) establish an exclusive list of coverable medical
17 conditions; or

18 (2) consider as a source of support to provide
19 services assets legally owned or available to a child's household.

20 (c) A child is not eligible to receive rehabilitation
21 services unless:

22 (1) the child is a resident of this state;

23 (2) at least one physician or dentist certifies to the
24 department that the physician or dentist has examined the child and
25 finds the child to be a child with special health care needs whose
26 disability meets the medical criteria established by the executive
27 commissioner [~~board~~];

1 (3) the department determines that the persons who
2 have any legal obligation to provide services for the child are
3 unable to pay for the entire cost of the services;

4 (4) the child has a family income that is less than or
5 equal to 200 percent of the federal poverty level; and

6 (5) the child meets all other eligibility criteria
7 established by department [board] rules.

8 (d) A child is not eligible to receive services, other than
9 rehabilitation services, unless the child:

10 (1) is a resident of this state; and

11 (2) meets all other eligibility criteria established
12 by department [board] rules.

13 (e) Notwithstanding Subsection (c)(4), a child with special
14 health care needs who has a family income that is greater than 200
15 percent of the federal poverty level and who meets all other
16 eligibility criteria established by this section and by department
17 [board] rules is eligible for services if the department determines
18 that the child's family is or will be responsible for medical
19 expenses that are equal to or greater than the amount by which the
20 family's income exceeds 200 percent of the federal poverty level.

21 SECTION 3.0116. Sections 35.006(a), (c), (d), and (e),
22 Health and Safety Code, are amended to read as follows:

23 (a) The executive commissioner [board] shall adopt
24 substantive and procedural rules for the denial of applications and
25 the modification, suspension, or termination of services.

26 (c) The executive commissioner [board] by rule shall
27 provide criteria for action by the department under this section.

1 (d) The department shall conduct hearings under this
2 section in accordance with the department's [board's] due process
3 hearing rules. Chapter 2001, Government Code, does [do] not apply
4 to the granting, denial, modification, suspension, or termination
5 of services.

6 (e) This section does not apply if the department restricts
7 services to conform to budgetary limitations that require the
8 executive commissioner [board] to adopt service priorities
9 regarding types of services to be provided.

10 SECTION 3.0117. Sections 35.007(a) and (b), Health and
11 Safety Code, are amended to read as follows:

12 (a) The department [board] shall require a child receiving
13 services, or the person who has a legal obligation to support the
14 child, to pay for or reimburse the department for that part of the
15 cost of the services that the child or person is financially able to
16 pay.

17 (b) A child is not eligible to receive services under this
18 chapter to the extent that the child or a person with a legal
19 obligation to support the child is eligible for some other benefit
20 that would pay for all or part of the services. The executive
21 commissioner [board] may waive this subsection if its enforcement
22 will deny services to a class of children because of conflicting
23 state and federal laws or rules and regulations.

24 SECTION 3.0118. Section 35.008(b), Health and Safety Code,
25 is amended to read as follows:

26 (b) This section creates a separate cause of action, and the
27 department [commissioner] may request the attorney general to bring

1 suit in the appropriate court of Travis County on behalf of the
2 department.

3 SECTION 3.0119. Section 35.009, Health and Safety Code, is
4 amended to read as follows:

5 Sec. 35.009. FEES. The executive commissioner by rule
6 [board] may adopt reasonable procedures and standards for the
7 determination of fees and charges for program services.

8 SECTION 3.0120. Sections 36.004(a) and (c), Health and
9 Safety Code, are amended to read as follows:

10 (a) The executive commissioner [board] by rule shall
11 require screening of individuals who attend public or private
12 preschools or schools to detect vision and hearing disorders and
13 any other special senses or communication disorders specified by
14 the executive commissioner [board]. In developing the rules, the
15 executive commissioner [board] may consider the number of
16 individuals to be screened and the availability of:

17 (1) personnel qualified to administer the required
18 screening;

19 (2) appropriate screening equipment; and

20 (3) state and local funds for screening activities.

21 (c) The executive commissioner [board] shall adopt a
22 schedule for implementing the screening requirements and shall give
23 priority to the age groups that may derive the greatest educational
24 and social benefits from early identification of special senses and
25 communication disorders.

26 SECTION 3.0121. Sections 36.005(a) and (c), Health and
27 Safety Code, are amended to read as follows:

1 (a) An individual required to be screened shall undergo
2 approved screening for vision and hearing disorders and any other
3 special senses and communication disorders specified by the
4 executive commissioner [board]. The individual shall comply with
5 the requirements as soon as possible after the individual's
6 admission to a preschool or school and within the period set by the
7 executive commissioner [board]. The individual or, if the
8 individual is a minor, the minor's parent, managing conservator, or
9 guardian, may substitute professional examinations for the
10 screening.

11 (c) The chief administrator of each preschool or school
12 shall ensure that each individual admitted to the preschool or
13 school complies with the screening requirements set by the
14 executive commissioner [board] or submits an affidavit of
15 exemption.

16 SECTION 3.0122. Sections 36.006(a) and (d), Health and
17 Safety Code, are amended to read as follows:

18 (a) The chief administrator of each preschool or school
19 shall maintain, on a form prescribed by the department in
20 accordance with department rules, screening records for each
21 individual in attendance, and the records are open for inspection
22 by the department or the local health department.

23 (d) Each preschool or school shall submit to the department
24 an annual report on the screening status of the individuals in
25 attendance during the reporting year and shall include in the
26 report any other information required by the executive commissioner
27 [board]. The report must be on a form prescribed by the department

1 in accordance with department rules and must be submitted according
2 to the [board's] rules.

3 SECTION 3.0123. Sections 36.007(b) and (c), Health and
4 Safety Code, are amended to read as follows:

5 (b) The executive commissioner [board] by rule shall:

6 (1) describe the type, amount, and duration of
7 remedial services that the department provides;

8 (2) establish medical, financial, and other criteria
9 to be applied by the department in determining an individual's
10 eligibility for the services;

11 (3) establish criteria for the selection by the
12 department of providers of remedial services; and

13 (4) establish procedures necessary to provide
14 remedial services.

15 (c) The executive commissioner [board] may establish a
16 schedule to determine financial eligibility.

17 SECTION 3.0124. Sections 36.008(d) and (e), Health and
18 Safety Code, are amended to read as follows:

19 (d) The department may modify, suspend, or terminate the
20 eligibility of an applicant for or recipient of remedial services
21 after notice to the affected individual and an opportunity for a
22 fair hearing that is conducted in accordance with the department's
23 informal hearing rules [adopted by the board].

24 (e) The executive commissioner [board] by rule shall
25 provide criteria for actions taken under this section.

26 SECTION 3.0125. Section 36.009(a), Health and Safety Code,
27 is amended to read as follows:

1 (a) The executive commissioner [board] may require an
2 individual or, if the individual is a minor, the minor's parent,
3 managing conservator, or guardian, to pay or reimburse the
4 department for a part of the cost of the remedial services provided.

5 SECTION 3.0126. Section 36.010(d), Health and Safety Code,
6 is amended to read as follows:

7 (d) The executive commissioner [board] by rule shall
8 provide criteria for actions taken under this section.

9 SECTION 3.0127. Section 36.011(a), Health and Safety Code,
10 is amended to read as follows:

11 (a) The department in accordance with department rules may
12 require that persons who administer special senses and
13 communication disorders screening complete an approved training
14 program, and the department may train those persons and approve
15 training programs.

16 SECTION 3.0128. Sections 37.001(b), (c), and (d), Health
17 and Safety Code, are amended to read as follows:

18 (b) The executive commissioner [board], in cooperation with
19 the Texas Education Agency, shall adopt rules for the mandatory
20 spinal screening of children in grades 6 and 9 attending public or
21 private schools. The department shall coordinate the spinal
22 screening program with any other screening program conducted by the
23 department on those children.

24 (c) The executive commissioner [board] shall adopt
25 substantive and procedural rules necessary to administer screening
26 activities.

27 (d) A rule adopted by the executive commissioner [board]

1 under this chapter may not require any expenditure by a school,
2 other than an incidental expense required for certification
3 training for nonhealth practitioners and for notification
4 requirements under Section 37.003.

5 SECTION 3.0129. Sections 37.002(a) and (c), Health and
6 Safety Code, are amended to read as follows:

7 (a) Each individual required by a department [board] rule to
8 be screened shall undergo approved screening for abnormal spinal
9 curvature. The individual's parent, managing conservator, or
10 guardian may substitute professional examinations for the
11 screening.

12 (c) The chief administrator of each school shall ensure that
13 each individual admitted to the school complies with the screening
14 requirements set by the executive commissioner [board] or submits
15 an affidavit of exemption.

16 SECTION 3.0130. Section 39.002, Health and Safety Code, is
17 amended to read as follows:

18 Sec. 39.002. CHILDREN'S OUTREACH HEART PROGRAM. The
19 department, with approval of the executive commissioner [board],
20 may establish a children's outreach heart program to provide:

21 (1) prediagnostic cardiac screening and follow-up
22 evaluation services to persons under 21 years of age who are from
23 low-income families and who may have a heart disease or defect; and
24 (2) training to local physicians and public health
25 nurses in screening and diagnostic procedures for heart disease or
26 defect.

27 SECTION 3.0131. Section 39.003, Health and Safety Code, is

1 amended to read as follows:

2 Sec. 39.003. RULES. The executive commissioner [board]
3 shall adopt rules the executive commissioner [~~it~~] considers
4 necessary to define the scope of the children's outreach heart
5 program and the medical and financial standards for eligibility.

6 SECTION 3.0132. Section 39.004, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 39.004. FEES. Recipients of services or training
9 provided by the program may be charged a fee for services or
10 training according to rules adopted by the executive commissioner
11 [board].

12 SECTION 3.0133. Section 40.002, Health and Safety Code, is
13 amended to read as follows:

14 Sec. 40.002. EPILEPSY PROGRAM. [(a)] The department, with
15 approval of the executive commissioner [board], may establish an
16 epilepsy program to provide diagnostic services, treatment, and
17 support services to eligible persons who have epilepsy.

18 [~~(b) The commissioner may appoint an epilepsy advisory~~
19 ~~board to assist the department in developing the epilepsy program.~~]]

20 SECTION 3.0134. Section 40.003, Health and Safety Code, is
21 amended to read as follows:

22 Sec. 40.003. RULES. The executive commissioner [board] may
23 adopt rules the executive commissioner [~~it~~] considers necessary to
24 define the scope of the epilepsy program and the medical and
25 financial standards for eligibility.

26 SECTION 3.0135. Section 40.004(a), Health and Safety Code,
27 is amended to read as follows:

1 (a) The commissioner, with the approval of the executive
2 commissioner [board], may appoint an administrator to carry out the
3 epilepsy program.

4 SECTION 3.0136. Section 40.005, Health and Safety Code, is
5 amended to read as follows:

6 Sec. 40.005. FEES. Program patients may be charged a fee
7 for services according to rules adopted by the executive
8 commissioner [board].

9 SECTION 3.0137. Sections 41.001(1) and (2), Health and
10 Safety Code, are amended to read as follows:

11 (1) "Hemophilia" means a human physical condition
12 characterized by bleeding resulting from a genetically or
13 hereditarily determined deficiency of a blood coagulation factor
14 [~~or hereditarily~~] resulting in an abnormal or deficient plasma
15 procoagulant.

16 (2) "Other benefit" means a benefit, other than a
17 benefit under this chapter, to which a person is entitled for
18 payment of the costs of blood factor replacement products[, blood
19 ~~derivatives and concentrates,~~] and other substances provided under
20 this chapter, including benefits available from:

21 (A) an insurance policy, group health plan, or
22 prepaid medical or dental care plan;

23 (B) Title XVIII or Title XIX of the Social
24 Security Act (42 U.S.C. Sec. 1395 et seq. or 42 U.S.C. Sec. 1396 et
25 seq.);

26 (C) the United States Department of Veterans
27 Affairs [Administration];

1 (D) the TRICARE program of the United States
2 Department of Defense [~~civilian Health and Medical Program of the~~
3 ~~Uniformed Services~~];

4 (E) workers' compensation or any compulsory
5 employers' insurance program;

6 (F) a public program created by federal law,
7 state law, or the ordinances or rules of a municipality or political
8 subdivision of the state, excluding benefits created by the
9 establishment of a municipal or county hospital, a joint
10 municipal-county hospital, a county hospital authority, a hospital
11 district, or the facilities of a publicly supported medical school;
12 or

13 (G) a cause of action for medical or dental
14 expenses to a person applying for or receiving services from the
15 department, or a settlement or judgment based on the cause of
16 action, if the expenses are related to the need for services
17 provided under this chapter.

18 SECTION 3.0138. Section 41.002, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 41.002. HEMOPHILIA ASSISTANCE PROGRAM. (a) The
21 hemophilia assistance program is in the department to assist
22 persons who have hemophilia and who require continuing treatment
23 with blood factor replacement [, ~~blood derivatives, or manufactured~~
24 ~~pharmaceutical~~] products, but who are unable to pay the entire cost
25 of the treatment.

26 (b) The executive commissioner [~~department~~] shall establish
27 standards of eligibility for assistance under this chapter in

1 accordance with Section 41.004.

2 (c) The department shall provide, through approved
3 providers, financial assistance for medically eligible persons in
4 obtaining blood factor replacement products [~~, blood derivatives~~
5 ~~and concentrates,~~] and other substances for use in medical or
6 dental facilities or in the home.

7 SECTION 3.0139. Section 41.007(b), Health and Safety Code,
8 is amended to read as follows:

9 (b) The department shall identify [~~investigate~~] any
10 potential sources of funding from federal grants or programs.

11 SECTION 3.0140. Sections 42.001(b) and (c), Health and
12 Safety Code, are amended to read as follows:

13 (b) The state finds that one of the most serious and tragic
14 problems facing the public health and welfare is the death each year
15 from end stage renal [~~chronic kidney~~] disease of hundreds of
16 persons in this state, when the present state of medical art and
17 technology could return many of those individuals to a socially
18 productive life. Patients may die for lack of personal financial
19 resources to pay for the expensive equipment and care necessary for
20 survival. The state therefore recognizes a responsibility to allow
21 its citizens to remain healthy without being pauperized and a
22 responsibility to use the resources and organization of the state
23 to gather and disseminate information on the prevention and
24 treatment of end stage renal [~~chronic kidney~~] disease.

25 (c) A comprehensive program to combat end stage renal
26 [~~kidney~~] disease must be implemented through the combined and
27 correlated efforts of individuals, state and local governments,

1 persons in the field of medicine, universities, and nonprofit
2 organizations. The program provided by this chapter is designed to
3 direct the use of resources and to coordinate the efforts of the
4 state in this vital matter of public health.

5 SECTION 3.0141. Section 42.002(2), Health and Safety Code,
6 is amended to read as follows:

7 (2) "Other benefit" means a benefit, other than one
8 provided under this chapter, to which a person is entitled for
9 payment of the costs of medical care and treatment, services,
10 pharmaceuticals, transportation, and supplies, including benefits
11 available from:

12 (A) an insurance policy, group health plan, or
13 prepaid medical care plan;

14 (B) Title XVIII or Title XIX of the Social
15 Security Act (42 U.S.C. Sec. 1395 et seq. and 42 U.S.C. Sec. 1396 et
16 seq.);

17 (C) the United States Department of Veterans
18 Affairs [Administration];

19 (D) the TRICARE program of the United States
20 Department of Defense [Civilian Health and Medical Program of the
21 Uniformed Services];

22 (E) workers' compensation or other compulsory
23 employers' insurance programs [program];

24 (F) a public program created by federal law,
25 state law, or the ordinances or rules of a municipality or other
26 political subdivision of the state, excluding benefits created by
27 the establishment of a municipal or county hospital, a joint

1 municipal-county hospital, a county hospital authority, or a
2 hospital district; or

3 (G) a cause of action for medical expenses
4 brought by an applicant for or recipient of services from the
5 department, or a settlement or judgment based on the cause of
6 action, if the expenses are related to the need for services
7 provided under this chapter.

8 SECTION 3.0142. Section 42.003, Health and Safety Code, is
9 amended to read as follows:

10 Sec. 42.003. KIDNEY HEALTH CARE PROGRAM [DIVISION]. (a)
11 The kidney health care program [division] is in the department to
12 carry out this chapter. [~~The board shall administer the division.~~]

13 (b) The department [division] may develop and expand
14 [~~assist in the development and expansion of~~] programs for the care
15 and treatment of persons with end stage renal [~~chronic kidney~~]
16 disease, including dialysis and other lifesaving medical
17 procedures and techniques.

18 (c) The executive commissioner [~~board~~] may adopt rules
19 necessary to carry out this chapter and to provide adequate kidney
20 care and treatment for citizens of this state.

21 SECTION 3.0143. Section 42.004, Health and Safety Code, is
22 amended to read as follows:

23 Sec. 42.004. SERVICES. (a) The department [division]
24 shall provide kidney care services directly or through public or
25 private resources to persons the department determines [~~determined~~
26 ~~by the board~~] to be eligible for services authorized under this
27 chapter.

1 (b) The department [division] may cooperate with other
2 departments, agencies, political subdivisions, and public and
3 private institutions to provide the services authorized by this
4 chapter to eligible persons, to study the public health and welfare
5 needs involved, and to plan, establish, develop, and provide
6 programs or facilities and services that are necessary or
7 desirable, including any that are jointly administered with state
8 agencies.

9 (c) The department [division] may conduct research and
10 compile statistics relating to the provision of kidney care
11 services and the need for the services by [disabled or handicapped]
12 persons with disabilities.

13 (d) The department [division] may contract with schools,
14 hospitals, corporations, agencies, and individuals, including
15 doctors, nurses, and technicians, for training, physical
16 restoration, transportation, and other services necessary to treat
17 and care for persons with end stage renal [kidney] disease.

18 SECTION 3.0144. Sections 42.0045(a), (b), and (c), Health
19 and Safety Code, are amended to read as follows:

20 (a) Sections 483.041(a) and 483.042 of this code, Subtitle
21 J, Title 3, Occupations Code, and other applicable laws
22 establishing prohibitions do not apply to a dialysate, device, or
23 drug exclusively used or necessary to perform dialysis that a
24 physician prescribes or orders for administration or delivery to a
25 person with end stage renal disease [chronic kidney failure] if:

26 (1) the dialysate, device, or drug is lawfully held by
27 a manufacturer or wholesaler licensed by the department [registered

1 ~~with the board~~;

2 (2) the manufacturer or wholesaler delivers the
3 dialysate, device, or drug to:

4 (A) a person with end stage renal disease
5 ~~chronic kidney failure~~ for self-administration at the person's
6 home or a specified address, as ordered by a physician; or

7 (B) a physician for administration or delivery to
8 a person with end stage renal disease ~~chronic kidney failure~~; and

9 (3) the manufacturer or wholesaler has sufficient and
10 qualified supervision to adequately protect the public health.

11 (b) The executive commissioner ~~board~~ shall adopt rules
12 necessary to ensure the safe distribution, without the interruption
13 of supply, of a dialysate, device, or drug covered by Subsection
14 (a). The rules must include provisions regarding manufacturer and
15 wholesaler licensing, record keeping, evidence of a delivery to a
16 patient or a patient's designee, patient training, specific product
17 and quantity limitation, physician prescriptions or order forms,
18 adequate facilities, and appropriate labeling to ensure that
19 necessary information is affixed to or accompanies the dialysate,
20 device, or drug.

21 (c) If the department ~~board~~ determines that a dialysate,
22 device, or drug distributed under this chapter is ineffective or
23 unsafe for its intended use, the department ~~board~~ may immediately
24 recall the dialysate, device, or drug distributed to an individual
25 patient.

26 SECTION 3.0145. Sections 42.005(a), (b), (c), and (d),
27 Health and Safety Code, are amended to read as follows:

1 (a) The executive commissioner [board] may establish [~~and~~
2 ~~maintain~~] standards for the accreditation of all facilities
3 designed or intended to deliver care or treatment for persons with
4 end stage renal [~~chronic kidney~~] disease, and the department shall
5 Maintain all established standards.

6 (b) The department [~~division~~] may conduct surveys of
7 existing facilities in this state that diagnose, evaluate, and
8 treat patients with end stage renal [~~kidney~~] disease and may
9 prepare and submit its findings and a specific program of action.

10 (c) The department [~~division~~] may evaluate the need to
11 create local or regional facilities and to establish a major kidney
12 research center.

13 (d) The department [~~division~~] may:

14 (1) establish or construct rehabilitation facilities
15 and workshops;

16 (2) make grants to public agencies and make contracts
17 or other arrangements with public and other nonprofit agencies,
18 organizations, or institutions for the establishment of workshops
19 and rehabilitation facilities; and

20 (3) operate facilities to carry out this chapter.

21 SECTION 3.0146. Sections 42.006(a), (b), and (d), Health
22 and Safety Code, are amended to read as follows:

23 (a) The department shall select providers to furnish kidney
24 health care services under the program according to the criteria
25 and procedures adopted by the executive commissioner [board].

26 (b) The department [board] shall provide a hearing
27 procedure in accordance with department rules for the resolution of

1 conflicts between the department and a provider. Chapter 2001,
2 Government Code, does [do] not apply to conflict resolution
3 procedures adopted under this section.

4 (d) Subsections (b) and (c) do not apply if a contract:

5 (1) is canceled because program services are
6 restricted to conform to budgetary limitations that require the
7 executive commissioner [board] to adopt service priorities
8 regarding types of services to be furnished or classes of eligible
9 individuals; or

10 (2) expires according to its terms.

11 SECTION 3.0147. Section 42.007, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 42.007. ELIGIBILITY FOR SERVICES. The executive
14 commissioner [board] may determine the terms, conditions, and
15 standards, including medical and financial standards, for the
16 eligibility of persons with end stage renal [~~chronic kidney~~]
17 disease to receive the aid, care, or treatment provided under this
18 chapter.

19 SECTION 3.0148. Sections 42.008(b), (c), and (d), Health
20 and Safety Code, are amended to read as follows:

21 (b) The program rules adopted by the executive commissioner
22 [board] must contain the criteria for the department's action under
23 this section.

24 (c) Chapter 2001, Government Code, does [do] not apply to
25 the granting, denial, modification, suspension, or termination of
26 services provided under this chapter. Hearings under this section
27 must be conducted in accordance with the department's [board's]

1 hearing rules.

2 (d) This section does not apply if program services are
3 restricted to conform to budgetary limitations that require the
4 executive commissioner [board] to adopt service priorities
5 regarding types of services to be furnished or classes of eligible
6 persons.

7 SECTION 3.0149. Section 42.009(d), Health and Safety Code,
8 is amended to read as follows:

9 (d) The executive commissioner [board] may waive the
10 provisions of Subsection (a) in certain individually considered
11 cases when the enforcement of that provision will deny services to a
12 class of end stage renal disease patients because of conflicting
13 state or federal laws or rules.

14 SECTION 3.0150. Sections 42.011(a) and (b), Health and
15 Safety Code, are amended to read as follows:

16 (a) The department [division] may receive and use gifts to
17 carry out this chapter.

18 (b) The department [board] may comply with any requirements
19 necessary to obtain federal funds in the maximum amount and most
20 advantageous proportions possible to carry out this chapter.

21 SECTION 3.0151. Section 42.012(a), Health and Safety Code,
22 is amended to read as follows:

23 (a) The department [division] may enter into contracts and
24 agreements with persons, colleges, universities, associations,
25 corporations, municipalities, and other units of government as
26 necessary to carry out this chapter.

27 SECTION 3.0152. Section 42.013, Health and Safety Code, is

1 amended to read as follows:

2 Sec. 42.013. COOPERATION. (a) The department [~~division~~]
3 may cooperate with private or public agencies to facilitate the
4 availability of adequate care for all citizens with end stage renal
5 [~~chronic kidney~~] disease.

6 (b) The department [~~board~~] shall make agreements,
7 arrangements, or plans to cooperate with the federal government in
8 carrying out the purposes of this chapter or of any federal statute
9 or rule relating to the prevention, care, or treatment of end stage
10 renal [~~kidney~~] disease or the care, treatment, or rehabilitation of
11 persons with end stage renal [~~kidney~~] disease. The executive
12 commissioner [~~board~~] may adopt rules and methods of administration
13 found by the federal government to be necessary for the proper and
14 efficient operation of the agreements, arrangements, or plans.

15 (c) The department [~~division~~] may enter into reciprocal
16 agreements with other states.

17 SECTION 3.0153. Section 42.014, Health and Safety Code, is
18 amended to read as follows:

19 Sec. 42.014. SCIENTIFIC INVESTIGATIONS. (a) The
20 department [~~division~~] may develop and administer scientific
21 investigations into the cause, prevention, methods of treatment,
22 and cure of end stage renal [~~kidney~~] disease, including research
23 into kidney transplantation.

24 (b) The department [~~division~~] may develop techniques for an
25 effective method of mass testing to detect end stage renal [~~kidney~~]
26 disease and urinary tract infections.

27 SECTION 3.0154. Section 42.015, Health and Safety Code, is

1 amended to read as follows:

2 Sec. 42.015. EDUCATIONAL PROGRAMS. (a) The department
3 [~~division~~] may develop, implement [~~institute, carry on~~], and
4 supervise educational programs for the public and health providers,
5 including physicians, hospitals, and public health departments,
6 concerning end stage renal [~~chronic kidney~~] disease, including
7 prevention and methods of care and treatment.

8 (b) The department [~~division~~] may use existing public or
9 private programs or groups for the educational programs.

10 SECTION 3.0155. Section 42.016, Health and Safety Code, is
11 amended to read as follows:

12 Sec. 42.016. REPORTS. The department [~~board~~] shall report
13 to the governor and the legislature not later than February 1 of
14 each year concerning its findings, progress, and activities under
15 this chapter and the state's total need in the field of kidney
16 health care.

17 SECTION 3.0156. Section 42.017, Health and Safety Code, is
18 amended to read as follows:

19 Sec. 42.017. INSURANCE PREMIUMS. The department [~~board~~]
20 may provide for payment of the premiums required to maintain
21 coverage under Title XVIII of the Social Security Act (42 U.S.C.
22 Section 1395 et seq.) for certain classes of persons with end stage
23 renal disease, in individually considered instances according to
24 criteria established by department [~~board~~] rules.

25 SECTION 3.0157. Section 42.018, Health and Safety Code, is
26 amended to read as follows:

27 Sec. 42.018. FREEDOM OF SELECTION. The freedom of an

1 eligible person to select a treating physician, a treatment
2 facility, or a treatment modality is not limited by Section 42.009
3 if the physician, facility, or modality is approved by the
4 department [board] as required by this chapter.

5 SECTION 3.0158. Section 43.003(a)(3), Health and Safety
6 Code, is amended to read as follows:

7 (3) "Other benefit" means a benefit, other than a
8 benefit provided under this chapter, to which an individual is
9 entitled for the payment of the costs of oral health treatment
10 services, including benefits available from:

11 (A) an insurance policy, group oral health plan,
12 or prepaid oral care plan;

13 (B) Title XVIII or Title XIX of the Social
14 Security Act, as amended (42 U.S.C. Sec. 1395 et seq. and 42 U.S.C.
15 Sec. 1396 et seq.);

16 (C) the United States Department of Veterans
17 Affairs [Administration];

18 (D) the TRICARE program of the United States
19 Department of Defense [~~Civilian Health and Medical Program of the~~
20 ~~Uniformed Services~~];

21 (E) workers' compensation or any other
22 compulsory employer's insurance program;

23 (F) a public program created by federal law,
24 state law, or the ordinances or rules of a municipality or other
25 political subdivision of the state; or

26 (G) a cause of action for the expenses of dental
27 or oral health treatment services, or a settlement or judgment

1 based on the cause of action, if the expenses are related to the
2 need for treatment services provided under this chapter.

3 SECTION 3.0159. Section 43.003(b), Health and Safety Code,
4 is amended to read as follows:

5 (b) The executive commissioner [board] by rule may define a
6 word or term not defined by Subsection (a) as necessary to
7 administer this chapter. The executive commissioner [board] may
8 not define a word or term so that the word or term is inconsistent or
9 in conflict with the purposes of this chapter.

10 SECTION 3.0160. Sections 43.004(b) and (e), Health and
11 Safety Code, are amended to read as follows:

12 (b) The executive commissioner [board] shall adopt rules to
13 govern the program, to prescribe the type, amount, and duration of
14 oral health services to be provided, and, if necessary to conform to
15 budgetary limitations, to prescribe a system of program priorities
16 regarding the types of services to be furnished, the geographic
17 areas to be covered, or the classes of individuals eligible for
18 services.

19 (e) The department may provide services only as prescribed
20 by department [board] rules.

21 SECTION 3.0161. Section 43.005(a), Health and Safety Code,
22 is amended to read as follows:

23 (a) The department shall:

24 (1) administer the program of oral health services
25 [~~established by the board~~]; and

26 (2) develop [~~adopt~~] the design and content of all
27 forms necessary for the program.

1 SECTION 3.0162. Sections **43.006(a), (b), and (d)**, Health
2 and Safety Code, are amended to read as follows:

3 (a) The executive commissioner [board] may adopt
4 substantive and procedural rules relating to:

5 (1) the selection of dentists, physicians,
6 facilities, and other providers to furnish program services,
7 including criteria for the emergency selection of providers; and

8 (2) the denial, modification, suspension, or
9 termination of a provider's program participation.

10 (b) The department shall approve providers to participate
11 in the program according to the criteria, rules, and procedures
12 adopted by the executive commissioner [board].

13 (d) The department [board] shall provide a due process
14 hearing procedure in accordance with department rules for the
15 resolution of conflicts between the department and a provider.
16 Chapter 2001, Government Code, does [do] not apply to conflict
17 resolution procedures adopted under this section.

18 SECTION 3.0163. Section **43.007**, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 43.007. INDIVIDUAL REFERRAL AND APPLICATION FOR
21 SERVICES. (a) The executive commissioner [board] may adopt
22 substantive and procedural rules to govern the application for
23 admission to the program and the receipt of treatment services,
24 including the dental, financial, and other criteria for eligibility
25 to receive treatment services.

26 (b) An applicant for treatment services must be referred to
27 the program by a person who knows the individual's economic

1 condition, such as a school administrator or school nurse, social
2 worker, municipal or county official, dentist, physician, public
3 health clinic, community health center, hospital, or any other
4 source acceptable to the executive commissioner [board].

5 (c) An applicant for treatment services must complete or
6 cause to be completed an application form prescribed under Section
7 43.005 [~~by the department~~].

8 (d) The application form must include or be accompanied by:

9 (1) a statement by the individual, or by the person
10 with a legal obligation to support the individual, that the
11 individual or the person is financially unable to pay for all or
12 part of the cost of the necessary treatment services;

13 (2) a statement from the referring person that the
14 treatment services are necessary to prevent or reduce the
15 probability of pain, infection, or disease; and

16 (3) any other assurances from the applicant or any
17 other documentary evidence required by the department [board] to
18 support the applicant's eligibility.

19 SECTION 3.0164. Section 43.008, Health and Safety Code, is
20 amended to read as follows:

21 Sec. 43.008. ELIGIBILITY FOR SERVICES. (a) The department
22 shall determine an individual's eligibility for treatment services
23 according to this chapter and department [~~the program~~] rules.

24 (b) An individual is not eligible to receive treatment
25 services provided under this chapter unless:

26 (1) the individual is a resident of this state;
27 (2) the department has determined that neither the

1 individual nor a person with a legal obligation to support the
2 individual is financially able to pay for all or part of the
3 treatment services provided by this chapter;

4 (3) the individual complies with any other
5 requirements stated in the department [program] rules; and

6 (4) at least one licensed dentist or licensed
7 physician has certified to the department that the dentist or
8 physician has examined the individual and has found that:

9 (A) the individual meets the department's
10 [board's] dental criteria; and

11 (B) the dentist or physician has reason to expect
12 that the treatment services provided by or through the department
13 will prevent or reduce the probability of the individual's
14 experiencing pain, infection, or disease.

15 (c) Except as permitted by department [program] rules, the
16 department may not provide treatment services before an
17 individual's eligibility date assigned by the department or
18 authorize payment for treatment services furnished by a provider
19 before that date.

20 SECTION 3.0165. Sections 43.009(b) and (c), Health and
21 Safety Code, are amended to read as follows:

22 (b) The executive commissioner [board] by rule shall
23 provide criteria for action by the department under this section.

24 (c) Chapter 2001, Government Code, does [do] not apply to
25 the granting, denial, modification, suspension, or termination of
26 treatment services. The department shall conduct hearings in
27 accordance with the department's [board's] due process hearing

1 rules.

2 SECTION 3.0166. Section 43.010(e), Health and Safety Code,
3 is amended to read as follows:

4 (e) The commissioner may waive the enforcement of
5 Subsection (b) as prescribed by department [board] rules in certain
6 individually considered cases in which enforcement will deny
7 treatment services to a class of otherwise eligible individuals
8 because of conflicting federal, state, or local laws or rules.

9 SECTION 3.0167. Section 43.012, Health and Safety Code, is
10 amended to read as follows:

11 Sec. 43.012. FEES. The department, in accordance with
12 department rules, [board] may charge fees for the oral health
13 services provided directly by the department or through approved
14 providers in accordance with Subchapter D, Chapter 12.

15 SECTION 3.0168. Section 43.013(a), Health and Safety Code,
16 is amended to read as follows:

17 (a) The department [~~Subject to limitations or conditions~~
18 ~~prescribed by the legislature, the board~~] may seek, receive, and
19 spend funds received from any public or private source for the
20 purposes of this chapter, subject to:

21 (1) the limitations or conditions prescribed by the
22 legislature; and

23 (2) any limitations or conditions prescribed by the
24 executive commissioner.

25 SECTION 3.0169. Section 45.003, Health and Safety Code, is
26 amended to read as follows:

27 Sec. 45.003. RULES. The executive commissioner [board] may

1 adopt rules governing eligibility for a child passenger safety seat
2 system from the program established under Section 45.002.

3 SECTION 3.0170. Sections 47.001(3), (4), (6), and (9),
4 Health and Safety Code, are amended to read as follows:

5 (3) "Health care provider" means a registered nurse
6 recognized as an advanced practice registered nurse by the Texas
7 Board of Nursing or a physician assistant licensed by the Texas
8 Physician Assistant Board.

9 (4) "Hearing loss" means a hearing loss of 30 dB HL or
10 greater in the frequency region important for speech recognition
11 and comprehension in one or both ears, approximately 500 through
12 4,000 Hz. As technological advances permit the detection of less
13 severe hearing loss, the executive commissioner [department] may
14 modify this definition by rule.

15 (6) "Intervention or follow-up care" means the early
16 intervention services described in Part C, Individuals with
17 Disabilities Education Act (20 U.S.C. Sections 1431-1443)
18 [~~1431-1445~~, as amended by Pub. L. No. 105-17].

19 (9) "Physician" means a person licensed to practice
20 medicine by the Texas [State Board of] Medical Board [Examiners].

21 SECTION 3.0171. Sections 47.004(a), (b), and (d), Health
22 and Safety Code, are amended to read as follows:

23 (a) The executive commissioner [department or the
24 department's designee] shall establish certification criteria for
25 implementing a program.

26 (b) In order to be certified, the program must:

27 (1) provide hearing screening using equipment

1 recommended by the department;

2 (2) use appropriate staff to provide the screening;

3 (3) maintain and report data electronically as

4 required by [the] department rule;

5 (4) distribute family, health care provider, and

6 physician educational materials standardized by the department;

7 (5) provide information, as recommended by the

8 department, to the parents on follow-up services for newborns and

9 infants who do not pass the screening; and

10 (6) be supervised by:

11 (A) a physician;

12 (B) an audiologist;

13 (C) a registered nurse; or

14 (D) a physician assistant.

15 (d) The department may renew the certification of a program

16 on a periodic basis as established by department [board] rule in

17 order to ensure quality services to newborns, infants, and

18 families.

19 SECTION 3.0172. Section 47.007, Health and Safety Code, as

20 amended by Chapters 1273 (H.B. 411) and 601 (S.B. 229), Acts of the

21 82nd Legislature, Regular Session, 2011, is reenacted and amended

22 to read as follows:

23 Sec. 47.007. INFORMATION MANAGEMENT, REPORTING, AND

24 TRACKING SYSTEM. (a) The department shall provide each birthing

25 facility that provides newborn hearing screening under the state's

26 medical assistance program provided under Chapter 32, Human

27 Resources Code, with access to the appropriate information

1 management, reporting, and tracking system for the program. The
2 information management, reporting, and tracking system must be
3 capable of providing the department with information and data
4 necessary to plan, monitor, and evaluate the program, including the
5 program's screening, follow-up, diagnostic, and intervention
6 components.

7 (b) Subject to Section [47.008](#), a qualified hearing
8 screening provider, hospital, health care provider, physician,
9 audiologist, or intervention specialist shall access the
10 information management, reporting, and tracking system to provide
11 information to the department and may obtain information from the
12 department relating to:

13 (1) the results of each hearing screening performed
14 under Section [47.003\(a\)](#) or [47.0031\(a\)](#);

15 (2) the results of each diagnostic audiological
16 evaluation required under Section [47.0031\(b\)\(2\)](#);

17 (3) infants who receive follow-up care;

18 (4) infants identified with hearing loss;

19 (5) infants who are referred for intervention
20 services; and

21 (6) case level information necessary to report
22 required statistics to:

23 (A) the federal Maternal and Child Health Bureau
24 on an annual basis; and

25 (B) the federal Centers for Disease Control and
26 Prevention.

27 (c) A birthing facility described by Subsection (a) shall

1 report the resulting information in the format and within the time
2 frame specified by the department.

3 (d) ~~[A birthing facility described by Subsection (a) shall~~
4 ~~report the resulting information in the format and within the time~~
5 ~~frame specified by the department.~~

6 [(d) ~~A qualified hearing screening provider, audiologist,~~
7 ~~intervention specialist, educator, or other person who receives a~~
8 ~~referral from a program under this chapter shall:~~

9 [(1) ~~provide the services needed by the child or refer~~
10 ~~the child to a person who provides the services needed by the child,~~
11 and

12 [(2) ~~provide, with the consent of the child's parent,~~
13 ~~the following information to the department or the department's~~
14 ~~designee:~~

15 [(A) ~~results of follow-up care,~~

16 [(B) ~~results of audiology testing of infants~~
17 ~~identified with hearing loss; and~~

18 [(C) ~~reports on the initiation of intervention~~
19 ~~services.~~

20 [(e)] A qualified hearing screening provider, audiologist,
21 intervention specialist, educator, or other person who receives a
22 referral from a program under this chapter shall:

23 (1) provide the services needed by the newborn or
24 infant or refer the newborn or infant to a person who provides the
25 services needed by the newborn or infant; and

26 (2) provide, with the consent of the newborn's or
27 infant's parent, the following information to the department or the

1 department's designee:

2 (A) results of follow-up care;
3 (B) results of audiologic testing of an infant
4 identified with hearing loss; and
5 (C) reports on the initiation of intervention
6 services.

7 (e) ~~A qualified hearing screening provider, audiologist, intervention specialist, educator, or other person who provides services to infants who are diagnosed with hearing loss shall provide, with the consent of the infant's parent, the following information to the department or the department's designee:~~

8 [(1) results of follow-up services;
9 (2) results of audiologic testing of infants
10 identified with hearing loss; and
11 (3) reports on the initiation of intervention
12 services.

13 (f) A qualified hearing screening provider, audiologist, intervention specialist, educator, or other person who provides services to an infant who is diagnosed with hearing loss shall provide, with the consent of the infant's parent, the following information to the department or the department's designee:

14 (1) results of follow-up care;
15 (2) results of audiologic testing; and
16 (3) reports on the initiation of intervention
17 services.

18 (f) ~~A hospital that provides services under this chapter shall use the information management, reporting, and tracking~~

1 system, which the department has provided the hospital with access
2 to, to report, with the consent of the infant's parent, the
3 following information to the department or the department's
4 designee:

5 [(1) results of all follow-up services for infants who
6 do not pass the birth admission screening if the hospital provides
7 the follow-up services; or

8 [(2) the name of the provider or facility where the
9 hospital refers an infant who does not pass the birth admission
10 screening for follow-up services.

11 [(g) A hospital that provides services under this chapter
12 shall use the information management, reporting, and tracking
13 system described by this section, access to which has been provided
14 to the hospital by the department, to report, with the consent of
15 the infant's parent, the following information to the department or
16 the department's designee:

17 (1) results of all follow-up services for an infant
18 who does not pass the screening described by Section 47.003(a) if
19 the hospital provides the follow-up services; or

20 (2) the name of the provider or facility to which the
21 hospital refers an infant who does not pass the screening described
22 by Section 47.003(a) for follow-up services.

23 (g) The department shall ensure that the written consent of
24 a parent is obtained before any information individually
25 identifying the newborn or infant is released through the
26 information management, reporting, and tracking system.

27 (h) Subject to Section 47.008, a qualified hearing

1 screening provider, hospital, health care provider, physician,
2 audiologist, or intervention specialist may obtain information
3 from the department relating to:

4 (1) the results of each hearing screening performed
5 under Section 47.003(a) or 47.0031(a);

6 (2) the results of each diagnostic audiological
7 evaluation required under Section 47.0031(b)(2);

8 (3) infants who receive follow-up care;

9 (4) infants identified with hearing loss; and

10 (5) infants who are referred for intervention
11 services.

12 SECTION 3.0173. Section 47.008(c), Health and Safety Code,
13 is amended to read as follows:

14 (c) The executive commissioner [department] by rule shall
15 develop guidelines to protect the confidentiality of patients in
16 accordance with Chapter 159, Occupations Code, and require the
17 written consent of a parent or guardian of a patient before any
18 individually identifying information is provided to the department
19 as set out in this chapter. The department shall permit a parent or
20 guardian at any time to withdraw information provided to the
21 department under this chapter.

22 SECTION 3.0174. Section 47.010(a), Health and Safety Code,
23 is amended to read as follows:

24 (a) The executive commissioner [~~of the Health and Human~~
25 ~~Services Commission~~] may adopt rules for the department to
26 implement this chapter.

27 SECTION 3.0175. Section 61.003(f), Health and Safety Code,

1 is amended to read as follows:

2 (f) For purposes of this chapter, a person who is an inmate
3 or resident of a state supported living center, as defined by
4 Section 531.002, [school] or institution operated by the Texas
5 Department of Criminal Justice, Department of Aging and Disability
6 Services, Department of State Health Services, Texas Juvenile
7 Justice Department [~~Youth Commission~~], Texas School for the Blind
8 and Visually Impaired, Texas School for the Deaf, or any other state
9 agency or who is an inmate, patient, or resident of a school or
10 institution operated by a federal agency is not considered a
11 resident of a hospital district or of any governmental entity
12 except the state or federal government.

13 SECTION 3.0176. Section 61.004(b), Health and Safety Code,
14 is amended to read as follows:

15 (b) The provider of assistance and the governmental entity
16 or hospital district shall submit all relevant information to the
17 department in accordance with the application, documentation, and
18 verification procedures established by [~~the~~] department rule under
19 Section 61.006.

20 SECTION 3.0177. Sections 61.006(c) and (e), Health and
21 Safety Code, are amended to read as follows:

22 (c) The department shall also define the services and
23 establish the payment standards for the categories of services
24 listed in Sections 61.028(a) and 61.0285 in accordance with
25 commission [~~Texas Department of Human Services~~] rules relating to
26 the Temporary Assistance for Needy Families-Medicaid program.

27 (e) The department shall ensure that each person who meets

1 the basic income and resources requirements for Temporary
2 Assistance for Needy Families program payments but who is
3 categorically ineligible for Temporary Assistance for Needy
4 Families will be eligible for assistance under Subchapter B.
5 Except as provided by Section 61.023(b), the executive commissioner
6 [department] by rule shall also provide that a person who receives
7 or is eligible to receive Temporary Assistance for Needy Families,
8 Supplemental Security Income, or Medicaid benefits is not eligible
9 for assistance under Subchapter B even if the person has exhausted a
10 part or all of that person's benefits.

11 SECTION 3.0178. Section 61.007, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 61.007. INFORMATION PROVIDED BY APPLICANT. The
14 executive commissioner [department] by rule shall require each
15 applicant to provide at least the following information:

16 (1) the applicant's full name and address;
17 (2) the applicant's social security number, if
18 available;

19 (3) the number of persons in the applicant's
20 household, excluding persons receiving Temporary Assistance for
21 Needy Families, Supplemental Security Income, or Medicaid
22 benefits;

23 (4) the applicant's county of residence;
24 (5) the existence of insurance coverage or other
25 hospital or health care benefits for which the applicant is
26 eligible;

27 (6) any transfer of title to real property that the

1 applicant has made in the preceding 24 months;

2 (7) the applicant's annual household income, excluding
3 the income of any household member receiving Temporary Assistance
4 for Needy Families, Supplemental Security Income, or Medicaid
5 benefits; and

6 (8) the amount of the applicant's liquid assets and the
7 equity value of the applicant's car and real property.

8 SECTION 3.0179. Section 61.008(a), Health and Safety Code,
9 is amended to read as follows:

10 (a) The executive commissioner [department] by rule shall
11 provide that in determining eligibility:

12 (1) a county may not consider the value of the
13 applicant's homestead;

14 (2) a county must consider the equity value of a car
15 that is in excess of the amount exempted under department
16 guidelines as a resource;

17 (3) a county must subtract the work-related and child
18 care expense allowance allowed under department guidelines;

19 (4) a county must consider as a resource real property
20 other than a homestead and, except as provided by Subsection (b),
21 must count that property in determining eligibility;

22 (5) if an applicant transferred title to real property
23 for less than market value to become eligible for assistance under
24 this chapter, the county may not credit toward eligibility for
25 state assistance an expenditure for that applicant made during a
26 two-year period beginning on the date on which the property is
27 transferred; and

1 (6) if an applicant is a sponsored alien, a county may
2 include in the income and resources of the applicant:

3 (A) the income and resources of a person who
4 executed an affidavit of support on behalf of the applicant; and

5 (B) the income and resources of the spouse of a
6 person who executed an affidavit of support on behalf of the
7 applicant, if applicable.

8 SECTION 3.0180. Section [61.011](#), Health and Safety Code, is
9 amended to read as follows:

10 Sec. 61.011. SERVICES BY STATE HOSPITAL OR CLINIC. A state
11 hospital or clinic shall be entitled to payment for services
12 rendered to an eligible resident under the provisions of this
13 chapter applicable to other providers. The executive commissioner
14 [department] may adopt rules as necessary to implement this
15 section.

16 SECTION 3.0181. Section [61.0285](#)(b), Health and Safety Code,
17 is amended to read as follows:

18 (b) A county must notify the department of the county's
19 intent to provide services specified by Subsection (a). If the
20 services are approved in accordance with [~~by the department under~~]
21 Section [61.006](#), or if the department fails to notify the county of
22 the department's disapproval before the 31st day after the date the
23 county notifies the department of its intent to provide the
24 services, the county may credit the services toward eligibility for
25 state assistance under this subchapter.

26 SECTION 3.0182. Section [61.034](#)(b), Health and Safety Code,
27 is amended to read as follows:

1 (b) A county may contract with a provider of assistance to
2 provide a health care service at a rate below the payment standard
3 set by [the] department rule.

4 SECTION 3.0183. Sections 61.036(c) and (d), Health and
5 Safety Code, are amended to read as follows:

6 (c) Regardless of the application, documentation, and
7 verification procedures or eligibility standards established [by]
8 ~~the department~~] under Subchapter A, a county may credit an
9 expenditure for an eligible resident toward eligibility for state
10 assistance if the eligible resident received the health care
11 services at:

12 (1) a hospital maintained or operated by a state
13 agency that has a contract with the county to provide health care
14 services;

15 (2) a federally qualified health center delivering
16 federally qualified health center services, as those terms are
17 defined in 42 U.S.C. Sections 1396d(1)(2)(A) and (B), that has a
18 contract with the county to provide health care services; or

19 (3) a hospital or other health care provider if the
20 eligible resident is an inmate of a county jail or another county
21 correctional facility.

22 (d) Regardless of the application, documentation, and
23 verification procedures or eligibility standards established [by]
24 ~~the department~~] under Subchapter A, a county may credit an
25 intergovernmental transfer to the state toward eligibility for
26 state assistance if the transfer was made to provide health care
27 services as part of the Texas Healthcare Transformation and Quality

1 Improvement Program waiver issued under 42 U.S.C. Section 1315.

2 SECTION 3.0184. Section 61.037(h), Health and Safety Code,
3 is amended to read as follows:

4 (h) The executive commissioner [department] shall adopt
5 rules governing the circumstances under which a waiver may be
6 granted under Subsection (g) and the procedures to be used by a
7 county to apply for the waiver. The procedures must provide that
8 the department shall make a determination with respect to an
9 application for a waiver not later than the 90th day after the date
10 the application is submitted to the department in accordance with
11 the procedures established by [the] department rule. To be
12 eligible for state assistance under Subsection (g), a county must
13 submit monthly financial reports, in the form required by the
14 department, covering the 12-month period preceding the date on
15 which the assistance is sought.

16 SECTION 3.0185. Section 61.0395(b), Health and Safety Code,
17 is amended to read as follows:

18 (b) The executive commissioner [department] may adopt rules
19 governing the distribution of state assistance under this chapter
20 that establish a maximum annual allocation for each county eligible
21 for assistance under this chapter in compliance with Subsection
22 (a).

23 SECTION 3.0186. Section 61.042(a), Health and Safety Code,
24 is amended to read as follows:

25 (a) A county may establish procedures consistent with those
26 used by the commission [Texas Department of Human Services] under
27 Chapter 31, Human Resources Code, for administering an employment

1 services program and requiring an applicant or eligible resident to
2 register for work with the Texas Workforce [~~Employment~~] Commission.

3 SECTION 3.0187. Section 61.065(c), Health and Safety Code,
4 is amended to read as follows:

5 (c) If the contract for the sale of the hospital provides
6 for the provision by the hospital of health care services to county
7 residents, the value of the health care services credited or paid in
8 a state fiscal year under the contract is included as part of the
9 computation of a county expenditure under Section 61.037 to the
10 extent that the value of the services does not exceed the payment
11 standard established by [the] department rule for allowed inpatient
12 and outpatient services.

13 SECTION 3.0188. Section 61.067(g), Health and Safety Code,
14 is amended to read as follows:

15 (g) The lien does not attach to a claim under the workers'
16 compensation law of this state, the Federal Employers' [~~Employees~~]
17 Liability Act, or the Federal Longshore and Harbor Workers'
18 Compensation Act.

19 SECTION 3.0189. Section 61.068(a), Health and Safety Code,
20 is amended to read as follows:

21 (a) A public hospital or hospital district may establish
22 procedures consistent with those used by the commission [~~Health and~~
23 ~~Human Services Commission~~] under Chapter 31, Human Resources Code,
24 for administering an employment services program and requiring an
25 applicant or eligible resident to register for work with the Texas
26 Workforce Commission.

27 SECTION 3.0190. Section 62.002(4), Health and Safety Code,

1 is amended to read as follows:

2 (4) "Household [~~Net family~~] income" means the sum
3 [~~amount~~] of the individual incomes of each individual in an
4 applicant's or enrollee's household, minus the standard income
5 disregard prescribed by federal law [~~income established for a~~
6 ~~family after reduction for offsets for child care expenses, in~~
7 ~~accordance with standards applicable under the Medicaid program~~].

8 SECTION 3.0191. Section 62.004, Health and Safety Code, is
9 amended to read as follows:

10 Sec. 62.004. FEDERAL LAW AND REGULATIONS. The executive
11 commissioner shall monitor federal legislation affecting Title XXI
12 of the Social Security Act (42 U.S.C. Section 1397aa et seq.) and
13 changes to the federal regulations implementing that law. If the
14 executive commissioner determines that a change to Title XXI of the
15 Social Security Act (42 U.S.C. Section 1397aa et seq.) or the
16 federal regulations implementing that law conflicts with this
17 chapter, the executive commissioner shall report the changes to the
18 governor, lieutenant governor, and speaker of the house of
19 representatives, with recommendations for legislation necessary to
20 implement the federal law or regulations, seek a waiver, or
21 withdraw from participation.

22 SECTION 3.0192. Sections 62.051 and 62.052, Health and
23 Safety Code, are amended to read as follows:

24 Sec. 62.051. DUTIES OF EXECUTIVE COMMISSIONER AND
25 COMMISSION IN GENERAL. (a) The executive commissioner
26 [~~commission~~] shall administer [~~develop~~] a state-designed child
27 health plan program to obtain health benefits coverage for children

1 in low-income families. The executive commissioner [~~commission~~]
2 shall ensure that the child health plan program is designed and
3 administered in a manner that qualifies for federal funding under
4 Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et
5 seq.), as amended, and any other applicable law or regulations.

6 (b) The executive commissioner [~~commission~~] is [~~the agency~~]
7 responsible for making policy for the child health plan program,
8 including policy related to covered benefits provided under the
9 child health plan. The executive commissioner [~~commission~~] may not
10 delegate this duty to another agency or entity.

11 (c) The executive commissioner [~~commission~~] shall oversee
12 the implementation of the child health plan program and coordinate
13 the activities of each agency necessary to the implementation of
14 the program, including the [~~Texas Department of Health, Texas~~
15 ~~Department of Human Services, and~~] Texas Department of Insurance.

16 (d) The executive commissioner [~~commission~~] shall adopt
17 rules as necessary to implement this chapter. [~~The commission may~~
18 ~~require the Texas Department of Health, the Texas Department of~~
19 ~~Human Services, or any other health and human services agency to~~
20 ~~adopt, with the approval of the commission, any rules that may be~~
21 ~~necessary to implement the program. With the consent of another~~
22 ~~agency, including the Texas Department of Insurance, the commission~~
23 ~~may delegate to that agency the authority to adopt, with the~~
24 ~~approval of the commission, any rules that may be necessary to~~
25 ~~implement the program.]~~

26 (e) The commission shall conduct a review of each entity
27 that enters into a contract under Section 62.055 or [~~Section~~]

1 62.155[~~7~~] to ensure that the entity is available, prepared, and
2 able to fulfill the entity's obligations under the contract in
3 compliance with the contract, this chapter, and rules adopted under
4 this chapter.

5 (f) The commission shall ensure that the amounts spent for
6 administration of the child health plan program do not exceed any
7 limit on those expenditures imposed by federal law.

8 Sec. 62.052. AUTHORITY OF COMMISSION RELATING TO HEALTH
9 PLAN PROVIDER CONTRACTS [~~DUTIES OF TEXAS DEPARTMENT OF HEALTH~~].
10 [~~(a)~~] The commission may [~~direct the Texas Department of Health~~
11 ~~to~~] :

12 (1) implement contracts with health plan providers
13 under Section 62.155;

14 (2) monitor the health plan providers, through
15 reporting requirements and other means, to ensure performance under
16 the contracts and quality delivery of services;

17 (3) monitor the quality of services delivered to
18 enrollees through outcome measurements including:

19 (A) rate of hospitalization for ambulatory
20 sensitive conditions, including asthma, diabetes, epilepsy,
21 dehydration, gastroenteritis, pneumonia, and UTI/kidney infection;

22 (B) rate of hospitalization for injuries;

23 (C) percent of enrolled adolescents reporting
24 risky health behavior such as injuries, tobacco use, alcohol/drug
25 use, dietary behavior, physical activity, or other health related
26 behaviors; and

27 (D) percent of adolescents reporting attempted

1 suicide; and

2 (4) provide payment under the contracts to the health
3 plan providers.

4 ~~[(b) The commission, or the Texas Department of Health under
5 the direction of and in consultation with the commission, shall
6 adopt rules as necessary to implement this section.]~~

7 SECTION 3.0193. Subchapter B, Chapter 62, Health and Safety
8 Code, is amended by amending Section 62.053 and adding Section
9 62.0531 to read as follows:

10 Sec. 62.053. AUTHORITY OF COMMISSION RELATING TO
11 ELIGIBILITY AND MEDICAID COORDINATION [~~DUTIES OF TEXAS DEPARTMENT~~
12 ~~OF HUMAN SERVICES~~]. The commission [(a) ~~Under the direction of the~~
13 ~~commission, the Texas Department of Human Services~~] may:

14 (1) accept applications for coverage under the child
15 health plan and implement the child health plan program eligibility
16 screening and enrollment procedures;

17 (2) resolve grievances relating to eligibility
18 determinations; and

19 (3) coordinate the child health plan program with the
20 Medicaid program.

21 Sec. 62.0531. AUTHORITY OF COMMISSION RELATING TO THIRD
22 PARTY ADMINISTRATOR. [(b)] If the commission contracts with a third
23 party administrator under Section 62.055, the commission may
24 [~~direct the Texas Department of Human Services to~~] :

25 (1) implement the contract;

26 (2) monitor the third party administrator, through
27 reporting requirements and other means, to ensure performance under

1 the contract and quality delivery of services; and
2 (3) provide payment under the contract to the third
3 party administrator.

4 [(c) The commission, or the Texas Department of Human
5 Services under the direction of and in consultation with the
6 commission, shall adopt rules as necessary to implement this
7 section.]

8 SECTION 3.0194. Sections 62.054(a) and (b), Health and
9 Safety Code, are amended to read as follows:

10 (a) At the request of the commission, the Texas Department
11 of Insurance shall provide any necessary assistance with the
12 [development of the] child health plan. The department shall
13 monitor the quality of the services provided by health plan
14 providers and resolve grievances relating to the health plan
15 providers.

16 (b) The commission and the Texas Department of Insurance may
17 adopt a memorandum of understanding that addresses the
18 responsibilities of each agency with respect to [in developing] the
19 plan.

20 SECTION 3.0195. Section 62.055, Health and Safety Code, is
21 amended by amending Subsection (e) and adding Subsection (f) to
22 read as follows:

23 (e) The executive commissioner [~~commission~~] shall[~~÷~~
24 [~~(1)~~] retain all policymaking authority over the state
25 child health plan.[~~†~~]

27 (1) [2] procure all contracts with a third party

1 administrator through a competitive procurement process in
2 compliance with all applicable federal and state laws or
3 regulations; and

4 (2) [+] ensure that all contracts with child health
5 plan providers under Section 62.155 are procured through a
6 competitive procurement process in compliance with all applicable
7 federal and state laws or regulations.

8 SECTION 3.0196. Sections 62.101(a), (b), and (c), Health
9 and Safety Code, are amended to read as follows:

10 (a) A child is eligible for health benefits coverage under
11 the child health plan if the child:

12 (1) is younger than 19 years of age;

13 (2) is not eligible for medical assistance under the
14 Medicaid program;

15 (3) is not covered by a health benefits plan offering
16 adequate benefits, as determined by the commission;

17 (4) has a household [family] income that is less than
18 or equal to the income eligibility level established under
19 Subsection (b); and

20 (5) satisfies any other eligibility standard imposed
21 under the child health plan program in accordance with 42 U.S.C.
22 Section 1397bb, as amended, and any other applicable law or
23 regulations.

24 (b) The executive commissioner [commission] shall establish
25 income eligibility levels consistent with Title XXI, Social
26 Security Act (42 U.S.C. Section 1397aa et seq.), as amended, and any
27 other applicable law or regulations, and subject to the

1 availability of appropriated money, so that a child who is younger
2 than 19 years of age and whose household [~~net family~~] income is at
3 or below 200 percent of the federal poverty level is eligible for
4 health benefits coverage under the program. [~~In addition, the~~
~~commission may establish eligibility standards regarding the~~
~~amount and types of allowable assets for a family whose net family~~
~~income is above 150 percent of the federal poverty level.~~]

8 (c) The executive commissioner shall evaluate enrollment
9 levels and program impact [~~every six months during the first 12~~
10 ~~months of implementation and~~] at least annually [~~thereafter~~] and
11 shall submit a finding of fact to the Legislative Budget Board and
12 the Governor's Office of Budget, [~~and~~] Planning, and Policy as to
13 the adequacy of funding and the ability of the program to sustain
14 enrollment at the eligibility level established by Subsection (b).
15 In the event that appropriated money is insufficient to sustain
16 enrollment at the authorized eligibility level, the executive
17 commissioner shall:

18 (1) suspend enrollment in the child health plan;
19 (2) establish a waiting list for applicants for
20 coverage; and
21 (3) establish a process for periodic or continued
22 enrollment of applicants in the child health plan program as the
23 availability of money allows.

24 SECTION 3.0197. Section 62.1011, Health and Safety Code, is
25 amended to read as follows:

26 Sec. 62.1011. VERIFICATION OF INCOME. The commission shall
27 continue employing methods of verifying the individual incomes [~~net~~

1 ~~income~~] of the individuals considered in the calculation of an
2 applicant's household [~~not family~~] income. The commission shall
3 verify income under this section unless the applicant reports a
4 household [~~not family~~] income that exceeds the income eligibility
5 level established under Section [62.101](#)(b).

6 SECTION 3.0198. Sections [62.1015](#)(a) and (c), Health and
7 Safety Code, are amended to read as follows:

8 (a) In this section:

9 (1) "Charter school"[~~, "charter school," "employee,"~~]
10 and "regional education service center" have the meanings assigned
11 by Section [1579.002](#) [~~2, Article 3.50-7~~], Insurance Code.

12 (2) "Employee" has the meaning assigned by Section
13 [1579.003](#), Insurance Code.

14 (c) The cost of health benefits coverage for children
15 enrolled in the child health plan under this section shall be paid
16 as provided in the General Appropriations Act. Expenditures made
17 to provide health benefits coverage under this section may not be
18 included for the purpose of determining the state children's health
19 insurance expenditures, as that term is defined by 42 U.S.C.
20 Section 1397ee(d)(2)(B), as amended, unless the commission [~~Health~~
21 ~~and Human Services Commission~~], after consultation with the
22 appropriate federal agencies, determines that the expenditures may
23 be included without adversely affecting federal matching funding
24 for the child health plan provided under this chapter.

25 SECTION 3.0199. Sections [62.102](#)(b) and (c), Health and
26 Safety Code, are amended to read as follows:

27 (b) During the sixth month following the date of initial

1 enrollment or reenrollment of an individual whose household [~~net~~
2 ~~family~~] income exceeds 185 percent of the federal poverty level,
3 the commission shall:

4 (1) review the individual's household [~~net family~~]
5 income and may use electronic technology if available and
6 appropriate; and

7 (2) continue to provide coverage if the individual's
8 household [~~net family~~] income does not exceed the income
9 eligibility limits prescribed by this chapter.

10 (c) If, during the review required under Subsection (b), the
11 commission determines that the individual's household [~~net family~~]
12 income exceeds the income eligibility limits prescribed by this
13 chapter, the commission may not disenroll the individual until:

14 (1) the commission has provided the family an
15 opportunity to demonstrate that the family's household [~~net family~~]
16 income is within the income eligibility limits prescribed by this
17 chapter; and

18 (2) the family fails to demonstrate such eligibility.

19 SECTION 3.0200. Sections [62.103\(a\)](#) and (d), Health and
20 Safety Code, are amended to read as follows:

21 (a) The executive commissioner [~~commission, or the Texas~~
22 ~~Department of Human Services at the direction of and in~~
23 ~~consultation with the commission,~~] shall adopt an application form
24 and application procedures for requesting child health plan
25 coverage under this chapter.

26 (d) The executive commissioner [~~commission~~] may permit
27 application to be made by mail, over the telephone, or through the

1 Internet.

2 SECTION 3.0201. Sections [62.104](#)(a) and (g), Health and
3 Safety Code, are amended to read as follows:

4 (a) The executive commissioner [~~commission, or the Texas~~
5 ~~Department of Human Services at the direction of and in~~
6 ~~consultation with the commission,~~] shall develop eligibility
7 screening and enrollment procedures for children that comply with
8 the requirements of 42 U.S.C. Section 1397bb, as amended, and any
9 other applicable law or regulations. The procedures shall ensure
10 that Medicaid-eligible children are identified and referred to the
11 Medicaid program.

12 (g) The executive commissioner [~~In the first year of~~
13 ~~implementation of the child health plan, enrollment shall be open.~~
14 ~~Thereafter, the commission~~] may establish enrollment periods for
15 the child health plan.

16 SECTION 3.0202. Sections [62.151](#)(b), (c), (e), and (f),
17 Health and Safety Code, are amended to read as follows:

18 (b) In modifying [~~developing~~] the covered benefits, the
19 executive commissioner [~~commission~~] shall consider the health care
20 needs of healthy children and children with special health care
21 needs.

22 (c) In modifying [~~developing~~] the plan, the executive
23 commissioner [~~commission~~] shall ensure that primary and preventive
24 health benefits do not include reproductive services, other than
25 prenatal care and care related to diseases, illnesses, or
26 abnormalities related to the reproductive system.

27 (e) In modifying [~~developing~~] the covered benefits, the

1 executive commissioner [~~commission~~] shall seek input from the
2 Public Assistance Health Benefit Review and Design Committee
3 established under Section [531.067](#), Government Code.

4 (f) If the executive commissioner [~~The commission, if it~~]
5 determines the policy to be cost-effective, the executive
6 commissioner may ensure that an enrolled child does not, unless
7 authorized by the commission in consultation with the child's
8 attending physician or advanced practice nurse, receive under the
9 child health plan:

10 (1) more than four different outpatient brand-name
11 prescription drugs during a month; or
12 (2) more than a 34-day supply of a brand-name
13 prescription drug at any one time.

14 SECTION 3.0203. Sections [62.153](#)(a) and (c), Health and
15 Safety Code, are amended to read as follows:

16 (a) To the extent permitted under 42 U.S.C. Section 1397cc,
17 as amended, and any other applicable law or regulations, the
18 executive commissioner [~~commission~~] shall require enrollees to
19 share the cost of the child health plan, including provisions
20 requiring enrollees under the child health plan to pay:

21 (1) a copayment for services provided under the plan;
22 (2) an enrollment fee; or
23 (3) a portion of the plan premium.

24 (c) If cost-sharing provisions imposed under Subsection (a)
25 include requirements that enrollees pay a portion of the plan
26 premium, the executive commissioner [~~commission~~] shall specify the
27 manner in which the premium is paid. The commission may require

1 that the premium be paid to the [Texas Department of Health, the
2 ~~Texas Department of Human Services, or the~~] health plan provider.

3 SECTION 3.0204. Section 62.154(b), Health and Safety Code,
4 is amended to read as follows:

5 (b) A child is not subject to a waiting period adopted under
6 Subsection (a) if:

7 (1) the family lost coverage for the child as a result
8 of:

9 (A) termination of employment because of a layoff
10 or business closing;

11 (B) termination of continuation coverage under
12 the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L.
13 No. 99-272);

14 (C) change in marital status of a parent of the
15 child;

16 (D) termination of the child's Medicaid
17 eligibility because:

18 (i) the child's family's earnings or
19 resources increased; or

20 (ii) the child reached an age at which
21 Medicaid coverage is not available; or

22 (E) a similar circumstance resulting in the
23 involuntary loss of coverage;

24 (2) the family terminated health benefits plan
25 coverage for the child because the cost to the child's family for
26 the coverage exceeded 9.5 [10] percent of the family's household
27 [~~net~~] income;

1 (3) the child has access to group-based health
2 benefits plan coverage and is required to participate in the health
3 insurance premium payment reimbursement program administered by
4 the commission; [or]

5 (4) the commission has determined that other grounds
6 exist for a good cause exception; or

7 (5) federal law provides that the child is not subject
8 to a waiting period adopted under Subsection (a).

9 SECTION 3.0205. Sections 62.155(a) and (d), Health and
10 Safety Code, are amended to read as follows:

11 (a) The commission[~~, or the Texas Department of Health at~~
12 ~~the direction of and in consultation with the commission,~~] shall
13 select the health plan providers under the program through a
14 competitive procurement process. A health plan provider, other
15 than a state administered primary care case management network,
16 must hold a certificate of authority or other appropriate license
17 issued by the Texas Department of Insurance that authorizes the
18 health plan provider to provide the type of child health plan
19 offered and must satisfy, except as provided by this chapter, any
20 applicable requirement of the Insurance Code or another insurance
21 law of this state.

22 (d) The executive commissioner may authorize an exception
23 to Subsection (c)(2) if there is only one acceptable applicant to
24 become a health plan provider in the service area.

25 SECTION 3.0206. Section 62.1551, Health and Safety Code, is
26 amended to read as follows:

27 Sec. 62.1551. INCLUSION OF CERTAIN HEALTH CARE PROVIDERS IN

1 PROVIDER NETWORKS. Notwithstanding any other law, including
2 Sections 843.312 and 1301.052, Insurance Code, the executive
3 commissioner [of the commission] shall adopt rules to require a
4 managed care organization or other entity to ensure that advanced
5 practice registered nurses and physician assistants are available
6 as primary care providers in the organization's or entity's
7 provider network. The rules must require advanced practice
8 registered nurses and physician assistants to be treated in the
9 same manner as primary care physicians with regard to:

10 (1) selection and assignment as primary care
11 providers;

12 (2) inclusion as primary care providers in the
13 provider network; and

14 (3) inclusion as primary care providers in any
15 provider network directory maintained by the organization or
16 entity.

17 SECTION 3.0207. Section 62.156, Health and Safety Code, is
18 amended to read as follows:

19 Sec. 62.156. HEALTH CARE PROVIDERS. Health care providers
20 who provide health care services under the child health plan must
21 satisfy certification and licensure requirements, as required by
22 [the] commission rules and[~~–~~] consistent with other law.

23 SECTION 3.0208. Section 62.1561, Health and Safety Code, is
24 amended to read as follows:

25 Sec. 62.1561. PROHIBITION OF CERTAIN HEALTH CARE PROVIDERS.
26 The executive commissioner [of the commission] shall adopt rules
27 for prohibiting a person from participating in the child health

1 plan program as a health care provider for a reasonable period, as
2 determined by the executive commissioner, if the person:

3 (1) fails to repay overpayments under the program; or
4 (2) owns, controls, manages, or is otherwise
5 affiliated with and has financial, managerial, or administrative
6 influence over a provider who has been suspended or prohibited from
7 participating in the program.

8 SECTION 3.0209. Sections [62.157](#)(b) and (c), Health and
9 Safety Code, as added by Chapter 959 (S.B. 1536), Acts of the 77th
10 Legislature, Regular Session, 2001, are amended to read as follows:

11 (b) The policies must provide for:

12 (1) the availability of covered benefits
13 appropriately provided through telemedicine medical services and
14 telehealth services that are comparable to the same types of
15 covered benefits provided without the use of telemedicine medical
16 services and telehealth services; and

17 (2) the availability of covered benefits for different
18 services performed by multiple health care providers during a
19 single telemedicine medical services and telehealth services
20 session, if the executive commissioner [~~commission~~] determines
21 that delivery of the covered benefits in that manner is
22 cost-effective in comparison to the costs that would be involved in
23 obtaining the services from providers without the use of
24 telemedicine medical services and telehealth services, including
25 the costs of transportation and lodging and other direct costs.

26 (c) In developing the policies required by Subsection (a),
27 the executive commissioner [~~commission~~] shall consult with:

1 (1) The University of Texas Medical Branch at
2 Galveston;

3 (2) Texas Tech University Health Sciences Center;

4 (3) the [Texas] Department of State Health Services;

5 (4) providers of telemedicine hub sites in this state;

6 (5) providers of services to children with special
7 health care needs; and

8 (6) representatives of consumer or disability groups
9 affected by changes to services for children with special health
10 care needs.

11 SECTION 3.0210. Section 62.157, Health and Safety Code, as
12 added by Chapter 1255 (S.B. 789), Acts of the 77th Legislature,
13 Regular Session, 2001, is redesignated as Section 62.1571, Health
14 and Safety Code, and amended to read as follows:

15 Sec. 62.1571 [62.157]. TELEMEDICINE MEDICAL SERVICES. (a)
16 In providing covered benefits to a child, a health plan provider
17 must permit benefits to be provided through telemedicine medical
18 services in accordance with policies developed by the commission.

19 (b) The policies must provide for:

20 (1) the availability of covered benefits
21 appropriately provided through telemedicine medical services that
22 are comparable to the same types of covered benefits provided
23 without the use of telemedicine medical services; and

24 (2) the availability of covered benefits for different
25 services performed by multiple health care providers during a
26 single session of telemedicine medical services, if the executive
27 commissioner [commission] determines that delivery of the covered

1 benefits in that manner is cost-effective in comparison to the
2 costs that would be involved in obtaining the services from
3 providers without the use of telemedicine medical services,
4 including the costs of transportation and lodging and other direct
5 costs.

6 (c) In developing the policies required by Subsection (a),
7 the executive commissioner [commission] shall consult with the
8 telemedicine and telehealth advisory committee.

9 (d) In this section, "telemedicine medical service" has the
10 meaning assigned by Section 531.001, Government [~~57.042~~
11 ~~Utilities~~] Code.

12 SECTION 3.0211. Section 62.159, Health and Safety Code, is
13 amended to read as follows:

14 Sec. 62.159. DISEASE MANAGEMENT SERVICES. (a) In this
15 section, "disease management services" means services to assist a
16 child manage a disease or other chronic health condition, such as
17 heart disease, diabetes, respiratory illness, end-stage renal
18 disease, HIV infection, or AIDS, and with respect to which the
19 executive commissioner [commission] identifies populations for
20 which disease management would be cost-effective.

21 (b) The child health plan must provide disease management
22 services or coverage for disease management services in the manner
23 required by the executive commissioner [commission], including:

- 24 (1) patient self-management education;
- 25 (2) provider education;
- 26 (3) evidence-based models and minimum standards of
27 care;

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1 (4) standardized protocols and participation
2 criteria; and

4 SECTION 3.0212. Section 63.003, Health and Safety Code, is
5 amended to read as follows:

6 Sec. 63.003. HEALTH BENEFITS PLAN COVERAGE FOR CERTAIN
7 CHILDREN. The executive commissioner [commission] shall develop
8 and implement a program to provide health benefits plan coverage
9 for a child who:

12 (2) is younger than 19 years of age;

13 (3) entered the United States after August 22, 1996;

20 (B) the medical assistance program under Chapter
21 32, Human Resources Code.

22 SECTION 3.0213. Section 63.005(b), Health and Safety Code,
23 is amended to read as follows:

24 (b) Except as required by the executive commissioner
25 [commission], a health benefits plan provider under this chapter is
26 not subject to a law that requires coverage or the offer of coverage
27 of a health care service or benefit.

1 SECTION 3.0214. Section 63.006, Health and Safety Code, is
2 amended to read as follows:

3 Sec. 63.006. COST-SHARING PAYMENTS. (a) Except as provided
4 by Subsection (b), the executive commissioner [commission] may not
5 require a child who is provided health benefits plan coverage under
6 Section 63.003 and who meets the income eligibility requirement of
7 the medical assistance program under Chapter 32, Human Resources
8 Code, to pay a premium, deductible, coinsurance, or other
9 cost-sharing payment as a condition of health benefits plan
10 coverage under this chapter.

11 (b) The executive commissioner [commission] may require a
12 child described by Subsection (a) to pay a copayment as a condition
13 of health benefits plan coverage under this chapter that is equal to
14 any copayment required under the child health plan program under
15 Chapter 62.

16 (c) The executive commissioner [commission] may require a
17 child who is provided health benefits plan coverage under Section
18 63.003 and who meets the income eligibility requirement of the
19 child health plan program under Chapter 62 to pay a premium,
20 deductible, coinsurance, or other cost-sharing payment as a
21 condition of health benefits plan coverage under this chapter. The
22 payment must be equal to any premium, deductible, coinsurance, or
23 other cost-sharing payment required under the child health plan
24 program under Chapter 62.

25 SECTION 3.0215. Section 64.001, Health and Safety Code, is
26 amended to read as follows:

27 Sec. 64.001. TEACHING HOSPITAL ACCOUNT. The [Texas]

1 Department of State Health Services state-owned multi-categorical
2 teaching hospital account is an account in the general revenue
3 fund. Money in the account may be appropriated only to the
4 department to provide funding for indigent health care.

5 SECTION 3.0216. Section 81.003(5), Health and Safety Code,
6 is amended to read as follows:

7 (5) "Physician" means a person licensed to practice
8 medicine by the Texas [~~State Board of~~] Medical Board [~~Examiners~~].

9 SECTION 3.0217. Sections 81.004(b) and (c), Health and
10 Safety Code, are amended to read as follows:

11 (b) The executive commissioner [~~board~~] may adopt rules
12 necessary for the effective administration and implementation of
13 this chapter.

14 (c) A designee of the executive commissioner [~~board~~] may
15 exercise a power granted to or perform a duty imposed on the
16 executive commissioner [~~board~~] under this chapter except as
17 otherwise required by law.

18 SECTION 3.0218. Section 81.008, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 81.008. COMMUNICABLE DISEASE IN ANIMALS; EXCHANGE OF
21 INFORMATION. The Texas Animal Health Commission and the Texas A&M
22 University Veterinary Medical Diagnostic Laboratory shall each
23 adopt by rule a memorandum of understanding, adopted also by rule by
24 the executive commissioner, governing the [~~with the department to~~]
25 exchange of information on communicable diseases in animals between
26 the department and those entities.

27 SECTION 3.0219. Sections 81.010(c), (e), (h), (i), and (k),

1 Health and Safety Code, are amended to read as follows:

2 (c) The council consists of one representative from each of
3 the following agencies appointed by the executive director or
4 commissioner of each agency:

5 (1) the Department of State Health Services;
6 (2) the Department of Aging and Disability Services;
7 (3) the Department of Assistive and Rehabilitative
8 Services;

9 (4) the Department of Family and Protective Services;
10 (5) [~~the Texas Youth Commission,~~
11 [~~6~~] the Texas Department of Criminal Justice;
12 (6) [~~7~~] the Texas Juvenile Justice Department
13 [~~Probation Commission~~];

14 (7) [~~8~~] the Texas Medical Board;
15 (8) [~~9~~] the Texas Board of Nursing;
16 (9) [~~10~~] the State Board of Dental Examiners;
17 (10) [~~11~~] the Health and Human Services Commission;
18 (11) [~~12~~] the Texas Workforce Commission; and
19 (12) [~~13~~] the Texas Higher Education Coordinating
20 Board.

21 (e) The representative from the commission [~~Health and~~
22 ~~Human Services Commission~~] serves as chairperson of the council.

23 (h) The council shall:

24 (1) coordinate communication among the member
25 agencies listed in Subsection (c) concerning each agency's programs
26 in providing services related to AIDS, HIV, and hepatitis;
27 (2) develop a plan that facilitates coordination of

1 agency programs based on statistical information regarding this
2 state for:

3 (A) prevention of AIDS, HIV infection, and
4 hepatitis; and

5 (B) provision of services to individuals who have
6 hepatitis or are infected with HIV;

7 (3) identify all statewide plans related to AIDS, HIV,
8 and hepatitis;

9 (4) compile a complete inventory of all federal,
10 state, and local money spent in this state on HIV infection, AIDS,
11 and hepatitis prevention and health care services, including
12 services provided through or covered under Medicaid and Medicare;

13 (5) identify the areas with respect to which state
14 agencies interact on HIV, AIDS, and hepatitis issues and the policy
15 issues arising from that interaction;

16 (6) assess gaps in prevention and health care services
17 for HIV infection, AIDS, and hepatitis in this state, including
18 gaps in services that result from provision of services by
19 different state agencies, and develop strategies to address these
20 gaps through service coordination;

21 (7) identify barriers to prevention and health care
22 services for HIV infection, AIDS, and hepatitis faced by
23 marginalized populations;

24 (8) identify the unique health care service and other
25 service needs of persons who are infected with HIV or who have AIDS
26 or hepatitis;

27 (9) evaluate the level of service and quality of

1 health care in this state for persons who are infected with HIV or
2 who have AIDS or hepatitis as compared to national standards;

3 (10) identify issues that emerge related to HIV, AIDS,
4 and hepatitis and the potential impact on delivery of prevention
5 and health care services; and

6 (11) provide the information required under
7 Subdivisions (1) through (10) to the department [Department of
8 ~~State Health Services~~].

9 (i) Not later than September 1 of each year, the department
10 [Department of State Health Services] shall file a report with the
11 legislature and the governor containing policy recommendations
12 based on information reported to the council in Subsection (h)
13 relating to:

14 (1) prevention of AIDS, HIV infection, and hepatitis;
15 and

16 (2) delivery of health services to individuals who
17 have AIDS or hepatitis or are infected with HIV.

18 (k) The commission [Health and Human Services Commission]
19 shall provide administrative support to the council.

20 SECTION 3.0220. Section 81.021, Health and Safety Code, is
21 amended to read as follows:

22 Sec. 81.021. PROTECTION OF PUBLIC HEALTH [~~BOARD'S DUTY~~].
23 The executive commissioner and department [board] shall exercise
24 their powers [~~its power~~] in matters relating to protecting the
25 public health to prevent the introduction of disease into the
26 state.

27 SECTION 3.0221. Section 81.023, Health and Safety Code, is

1 amended to read as follows:

2 Sec. 81.023. IMMUNIZATION. (a) The department [~~board~~]
3 shall develop immunization requirements for children.

4 (b) The department [~~board~~] shall cooperate with the
5 Department of Family and Protective [~~and Regulatory~~] Services in
6 formulating and implementing the immunization requirements for
7 children admitted to child-care facilities.

8 (c) The department [~~board~~] shall cooperate with the State
9 Board of Education in formulating and implementing immunization
10 requirements for students admitted to public or private primary or
11 secondary schools.

12 SECTION 3.0222. Section [81.024](#), Health and Safety Code, is
13 amended to read as follows:

14 Sec. 81.024. REPORTS BY DEPARTMENT [~~BOARD~~]. The department
15 [~~board~~] shall provide regular reports of the incidence, prevalence,
16 and medical and economic effects of each disease that the
17 department [~~board~~] determines is a threatening risk to the public
18 health. A disease may be a risk because of its indirect
19 complications.

20 SECTION 3.0223. Section [81.041](#), Health and Safety Code, is
21 amended to read as follows:

22 Sec. 81.041. REPORTABLE DISEASES. (a) The executive
23 commissioner [~~board~~] shall identify each communicable disease or
24 health condition that shall be reported under this chapter.

25 (b) The executive commissioner [~~board~~] shall classify each
26 reportable disease according to its nature and the severity of its
27 effect on the public health.

1 (c) The executive commissioner [board] shall maintain and
2 revise as necessary the list of reportable diseases.

3 (d) The executive commissioner [board] may establish
4 registries for reportable diseases and other communicable diseases
5 and health conditions. The provision to the department of
6 information relating to a communicable disease or health condition
7 that is not classified as reportable is voluntary only.

8 (e) Acquired immune deficiency syndrome and human
9 immunodeficiency virus infection are reportable diseases under
10 this chapter for which the executive commissioner [board] shall
11 require reports.

12 (f) In a public health disaster, the commissioner may
13 require reports of communicable diseases or other health conditions
14 from providers without the adoption of a [board] rule or other
15 action by the executive commissioner. The commissioner shall issue
16 appropriate instructions relating to complying with the reporting
17 requirements of this section.

18 SECTION 3.0224. Sections 81.042(c) and (d), Health and
19 Safety Code, are amended to read as follows:

20 (c) A local school authority shall report a child attending
21 school who is suspected of having a reportable disease. The
22 executive commissioner [board] by rule shall establish procedures
23 to determine if a child should be suspected and reported and to
24 exclude the child from school pending appropriate medical diagnosis
25 or recovery.

26 (d) A person in charge of a clinical or hospital laboratory,
27 blood bank, mobile unit, or other facility in which a laboratory

1 examination of a specimen derived from a human body yields
2 microscopical, cultural, serological, or other evidence of a
3 reportable disease shall report the findings, in accordance with
4 this section and procedures adopted by the executive commissioner
5 [~~board~~], in the jurisdiction in which:

- 6 (1) the physician's office is located, if the
7 laboratory examination was requested by a physician; or
8 (2) the laboratory is located, if the laboratory
9 examination was not requested by a physician.

10 SECTION 3.0225. Section 81.043(b), Health and Safety Code,
11 is amended to read as follows:

12 (b) A [~~Except as provided by Subsection (c), a~~] health
13 authority shall report reportable diseases to the department's
14 central office at least as frequently as the interval set by
15 department [~~board~~] rule.

16 SECTION 3.0226. Sections 81.044(a), (b), and (d), Health
17 and Safety Code, are amended to read as follows:

18 (a) The executive commissioner [~~board~~] shall prescribe the
19 form and method of reporting under this chapter, which may be in
20 writing, by telephone, by electronic data transmission, or by other
21 means.

22 (b) The executive commissioner [~~board~~] may require the
23 reports to contain any information relating to a case that is
24 necessary for the purposes of this chapter, including:

- 25 (1) the patient's name, address, age, sex, race, and
26 occupation;
27 (2) the date of onset of the disease or condition;

(3) the probable source of infection; and

(4) the name of the attending physician or dentist.

(d) For a case of acquired immune deficiency syndrome or

4 human immunodeficiency virus infection, the executive commissioner
5 [department] shall require the reports to contain:

(1) the information described by Subsection (b); and

(2) the patient's ethnicity, national origin, and city of residence.

9 SECTION 3.0227. Sections 81.048(a) and (g), Health and
10 Safety Code, are amended to read as follows:

(a) The executive commissioner [board] shall:

(1) designate certain reportable diseases for
n under this section; and

14 (2) define the conditions that constitute possible
15 exposure to those diseases.

16 (g) A hospital that gives notice of a possible exposure
17 under Subsection (c) or a local health authority that receives
18 notice of a possible exposure under Subsection (c) may give notice
19 of the possible exposure to a person other than emergency medical
20 personnel, a peace officer, a detention officer, a county jailer,
21 or a fire fighter if the person demonstrates that the person was
22 exposed to the reportable disease while providing emergency care.

23 The executive commissioner [of the Health and Human Services
24 ~~Commission~~] shall adopt rules to implement this subsection.

1 (a) The executive commissioner [board] by rule shall
2 prescribe the criteria that constitute exposure to reportable
3 diseases[, including HIV infection]. The criteria must be based on
4 activities that the United States Public Health Service determines
5 pose a risk of infection.

6 (b) A person whose occupation or whose volunteer service is
7 included in one or more of the following categories may request the
8 department or a health authority to order testing of another person
9 who may have exposed the person to a reportable disease[, including
10 ~~HIV infection~~]:

11 (1) a law enforcement officer;
12 (2) a fire fighter;
13 (3) an emergency medical service employee or
14 paramedic;
15 (4) a correctional officer;
16 (5) an employee, contractor, or volunteer, other than
17 a correctional officer, who performs a service in a correctional
18 facility as defined by Section 1.07, Penal Code, or a secure
19 correctional facility or secure detention facility as defined by
20 Section 51.02, Family Code; or
21 (6) an employee of a juvenile probation department.

22 (c) A request under this section may be made only if the
23 person:

24 (1) has experienced the exposure in the course of the
25 person's employment or volunteer service;
26 (2) believes that the exposure places the person at
27 risk of a reportable disease[, including HIV infection]; and

1 (3) presents to the department or health authority a
2 sworn affidavit that delineates the reasons for the request.

3 (d) The department or the department's designee who meets
4 the minimum training requirements prescribed by department [board]
5 rule shall review the person's request and inform the person
6 whether the request meets the criteria establishing risk of
7 infection with a reportable disease[~~, including HIV infection~~].

8 (e) The department or the department's designee shall give
9 the person who is subject to the order prompt and confidential
10 written notice of the order. The order must:

11 (1) state the grounds and provisions of the order,
12 including the factual basis for its issuance;

13 (2) refer the person to appropriate health care
14 facilities where the person can be tested for reportable diseases[~~,~~
15 ~~including HIV infection~~]; and

16 (3) inform the person who is subject to the order of
17 that person's right to refuse to be tested and the authority of the
18 department or health authority to ask for a court order requiring
19 the test.

20 (g) In reviewing the order, the court shall determine
21 whether exposure occurred and whether that exposure presents a
22 possible risk of infection as defined by department [board] rule.
23 The attorney for the state and the attorney for the person subject
24 to the order may introduce evidence at the hearing in support of or
25 opposition to the testing of the person. On conclusion of the
26 hearing, the court shall either issue an appropriate order
27 requiring counseling and testing of the person for reportable

1 diseases[, ~~including HIV infection,~~] or refuse to issue the order
2 if the court has determined that the counseling and testing of the
3 person is unnecessary. The court may assess court costs against the
4 person who requested the test if the court finds that there was not
5 reasonable cause for the request.

6 (j) For the purpose of qualifying for workers' compensation
7 or any other similar benefits for compensation, an employee who
8 claims a possible work-related exposure to a reportable disease[~~,~~
9 ~~including HIV infection,~~] must provide the employer with a sworn
10 affidavit of the date and circumstances of the exposure and
11 document that, not later than the 10th day after the date of the
12 exposure, the employee had a test result that indicated an absence
13 of the reportable disease[, ~~including HIV infection~~].

14 (k) A person listed in Subsection (b) who may have been
15 exposed to a reportable disease[, ~~including HIV infection,~~] may not
16 be required to be tested.

17 (l) In this section, ["HIV" and] "test result" has [have]
18 the meaning [~~meanings~~] assigned by Section 81.101.

19 SECTION 3.0229. Section 81.051(j), Health and Safety Code,
20 is amended to read as follows:

21 (j) A partner notification program shall routinely evaluate
22 the performance of counselors and other program personnel to ensure
23 that high quality services are being delivered. A program shall
24 adopt quality assurance and training guidelines according to
25 recommendations of the Centers for Disease Control and Prevention
26 of the United States Public Health Service for professionals
27 participating in the program.

1 SECTION 3.0230. Section 81.062(b), Health and Safety Code,
2 is amended to read as follows:

3 (b) A witness or deponent who is not a party and who is
4 subpoenaed or otherwise compelled to appear at a hearing or
5 proceeding under this section conducted outside the witness's or
6 deponent's county of residence is entitled to a travel and per diem
7 allowance. The executive commissioner [board] by rule shall set
8 the allowance in an amount not to exceed the travel and per diem
9 allowance authorized for state employees traveling in this state on
10 official business.

11 SECTION 3.0231. Section 81.064(a), Health and Safety Code,
12 is amended to read as follows:

13 (a) The department or a health authority may enter at
14 reasonable times and inspect within reasonable limits a public
15 place in the performance of that person's duty to prevent or control
16 the entry into or spread in this state of communicable disease by
17 enforcing this chapter or the rules [of the board] adopted under
18 this chapter.

19 SECTION 3.0232. Section 81.081, Health and Safety Code, is
20 amended to read as follows:

21 Sec. 81.081. DEPARTMENT'S [BOARD'S] DUTY. The department
22 [board] shall impose control measures to prevent the spread of
23 disease in the exercise of its power to protect the public health.

24 SECTION 3.0233. Sections 81.082(a) and (c-1), Health and
25 Safety Code, are amended to read as follows:

26 (a) A health authority has supervisory authority and
27 control over the administration of communicable disease control

1 measures in the health authority's jurisdiction unless
2 specifically preempted by the department. Control measures imposed
3 by a health authority must be consistent with, and at least as
4 stringent as, the control measure standards in rules adopted by the
5 executive commissioner [board].

6 (c-1) A health authority may designate health care
7 facilities within the health authority's jurisdiction that are
8 capable of providing services for the examination, observation,
9 quarantine, isolation, treatment, or imposition of control
10 measures during a public health disaster or during an area
11 quarantine under Section 81.085. A health authority may not
12 designate a nursing facility [home] or other institution licensed
13 under Chapter 242.

14 SECTION 3.0234. Section 81.084(d), Health and Safety Code,
15 is amended to read as follows:

16 (d) The department or health authority shall remove the
17 quarantine and return control of the property to the person who owns
18 or controls it if the control measures are effective. If the
19 control measures are ineffective or if there is not a technically
20 feasible control measure available for use, the department or
21 health authority may continue the quarantine and order the person
22 who owns or controls the property:

23 (1) to destroy the property, other than land, in a
24 manner that disinfects or decontaminates the property to prevent
25 the spread of infection or contamination;

26 (2) if the property is land, to securely fence the
27 perimeter of the land or any part of the land that is infected or

1 contaminated; or

2 (3) to securely seal off an infected or contaminated
3 structure or other property on land to prevent entry into the
4 infected or contaminated area until the quarantine is removed by
5 the department [board] or health authority.

6 SECTION 3.0235. Sections 81.086(d), (e), and (h), Health
7 and Safety Code, are amended to read as follows:

8 (d) The owner or operator of a carrier or conveyance placed
9 in quarantine by order of the department or health authority, or of
10 a county or district court under Section 81.083 or 81.084, shall
11 bear the expense of the control measures employed to disinfect or
12 decontaminate the carrier or conveyance. The department or health
13 authority, as appropriate, shall charge and be reimbursed for the
14 cost of control measures performed by the department's or health
15 authority's employees. The department [board] shall deposit the
16 reimbursements to the credit of the general revenue fund to be used
17 to administer this chapter. A health authority shall distribute
18 the reimbursements to each county, municipality, or other
19 governmental entity in an amount proportional to that entity's
20 contribution to the quarantine and control expense.

21 (e) The owner or claimant of cargo or an object on board the
22 carrier or conveyance shall pay the expense of the control measures
23 employed in the manner provided by Section 81.084. The cost of
24 services rendered or provided by the department [board] or health
25 authority is subject to reimbursement as provided by Subsection
26 (d).

27 (h) If the department or health authority has reasonable

1 cause to believe that a carrier or conveyance is transporting cargo
2 or an object that is or may be infected or contaminated with a
3 communicable disease, the department or health authority may:

4 (1) require that the cargo or object be transported in
5 secure confinement or sealed in a car, trailer, hold, or
6 compartment, as appropriate, that is secured on the order and
7 instruction of the department [board] or health authority, if the
8 cargo or object is being transported through this state;

9 (2) require that the cargo or object be unloaded at an
10 alternate location equipped with adequate investigative and
11 disease control facilities if the cargo or object is being
12 transported to an intermediate or ultimate destination in this
13 state that cannot provide the necessary facilities; and

14 (3) investigate and, if necessary, quarantine the
15 cargo or object and impose any required control measure as
16 authorized by Section 81.084.

17 SECTION 3.0236. Sections 81.091(a), (c), and (d), Health
18 and Safety Code, are amended to read as follows:

19 (a) A physician, nurse, midwife, or other person in
20 attendance at childbirth shall use or cause to be used prophylaxis
21 approved by the executive commissioner [board] to prevent
22 ophthalmia neonatorum.

23 (c) Subject to the availability of funds, the department
24 shall furnish prophylaxis approved by the executive commissioner
25 [board] free of charge to:

26 (1) health care providers if the newborn's financially
27 responsible adult is unable to pay; and

(2) a midwife identified under Chapter 203, Occupations Code, who requests prophylaxis for administration under standing delegation orders issued by a licensed physician under Subsection (b) and subject to the provisions of Subchapter A, Chapter 157, Occupations Code.

6 (d) If a physician is not available to issue a standing
7 delegation order or if no physician will agree to issue a standing
8 delegation order, a midwife shall administer or cause to be
9 administered by an appropriately trained and licensed individual
10 prophylaxis approved by the executive commissioner [Texas Board of
11 Health] to prevent ophthalmia neonatorum to each infant that the
12 midwife delivers.

13 SECTION 3.0237. Section 81.0955(b), Health and Safety Code,
14 is amended to read as follows:

1 personnel, or a physician to provide any further testing,
2 treatment, or services or to perform further procedures. The
3 executive commissioner [~~of the Health and Human Services~~
4 ~~Commission~~] shall adopt rules to implement this subsection.

5 SECTION 3.0238. Sections [81.101](#)(1) and (4), Health and
6 Safety Code, are amended to read as follows:

7 (1) "AIDS" means acquired immune deficiency syndrome
8 as defined by the Centers for Disease Control and Prevention of the
9 United States Public Health Service.

10 (4) "Blood bank" means a blood bank, blood center,
11 regional collection center, tissue bank, transfusion service, or
12 other similar facility licensed by the Center for [~~Bureau of~~
13 Biologics Evaluation and Research of the United States Food and
14 Drug Administration, accredited for membership in the AABB
15 (formerly known as the American Association of Blood Banks), or
16 qualified for membership in the American Association of Tissue
17 Banks.

18 SECTION 3.0239. Sections [81.102](#)(a), (c), and (d), Health
19 and Safety Code, are amended to read as follows:

20 (a) A person may not require another person to undergo a
21 medical procedure or test designed to determine or help determine
22 if a person has AIDS or HIV infection, antibodies to HIV, or
23 infection with any other probable causative agent of AIDS unless:

24 (1) the medical procedure or test is required under
25 Subsection (d), under Section [81.050](#), or under Article [21.31](#), Code
26 of Criminal Procedure;

27 (2) the medical procedure or test is required under

1 Section 81.090, and no objection has been made under Section
2 81.090(1);

3 (3) the medical procedure or test is authorized under
4 Chapter 545, Insurance Code;

5 (4) a medical procedure is to be performed on the
6 person that could expose health care personnel to AIDS or HIV
7 infection, according to department rules [board guidelines]
8 defining the conditions that constitute possible exposure to AIDS
9 or HIV infection, and there is sufficient time to receive the test
10 result before the procedure is conducted; or

11 (5) the medical procedure or test is necessary:

12 (A) as a bona fide occupational qualification and
13 there is not a less discriminatory means of satisfying the
14 occupational qualification;

15 (B) to screen blood, blood products, body fluids,
16 organs, or tissues to determine suitability for donation;

17 (C) in relation to a particular person under this
18 chapter;

19 (D) to manage accidental exposure to blood or
20 other body fluids, but only if the test is conducted under written
21 infectious disease control protocols adopted by the health care
22 agency or facility;

23 (E) to test residents and clients of residential
24 facilities of the department or the Department of Aging and
25 Disability Services [Texas Department of Mental Health and Mental
26 Retardation], but only if:

27 (i) the test result would change the

1 medical or social management of the person tested or others who
2 associated with that person; and

7 (F) to test residents and clients of residential
8 facilities of the Texas Juvenile Justice Department [Youth
9 Commission], but only if:

10 (i) the test result would change the
11 medical or social management of the person tested or others who
12 associate with that person; and

23 (d) The executive commissioner [board] may adopt emergency
24 rules for mandatory testing for HIV infection if the commissioner
25 files a certificate of necessity with the executive commissioner
26 [board] that contains supportive findings of medical and scientific
27 fact and that declares a sudden and imminent threat to public

1 health. The rules must provide for:

2 (1) the narrowest application of HIV testing necessary

3 for the protection of the public health;

4 (2) procedures and guidelines to be followed by an
5 affected entity or state agency that clearly specify the need and
6 justification for the testing, specify methods to be used to assure
7 confidentiality, and delineate responsibility and authority for
8 carrying out the recommended actions;

9 (3) counseling of persons with seropositive test
10 results; and

11 (4) confidentiality regarding persons tested and
12 their test results.

13 SECTION 3.0240. Section [81.107\(a\)](#), Health and Safety Code,
14 is amended to read as follows:

15 (a) In a case of accidental exposure to blood or other body
16 fluids under Section [81.102\(a\)\(5\)\(D\)](#) [~~81.102(a)(4)(D)~~], the health
17 care agency or facility may test a person who may have exposed the
18 health care worker to HIV without the person's specific consent to
19 the test.

20 SECTION 3.0241. Section [81.108](#), Health and Safety Code, is
21 amended to read as follows:

22 Sec. 81.108. TESTING BY INSURERS. The Insurance Code and
23 any rules adopted by the commissioner of insurance for the Texas
24 Department [~~State Board~~] of Insurance exclusively govern all
25 practices of insurers in testing applicants to show or help show
26 whether a person has AIDS or HIV infection, antibodies to HIV, or
27 infection with any other probable causative agent of AIDS.

1 SECTION 3.0242. Section 81.159(a), Health and Safety Code,
2 is amended to read as follows:

3 (a) The commissioner shall designate health care facilities
4 throughout the state that are capable of providing services for the
5 examination, observation, isolation, or treatment of persons
6 having or suspected of having a communicable disease. However, the
7 commissioner may not designate:

8 (1) a nursing facility [~~home~~] or custodial care home
9 required to be licensed under Chapter 242; or

10 (2) an ICF-IID [~~intermediate care facility for the~~
11 ~~mentally retarded~~] required to be licensed under Chapter 252.

12 SECTION 3.0243. Section 81.166(d), Health and Safety Code,
13 is amended to read as follows:

14 (d) The notification of probable cause hearing shall read as
15 follows:

16 (Style of Case)

17 NOTIFICATION OF PROBABLE CAUSE HEARING

18 On this the _____ day of _____, 20____ [19____], the
19 undersigned hearing officer heard evidence concerning the need for
20 protective custody of _____ (hereinafter referred to as
21 proposed patient). The proposed patient was given the opportunity
22 to challenge the allegations that the proposed patient [~~(s)he~~]
23 presents a substantial risk of serious harm to self or others.

24 The proposed patient and the proposed patient's [~~his or her~~]
25 attorney _____ have been given written notice
26 that the proposed patient was placed under an order of protective
27 custody and the reasons for such order on _____ (date of

1 notice).

2 I have examined the affidavit of medical evaluation and
3 _____ (other evidence considered). Based on this
4 evidence, I find that there is probable cause to believe that the
5 proposed patient presents a substantial risk of serious harm to
6 self [himself or herself] (yes ____ or no ____) or others (yes ____
7 or no ____) such that the proposed patient [(s)he] cannot be at
8 liberty pending final hearing because the proposed patient [(s)he]
9 is infected with or is reasonably suspected of being infected with a
10 communicable disease that presents an immediate threat to the
11 public health and the proposed patient [(s)he] has failed or
12 refused to comply with the orders of the health authority or the
13 [Texas] Department of State Health Services delivered on _____
14 (date of service) _____.

15 SECTION 3.0244. Section 81.178(d), Health and Safety Code,
16 is amended to read as follows:

17 (d) The appropriate courts of this state retain
18 jurisdiction to inquire at any time into the person's [mental]
19 condition and the necessity of the person's continued commitment.

20 SECTION 3.0245. Sections 81.211(a) and (b), Health and
21 Safety Code, are amended to read as follows:

22 (a) In the case of a person who is not a resident of this
23 state and who may be admitted to a public health [~~state chest~~]
24 hospital in accordance with Section 13.046, the attorney general,
25 at the request of the department, shall file a copy of an order
26 issued by a court of another state that authorizes the commitment of
27 the person to a health care facility for inpatient care in the

1 manner provided by Chapter 35, Civil Practice and Remedies Code,
2 for enforcement of foreign judgments.

3 (b) The application must be filed with the district court in
4 the county in which the public health [state chest] hospital to
5 which the person will be admitted is located.

6 SECTION 3.0246. Section 81.304, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 81.304. MINIMUM STANDARDS. The executive commissioner
9 [board] by rule shall adopt minimum standards to implement the
10 exposure control plan and the other provisions of this subchapter.
11 The rules shall be analogous to standards adopted by the federal
12 Occupational Safety and Health Administration. Each governmental
13 unit shall comply with the minimum standards adopted under this
14 subchapter.

15 SECTION 3.0247. Section 81.305(a), Health and Safety Code,
16 is amended to read as follows:

17 (a) The executive commissioner [board] by rule shall
18 recommend that governmental units implement needleless systems and
19 sharps with engineered sharps injury protection for employees.

20 SECTION 3.0248. Sections 81.306(a) and (c), Health and
21 Safety Code, are amended to read as follows:

22 (a) The executive commissioner [board] by rule shall
23 require that information concerning exposure incidents be recorded
24 in a written or electronic sharps injury log to be maintained by a
25 governmental unit. This information must be reported to the
26 department and must include:

27 (1) the date and time of the exposure incident;

1 (2) the type and brand of sharp involved in the
2 exposure incident; and

3 (3) a description of the exposure incident, including:

4 (A) the job classification or title of the
5 exposed employee;

6 (B) the department or work area where the
7 exposure incident occurred;

8 (C) the procedure that the exposed employee was
9 performing at the time of the incident;

10 (D) how the incident occurred;

11 (E) the employee's body part that was involved in
12 the exposure incident; and

13 (F) whether the sharp had engineered sharps
14 injury protection and, if so, whether the protective mechanism was
15 activated and whether the injury occurred before, during, or after
16 the activation of the protective mechanism.

17 (c) All information and materials obtained or compiled by
18 the department in connection with a report under this section are
19 confidential and not subject to disclosure under Chapter 552,
20 Government Code, and not subject to disclosure, discovery,
21 subpoena, or other means of legal compulsion for their release by
22 the department. The department shall make available, in aggregate
23 form, the information described in Section 81.305(b) and this
24 section, provided that the name and other information identifying
25 the facility is deleted and the information is provided according
26 to public health regions established by the executive commissioner
27 [department].

1 SECTION 3.0249. Sections 81.307(a) and (c), Health and
2 Safety Code, are amended to read as follows:

3 (a) The department, in accordance with rules adopted by the
4 executive commissioner [board], shall implement a registration
5 program for existing needleless systems and sharps with engineered
6 sharps injury protection.

7 (c) The department shall collect [~~charge~~] a fee to register
8 a device in an amount established by rule by the executive
9 commissioner [board]. The fees collected under this section may be
10 appropriated only to the department to implement this subchapter.

11 SECTION 3.0250. Section 81.352(b), Health and Safety Code,
12 is amended to read as follows:

13 (b) The executive commissioner [~~department~~] shall adopt
14 rules to govern:

15 (1) the form and content of the sign required by
16 Subsection (a) and the manner and place of posting of the sign; and
17 (2) the form and content of the written warning
18 required by Subsection (a).

19 SECTION 3.0251. Sections 81.353(a) and (d), Health and
20 Safety Code, are amended to read as follows:

21 (a) The department may assess an administrative penalty if a
22 person violates this subchapter [~~section~~] or a rule adopted under
23 this subchapter [~~section~~].

24 (d) The enforcement of the penalty may be stayed during the
25 time the order is under judicial review if the person pays the
26 penalty to the clerk of the court or files a supersedeas bond with
27 the court in the amount of the penalty. A person who cannot afford

1 to pay the penalty or file the bond may stay the enforcement by
2 filing an affidavit in the manner required by the Texas Rules of
3 Civil Procedure for a party who cannot afford to file security for
4 costs, subject to the right of the department [board] to contest the
5 affidavit as provided by those rules.

6 SECTION 3.0252. Section 82.004, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 82.004. REGISTRY REQUIRED. The department [board]
9 shall maintain a cancer registry for the state.

10 SECTION 3.0253. Section 82.005(b), Health and Safety Code,
11 is amended to read as follows:

12 (b) The cancer registry must include:

13 (1) a record of the cases of cancer that occur in the
14 state; and

15 (2) information concerning cancer cases as the
16 executive commissioner [board] considers necessary and appropriate
17 for the recognition, prevention, cure, or control of cancer.

18 SECTION 3.0254. Section 82.006, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 82.006. EXECUTIVE COMMISSIONER AND DEPARTMENT [BOARD]
21 POWERS. (a) To implement this chapter, the executive commissioner
22 [board] may [+]

23 [+1] adopt rules that the executive commissioner
24 [board] considers necessary. [-]

25 (b) To implement this chapter, the department may:

26 (1) [+2] execute contracts considered [that the
27 board considers] necessary;

1 (2) [+] receive the data from medical records of
2 cases of cancer that are in the custody or under the control of
3 clinical laboratories, health care facilities, and health care
4 practitioners to record and analyze the data directly related to
5 those diseases;

6 (3) [+] compile and publish statistical and other
7 studies derived from the patient data obtained under this chapter
8 to provide, in an accessible form, information that is useful to
9 physicians, other medical personnel, and the general public;

10 (4) [+] comply with requirements as necessary to
11 obtain federal funds in the maximum amounts and most advantageous
12 proportions possible;

13 (5) [+] receive and use gifts made for the purpose
14 of this chapter; and

15 (6) [+] limit cancer reporting activities under
16 this chapter to specified geographic areas of the state to ensure
17 optimal use of funds available for obtaining the data.

18 SECTION 3.0255. Sections 82.008(a), (b), and (e), Health
19 and Safety Code, are amended to read as follows:

20 (a) To ensure an accurate and continuing source of data
21 concerning cancer, each health care facility, clinical laboratory,
22 and health care practitioner shall furnish to the department [board
23 ~~or its representative~~], on request, data the executive commissioner
24 [board] considers necessary and appropriate that is derived from
25 each medical record pertaining to a case of cancer that is in the
26 custody or under the control of the health care facility, clinical
27 laboratory, or health care practitioner. The department may not

1 request data that is more than three years old unless the department
2 is investigating a possible cancer cluster.

3 (b) A health care facility, clinical laboratory, or health
4 care practitioner shall furnish the data requested under Subsection
5 (a) in a reasonable format prescribed by [the] department rule and
6 within six months of the patient's admission, diagnosis, or
7 treatment for cancer unless a different period is prescribed by the
8 United States Department of Health and Human Services.

9 (e) The executive commissioner [board] shall adopt
10 procedures that ensure adequate notice is given to the health care
11 facility, clinical laboratory, or health care practitioner before
12 the department accesses data under Subsection (d).

13 SECTION 3.0256. Section 82.009(b), Health and Safety Code,
14 is amended to read as follows:

15 (b) Medical or epidemiological information may be released:
16 (1) for statistical purposes in a manner that prevents
17 identification of individuals, health care facilities, clinical
18 laboratories, or health care practitioners;
19 (2) with the consent of each person identified in the
20 information; or
21 (3) to promote cancer research, including release of
22 information to other cancer registries and appropriate state and
23 federal agencies, under rules adopted by the executive commissioner
24 [board] to ensure confidentiality as required by state and federal
25 laws.

26 SECTION 3.0257. Section 82.011, Health and Safety Code, is
27 amended to read as follows:

1 Sec. 82.011. EXAMINATION AND SUPERVISION NOT REQUIRED.
2 This chapter does not require an individual to submit to any medical
3 examination or supervision or to examination or supervision by the
4 department [board or its representatives].

5 SECTION 3.0258. Sections 84.003(b), (c), (d), and (e),
6 Health and Safety Code, are amended to read as follows:

7 (b) Blood lead levels in adults are laboratory findings that
8 are reportable to the department as provided by department [board]
9 rule.

10 (c) The executive commissioner [board] may adopt rules that
11 require other occupational conditions to be reported under this
12 chapter. Before the executive commissioner [board] requires
13 another occupational condition to be reported, the executive
14 commissioner [board] must find that the condition:

15 (1) has a well-understood etiology;
16 (2) results predominantly from occupational
17 exposures; and
18 (3) is preventable.

19 (d) The executive commissioner [board] shall maintain a
20 list of reportable conditions.

21 (e) The executive commissioner [board] shall adopt rules
22 necessary to administer and implement this chapter.

23 SECTION 3.0259. Section 84.004(c), Health and Safety Code,
24 is amended to read as follows:

25 (c) The executive commissioner [board] shall prescribe the
26 form and method of reporting. The executive commissioner [board]
27 may require the reports to contain any information necessary to

1 achieve the purposes of this chapter, including the person's name,
2 address, age, sex, race, occupation, employer, and attending
3 physician.

4 SECTION 3.0260. Section 84.005(b), Health and Safety Code,
5 is amended to read as follows:

6 (b) The department may seek, receive, and spend any funds
7 received through appropriations, grants, or donations from public
8 or private sources for the purpose of identifying, reporting, or
9 preventing those occupational conditions that have been determined
10 by the executive commissioner [board] to be injurious or to be a
11 threat to the public health, subject to any limitations or
12 conditions prescribed by the legislature.

13 SECTION 3.0261. Section 84.006(b), Health and Safety Code,
14 is amended to read as follows:

15 (b) The executive commissioner [board] shall adopt rules
16 establishing procedures to ensure that all information and records
17 maintained by the department under this chapter are kept
18 confidential and protected from release to unauthorized persons.

19 SECTION 3.0262. Section 84.007(b), Health and Safety Code,
20 is amended to read as follows:

21 (b) In performing the department's [commissioner's] duty to
22 prevent an occupational condition, the department's [commissioner
23 ~~or the commissioner's~~] designee may enter at reasonable times and
24 inspect within reasonable limits all or any part of an area,
25 structure, or conveyance, regardless of ownership, that is not used
26 for private residential purposes.

27 SECTION 3.0263. Sections 85.002(1), (2), and (6), Health

1 and Safety Code, are amended to read as follows:

2 (1) "AIDS" means acquired immune deficiency syndrome
3 as defined by the Centers for Disease Control and Prevention of the
4 United States Public Health Service.

(6) "Testing program" means a [medical] program using
a diagnostic test approved by the United States Food and Drug
Administration to indicate the presence of HIV [to test for AIDS,
HIV infection, antibodies to HIV, or infection with any other
probable causative agent of AIDS].

13 SECTION 3.0264. The heading to Subchapter A, Chapter 85,
14 Health and Safety Code, is amended to read as follows:

15 SUBCHAPTER A. GENERAL PROVISIONS AND EDUCATIONAL MATERIALS

[~~EDUCATION PROGRAMS~~] 16

17 SECTION 3.0265. Sections 85.004 and 85.005, Health and
18 Safety Code, are amended to read as follows:

19 Sec. 85.004. EDUCATIONAL MATERIALS [EDUCATION PROGRAMS].

20 (a) The department shall develop model educational materials
21 [~~education programs~~] to be available on the department's Internet
22 website to educate the public about AIDS and HIV infection.

23 (b) The [As part of the programs, the department shall
24 ~~develop a model~~] educational materials must:

25 (1) include information [pamphlet] about methods of
26 transmission and prevention of HIV infection, [about] state laws
27 relating to the transmission, and [to] conduct that may result in

1 the transmission of HIV; and [.]

2 (2) [~~(c)~~ The programs must] be scientifically
3 accurate and factually correct and designed to:

4 (A) [~~(1)~~] communicate to the public knowledge
5 about methods of transmission and prevention of HIV infection; and

6 (B) [~~(2)~~] educate the public about transmission
7 risks in social, employment, and educational situations[+]

8 [~~(3) educate health care workers and health facility~~
9 ~~employees about methods of transmission and prevention in their~~
10 ~~particular workplace environments; and~~

11 [~~(4) educate the public about state laws relating to~~
12 ~~the transmission and conduct that may result in the transmission of~~
13 ~~HIV~~].

14 Sec. 85.005. EDUCATIONAL MATERIALS DESIGNED FOR CERTAIN
15 PERSONS; SPECIFIC INFORMATION [~~SPECIAL COMPONENTS OF EDUCATION~~
16 ~~PROGRAMS~~]. (a) The department shall include in the educational
17 materials specific information [~~education programs special~~
18 ~~components~~] designed to reach:

19 (1) persons with behavior conducive to HIV
20 transmission;

21 (2) persons younger than 18 years of age; and

22 (3) minority groups.

23 (b) In developing educational materials [~~designing~~
24 ~~education programs~~] for ethnic minorities and in assisting local
25 community organizations in developing educational materials
26 [~~education programs~~] for minority groups, the department shall
27 ensure that the educational materials [~~programs~~] reflect the nature

1 and spread of HIV infection in minorities in this state.

2 SECTION 3.0266. The heading to Section 85.006, Health and
3 Safety Code, is amended to read as follows:

4 Sec. 85.006. EDUCATIONAL MATERIALS [~~EDUCATION PROGRAMS~~]
5 FOR ~~DISABLED~~ PERSONS WITH DISABILITIES.

6 SECTION 3.0267. Sections 85.006(a) and (b), Health and
7 Safety Code, are amended to read as follows:

8 (a) The department shall develop and promote the
9 availability of educational materials concerning HIV [~~education~~]
10 and prevention of HIV infection [~~programs~~] specifically designed to
11 address the concerns of persons with physical or mental
12 disabilities.

13 (b) In developing [~~designing~~] those educational materials
14 [~~programs~~], the department shall consult persons with disabilities
15 or consult experts in the appropriate professional disciplines.

16 SECTION 3.0268. The heading to Section 85.007, Health and
17 Safety Code, is amended to read as follows:

18 Sec. 85.007. EDUCATIONAL MATERIALS [~~EDUCATION PROGRAMS~~]
19 FOR MINORS.

20 SECTION 3.0269. Sections 85.007(a) and (c), Health and
21 Safety Code, are amended to read as follows:

22 (a) The department shall give priority to developing model
23 educational materials for education programs for persons younger
24 than 18 years of age.

25 (c) In addition, the educational materials [~~in the~~
26 ~~education program~~] intended for persons younger than 18 years of
27 age must:

1 (1) teach that sexual activity before marriage is
2 likely to have harmful psychological and physical consequences;
3 (2) teach adolescents ways to recognize and respond to
4 unwanted physical and verbal sexual advances;
5 (3) teach that the use of alcohol or drugs increases a
6 person's vulnerability to unwanted sexual advances; and
7 (4) emphasize the importance of attaining
8 self-sufficiency before engaging in sexual activity.

9 SECTION 3.0270. Sections 85.008, 85.009, 85.010, and
10 85.011, Health and Safety Code, are amended to read as follows:

11 Sec. 85.008. PROMOTION [~~DISTRIBUTION~~] OF AVAILABILITY OF
12 EDUCATIONAL MATERIALS [~~EDUCATION PROGRAMS~~]. [(a)] The department
13 shall determine where HIV education efforts are needed in this
14 state and shall promote the availability of educational materials
15 on the department's Internet website [~~initiate programs~~] in those
16 areas [~~by identifying local resources~~].

17 [(b) ~~The department shall assist communities, especially~~
18 ~~those in rural areas, in establishing self-sustaining education~~
19 ~~programs, using public and private resources.~~]

20 Sec. 85.009. AVAILABILITY OF EDUCATIONAL MATERIALS
21 [~~EDUCATION PROGRAMS AVAILABLE ON REQUEST~~]. The department shall
22 make the educational materials [~~the education programs~~] available
23 on the department's Internet website for [~~to~~] local governments and
24 private businesses [~~on request~~].

25 Sec. 85.010. EDUCATIONAL COURSE FOR EMPLOYEES AND CLIENTS
26 OF HEALTH CARE FACILITIES. A health care facility licensed by the
27 department or [~~or~~] the [~~Texas~~] Department of Aging and Disability

1 Services [~~Mental Health and Mental Retardation, or the Texas~~
2 ~~Department of Human Services~~] shall require its employees to
3 complete an educational course about HIV infection based on the
4 model educational materials [~~education programs~~] developed by the
5 department.

6 Sec. 85.011. CONTRACTS FOR EDUCATIONAL MATERIALS
7 [~~EDUCATION PROGRAMS~~]. (a) The department may contract with any
8 person, other than a person who advocates or promotes conduct that
9 violates state law, for the design and[~~–~~] development[~~– and~~
10 ~~distribution~~] of educational materials [~~education programs~~].

11 (b) This section does not restrict the inclusion in
12 educational materials of [~~an education program from providing~~]
13 accurate information about different ways to reduce the risk of
14 exposure to or the transmission of HIV.

15 SECTION 3.0271. Sections 85.012(b) and (e), Health and
16 Safety Code, are amended to read as follows:

17 (b) The model workplace guidelines must include provisions
18 stating that:

19 (1) all employees will receive some education about
20 methods of transmission and prevention of HIV infection and related
21 conditions;

22 (2) accommodations will be made to keep persons with
23 HIV infection employed and productive for as long as possible;

24 (3) the confidentiality of employee medical records
25 will be protected;

26 (4) HIV-related policies will be consistent with
27 current information from public health authorities, such as the

1 Centers for Disease Control and Prevention of the United States
2 Public Health Service, and with state and federal law and
3 regulations;

4 (5) persons with HIV infection are entitled to the
5 same rights and opportunities as persons with other communicable
6 diseases; and

7 (6) employers and employees should not engage in
8 discrimination against persons with HIV infection unless based on
9 accurate scientific information.

10 (e) Employers should be encouraged to adopt HIV-related
11 workplace guidelines that incorporate, at a minimum, the guidelines
12 established by the department [board] under this section.

13 SECTION 3.0272. Section 85.015(b), Health and Safety Code,
14 is amended to read as follows:

15 (b) Subsection (a)(2) does not restrict the inclusion in
16 educational materials of [an education program from providing]
17 accurate information about ways to reduce the risk of exposure to or
18 transmission of HIV.

19 SECTION 3.0273. Section 85.016, Health and Safety Code, is
20 amended to read as follows:

21 Sec. 85.016. RULES. The executive commissioner [board] may
22 adopt rules necessary to implement Subchapters A through F.

23 SECTION 3.0274. Sections 85.032 and 85.033, Health and
24 Safety Code, are amended to read as follows:

25 Sec. 85.032. RULES; PROGRAM STRUCTURE. (a) The executive
26 commissioner [board] may adopt rules relating to:

27 (1) the services that may be furnished under the

1 program;

2 (2) a system of priorities regarding the types of
3 services provided, geographic areas covered, or classes of
4 individuals or communities targeted for services under the program;
5 and

6 (3) a process for resolving conflicts between the
7 department and a program receiving money under this subchapter.

8 (b) Executive commissioner [Board] or department actions
9 relating to service, geographic, and other priorities shall be
10 based on the set of priorities and guidelines established under
11 this section.

12 (c) In structuring the program and adopting rules, the
13 department and the executive commissioner, as appropriate, [board]
14 shall attempt to:

15 (1) coordinate the use of federal, local, and private
16 funds;

17 (2) encourage the provision of community-based
18 services;

19 (3) address needs that are not met by other sources of
20 funding;

21 (4) provide funding as extensively as possible across
22 the regions of the state in amounts that reflect regional needs; and

23 (5) encourage cooperation among local service
24 providers.

25 Sec. 85.033. COORDINATION OF SERVICES. (a) To prevent
26 unnecessary duplication of services, the executive commissioner
27 [board] and the department shall seek to coordinate the services

1 provided by eligible programs under Subchapters A through G with
2 existing federal, state, and local programs.

3 (b) The department shall consult with the [Texas]
4 Department of Aging and Disability [Human] Services and the
5 commission to ensure that programs funded under this subchapter
6 complement and do not unnecessarily duplicate services provided
7 through the [Texas] Department of Aging and Disability [Human]
8 Services and the commission.

9 SECTION 3.0275. Section 85.041(b), Health and Safety Code,
10 is amended to read as follows:

11 (b) The executive commissioner [board] may adopt rules
12 relating to the information a program is required to report to the
13 department and shall adopt procedures and forms for reporting the
14 information to prevent unnecessary and duplicative reporting of
15 data.

16 SECTION 3.0276. Section 85.044, Health and Safety Code, is
17 amended to read as follows:

18 Sec. 85.044. ADVISORY COMMITTEE. The executive
19 commissioner [board] may appoint an advisory committee to assist in
20 the development of procedures and guidelines required by this
21 subchapter.

22 SECTION 3.0277. Section 85.061(b), Health and Safety Code,
23 is amended to read as follows:

24 (b) The program shall assist hospital districts, local
25 health departments, public or nonprofit hospitals and clinics,
26 nonprofit community organizations, and HIV-infected individuals in
27 the purchase of medications approved by the commissioner [board]

1 that have been shown to be effective in reducing hospitalizations
2 due to HIV-related conditions.

3 SECTION 3.0278. Section 85.062(a), Health and Safety Code,
4 is amended to read as follows:

5 (a) To be eligible for the program, an individual:
6 (1) must not be eligible for Medicaid benefits;
7 (2) must meet financial eligibility criteria set by
8 department [board] rule;
9 (3) must not qualify for any other state or federal
10 program available for financing the purchase of the prescribed
11 medication; and
12 (4) must be diagnosed by a licensed physician as
13 having AIDS or an HIV-related condition or illness of at least the
14 minimal severity set by the executive commissioner [board].

15 SECTION 3.0279. Section 85.063, Health and Safety Code, is
16 amended to read as follows:

17 Sec. 85.063. PROCEDURES AND ELIGIBILITY GUIDELINES. The
18 executive commissioner [board] by rule shall establish:
19 (1) application and distribution procedures;
20 (2) eligibility guidelines to ensure the most
21 appropriate distribution of funds available each year; and
22 (3) appellate procedures to resolve any eligibility or
23 funding conflicts.

24 SECTION 3.0280. Section 85.064(d), Health and Safety Code,
25 is amended to read as follows:

26 (d) The department shall deposit money received under this
27 section in the state treasury to the credit of the general revenue

1 fund [HIV medication fund and to the credit of a special account in
2 that fund that shall be established for each entity sending funds
3 under this section].

4 SECTION 3.0281. Section 85.081(a), Health and Safety Code,
5 is amended to read as follows:

6 (a) The department shall develop, and the executive
7 commissioner shall adopt, model protocols for counseling and
8 testing related to HIV infection. The protocols shall be made
9 available to health care providers on request.

10 SECTION 3.0282. Section 85.087(d), Health and Safety Code,
11 is amended to read as follows:

12 (d) The executive commissioner by rule [board] shall set the
13 fee in an amount that is reasonable and necessary to cover the costs
14 of providing the course.

15 SECTION 3.0283. Section 85.088(a), Health and Safety Code,
16 is amended to read as follows:

17 (a) State-funded primary health, women's reproductive
18 health, and sexually transmitted disease clinics shall:

19 (1) make available to patients and clients information
20 and educational materials concerning the prevention of HIV
21 infection; and

22 (2) provide or refer patients and clients to
23 voluntary[, anonymous,] and affordable counseling and HIV testing
24 services, including the patient's or client's choice of anonymous
25 or confidential HIV testing or counseling [programs concerning HIV
26 infection or provide referrals to those programs].

27 SECTION 3.0284. Sections 85.111(a), (b), and (c), Health

1 and Safety Code, are amended to read as follows:

2 (a) Each state agency annually shall provide to each state
3 employee [an] educational information [~~pamphlet~~] about:

4 (1) methods of transmission and prevention of HIV
5 infection;

6 (2) state laws relating to the transmission of HIV
7 infection; and

8 (3) conduct that may result in the transmission of HIV
9 infection.

10 (b) The educational information [~~pamphlet~~] shall be
11 provided to a newly hired state employee on the first day of
12 employment.

13 (c) The educational information [~~pamphlet~~] shall be based
14 on the model developed by the department and shall include the
15 workplace guidelines adopted by the state agency.

16 SECTION 3.0285. Section 85.113, Health and Safety Code, is
17 amended to read as follows:

18 Sec. 85.113. WORKPLACE GUIDELINES FOR STATE CONTRACTORS.
19 An entity that contracts with or is funded by any of the following
20 state agencies to operate a program involving direct client contact
21 shall adopt and implement workplace guidelines similar to the
22 guidelines adopted by the agency that funds or contracts with the
23 entity:

24 (1) the Department of Assistive and Rehabilitative
25 Services [~~Texas Commission on Alcohol and Drug Abuse;~~

26 [~~(2) the Texas Commission for the Blind;~~

27 [~~(3) the Texas Commission for the Deaf and Hard of~~

1 Hearing];
2 (2) [(-4)] the Texas Juvenile Justice Department
3 ~~[Probation Commission]~~;
4 (3) [(-5)] the Texas Department of Criminal Justice;
5 (4) [(-6)] ~~the Texas Youth Commission;~~
6 ~~[(-7)]~~ the department;
7 (5) [(-8)] the ~~[Texas]~~ Department of Aging and
8 Disability ~~Human~~ Services; and
9 (6) [(-9)] the commission ~~[Texas Department of Mental~~
10 ~~Health and Mental Retardation; and~~
11 ~~[(-10)]~~ ~~the Texas Rehabilitation Commission~~.
12 SECTION 3.0286. Section 85.114(b), Health and Safety Code,
13 is amended to read as follows:
14 (b) Education available under this section shall be based on
15 the model educational materials ~~education program~~ developed by
16 the department and tailored to the cultural, educational, language,
17 and developmental needs of the clients, inmates, patients, or
18 residents, including the use of Braille or telecommunication
19 devices for the deaf.
20 SECTION 3.0287. Sections 85.116(b) and (d), Health and
21 Safety Code, are amended to read as follows:
22 (b) The executive commissioner ~~board~~ by rule shall
23 prescribe the criteria that constitute possible exposure to HIV
24 under this section. The criteria must be based on activities the
25 United States Public Health Service determines pose a risk of HIV
26 infection.
27 (d) The cost of a state employee's testing and counseling

1 shall be paid from funds appropriated for payment of workers'
2 compensation benefits to state employees. The State Office of Risk
3 Management [~~director of the workers' compensation division of the~~
4 ~~attorney general's office~~] shall adopt rules necessary to
5 administer this subsection.

6 SECTION 3.0288. Section 85.201(a), Health and Safety Code,
7 is amended to read as follows:

8 (a) The legislature finds that:

9 (1) the Centers for Disease Control and Prevention of
10 the United States Public Health Service have made recommendations
11 for preventing transmission of human immunodeficiency virus (HIV)
12 and hepatitis B virus (HBV) to patients in the health care setting;

13 (2) the Centers for Disease Control and Prevention of
14 the United States Public Health Service have found that when health
15 care workers adhere to recommended infection-control procedures,
16 the risk of transmitting HBV from an infected health care worker to
17 a patient is small, and the risk of transmitting HIV is likely to be
18 even smaller;

19 (3) the risk of transmission of HIV and HBV in health
20 care settings will be minimized if health care workers adhere to the
21 Centers for Disease Control and Prevention of the United States
22 Public Health Service recommendations; and

23 (4) health care workers who perform exposure-prone
24 procedures should know their HIV antibody status; health care
25 workers who perform exposure-prone procedures and who do not have
26 serologic evidence of immunity to HBV from vaccination or from
27 previous infection should know their HBsAg status and, if that is

1 positive, should also know their HBeAg status.

2 SECTION 3.0289. Section 85.202(4), Health and Safety Code,
3 is amended to read as follows:

4 (4) "Universal precautions" means procedures for
5 disinfection and sterilization of reusable medical devices and the
6 appropriate use of infection control, including hand washing, the
7 use of protective barriers, and the use and disposal of needles and
8 other sharp instruments as those procedures are defined by the
9 Centers for Disease Control and Prevention of the United States
10 Public Health Service.

11 SECTION 3.0290. Sections 85.257(c) and (d), Health and
12 Safety Code, are amended to read as follows:

13 (c) Counseling provided by a service provider, including
14 written information provided under Subsection (a) and referrals,
15 must conform with counseling protocols adopted by the executive
16 commissioner [board]. Except as provided by Section 85.256, the
17 counseling protocols must be consistent with the requirements of
18 Section 81.109 and the protocols adopted under Section 85.081.

19 (d) Counseling provided by a service provider under this
20 section must be provided in English and in Spanish. The department
21 [board] may require a service provider to provide counseling in
22 another language if the department [board] finds that the service
23 provider is marketing home collection kits in a community in which a
24 significant portion of the population speaks a language other than
25 English or Spanish.

26 SECTION 3.0291. Section 85.258(c), Health and Safety Code,
27 is amended to read as follows:

1 (c) In addition to the labeling requirements in Subsections
2 (a) and (b), a home collection kit labeled in Spanish must also be
3 available. The department [~~board~~] may require a service provider
4 to label a home collection kit in another language if the department
5 [~~board~~] finds that the service provider is marketing home
6 collection kits in a community in which a significant portion of the
7 population speaks a language other than English or Spanish.

8 SECTION 3.0292. Section 85.275(f), Health and Safety Code,
9 is amended to read as follows:

10 (f) The assistant presiding officer shall:

11 (1) perform the duties of the presiding officer if the
12 presiding officer is absent or is not able to perform those duties
13 because of disability [~~becomes disabled~~]; and

14 (2) complete the unexpired portion of the presiding
15 officer's term if the office of the presiding officer becomes
16 vacant.

17 SECTION 3.0293. Section 87.001(7), Health and Safety Code,
18 is amended to read as follows:

19 (7) "Health facility" includes:

20 (A) a general or special hospital licensed by the
21 department under Chapter 241;

22 (B) a physician-owned or physician-operated
23 clinic;

24 (C) a publicly or privately funded medical
25 school;

26 (D) a state hospital operated by the department
27 or a state supported living center operated [~~school maintained and~~

1 managed] by the [Texas] Department of Aging and Disability Services
2 [Mental Health and Mental Retardation];
3 (E) a genetic evaluation and counseling center;
4 (F) a public health clinic conducted by a local
5 health unit, health department, or public health district organized
6 and recognized under Chapter 121;
7 (G) a physician peer review organization; and
8 (H) another facility specified by department
9 [~~board~~] rule.

10 SECTION 3.0294. Sections 87.002(c) and (d), Health and
11 Safety Code, are amended to read as follows:

12 (c) The department may release medical, epidemiological, or
13 toxicological information:

14 (1) for statistical purposes, if released in a manner
15 that prevents the identification of any person;

16 (2) with the consent of each person identified in the
17 information or, if the person is a minor, the minor's parents,
18 managing conservator, guardian, or other person who is legally
19 authorized to consent;

20 (3) to medical personnel, appropriate state agencies,
21 health authorities, regional directors, and public officers of
22 counties and municipalities as necessary to comply with this
23 chapter and department [~~board~~] rules relating to the
24 identification, monitoring, and referral of children with birth
25 defects;

26 (4) to appropriate federal agencies, such as the
27 Centers for Disease Control and Prevention of the United States

1 Public Health Service; or

5 (d) The executive commissioner [A board member], the
6 commissioner, another employee of the department, or an authorized
7 agent may not be examined in a civil, criminal, special, or other
8 proceeding as to the existence or contents of pertinent records of
9 or reports or information about a child identified or monitored for
10 a birth defect by the department without the consent of the child's
11 parents, managing conservator, guardian, or other person
12 authorized by law of this state or another state or by a court order
13 to give consent.

14 SECTION 3.0295. Section [87.021](#), Health and Safety Code, is
15 amended to read as follows:

16 Sec. 87.021. SURVEILLANCE PROGRAM; REGISTRY ESTABLISHED.

17 (a) The executive commissioner [board] shall establish in the
18 department a program to:

19 (1) identify and investigate certain birth defects in
20 children; and

21 (2) maintain a central registry of cases of birth
22 defects.

23 (b) The executive commissioner [board] may authorize the
24 department to implement a statewide program or to limit the program
25 to a part or all of one or more public health regions, depending on
26 the funding available to the department. In establishing the
27 program, the executive commissioner [board] shall consider:

1 (1) the number and geographic distribution of births
2 in the state;

3 (2) the trained personnel and other departmental
4 resources that may be assigned to the program activities; and

5 (3) the occurrence or probable occurrence of an urgent
6 situation that requires or will require an unusual commitment of
7 the department's personnel and other resources.

8 (c) The ~~board and the~~ department shall design the program
9 so that the program will:

10 (1) provide information to identify risk factors and
11 causes of birth defects;

12 (2) provide information on other possible causes of
13 birth defects;

14 (3) provide for the development of strategies to
15 prevent birth defects;

16 (4) provide for interview studies about the causes of
17 birth defects;

18 (5) together with other departmental programs,
19 contribute birth defects data to a central registry;

20 (6) provide for the appointment of authorized agents
21 to collect birth defects information; and

22 (7) provide for the active collection of birth defects
23 information.

24 (d) The executive commissioner ~~board~~ shall adopt rules to
25 govern the operation of the program and carry out the intent of this
26 chapter. At a minimum, the rules shall:

27 (1) use a medically recognized system to specify the

1 birth defects to be identified and investigated;

2 (2) select a system for classifying the birth defects
3 according to the public health significance of each defect to
4 prioritize the use of resources;

5 (3) develop a system to select and specify the cases to
6 be investigated;

7 (4) specify a system for selecting the demographic
8 areas in which the department may undertake investigations; and

9 (5) prescribe the training and experience a person
10 must have for appointment as an authorized agent of the department.

11 (e) In adopting the rules required by Subsection (d), the
12 executive commissioner [board] shall consider at least:

13 (1) the known incidence and prevalence rates of a
14 birth defect in the state or portions of the state;

15 (2) the known incidence and prevalence rates of a
16 particular birth defect in specific population groups who live in
17 the state or portions of the state;

18 (3) the morbidity and mortality resulting from the
19 birth defect; and

20 (4) the existence, cost, and availability of a
21 strategy to prevent and treat the birth defect.

22 (f) In addition to providing for the active collection of
23 birth defects information under Subsection (c)(7), the [board and
24 the] department may design the program to also provide for the
25 passive collection of that information.

26 SECTION 3.0296. Section 87.022, Health and Safety Code, is
27 amended to read as follows:

1 Sec. 87.022. DATA COLLECTION. (a) To ensure an accurate
2 source of data necessary to investigate the incidence, prevalence,
3 and trends of birth defects, the executive commissioner [board] may
4 require a health facility, health professional, or midwife to make
5 available for review by the department or by an authorized agent
6 medical records or other information that is in the facility's,
7 professional's, or midwife's custody or control and that relates to
8 the occurrence of a birth defect specified by the executive
9 commissioner [board].

10 (b) The executive commissioner [board] by rule shall
11 prescribe the manner in which records and other information are
12 made available to the department.

13 (c) The executive commissioner [board] shall adopt
14 procedural rules to facilitate cooperation between the health care
15 facility, health professional, or midwife and a department employee
16 or authorized agent, including rules for notice, requests for
17 medical records, times for record reviews, and record management
18 during review.

19 SECTION 3.0297. Section 87.023, Health and Safety Code, is
20 amended to read as follows:

21 Sec. 87.023. REFERRAL FOR SERVICES. A child who meets the
22 medical criteria prescribed by department [board] rule, and the
23 child's family, shall be referred to the department's case
24 management program for guidance in applying for financial or
25 medical assistance available through existing state and federal
26 programs.

27 SECTION 3.0298. Sections 87.061(b) and (c), Health and

1 Safety Code, are amended to read as follows:

2 (b) The department shall use the registry to:

3 (1) investigate the causes of birth defects and other
4 health conditions as authorized by Texas statutes;

5 (2) design and evaluate measures to prevent the
6 occurrence of birth defects and other health conditions; and

7 (3) conduct other investigations and activities
8 necessary for the executive commissioner [board] and department to
9 fulfill their obligation to protect the health of the public.

10 (c) The department may store in the central registry
11 information that is obtained from the section of the birth
12 certificate entitled "For Medical and Health Use Only." This
13 information may be used only as provided by Section 192.002(b),
14 [191.002(b)], relating to the form and contents of the birth
15 certificate.

16 SECTION 3.0299. Section 87.063(a), Health and Safety Code,
17 is amended to read as follows:

18 (a) The commissioner and the department's committee for the
19 protection of human subjects shall review each research proposal
20 that requests the use of information in the central registry. The
21 executive commissioner [board] shall adopt rules establishing
22 criteria to be used in deciding if the research design should be
23 approved. A proposal that meets the approval criteria is
24 considered to establish a valid interest as required by Section
25 87.062(a), and the commissioner and the committee shall authorize
26 the researcher to review the records relevant to the research
27 proposal and to contact cases and controls.

1 SECTION 3.0300. Sections [88.001](#)(6), (7), (9), and (11),
2 Health and Safety Code, are amended to read as follows:

3 (6) "Reference level" [~~Blood lead levels of concern~~] means the presence of blood lead concentrations suspected to be
4 associated with mental and physical disorders due to absorption,
5 ingestion, or inhalation of lead as specified in the most recent
6 reference value [~~criteria~~] issued by the [~~United States Department~~
7 ~~of Health and Human Services, United States Public Health Service,~~] Centers for Disease Control and Prevention of the United States
8 Public Health Service.

9 (7) "Lead poisoning" means the presence of a confirmed
10 venous blood level established by department [~~board~~] rule in the
11 range specified for medical evaluation and possible pharmacologic
12 treatment in the most recent criteria issued by the [~~United States~~
13 ~~Department of Health and Human Services, United States Public~~
14 ~~Health Service,~~] Centers for Disease Control and Prevention of the
15 United States Public Health Service.

16 (9) "Physician" means a person licensed to practice
17 medicine by the Texas [~~State Board of~~] Medical Board [~~Examiners~~].

18 (11) "Regional director" means a physician appointed
19 under Section [121.007](#) [~~by the board~~] as the chief administrative
20 officer of a public health region as designated under Chapter 121.

21 SECTION 3.0301. Sections [88.002](#)(a), (b), and (d), Health
22 and Safety Code, are amended to read as follows:

23 (a) Except as specifically authorized by this chapter,
24 reports, records, and information furnished to a health authority,
25 a regional director, or the department that relate to cases or

1 suspected cases of children with reportable blood lead levels [~~of~~
2 ~~concern or lead poisoning~~] are confidential and may be used only for
3 the purposes of this chapter.

4 (b) Reports, records, and information relating to cases or
5 suspected cases of childhood lead poisoning and children with
6 reportable blood lead levels [~~of concern~~] are not public
7 information under the open records law, Chapter 552, Government
8 Code, and may not be released or made public on subpoena or
9 otherwise except as provided by this chapter.

10 (d) The commissioner, a regional director or other
11 department employee, a health authority or employee of a public
12 health district, a health authority or employee of a county or
13 municipal health department, or a public official of a county or
14 municipality may not be examined in a civil, criminal, special, or
15 other proceeding as to the existence or contents of pertinent
16 records of or reports or information about a child identified,
17 examined, or treated for lead poisoning or about a child possessing
18 reportable blood lead levels [~~of concern~~] by the department, a
19 public health district, a local health department, or a health
20 authority without the consent of the child's parents, managing
21 conservator, guardian, or other person authorized by law to give
22 consent.

23 SECTION 3.0302. Section 88.0025, Health and Safety Code, is
24 amended to read as follows:

25 Sec. 88.0025. CHILDHOOD LEAD POISONING PREVENTION. The
26 executive commissioner may adopt [~~board may implement~~] policies and
27 procedures to promote the elimination of childhood lead poisoning

1 within the state, and the department shall implement all adopted
2 policies and procedures. The executive commissioner [board] may
3 adopt measures to:

4 (1) significantly reduce the incidence of childhood
5 lead poisoning throughout the state;

6 (2) improve public awareness of lead safety issues and
7 educate both property owners and tenants about practices that can
8 reduce the incidence of lead poisoning; and

9 (3) encourage the testing of children likely to suffer
10 the consequences of lead poisoning so that prompt diagnosis and
11 treatment and the prevention of harm are possible.

12 SECTION 3.0303. Section 88.003, Health and Safety Code, is
13 amended to read as follows:

14 Sec. 88.003. REPORTABLE HEALTH CONDITION. (a) Childhood
15 blood lead levels that exceed the reference level [~~of concern~~] are
16 reportable.

17 (b) The executive commissioner [board] by rule may
18 designate:

19 (1) blood lead concentrations in children that must be
20 reported; and

21 (2) the ages of children for whom the reporting
22 requirements apply.

23 (c) The executive commissioner [board] may adopt rules that
24 establish a registry of children with blood lead levels that exceed
25 the reference level [~~of concern~~] and lead poisoning.

26 SECTION 3.0304. Section 88.004, Health and Safety Code, is
27 amended to read as follows:

1 Sec. 88.004. PERSONS REQUIRED TO REPORT. (a) A person
2 required to report childhood blood lead levels [~~of concern~~] shall
3 report to the department in the manner specified by department
4 [~~board~~] rule. Except as provided by this section, a person required
5 by this section to report must make the report immediately after the
6 person gains knowledge of [~~the case or suspected case of~~] a child
7 with a reportable blood lead level [~~of concern~~].

8 (b) A physician shall report a case or suspected case of
9 childhood lead poisoning or of a child with a reportable blood lead
10 level [~~of concern~~] after the physician's first examination of a
11 child for whom reporting is required by this chapter or department
12 [~~board~~] rule.

13 (c) A person in charge of an independent clinical
14 laboratory, a hospital or clinic laboratory, or other facility in
15 which a laboratory examination of a specimen derived from the human
16 body yields evidence of a child with a reportable blood lead level
17 [~~of concern~~] shall report the findings to the department as
18 required by department [~~board~~] rule.

19 (d) If a report is not made as required by Subsection (b) or
20 (c), the following persons shall report [~~a case or suspected case of~~
21 ~~a child with lead poisoning or~~] a child's reportable blood lead
22 level [~~of concern~~] and all information known concerning the child:

- 23 (1) the administrator of a hospital licensed under
24 Chapter 241;
- 25 (2) a [~~professional~~] registered nurse;
- 26 (3) an administrator or director of a public or
27 private child care facility;

- 1 (4) an administrator of a home and community support
2 services [health] agency;
3 (5) an administrator or health official of a public or
4 private institution of higher education;
5 (6) a superintendent, manager, or health official of a
6 public or private camp, home, or institution;
7 (7) a parent, managing conservator, or guardian; and
8 (8) a health professional.

9 SECTION 3.0305. Sections 88.005(a) and (b), Health and
10 Safety Code, are amended to read as follows:

- 11 (a) The executive commissioner [~~board~~] shall prescribe the
12 form and method of reporting under this chapter, including a report
13 in writing, by telephone, or by electronic data transmission.
14 (b) The executive commissioner by rule [~~Board rules~~] may
15 require the reports to contain any information relating to a case
16 that is necessary for the purposes of this chapter, including:
17 (1) the child's name, address, age, sex, and race;
18 (2) the child's blood lead concentration;
19 (3) the procedure used to determine the child's blood
20 lead concentration; and
21 (4) the name of the attending physician.

22 SECTION 3.0306. Section 88.006(a), Health and Safety Code,
23 is amended to read as follows:

- 24 (a) A physician who attends a child during the child's
25 hospitalization shall immediately notify the department if the
26 physician knows or suspects that the child has lead poisoning or a
27 blood lead level that exceeds the reference level [~~of concern~~] and

1 the physician believes the lead poisoning or blood lead level [~~of~~
2 ~~concern~~] resulted from the child's exposure to a dangerous level of
3 lead that may be a threat to the public health.

4 SECTION 3.0307. Section 88.007, Health and Safety Code, is
5 amended to read as follows:

6 Sec. 88.007. DEPARTMENT RULES FOR FOLLOW-UP CARE;
7 COORDINATION OF CARE. (a) The executive commissioner [~~department~~]
8 may adopt rules establishing standards for follow-up care provided
9 to children with a confirmed blood lead level that exceeds the
10 reference level [~~of concern~~].

11 (b) Rules adopted under this section must meet any federal
12 requirements for coordinated follow-up care for children with
13 confirmed blood lead levels that exceed the reference level [~~of~~
14 ~~concern~~] and may include, in a manner consistent with current
15 federal guidelines:

16 (1) an environmental lead investigation of all or
17 parts of a child's home environment, child-care facility, or
18 child-occupied facility that may be a source of a lead hazard
19 causing or contributing to the child's lead exposure; and

20 (2) guidance to parents, guardians, and consulting
21 physicians on how to eliminate or control lead exposures that may be
22 contributing to the child's blood lead level.

23 SECTION 3.0308. Section 88.009, Health and Safety Code, is
24 amended to read as follows:

25 Sec. 88.009. ENVIRONMENTAL LEAD INVESTIGATION PROCEDURES.
26 The executive commissioner [~~department~~] may adopt rules
27 establishing procedures for environmental lead investigations of

1 dwellings and other premises subject to this chapter. The rules
2 must meet, but may not exceed, any requirements established under
3 regulations adopted by the federal Environmental Protection Agency
4 under Subchapter IV, Toxic Substances Control Act (15 U.S.C.
5 Section 2681 et seq.).

6 SECTION 3.0309. Section 89.001(5), Health and Safety Code,
7 is amended to read as follows:

8 (5) "Jail" means:

9 (A) a county jail; or

10 (B) a facility for the confinement of persons
11 accused of an offense that is:

12 (i) operated by a municipality or a vendor
13 under contract with a municipality under Subchapter F [E], Chapter
14 351, Local Government Code; or

15 (ii) operated by a vendor under contract
16 with a community supervision and corrections department under
17 Chapter 76, Government Code.

18 SECTION 3.0310. Section 89.011(a), Health and Safety Code,
19 is amended to read as follows:

20 (a) The governing body of a jail or community corrections
21 facility, through the community supervision and corrections
22 department, shall require that each employee or volunteer working
23 or providing services in a jail or a community corrections
24 facility, who meets the screening guidelines prescribed by
25 department [board] rule, present to the governing body a
26 certificate signed by a physician that states that:

27 (1) the employee or volunteer has been tested for

1 tuberculosis infection in accordance with department [board]
2 rules; and

3 (2) the results of the test indicate that the person
4 does not have tuberculosis.

5 SECTION 3.0311. Section 89.051(a), Health and Safety Code,
6 is amended to read as follows:

7 (a) Each inmate in a jail or community corrections facility
8 shall undergo a screening test for tuberculosis infection approved
9 by the executive commissioner [board] if:

10 (1) the inmate will probably be confined in jail or a
11 community corrections facility for more than seven days; and

12 (2) the inmate meets the screening guidelines
13 prescribed by department [board] rules.

14 SECTION 3.0312. Section 89.073, Health and Safety Code, is
15 amended to read as follows:

16 Sec. 89.073. ADOPTION OF LOCAL STANDARDS. (a) The
17 standards prescribed by this chapter and the rules adopted by the
18 executive commissioner [board] relating to screening tests or
19 examinations for tuberculosis required for certain employees and
20 volunteers are minimum standards.

21 (b) With the prior approval of the department:

22 (1) a governing body may adopt and enforce standards
23 for carrying out this chapter if the standards are compatible with
24 and equal to or more stringent than the standards prescribed by this
25 chapter and department [~~the board's~~] rules; and

26 (2) a private facility may adopt and enforce standards
27 for carrying out this chapter if the standards are compatible with

1 and equal to or more stringent than the standards prescribed by this
2 chapter and department [~~the board's~~] rules.

3 (c) The executive commissioner [~~board~~] shall adopt
4 substantive and procedural rules to govern the submission of
5 standards adopted under Subsection (b). At a minimum these rules
6 must contain:

7 (1) a procedure for the submission of standards for
8 departmental review; and

9 (2) an internal departmental appeal process by which a
10 governing body or private entity may seek a review of the
11 department's decision to reject proposed standards.

12 SECTION 3.0313. Section 89.101(1), Health and Safety Code,
13 is amended to read as follows:

14 (1) "Corrections facility" means:

15 (A) a jail or community corrections facility,
16 without regard to whether the jail or facility satisfies the
17 requirements of Section 89.002;

18 (B) any correctional facility operated by or
19 under contract with a division of the Texas Department of Criminal
20 Justice; or

21 (C) a detention facility operated by the Texas
22 Juvenile Justice Department [~~Youth Commission~~].

23 SECTION 3.0314. Section 92.002, Health and Safety Code, is
24 amended to read as follows:

25 Sec. 92.002. REPORTABLE INJURY; RULES. (a) Spinal cord
26 injuries, traumatic brain injuries, and submersion injuries are
27 reportable to the department. The executive commissioner [~~board~~]

1 by rule shall define those terms for reporting purposes.

2 (b) The executive commissioner [board] may adopt rules that
3 require other injuries to be reported under this subchapter.

4 (c) The executive commissioner [board] shall maintain and
5 revise, as necessary, the list of reportable injuries.

6 (d) The executive commissioner [board] shall adopt rules
7 necessary to administer this subchapter.

8 SECTION 3.0315. Section 92.003(c), Health and Safety Code,
9 is amended to read as follows:

10 (c) The department [board] shall prescribe the form and
11 method of reporting. The department [board] may require the
12 reports to contain any information, including the person's name,
13 address, age, sex, race, occupation, employer, and attending
14 physician, necessary to achieve the purposes of this subchapter.

15 SECTION 3.0316. Section 92.004(b), Health and Safety Code,
16 is amended to read as follows:

17 (b) The department may seek, receive, and spend any funds
18 received through appropriations, grants, donations, or
19 contributions from public or private sources for the purpose of
20 identifying, reporting, or preventing those injuries [~~that have~~
21 ~~been~~] determined by the executive commissioner [board] to be
22 harmful or to be a threat to the public health.

23 SECTION 3.0317. Sections 92.006(b) and (c), Health and
24 Safety Code, are amended to read as follows:

25 (b) The executive commissioner [board] shall adopt rules
26 establishing procedures to ensure that all information and records
27 maintained by the department under this subchapter are kept

1 confidential and protected from release to unauthorized persons.

2 (c) The commissioner ~~[director]~~, the commissioner's
3 ~~[director's]~~ designee, the executive commissioner, or an employee
4 of the department or commission may not be examined in a judicial or
5 other proceeding about the existence or contents of pertinent
6 records of, investigation reports of, or reports or information
7 about a person examined or treated for an injury without that
8 person's consent.

9 SECTION 3.0318. Sections 92.007(b) and (c), Health and
10 Safety Code, are amended to read as follows:

11 (b) The department ~~[director or the director's designee]~~
12 may enter at reasonable times and inspect within reasonable limits
13 a public place or building, including a public conveyance, in the
14 department's ~~[director's]~~ duty to prevent an injury.

15 (c) The department ~~[director or the director's designee]~~
16 may not enter a private residence to conduct an investigation about
17 the causes of injuries without first receiving permission from a
18 lawful adult occupant of the residence.

19 SECTION 3.0319. Section 92.010, Health and Safety Code, is
20 amended to read as follows:

21 Sec. 92.010. COORDINATION WITH DEPARTMENT OF ASSISTIVE AND
22 REHABILITATIVE SERVICES ~~[TEXAS REHABILITATION COMMISSION]~~. The
23 department and the Department of Assistive and Rehabilitative
24 Services ~~[Texas Rehabilitation Commission]~~ shall enter into a
25 memorandum of understanding to:

26 (1) exchange relevant injury data on an ongoing basis
27 notwithstanding Section 92.006;

1 (2) maintain the confidentiality of injury data
2 provided to the department by the Department of Assistive and
3 Rehabilitative Services [~~commission~~] in accordance with Section
4 92.006 and Section 111.057, Human Resources Code; and

5 (3) cooperate in conducting investigations of spinal
6 cord and traumatic brain injuries.

7 SECTION 3.0320. Section 92.011(a), Health and Safety Code,
8 is amended to read as follows:

9 (a) The department and the Texas Traumatic Brain Injury
10 Advisory Council established [~~within the department~~] under
11 Subchapter B shall:

12 (1) exchange relevant injury data on an ongoing basis
13 to the extent allowed by Section 92.006;

14 (2) maintain the confidentiality of injury data
15 provided to the council by the department in accordance with
16 Section 92.006;

17 (3) permit the council to review and comment on the
18 department's [~~board's~~] rules under Section 92.002(b) before the
19 rules are proposed; and

20 (4) cooperate in conducting investigations of
21 traumatic brain injuries.

22 SECTION 3.0321. Section 92.052, Health and Safety Code, is
23 amended to read as follows:

24 Sec. 92.052. ADVISORY COUNCIL[~~; ASSOCIATED AGENCY~~]. [~~(a)~~]
25 The Texas Traumatic Brain Injury Advisory Council is an advisory
26 council within the commission [~~department~~].

27 [~~(b) Notwithstanding Subsection (a), if, as a result of~~

1 ~~legislation enacted in the 78th Legislature, Regular Session, 2003,~~
2 ~~a state agency other than the department is designated to serve as~~
3 ~~the agency with primary responsibility in relation to persons with~~
4 ~~physical disabilities, the council is an advisory council within~~
5 ~~that state agency and a reference in this chapter to the department~~
6 ~~means that agency.]~~

7 SECTION 3.0322. Section 92.053(b), Health and Safety Code,
8 is amended to read as follows:

9 (b) The council is composed of 21 [22] members appointed as
10 follows:

11 (1) eight public consumer members appointed by the
12 executive commissioner [~~of health and human services~~], at least
13 three of whom must be individuals related to persons with a
14 traumatic brain injury and at least three of whom must be persons
15 with a brain injury;

16 (2) six professional members appointed by the
17 executive commissioner [~~of health and human services~~], each of whom
18 must have special training and interest in the care, treatment, or
19 rehabilitation of persons with a traumatic brain injury, with one
20 representative each from:

21 (A) acute hospital trauma units;

22 (B) the National Institute on [~~for~~] Disability
23 and Rehabilitation Research Traumatic Brain Injury Model System in
24 this state;

25 (C) acute or post-acute rehabilitation
26 facilities;

27 (D) community-based services;

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1 (E) faculties of institutions of higher
2 education; and

5 (3) seven [~~eight~~] state agency members, with one
6 representative from each of the following agencies appointed by the
7 chief executive officer of the agency:

8 (A) [Texas] Department of State Health Services;

9 (B) [Texas] Department of Aging and Disability
10 [Human] Services;

11 (C) Department of Assistive and Rehabilitative
12 Services [~~Texas Department of Mental Health and Mental Retardation;~~
13 [~~(D)~~ Texas Rehabilitation Commission];
14 (D) [~~(E)~~] Health and Human Services Commission;
15 (E) [~~(F)~~] Texas Education Agency;
16 (F) [~~(G)~~] Texas [Planning] Council for
17 Developmental Disabilities; and
18 (G) [~~(H)~~] Texas Department of Insurance.

19 SECTION 3.0323. Section 92.057, Health and Safety Code, is
20 amended by amending Subsections (b) and (c) and adding Subsection
21 (b-1) to read as follows:

22 (b) Except as provided by Subsection (b-1), a [A] member who
23 is a representative of a state agency shall be reimbursed for travel
24 expenses incurred while conducting council business from the funds
25 of the agency the person represents in accordance with the General
26 Appropriations Act.

27 (b-1) A member who is a representative of a health and human

1 services agency listed by Section 531.001(4), Government Code,
2 shall be reimbursed for travel expenses incurred while conducting
3 council business from the funds of the commission in accordance
4 with the General Appropriations Act.

5 (c) If money is available for this purpose in the account
6 established under Section 92.062(b), the commission [~~department~~]
7 shall reimburse a public consumer member for the member's actual
8 and necessary expenses incurred in performing council duties,
9 including travel, meals, lodging, respite care for a dependent with
10 a disability, and telephone long-distance charges.

11 SECTION 3.0324. Section 92.060, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 92.060. COMMISSION DUTIES [~~OF THE DEPARTMENT~~]. (a)
14 The commission [~~department~~] shall:

15 (1) provide administrative support services to the
16 council;

17 (2) accept gifts and grants on behalf of the council
18 from any public or private entity;

19 (3) receive, deposit, and disburse gifts and grants
20 for the council in accordance with this subchapter and provide
21 other administrative services in support of the council as
22 requested by and negotiated with the council; and

23 (4) enter into a memorandum of understanding with the
24 council that delineates the responsibilities of the commission
25 [~~department~~] and the council under this subchapter and amend the
26 memorandum as necessary to reflect changes in those
27 responsibilities.

1 (b) The executive commissioner [board] may adopt rules as
2 necessary to implement the commission's [department's] duties under
3 this subchapter and federal developmental disability laws.

4 SECTION 3.0325. Section 92.062(b), Health and Safety Code,
5 is amended to read as follows:

6 (b) The [~~health and human services~~] commission shall
7 deposit any money received under Subsection (a) to the credit of the
8 Texas Traumatic Brain Injury Advisory Council account. The Texas
9 Traumatic Brain Injury Advisory Council account is an account in
10 the general revenue fund that may be appropriated only for the
11 purpose of carrying out this subchapter.

12 SECTION 3.0326. Section 93.013(a), Health and Safety Code,
13 is amended to read as follows:

14 (a) The council may receive gifts and grants from any public
15 or private source to perform its duties under this chapter. The
16 department shall accept the gifts on behalf of the council [~~and~~
17 ~~shall deposit any funds accepted under this section to the credit of~~
18 ~~a special account in the general revenue fund as required by Section~~
19 ~~93.014~~].

20 SECTION 3.0327. Section 93.014, Health and Safety Code, is
21 amended to read as follows:

22 Sec. 93.014. FUNDS FOR CLINICAL RESEARCH [~~HEART DISEASE~~
23 ~~AND STROKE RESOURCE FUND.~~ (a) The ~~heart disease and stroke~~
24 ~~resource fund is an account of the general revenue fund~~].

25 [~~(b) The legislature may appropriate money deposited to the~~
26 ~~credit of the heart disease and stroke resource fund only to the~~
27 ~~council for~~]

1 ~~(1) heart disease and stroke prevention, research,~~
2 ~~and medical care for heart attack and stroke victims; and~~
3 ~~(2) grants to nonprofit heart disease and stroke~~
4 ~~organizations.~~

5 ~~[c]~~ The council shall develop a policy governing the award
6 of funds for clinical research that follows scientific peer review
7 guidelines for primary and secondary prevention of heart disease or
8 stroke or that follows other review procedures that are designed to
9 distribute those funds on the basis of scientific merit.

10 ~~(d) Interest earned from the investment of the heart~~
11 ~~disease and stroke resource fund shall be deposited to the credit of~~
12 ~~the fund.]~~

13 SECTION 3.0328. Section 94.004(c), Health and Safety Code,
14 is amended to read as follows:

15 (c) The department may charge a fee for the course to
16 persons other than employees of entities receiving state or federal
17 funds for hepatitis C counseling and testing programs through a
18 contract with the department. The executive commissioner by rule
19 ~~board~~ shall set the fee in an amount necessary to cover the costs
20 of providing the course.

21 SECTION 3.0329. Section 95.002(f), Health and Safety Code,
22 is amended to read as follows:

23 (f) The office shall:

24 (1) provide educational and other material to assist
25 local risk assessment activities;
26 (2) monitor the quality of risk assessment activities
27 provided under this chapter; and

1 (3) consult with the Texas Board of Nursing [Nurse
2 Examiners] to determine the training requirements necessary for a
3 nurse or other person to conduct risk assessment activities under
4 this chapter.

5 SECTION 3.0330. Section 95.051, Health and Safety Code, is
6 amended to read as follows:

7 Sec. 95.051. DEFINITION [~~DEFINITIONS~~]. In this subchapter,
8 "public"[~~+~~

9 [~~(1)~~ "Department" means the Department of State Health
10 Services.

11 [~~(2)~~ "Executive commissioner" means the executive
12 commissioner of the Health and Human Services Commission.

13 [~~(3)~~ "Public" health district" means a district
14 created under Chapter 121.

15 SECTION 3.0331. Section 95A.001, Health and Safety Code, is
16 amended to read as follows:

17 Sec. 95A.001. DEFINITION [~~DEFINITIONS~~]. In this chapter,
18 "council"[~~+~~

19 [~~(1)~~ "Commission" means the Health and Human Services
20 Commission.

21 [~~(2)~~ "Council"] means the Texas Diabetes Council.

22 SECTION 3.0332. Section 96.001(3), Health and Safety Code,
23 is amended to read as follows:

24 (3) "Health facility" includes:

25 (A) a general or special hospital licensed by the
26 department under Chapter 241;

27 (B) a physician-owned or physician-operated

1 clinic;

2 (C) a publicly or privately funded medical
3 school;

4 (D) a state hospital operated [~~or state school~~
5 ~~maintained and managed~~] by the department or a state supported
6 living center operated by [~~Department of State Health Services or~~]
7 the Department of Aging and Disability Services;

8 (E) a public health clinic conducted by a local
9 health unit, health department, or public health district organized
10 and recognized under Chapter 121; and

11 (F) another facility specified by a rule adopted
12 by the executive commissioner.

13 SECTION 3.0333. Section 98.110(a), Health and Safety Code,
14 is amended to read as follows:

15 (a) Notwithstanding any other law, the department may
16 disclose information reported by health care facilities under
17 Section 98.103 or 98.1045 to other programs within the department,
18 to the commission [~~Health and Human Services Commission~~], to other
19 health and human services agencies, as defined by Section 531.001,
20 Government Code, and to the federal Centers for Disease Control and
21 Prevention, or any other agency of the United States Department of
22 Health and Human Services, for public health research or analysis
23 purposes only, provided that the research or analysis relates to
24 health care-associated infections or preventable adverse events.
25 The privilege and confidentiality provisions contained in this
26 chapter apply to such disclosures.

27 SECTION 3.0334. Sections 101.001(1) and (3), Health and

1 Safety Code, are amended to read as follows:

2 (1) "Alzheimer's disease and related disorders support
3 group" means a local, state, or national organization that:

4 (A) is established to provide support services to
5 aid persons with [victims of] Alzheimer's disease and related
6 disorders and their caregivers;

7 (B) encourages research into the cause,
8 prevention, treatment, and care of persons with [victims of]
9 Alzheimer's disease and related disorders; and

10 (C) is dedicated to the development of essential
11 services for persons with [victims of] Alzheimer's disease and
12 related disorders and their caregivers.

13 (3) "Primary family caregiver" means an individual who
14 is a relative of a person with [victim of] Alzheimer's disease or
15 related disorders, who has or has had a major responsibility for
16 care and supervision of the person [victim], and who is not a
17 professional health care provider paid to care for the person
18 [victim].

19 SECTION 3.0335. Section 101.002(a), Health and Safety Code,
20 is amended to read as follows:

21 (a) The Texas Council on Alzheimer's Disease and Related
22 Disorders is composed of:

23 (1) five public members, one of whom is an individual
24 related to a person with [victim of] Alzheimer's disease or related
25 disorders but who is not a primary family caregiver, one of whom is
26 a primary family caregiver, two of whom are members of an
27 Alzheimer's disease and related disorders support group, and one of

1 whom is an interested citizen;

2 (2) seven professional members with special training
3 and interest in Alzheimer's disease and related disorders, with one
4 representative each from nursing facilities [~~homes~~], physicians,
5 nurses, public hospitals, private hospitals, home health agencies,
6 and faculty of institutions of higher education; and

7 (3) the [~~chief executive officer or the officer's~~
8 ~~designated~~] representative from the commission, department, and
9 [~~Texas~~] Department of [~~on~~] Aging and Disability Services designated
10 by the executive commissioner or commissioner of each agency, as
11 applicable[, ~~Texas Department of Human Services, Texas Department~~
12 ~~of Mental Health and Mental Retardation, and Long-Term Care~~
13 ~~Coordinating Council for the Elderly~~].

14 SECTION 3.0336. Section 101.007(a), Health and Safety Code,
15 is amended to read as follows:

16 (a) The council shall:

17 (1) advise the department [~~board~~] and recommend needed
18 action for the benefit of persons with [~~victims of~~] Alzheimer's
19 disease and related disorders and for their caregivers;

20 (2) coordinate public and private family support
21 networking systems for primary family caregivers;

22 (3) disseminate information on services and related
23 activities for persons with [~~victims of~~] Alzheimer's disease and
24 related disorders to the medical and health care community, the
25 academic community, primary family caregivers, advocacy
26 associations, and the public;

27 (4) coordinate a volunteer assistance program

1 primarily for in-home and respite care services;

2 (5) encourage research to benefit persons with
3 ~~[victims of]~~ Alzheimer's disease and related disorders;

4 (6) recommend to the department [board] disbursement
5 of grants and funds available for the council; and

6 (7) facilitate coordination of state agency services
7 and activities relating to persons with ~~[victims of]~~ Alzheimer's
8 disease and related disorders.

9 SECTION 3.0337. Section 101.008, Health and Safety Code, is
10 amended to read as follows:

11 Sec. 101.008. DUTIES OF DEPARTMENT. The department shall:

12 (1) provide administrative assistance, services, and
13 materials to the council;

14 (2) accept, deposit, and disburse funds made available
15 to the council at the direction of the executive commissioner
16 [board];

17 (3) accept gifts and grants on behalf of the council
18 from any public or private entity;

19 (4) maintain a population data base of persons with
20 ~~[victims of]~~ Alzheimer's disease and related disorders in this
21 state; and

22 (5) apply for and receive on behalf of the council any
23 appropriations, gifts, or other funds from the state or federal
24 government or any other public or private entity, subject to
25 limitations and conditions prescribed by legislative
26 appropriation.

27 SECTION 3.0338. Section 101.009(b), Health and Safety Code,

1 is amended to read as follows:

2 (b) The department [board] shall deposit any money received
3 under Subsection (a) in the state treasury [~~to the credit of the~~
4 ~~Alzheimer's disease and related disorders council fund~~] to be used
5 for the purposes of this chapter.

6 SECTION 3.0339. Section [101.010](#), Health and Safety Code, is
7 amended to read as follows:

8 Sec. 101.010. REPORT. Before September 1 of each
9 even-numbered year, the council shall submit a biennial report of
10 the council's activities and recommendations to the governor,
11 lieutenant governor, speaker of the house of representatives, and
12 members of the legislature[~~, Long-Term Care Coordinating Council~~
13 ~~for the Elderly, and board~~].

14 SECTION 3.0340. Sections [103.002\(a\)](#), (b), and (c), Health
15 and Safety Code, are amended to read as follows:

16 (a) The Texas Diabetes Council is composed of 11 citizen
17 members appointed from the public and one representative each from
18 the department, the commission [~~Health and Human Services~~
19 ~~Commission~~], and the Department of Assistive and Rehabilitative
20 Services.

21 (b) The governor, with the advice and consent of the senate,
22 shall appoint the following citizen members:

23 (1) a licensed physician with a specialization in
24 treating diabetes;

25 (2) a registered nurse with a specialization in
26 diabetes education and training;

27 (3) a registered and licensed dietitian with a

1 specialization in the diabetes education field;

2 (4) a person with experience and training in public
3 health policy;

4 (5) three consumer members, with special
5 consideration given to persons active in the Texas affiliates of
6 the Juvenile Diabetes Research Foundation (JDRF) or the American
7 Diabetes Association; and

8 (6) four members from the general public with
9 expertise or demonstrated commitment to diabetes issues.

10 (c) The commissioner, executive commissioner, and
11 commissioner of assistive and rehabilitative services [~~chairman of~~
12 ~~the board of each agency listed in Subsection (a)~~] shall appoint
13 that agency's representative to the council. Agency
14 representatives shall be nonvoting members of the council.

15 SECTION 3.0341. Section 103.008(b), Health and Safety Code,
16 is amended to read as follows:

17 (b) If the office of a member who is an agency
18 representative becomes vacant, the commissioner or executive
19 commissioner, as appropriate, [~~chairman of the board~~] of that
20 agency shall appoint an agency representative to serve for the
21 remainder of that member's term.

22 SECTION 3.0342. Section 103.009, Health and Safety Code, is
23 amended to read as follows:

24 Sec. 103.009. REIMBURSEMENT. [-(a)] The department shall
25 reimburse council and advisory committee members for travel and
26 other necessary expenses incurred in performing official duties as
27 provided by Section 2110.004, Government Code [~~at the same rate~~

1 ~~provided for state employees in the General Appropriations Act].~~

2 ~~[(b) Funds for travel reimbursement shall be appropriated~~
3 ~~to the department.]~~

4 SECTION 3.0343. Section [103.013](#)(c), Health and Safety Code,
5 is amended to read as follows:

6 (c) The council shall make written recommendations for
7 performing its duties under this chapter to the executive
8 commissioner [~~board~~] and the legislature. If the council considers
9 a recommendation that will affect an agency not represented on the
10 council, the council shall seek the advice and assistance of the
11 agency before taking action on the recommendation. The council's
12 recommendations shall be implemented by the agencies affected by
13 the recommendations.

14 SECTION 3.0344. Section [103.0131](#)(a), Health and Safety
15 Code, is amended to read as follows:

16 (a) In conjunction with developing each state plan
17 described in Section [103.013](#), the council shall conduct a statewide
18 assessment of existing programs for the prevention of diabetes and
19 treatment of individuals with diabetes that are administered by the
20 commission [~~Health and Human Services Commission~~] or a health and
21 human services agency, as defined by Section [531.001](#), Government
22 Code. As part of the assessment, the council shall collect data
23 regarding:

24 (1) the number of individuals served by the programs;
25 (2) the areas where services to prevent diabetes and
26 treat individuals with diabetes are unavailable; and
27 (3) the number of health care providers treating

1 individuals with diabetes under the programs.

2 SECTION 3.0345. Section 103.015(a), Health and Safety Code,
3 is amended to read as follows:

4 (a) The council may receive gifts and grants from any public
5 or private source to perform its duties under this chapter. The
6 department shall accept the gifts on behalf of the council and shall
7 deposit any funds accepted under this section to the credit of [~~a~~
8 ~~special account in~~] the general revenue fund.

9 SECTION 3.0346. Sections 103.017(a) and (c), Health and
10 Safety Code, are amended to read as follows:

11 (a) The department, commission, and [~~the~~] Department of
12 Assistive and Rehabilitative Services[~~, and the Health and Human~~
13 ~~Services Commission~~] shall work with the council to jointly
14 develop, produce, and implement a general public awareness strategy
15 focusing on diabetes, its complications, and techniques for
16 achieving good management. Each agency shall pay for the costs of
17 producing and disseminating information on diabetes to clients
18 served by that agency.

19 (c) The department, commission, and [~~the~~] Department of
20 Assistive and Rehabilitative Services[~~, and the Health and Human~~
21 ~~Services Commission~~] may jointly develop and implement a statewide
22 plan for conducting regional training sessions for public and
23 private service providers, including institutional health care
24 providers, who have routine contact with persons with diabetes.

25 SECTION 3.0347. Section 103A.007, Health and Safety Code,
26 is amended to read as follows:

27 Sec. 103A.007. DUTIES OF COUNCIL. The council using

1 existing resources may conduct studies and advise the department,
2 the commission [~~Health and Human Services Commission~~], and the
3 Texas Department of Insurance on:

4 (1) public use data, outcome data, and other
5 information submitted to or collected by the department under
6 Chapter 108 or other law related to hemophilia or other bleeding or
7 clotting disorders and the department's disclosure and
8 dissemination of that information within and outside the
9 department; and

10 (2) other issues that affect the health and wellness
11 of persons living with hemophilia or other bleeding or clotting
12 disorders.

13 SECTION 3.0348. Section 104.011(a), Health and Safety Code,
14 is amended to read as follows:

15 (a) The statewide health coordinating council is composed
16 of 17 members determined as follows:

17 (1) the executive commissioner or a representative
18 designated by the executive commissioner;

19 (2) the chair of the Texas Higher Education
20 Coordinating Board or a representative designated by the presiding
21 officer;

22 (3) the commissioner or a representative designated by
23 the commissioner;

24 (4) the commissioner [~~presiding officer~~] of aging [~~the~~
25 ~~Department of Aging~~] and disability services [~~Disability Services~~]
26 or a representative designated by the commissioner of aging and
27 disability services [~~presiding officer~~]; and

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13 SECTION 3.0349. Section 104.0112(c), Health and Safety
14 Code, is amended to read as follows:

15 (c) If the executive commissioner has knowledge that a
16 potential ground for removal exists, the executive commissioner
17 shall notify the presiding officer of the council of the potential
18 ground. The presiding officer shall then notify the governor and
19 the attorney general that a potential ground for removal exists. If
20 the potential ground for removal involves the presiding officer,
21 the executive commissioner shall notify the next highest ranking
22 officer of the council, who shall then notify the governor and the
23 attorney general that a potential ground for removal exists.

24 SECTION 3.0350. Section 104.023, Health and Safety Code, is
25 amended to read as follows:

26 Sec. 104.023. REVIEW OF STATE HEALTH PLAN. The statewide
27 health coordinating council shall submit the state health plan to

1 the commission [~~Health and Human Services Commission~~] for review
2 and comment before the plan is sent to the governor.

3 SECTION 3.0351. Section 104.043(a), Health and Safety Code,
4 is amended to read as follows:

5 (a) If the department does not receive necessary data from
6 an entity as required by department [~~the executive commissioner's~~]
7 rules, the department shall send to the entity a notice requiring
8 the entity to submit the data not later than the 30th day after the
9 date on which the entity receives the notice.

10 SECTION 3.0352. Section 105.005, Health and Safety Code, is
11 amended to read as follows:

12 Sec. 105.005. RULES. The executive commissioner [~~of the~~
13 ~~Health and Human Services Commission~~] may adopt rules to govern the
14 reporting and collection of data.

15 SECTION 3.0353. Section 107A.001, Health and Safety Code,
16 is amended to read as follows:

17 Sec. 107A.001. CENTER FOR ELIMINATION OF
18 DISPROPORTIONALITY AND DISPARITIES. The executive commissioner
19 [~~of the Health and Human Services Commission~~] shall maintain a
20 center for elimination of disproportionality and disparities in the
21 commission [~~Health and Human Services Commission~~] to:

22 (1) assume a leadership role in working or contracting
23 with state and federal agencies, universities, private interest
24 groups, communities, foundations, and offices of minority health to
25 develop health initiatives to decrease or eliminate health and
26 health access disparities among racial, multicultural,
27 disadvantaged, ethnic, and regional populations, including

1 appropriate language services; and

(2) maximize use of existing resources without
duplicating existing efforts.

4 SECTION 3.0354. Section 107A.003, Health and Safety Code,
5 is amended to read as follows:

6 Sec. 107A.003. FUNDING. The commission [Health and Human
7 Services Commission] may distribute to the center unobligated and
8 unexpended appropriations to be used to carry out its powers.

9 SECTION 3.0355. Chapter 108, Health and Safety Code, is
10 amended to read as follows:

11 CHAPTER 108. [TEXAS] HEALTH CARE DATA COLLECTION [INFORMATION
12 COUNCIL]

13 Sec. 108.001. DEPARTMENT DUTIES [~~CREATION OF COUNCIL~~]. The
14 department [~~Texas Health Care Information Council~~] shall
15 administer this chapter and report to the governor, the
16 legislature, and the public.

17 Sec. 108.002. DEFINITIONS. In this chapter:

21 [(2) "Board" means the Texas Board of Health.]

26 (4) "Charge" or "rate" means the amount billed by a
27 provider for specific procedures or services provided to a patient

1 before any adjustment for contractual allowances. The term does
2 not include copayment charges to enrollees in health benefit plans
3 charged by providers paid by capitation or salary.

4 (4-a) "Commission" means the Health and Human Services
5 Commission.

6 (6) "Data" means information collected under Section
7 108.0065 or 108.009 in the form initially received.

8 [~~(7) "Department" means the Department of State Health
9 Services.]~~

10 (8) "Edit" means to use an electronic standardized
11 process developed and implemented by department [~~council~~] rule to
12 identify potential errors and mistakes in data elements by
13 reviewing data fields for the presence or absence of data and the
14 accuracy and appropriateness of data.

15 [~~(8-a) "Executive commissioner" means the executive
16 commissioner of the Health and Human Services Commission.]~~

17 (9) "Health benefit plan" means a plan provided by:

18 (A) a health maintenance organization; or

19 (B) an approved nonprofit health corporation
20 that is certified under Section 162.001, Occupations Code, and that
21 holds a certificate of authority issued by the commissioner of
22 insurance under Chapter 844, Insurance Code.

23 (10) "Health care facility" means:

24 (A) a hospital;

25 (B) an ambulatory surgical center licensed under
26 Chapter 243;

27 (C) a chemical dependency treatment facility

1 licensed under Chapter 464;

2 (D) a renal dialysis facility;

3 (E) a birthing center;

4 (F) a rural health clinic;

5 (G) a federally qualified health center as

6 defined by 42 U.S.C. Section 1396d(l)(2)(B); or

7 (H) a free-standing imaging center.

8 (11) "Health maintenance organization" means an
9 organization as defined in Section [843.002](#), Insurance Code.

10 (12) "Hospital" means a public, for-profit, or
11 nonprofit institution licensed or owned by this state that is a
12 general or special hospital, private mental hospital, chronic
13 disease hospital, or other type of hospital.

14 (13) "Outcome data" means measures related to the
15 provision of care, including:

16 (A) patient demographic information;

17 (B) patient length of stay;

18 (C) mortality;

19 (D) co-morbidity;

20 (E) complications; and

21 (F) charges.

22 (14) "Physician" means an individual licensed under
23 the laws of this state to practice medicine under Subtitle B, Title
24 3, Occupations Code.

25 (15) "Provider" means a physician or health care
26 facility.

27 (16) "Provider quality" means the extent to which a

1 provider renders care that, within the capabilities of modern
2 medicine, obtains for patients medically acceptable health
3 outcomes and prognoses, after severity adjustment.

4 (17) "Public use data" means patient level data
5 relating to individual hospitalizations that has not been
6 summarized or analyzed, that has had patient identifying
7 information removed, that identifies physicians only by use of
8 uniform physician identifiers, and that is severity and risk
9 adjusted, edited, and verified for accuracy and consistency.
10 Public use data may exclude some data elements submitted to the
11 department [~~council~~].

12 (19) "Severity adjustment" means a method to stratify
13 patient groups by degrees of illness and mortality.

14 (20) "Uniform patient identifier" means a number
15 assigned by the department [~~council~~] to an individual patient and
16 composed of numeric, alpha, or alphanumeric characters.

17 (21) "Uniform physician identifier" means a number
18 assigned by the department [~~council~~] to an individual physician and
19 composed of numeric, alpha, or alphanumeric characters.

20 (22) "Validation" means the process by which a
21 provider verifies the accuracy and completeness of data and
22 corrects any errors identified before certification in accordance
23 with department [~~council~~] rule.

24 [Sec. 108.0026. TRANSFER OF DUTIES; REFERENCE TO COUNCIL]
25 (a) ~~The powers and duties of the Texas Health Care Information~~
26 ~~Council under this chapter were transferred to the Department of~~
27 ~~State Health Services in accordance with Section 1.19, Chapter 198~~

1 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003.

2 [(b) In this chapter or other law, a reference to the Texas
3 Health Care Information Council means the Department of State
4 Health Services.]

5 [Sec. 108.003. COUNCIL COMPOSITION; EXPENSES.] (a) The
6 council is composed of four ex officio state agency members and 15
7 members appointed by the governor in accordance with this section.

8 [(b) The ex officio members of the council are:

9 [(1) the commissioner of public health or the
10 commissioner's designee;

11 [(2) the commissioner of health and human services or
12 the commissioner's designee;

13 [(3) the commissioner of insurance or the
14 commissioner's designee; and

15 [(4) the public insurance counsel or the counsel's
16 designee.]

17 [(c) The governor shall appoint the following members of the
18 council:]

19 [(1) three representatives of the business community,
20 with at least one representing small businesses, who are purchasers
21 of health care but who are not involved in the provision of health
22 care or health insurance;

23 [(2) two representatives from labor, one of whom is
24 not directly involved with management of health care benefits;

25 [(3) two representatives of consumers who are not
26 professionally involved in the purchase, provision,
27 administration, or review of health care or health care insurance;]

1 [(4) two representatives of hospitals;]
2 [(5) one representative of health maintenance
3 organizations;
4 [(6) three representatives of physicians who are
5 involved in direct patient care; and
6 [(7) two members who are not professionally involved
7 in the purchase, provision, administration, or utilization review
8 of health care or health care insurance and who have expertise in:
9 [(A) health planning;
10 [(B) health economics;
11 [(C) provider quality assurance;
12 [(D) information systems; or
13 [(E) the reimbursement of medical education and
14 research costs.

15 [(d) The chairman is appointed by and serves at the pleasure
16 of the governor. Members annually shall elect a vice chairman.

17 [(e) A majority of voting members constitutes a quorum for
18 the transaction of any business. An act by the majority of the
19 voting members present at any meeting at which there is a quorum is
20 considered to be an act of the council.

21 [(f) The council may appoint committees and may elect any
22 officers subordinate to those provided for in Subsection (d).

23 [(g) The council shall appoint technical advisory
24 committees and shall consult with the appropriate technical
25 advisory committee with respect to a rule before the rule is finally
26 adopted by the council. The council is not required to consult with
27 a technical advisory committee before adopting an emergency rule in

1 accordance with Section 2001.034, Government Code. The council
2 shall submit an emergency rule adopted by the council to the
3 appropriate advisory committee for review not later than the first
4 advisory committee meeting that occurs after the rule is adopted.
5 The council may consult with the appropriate technical advisory
6 committee with respect to other formal action of the council. A
7 technical advisory committee may consult with other professionals
8 as necessary. Chapter 2110, Government Code, does not apply to an
9 advisory committee appointed under this subsection. The technical
10 advisory committees shall include:

11 [(1) a technical advisory committee that includes,
12 among other individuals, at least five practicing physicians
13 licensed in this state to provide advice and recommendations to the
14 council on the development and implementation of the methodology
15 and the interpretation of a provider quality report and data under
16 Section 108.010;]

17 [(2) a technical advisory committee composed of at
18 least five practicing physicians licensed in this state who have
19 been actively engaged in organized peer review at a hospital in this
20 state to provide advice, recommendations, and peer review expertise
21 to the council on:]

22 [(A) the use of peer review in the determination
23 of quality inpatient care;]

24 [(B) the development and interpretation of data
25 elements necessary to the determination of quality inpatient care;
26 and]

27 [(C) the development and format of reports and]

1 information relating to provider quality;

2 [(3) a technical advisory committee that includes
3 providers and consumers to provide advice and recommendations to
4 the council relating to education about the development and
5 dissemination of provider reports and data;

6 [(4) a technical advisory committee that includes
7 representatives of consumers and each type of issuer of health
8 benefit plans to assist the council in complying with Section
9 108.009(o); and

10 [(5) a technical advisory committee composed of
11 providers, consumers, and individuals who have expertise in
12 hospital information systems, health information management,
13 quality management, and security of confidential data.

14 [(h) A member of the council may not receive compensation
15 for service on the council. However, the member shall be reimbursed
16 for the member's actual and necessary meals, lodging,
17 transportation, and incidental expenses if incurred while
18 performing council business.

19 [(i) A member of an advisory committee appointed by the
20 council may not receive compensation or reimbursement of any
21 expense incurred while serving on the committee.

22 [(j) Appointments to the council shall be made without
23 regard to the race, color, disability, sex, religion, age, or
24 national origin of appointees. Additionally, in making the
25 appointments to the council, the governor shall consider
26 geographical representation.

27 [(k) A person may not serve as a member of the council if the

1 person is required to register as a lobbyist under Chapter 305,
2 Government Code, because of the person's activities for
3 compensation on behalf of a profession related to the operation of
4 the council.

5 [Sec. 108.004. MEETINGS. (a) The council, council
6 committees, and technical advisory committees are subject to the
7 open meetings law, Chapter 551, Government Code.]

8 [(b) The council shall meet as often as necessary, but not
9 less often than quarterly, to perform its duties under this
10 chapter.]

11 [(c) The council shall publish a notice of its meetings in
12 the Texas Register.]

13 [Sec. 108.0045. OPEN RECORDS. Subject to the restrictions
14 of this chapter, the council is subject to the open records law,
15 Chapter 552, Government Code.]

16 [Sec. 108.005. TERMS. (a) The terms of the agency members
17 are concurrent with their terms of office. The appointed council
18 members serve six-year staggered terms, with the terms of five
19 members expiring September 1 of each odd-numbered year.]

20 [(b) An appointed member may not serve more than two full
21 consecutive terms.]

22 [(c) It is a ground for removal from the council if a member
23 of the council:]

24 [(1) does not have at the time of appointment the
25 qualifications required by Section 108.003;]

26 [(2) does not maintain during service the
27 qualifications required by Section 108.003;]

1 ~~[¶(3) cannot discharge the member's duties for a~~
2 ~~substantial part of the term for which the member is appointed~~
3 ~~because of illness or disability; or~~
4 ~~[¶(4) fails to attend at least one-half of the~~
5 ~~regularly scheduled meetings that the member is eligible to attend~~
6 ~~during a calendar year.]~~

7 Sec. 108.006. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER
8 AND DEPARTMENT [~~council~~]. (a) The department [~~council~~] shall
9 develop a statewide health care data collection system to collect
10 health care charges, utilization data, provider quality data, and
11 outcome data to facilitate the promotion and accessibility of
12 cost-effective, good quality health care. The executive
13 commissioner or department, as applicable, [council] shall perform
14 the following duties:

15 (1) the department shall direct the collection,
16 dissemination, and analysis of data under this chapter;

17 (2) [~~contract with~~] the department shall [~~to~~] collect
18 the data under this chapter;

19 (3) the executive commissioner shall adopt policies
20 and rules necessary to carry out this chapter, including rules
21 concerning data collection requirements;

22 (4) the department shall build on and not duplicate
23 other data collection required by state or federal law, by an
24 accreditation organization, or by department [~~board~~] rule;

25 (5) working with appropriate agencies, the
26 department, with the approval of the executive commissioner, shall
27 review public health data collection programs in this state and

1 recommend, where appropriate, consolidation of the programs and any
2 legislation necessary to effect the consolidation;

3 (6) the department shall assure that public use data
4 is made available and accessible to interested persons;

5 (7) the executive commissioner shall prescribe by rule
6 the process for providers to submit data consistent with Section
7 [108.009](#);

8 (8) the executive commissioner shall adopt by rule and
9 the department shall implement a methodology to collect and
10 disseminate data reflecting provider quality in accordance with
11 Section [108.010](#);

12 (9) the department shall make reports to the
13 legislature, the governor, and the public on:

14 (A) the charges and rate of change in the charges
15 for health care services in this state;

16 (B) the effectiveness of the department
17 [~~council~~] in carrying out the legislative intent of this chapter;

18 (C) if applicable, any recommendations on the
19 need for further legislation; and

20 (D) the quality and effectiveness of health care
21 and access to health care for all citizens of this state;

22 (10) the department shall develop an annual work plan
23 and establish priorities to accomplish its duties;

24 (11) the department shall provide consumer education
25 on the interpretation and understanding of the public use or
26 provider quality data before the data is disseminated to the
27 public;

1 (12) the department shall work with the commission
2 [Health and Human Services Commission] and each health and human
3 services agency that administers a part of the state Medicaid
4 program to avoid duplication of expenditures of state funds for
5 computer systems, staff, or services in the collection and analysis
6 of data relating to the state Medicaid program;

7 (13) the department shall work with the Department of
8 Information Resources in developing and implementing the statewide
9 health care data collection system and maintain consistency with
10 Department of Information Resources standards; and

11 (14) the department shall develop and implement a
12 health care information plan [~~to be used by the department~~] to:

13 (A) support public health and preventative
14 health initiatives;

15 (B) assist in the delivery of primary and
16 preventive health care services;

17 (C) facilitate the establishment of appropriate
18 benchmark data to measure performance improvements;

19 (D) establish and maintain a systematic approach
20 to the collection, storage, and analysis of health care data for
21 longitudinal, epidemiological, and policy impact studies; and

22 (E) develop and use system-based protocols to
23 identify individuals and populations at risk.

24 (b) The department [~~council~~] may:

25 (1) employ a [~~or contract with the department to~~
26 ~~employ an executive~~] director and other staff, including
27 administrative personnel, necessary to comply with this chapter and

1 rules adopted under this chapter;

2 (2) engage professional consultants as it considers
3 necessary to the performance of its duties; and

4 (3) ~~[adopt rules clarifying which health care~~
5 ~~facilities must provide data under this chapter; and~~

6 [~~(4)~~] apply for and receive any appropriation,
7 donation, or other funds from the state or federal government or any
8 other public or private source, subject to Section 108.015 and
9 limitations and conditions provided by legislative appropriation.

10 (b-1) The executive commissioner may adopt rules clarifying
11 which health care facilities must provide data under this chapter.

12 (c) The department ~~[council]~~ may not establish or recommend
13 rates of payment for health care services.

14 (d) The department ~~[council]~~ may not take an action that
15 affects or relates to the validity, status, or terms of an
16 interagency agreement ~~[or a contract with the department]~~ without
17 the executive commissioner's ~~[board's]~~ approval.

18 (e) In the collection of data, the department ~~[council]~~
19 shall consider the research and initiatives being pursued by the
20 United States Department of Health and Human Services, the National
21 Committee for Quality Assurance, and The ~~[the]~~ Joint Commission ~~[on~~
~~Accreditation of Healthcare Organizations]~~ to reduce potential
23 duplication or inconsistencies. The executive commissioner
24 ~~[council]~~ may not adopt rules that conflict with or duplicate any
25 federally mandated data collection programs or requirements of
26 comparable scope.

27 (f) The executive commissioner ~~[council]~~ shall prescribe by

1 rule a public use data file minimum data set that maintains patient
2 confidentiality and establishes data accuracy and consistency.

3 (g) The public use data file minimum data set as defined by
4 department [council] rule is subject to annual review by the
5 department [council with the assistance of the advisory committee
6 under Section 108.003(g)(5)]. The purpose of the review is to
7 evaluate requests to modify the existing minimum data set and
8 editing process. A decision to modify the minimum data set by the
9 addition or deletion of data elements shall include consideration
10 of the value of the specific data to be added or deleted and the
11 technical feasibility of establishing data accuracy and
12 consistency. The department [council] may also consider the costs
13 to the department [council] and providers associated with modifying
14 the minimum data set.

15 (h) In accordance with Section 108.0135, the department
16 [council] may release data collected under Section 108.009 that is
17 not included in the public use data file minimum data set
18 established under Subsection (f).

19 [Sec. 108.0062. DRUG PURCHASING COOPERATIVES.] (a) The
20 council shall develop criteria for evaluating drug purchasing
21 cooperatives that purchase drugs on behalf of consumers and create
22 an evaluation form for consumers to evaluate drug purchasing
23 cooperatives.

24 [(b) The council shall distribute the evaluation forms to
25 the department, local health departments, the Texas Department of
26 Insurance, and the consumer protection division of the office of
27 the attorney general.]

1 [(c) The council shall compile the information from
2 completed evaluation forms and make the information available to
3 the public.]

4 Sec. 108.0065. POWERS AND DUTIES OF COMMISSION AND
5 DEPARTMENT [~~COUNCIL~~] RELATING TO MEDICAID MANAGED CARE. (a) In
6 this section, [+

7 [(1) "Commission" means the Health and Human Services
8 ~~Commission~~.

9 [~~(2)~~] "Medicaid managed care organization" means a
10 managed care organization, as defined by Section 533.001,
11 Government Code, that is contracting with the commission to
12 implement the Medicaid managed care program under Chapter 533,
13 Government Code.

14 (b) The commission may direct the department [~~council~~] to
15 collect data under this chapter with respect to Medicaid managed
16 care organizations. The department [~~council~~] shall coordinate the
17 collection of the data with the collection of data for health
18 benefit plan providers, but with the approval of the commission may
19 collect data in addition to the data otherwise required of health
20 benefit plan providers.

21 (c) Each Medicaid managed care organization shall provide
22 to the department the data required by the executive commissioner
23 [~~council~~] in the form required by the executive commissioner
24 [~~council~~] or, if the data is also being submitted to the commission
25 [~~or Medicaid operating agency~~], in the form required by the
26 commission [~~or Medicaid operating agency~~].

27 (d) Dissemination of data collected under this section is

1 subject to Sections 108.010, 108.011, 108.012, 108.013, 108.014,
2 and 108.0141.

3 (e) The commission shall analyze the data collected in
4 accordance with this section and shall use the data to:

5 (1) evaluate the effectiveness and efficiency of the
6 Medicaid managed care system;

7 (2) determine the extent to which Medicaid managed
8 care does or does not serve the needs of Medicaid recipients in this
9 state; and

10 (3) assess the cost-effectiveness of the Medicaid
11 managed care system in comparison to the fee-for-service system,
12 considering any improvement in the quality of care provided.

13 (h) The commission, using existing funds, may contract with
14 an entity to comply with the requirements under Subsection (e).

15 Sec. 108.007. REVIEW POWERS. (a) The [council, through
16 the] department, [and] subject to reasonable rules and guidelines,
17 may:

18 (1) inspect documents and records used by data sources
19 that are required to compile data and reports; and

20 (2) compel providers to produce accurate documents and
21 records.

22 (b) The department [council] may enter into a memorandum of
23 understanding with a state agency, including the division of the
24 commission [~~Health and Human Services Commission~~] responsible for
25 the state Medicaid program, or with a school of public health or
26 another institution of higher education, to share data and
27 expertise, to obtain data for the department [council], or to make

1 data available to the department [council]. An agreement entered
2 into under this subsection must protect patient confidentiality.

3 [Sec. 108.008. DUTIES OF DEPARTMENT. (a) The department,
4 as the state health planning and development agency under Chapter
5 104, is responsible for the collection of data under Chapter 311.

6 [(b) The department shall:

7 [(1) contract with the council to collect data under
8 this chapter,

9 [(2) provide administrative assistance to the
10 council;

11 [(3) coordinate administrative responsibilities with
12 the council to avoid unnecessary duplication of the collection of
13 data and other duties;

14 [(4) on request of the council, give the council
15 access to data collected by the department;

16 [(5) submit or assist in the council's budget request
17 to the legislature; and

18 [(6) work with the Department of Information Resources
19 in developing and implementing the statewide health care data
20 collection system and maintain consistency with Department of
21 Information Resources standards.

22 [(c) The department may not take an action that affects or
23 relates to the validity, status, or terms of an interagency
24 agreement or a contract with the council without the council's
25 approval.

26 [Sec. 108.0081. MEMORANDUM OF UNDERSTANDING. The council
27 and the department shall enter into a memorandum of understanding

1 ~~to implement the department's duties under Section 108.008(b). The~~
2 ~~memorandum of understanding must address:~~

- 3 [←(1) ~~payroll and travel reimbursement services;~~
- 4 [←(2) ~~purchasing services;~~
- 5 [←(3) ~~personnel services;~~
- 6 [←(4) ~~budget management services;~~
- 7 [←(5) ~~computer support and maintenance services;~~
- 8 [←(6) ~~meeting coordination services;~~
- 9 [←(7) ~~any other administrative support or other~~
- 10 ~~services to be provided by the department for the council; and~~
- 11 [←(8) ~~the manner in which the council will reimburse~~
- 12 ~~the department for the cost of services provided by the department~~
- 13 ~~for the council.]~~

14 Sec. 108.0085. DUTIES OF ATTORNEY GENERAL. The attorney
15 general shall furnish the department [~~council~~] with advice and
16 legal assistance that may be required to implement this chapter.

17 Sec. 108.009. DATA SUBMISSION AND COLLECTION. (a) The
18 department [~~council~~] may collect, and, except as provided by
19 Subsection [~~Subsections (c) and~~] (d), providers shall submit to the
20 department [~~council~~] or another entity as determined by the
21 department [~~council~~], all data required by this section. The data
22 shall be collected according to uniform submission formats, coding
23 systems, and other technical specifications necessary to make the
24 incoming data substantially valid, consistent, compatible, and
25 manageable using electronic data processing, if available.

26 (b) The executive commissioner [~~council~~] shall adopt rules
27 to implement the data submission requirements imposed by Subsection

1 (a) in appropriate stages to allow for the development of efficient
2 systems for the collection and submission of the data. A rule
3 adopted by the executive commissioner [council] that requires
4 submission of a data element that, before adoption of the rule, was
5 not required to be submitted may not take effect before the 90th day
6 after the date the rule is adopted and must take effect not later
7 than the first anniversary after the date the rule is adopted.

8 (d) The department [council] may not collect data from
9 individual physicians or from an entity that is composed entirely
10 of physicians and that is a professional association organized
11 under the former Texas Professional Association Act (Article 1528f,
12 Vernon's Texas Civil Statutes) or formed under the Texas
13 Professional Association Law, as described by Section 1.008(1),
14 Business Organizations Code, a limited liability partnership
15 organized under former Section 3.08, Texas Revised Partnership Act
16 (Article 6132b-3.08, Vernon's Texas Civil Statutes), or formed as
17 described by Subchapter J, Chapter 152, Business Organizations
18 Code, or a limited liability company organized under the former
19 Texas Limited Liability Company Act (Article 1528n, Vernon's Texas
20 Civil Statutes) or formed under the Texas Limited Liability Company
21 Law, as described by Section 1.008(e), Business Organizations Code,
22 except to the extent the entity owns and operates a health care
23 facility in this state. This subsection does not prohibit the
24 release of data about physicians using uniform physician
25 identifiers that has been collected from a health care facility
26 under this chapter.

27 (e) The department [council] shall establish [the

1 ~~department as~~] the single collection point for receipt of data from
2 providers. With the approval of the executive commissioner
3 ~~[council and the board]~~, the department may transfer collection of
4 any data required to be collected by the department under any other
5 law to the statewide health care data collection system.

6 (f) The executive commissioner ~~[council]~~ may not require
7 providers to submit data more frequently than quarterly, but
8 providers may submit data on a more frequent basis.

9 (g) The department ~~[council]~~ shall coordinate data
10 collection with the data collection formats used by federally
11 qualified health centers. To satisfy the requirements of this
12 chapter:

13 (1) a federally qualified health center shall submit
14 annually to the department ~~[council]~~ a copy of the Medicaid cost
15 report of federally qualified health centers; and

16 (2) a provider receiving federal funds under 42 U.S.C.
17 Section 254b ~~or [r]~~ 254c~~[, or 256]~~ shall submit annually to the
18 department ~~[council]~~ a copy of the Uniform Data System ~~[Bureau of~~
19 ~~Common Reporting Requirements]~~ data report developed by the United
20 States Department of ~~[Public]~~ Health and Human Services ~~[Service]~~.

21 (h) The department shall coordinate data collection with
22 the data submission formats used by hospitals and other providers.
23 The department shall accept data in the format developed by the
24 American National Standards Institute or its successor or other
25 nationally accepted standardized forms that hospitals and other
26 providers use for other complementary purposes.

27 (i) The executive commissioner ~~[council]~~ shall develop by

1 rule reasonable alternate data submission procedures for providers
2 that do not possess electronic data processing capacity.

3 (k) The department [~~council~~] shall collect health care data
4 elements relating to payer type, the racial and ethnic background
5 of patients, and the use of health care services by consumers. The
6 department [~~council~~] shall prioritize data collection efforts on
7 inpatient and outpatient surgical and radiological procedures from
8 hospitals, ambulatory surgical centers, and free-standing imaging
9 [~~radiology~~] centers.

10 (m) To the extent feasible, the department [~~council~~] shall
11 obtain from public records the information that is available from
12 those records.

13 (o) A provider of a health benefit plan shall annually
14 submit to the department [~~council~~] aggregate data by service area
15 required by the Healthcare Effectiveness [~~Health Plan Employer~~]
16 Data and Information Set (HEDIS) as operated by the National
17 Committee for Quality Assurance. The department [~~council~~] may
18 approve the submission of data in accordance with other methods
19 generally used by the health benefit plan industry. If the
20 Healthcare Effectiveness [~~Health Plan Employer~~] Data and
21 Information Set does not generally apply to a health benefit plan,
22 the department [~~council~~] shall require submission of data in
23 accordance with other methods. This subsection does not relieve a
24 health care facility that provides services under a health benefit
25 plan from the requirements of this chapter. Information submitted
26 under this section is subject to Section 108.011 but is not subject
27 to Section 108.010.

1 Sec. 108.010. COLLECTION AND DISSEMINATION OF PROVIDER
2 QUALITY DATA. (a) Subject to Section 108.009, the department
3 [~~council~~] shall collect data reflecting provider quality based on a
4 methodology and review process established through the executive
5 commissioner's [~~council's~~] rulemaking process. The methodology
6 shall identify and measure quality standards and adhere to any
7 federal mandates.

8 (b) The department [~~council~~] shall study and analyze
9 initial methodologies for obtaining provider quality data,
10 including outcome data.

11 (c) The department [~~council~~] shall test the methodology by
12 collecting provider quality data for one year, subject to Section
13 108.009. The department [~~council~~] may test using pilot
14 methodologies. After collecting provider quality data for one
15 year, the department [~~council~~] shall report findings applicable to
16 a provider to that provider and allow the provider to review and
17 comment on the initial provider quality data applicable to that
18 provider. The department [~~council~~] shall verify the accuracy of
19 the data during this review and revision process. After the review
20 and revision process, provider quality data for subsequent reports
21 shall be published and made available to the public, on a time
22 schedule the department [~~council~~] considers appropriate.

23 (d) If the department [~~council~~] determines that provider
24 quality data to be published under Subsection (c) does not provide
25 the intended result or is inaccurate or inappropriate for
26 dissemination, the department [~~council~~] is not required to publish
27 the data or reports based in whole or in part on the data. This

1 subsection does not affect the release of public use data in
2 accordance with Section 108.011 or the release of information
3 submitted under Section 108.009(o).

4 (e) The executive commissioner [council] shall adopt rules
5 allowing a provider to submit concise written comments regarding
6 any specific provider quality data to be released concerning the
7 provider. The department [council] shall make the comments
8 available to the public at the office of the department [council]
9 and in an electronic form accessible through the Internet. The
10 comments shall be attached to any public release of provider
11 quality data. Providers shall submit the comments to the
12 department [council] to be attached to the public release of
13 provider quality data in the same format as the provider quality
14 data that is to be released.

15 (f) The methodology adopted [~~by the council~~] for measuring
16 quality shall include case-mix qualifiers, severity adjustment
17 factors, adjustments for medical education and research, and any
18 other factors necessary to accurately reflect provider quality.

19 (g) In addition to the requirements of this section, any
20 release of provider quality data shall comply with Sections
21 108.011(e) and (f).

22 (h) A provider quality data report may not identify an
23 individual physician by name, but must identify the physician by
24 the uniform physician identifier designated by the department
25 [council] under Section 108.011(c).

26 (i) The department [council] shall release provider quality
27 data in an aggregate form without uniform physician identifiers

1 when[~~+~~

2 [(-1) the data relates to providers described by

3 ~~Section 108.0025(1); or~~

4 [(-2)] the cell size of the data is below the minimum
5 size established by department [~~council~~] rule that would enable
6 identification of an individual patient or physician.

7 Sec. 108.011. DISSEMINATION OF PUBLIC USE DATA AND
8 DEPARTMENT [~~council~~] PUBLICATIONS. (a) The department [~~council~~]
9 shall promptly provide public use data and data collected in
10 accordance with Section 108.009(o) to those requesting it. The
11 public use data does not include provider quality data prescribed
12 by Section 108.010 or confidential data prescribed by Section
13 108.013.

14 (b) Subject to the restrictions on access to department
15 [~~council~~] data prescribed by Sections 108.010 and 108.013, and
16 using the public use data and other data, records, and matters of
17 record available to it, the department [~~council~~] shall prepare and
18 issue reports to the governor, the legislature, and the public as
19 provided by this section and Section 108.006(a). The department
20 [~~council~~] must issue the reports at least annually.

21 (c) Subject to the restrictions on access to department
22 [~~council~~] data prescribed by Sections 108.010 and 108.013, the
23 department [~~council~~] shall use public use data to prepare and issue
24 reports that provide information relating to providers, such as the
25 incidence rate of selected medical or surgical procedures. The
26 reports must provide the data in a manner that identifies
27 individual providers, including individual physicians, and that

1 identifies and compares data elements for all providers.
2 Individual physicians may not be identified by name, but shall be
3 identified by uniform physician identifiers. The executive
4 commissioner [council] by rule shall designate the characters to be
5 used as uniform physician identifiers.

6 (c-1) The department [council] shall use public use data to
7 prepare and issue reports that provide information for review and
8 analysis by the commission [~~Health and Human Services Commission~~]
9 relating to services that are provided in a niche hospital, as
10 defined by Section 105.002, Occupations Code, and that are provided
11 by a physician with an ownership interest in the niche hospital.

12 (c-2) Subsection (c-1) does not apply to an ownership
13 interest in publicly available shares of a registered investment
14 company, such as a mutual fund, that owns publicly traded equity
15 securities or debt obligations issued by a niche hospital or an
16 entity that owns the niche hospital.

17 (d) The executive commissioner [council] shall adopt
18 procedures to establish the accuracy and consistency of the public
19 use data before releasing the public use data to the public. The
20 department may adopt additional procedures as the department
21 determines necessary.

22 (e) If public use data is requested from the department
23 [council] about a specific provider, the department [council] shall
24 notify the provider about the release of the data. This subsection
25 does not authorize the provider to interfere with the release of
26 that data.

27 (f) A report issued by the department [council] shall

1 include a reasonable review and comment period for the affected
2 providers before public release of the report.

3 (g) The executive commissioner [~~council~~] shall adopt rules
4 allowing a provider to submit concise written comments regarding
5 any specific public use data to be released concerning the
6 provider. The department [~~council~~] shall make the comments
7 available to the public at [~~and~~] the office of the department
8 [~~council~~] and in an electronic form accessible through the
9 Internet. The comments shall be attached to any public release of
10 the public use data. Providers shall submit the comments to the
11 department [~~council~~] to be attached to the public release of public
12 use data in the same format as the public use data that is to be
13 released.

14 (h) Tapes containing public use data and provider quality
15 reports that are released to the public must include general
16 consumer education material, including an explanation of the
17 benefits and limitations of the information provided in the public
18 use data and provider quality reports.

19 (i) The department [~~council~~] shall release public use data
20 in an aggregate form without uniform physician identifiers when[+
21 [+(1) ~~the data relates to providers described by~~
22 ~~section 108.0025(1), or~~

23 [+(2)] the cell size of the data is below the minimum
24 size established by department [~~council~~] rule that would enable
25 identification of an individual patient or physician.

26 Sec. 108.012. COMPUTER ACCESS TO DATA. (a) The department
27 [~~council~~] shall provide a means for computer-to-computer access to

1 the public use data. All reports shall maintain patient
2 confidentiality as provided by Section [108.013](#).

3 (b) The department [~~council~~] may charge a person requesting
4 public use or provider quality data a fee for the data. The fees may
5 reflect the quantity of information provided and the expense
6 incurred by the department [~~council~~] in collecting and providing
7 the data. The executive commissioner by rule [~~and~~] shall [~~be~~] set
8 the fees at a level that will raise revenue sufficient for the
9 operation of the department [~~council~~]. The department [~~council~~]
10 may not charge a fee for providing public use data to another state
11 agency.

12 Sec. 108.013. CONFIDENTIALITY AND GENERAL ACCESS TO DATA.

13 (a) The data received by the department under this chapter shall be
14 used by the department and commission for the benefit of the public.
15 Subject to specific limitations established by this chapter and
16 department [~~executive commissioner~~] rule, the department shall
17 make determinations on requests for information in favor of access.

18 (b) The executive commissioner by rule shall designate the
19 characters to be used as uniform patient identifiers. The basis for
20 assignment of the characters and the manner in which the characters
21 are assigned are confidential.

22 (c) Unless specifically authorized by this chapter, the
23 department may not release and a person or entity may not gain
24 access to any data obtained under this chapter:

25 (1) that could reasonably be expected to reveal the
26 identity of a patient;

27 (2) that could reasonably be expected to reveal the

10 (d) Except as provided by this section, all data collected
11 and used by the department under this chapter is subject to the
12 confidentiality provisions and criminal penalties of:

16 (e) Data on patients and compilations produced from the data
17 collected that identify patients are not:

21 (2) admissible in any civil, administrative, or
22 criminal proceeding.

23 (f) Data on physicians and compilations produced from the
24 data collected that identify physicians are not:

(2) admissible in any civil, administrative, or
criminal proceeding.

3 (g) Unless specifically authorized by this chapter, the
4 department may not release data elements in a manner that will
5 reveal the identity of a patient. The department may not release
6 data elements in a manner that will reveal the identity of a
7 physician.

8 (h) Subsections (c) and (g) do not prohibit the release of a
9 uniform physician identifier in conjunction with associated public
10 use data in accordance with Section [108.011](#) or a provider quality
11 report in accordance with Section [108.010](#).

12 (i) Notwithstanding any other law and except as provided by
13 this section, the department may not provide information made
14 confidential by this section to any other agency of this state.

15 (j) The executive commissioner shall by rule develop and
16 implement a mechanism to comply with Subsections (c)(1) and (2).

17 (k) The department may disclose data collected under this
18 chapter that is not included in public use data to any department or
19 commission program if the disclosure is reviewed and approved by
20 the institutional review board under Section [108.0135](#).

21 (1) Confidential data collected under this chapter that is
22 disclosed to a department or commission program remains subject to
23 the confidentiality provisions of this chapter and other applicable
24 law. The department shall identify the confidential data that is
25 disclosed to a program under Subsection (k). The program shall
26 maintain the confidentiality of the disclosed confidential data.

27 (m) The following provisions do not apply to the disclosure

1 of data to a department or commission program:

- 2 (1) Section 81.103;
- 3 (2) Sections 108.010(g) and (h);
- 4 (3) Sections 108.011(e) and (f);
- 5 (4) Section 311.037; and
- 6 (5) Section 159.002, Occupations Code.

7 (n) Nothing in this section authorizes the disclosure of
8 physician identifying data.

9 Sec. 108.0131. LIST OF PURCHASERS OR RECIPIENTS OF DATA.

10 The department shall post on the department's Internet website a
11 list of each entity that purchases or receives data collected under
12 this chapter.

13 Sec. 108.0135. INSTITUTIONAL REVIEW BOARD. (a) The
14 department shall establish an institutional review board to review
15 and approve requests for access to data not contained in public use
16 data. The members of the institutional review board must have
17 experience and expertise in ethics, patient confidentiality, and
18 health care data.

19 (b) To assist the institutional review board in determining
20 whether to approve a request for information, the executive
21 commissioner shall adopt rules similar to the federal Centers for
22 Medicare and Medicaid Services' guidelines on releasing data.

23 (c) A request for information other than public use data
24 must be made on the form prescribed by the department.

25 (d) Any approval to release information under this section
26 must require that the confidentiality provisions of this chapter be
27 maintained and that any subsequent use of the information conform

1 to the confidentiality provisions of this chapter.

2 Sec. 108.014. CIVIL PENALTY. (a) A person who knowingly or
3 negligently releases data in violation of this chapter is liable
4 for a civil penalty of not more than \$10,000.

5 (b) A person who fails to supply available data under
6 Sections 108.009 and 108.010 is liable for a civil penalty of not
7 less than \$1,000 or more than \$10,000 for each act of violation.

8 (c) The attorney general, at the request of the department
9 [~~council~~], shall enforce this chapter. The venue of an action
10 brought under this section is in Travis County.

11 (d) A civil penalty recovered in a suit instituted by the
12 attorney general under this chapter shall be deposited in the
13 general revenue fund to the credit of the health care information
14 account.

15 Sec. 108.0141. CRIMINAL PENALTY. (a) A person who
16 knowingly accesses data in violation of this chapter or who with
17 criminal negligence releases data in violation of this chapter
18 commits an offense.

19 (b) An offense under this section is a state jail felony.

20 Sec. 108.015. CONFLICT OF INTEREST. The department
21 [~~council~~] may not accept a donation from a person required to
22 provide data under this chapter or from a person or business entity
23 who provides goods or services to the department [~~council~~] for
24 compensation.

25 Sec. 108.016. SUNSET REVIEW. Unless continued in existence
26 in accordance with Chapter 325, Government Code (Texas Sunset Act),
27 after the review required by Section 11.003(b), this chapter

1 expires September 1, 2015.

2 SECTION 3.0356. Section 114.002, Health and Safety Code, is
3 amended to read as follows:

4 Sec. 114.002. INTERAGENCY OBESITY COUNCIL. The council is
5 composed of the commissioner, the commissioner of agriculture, [~~the~~
6 ~~commissioner of state health services~~,] and the commissioner of
7 education, or a staff member designated by each of those
8 commissioners.

9 SECTION 3.0357. Section 114.005, Health and Safety Code, is
10 amended to read as follows:

11 Sec. 114.005. REVIEW OF AGENCY PROGRAMS. The council shall
12 review the status of the programs of the department, the Department
13 of Agriculture, [~~the Department of State Health Services~~,] and the
14 Texas Education Agency that promote better health and nutrition and
15 prevent obesity among children and adults in this state.

16 SECTION 3.0358. Section 114.006(d), Health and Safety Code,
17 is amended to read as follows:

18 (d) The council shall provide to the department [~~Department~~
19 ~~of State Health Services~~] information on effective strategies for
20 employers to use to promote workplace wellness, including
21 information on the projected costs and benefits. The department
22 [~~Department of State Health Services~~] shall post the information on
23 its Internet website.

24 SECTION 3.0359. Section 114.007(c), Health and Safety Code,
25 is amended to read as follows:

26 (c) A report submitted by the council under Subsection (a)
27 must include the following information regarding the

1 evidence-based public health awareness plan under Section 114.006:
2 (1) a cost estimate for an ongoing program to
3 implement the plan;
4 (2) projected benefits of the program;
5 (3) a summary of the information provided to the
6 department [Department of State Health Services] for its Internet
7 website; and
8 (4) recommendations for goals and future legislation.

9 SECTION 3.0360. Section 115.007(a), Health and Safety Code,
10 is amended to read as follows:

11 (a) The task force consists of:
12 (1) the commissioner, the executive director or
13 director, or a deputy or assistant commissioner of:
14 (A) the commission, designated by the executive
15 commissioner;
16 (B) the Department of Aging and Disability
17 Services, designated by the commissioner of aging and disability
18 services [~~that agency~~];
19 (C) the Department of Assistive and
20 Rehabilitative Services, designated by the commissioner of assistive and
21 assistive and rehabilitative services [~~that agency~~];
22 (D) the division of early childhood intervention
23 services, designated by the commissioner of assistive and
24 rehabilitative services [~~the Department of Assistive and~~
25 ~~Rehabilitative Services~~];
26 (E) the Department of Family and Protective
27 Services, designated by the commissioner of family and protective

1 services [~~that agency~~];
2 (F) the department [~~Department of State Health~~
3 Services], designated by the commissioner [~~of that agency~~];
4 (G) the Texas Education Agency, designated by the
5 commissioner of education [~~that agency~~];
6 (H) the Texas Juvenile Justice Department [~~Youth~~
7 Commission], designated by the executive director [~~commissioner~~]
8 of that agency; and
9 (I) [~~the Texas Juvenile Probation Commission,~~
10 ~~designated by the executive director of that agency; and~~
11 [~~(J)~~] the Texas Correctional Office on Offenders
12 with Medical or Mental Impairments, designated by the director of
13 that office; and
14 (2) eight nonvoting members who are:
15 (A) a representative of a local mental health
16 authority or a local intellectual and developmental disability
17 [~~mental retardation~~] authority, appointed by the governor;
18 (B) two members of the house of representatives,
19 appointed by the speaker of the house of representatives;
20 (C) two senators, appointed by the lieutenant
21 governor; and
22 (D) three parents or consumer advocates, one each
23 appointed by the commission, the Texas Education Agency, and the
24 Texas Juvenile Justice Department [~~Youth Commission~~].
25 SECTION 3.0361. Section 121.002(2), Health and Safety Code,
26 is amended to read as follows:
27 (2) "Physician" means a person licensed to practice

1 medicine by the Texas Medical [~~State~~] Board [~~of Medical Examiners~~].

2 SECTION 3.0362. Section 121.003(b), Health and Safety Code,
3 is amended to read as follows:

4 (b) The governing bodies of municipalities and the
5 commissioners courts of counties may cooperate with one another in
6 making necessary improvements and providing services to promote the
7 public health in accordance with Chapter 791, Government Code [~~The~~
~~Interlocal Cooperation Act (Article 4413(32e), Vernon's Texas~~
~~Civil Statutes)~~].

10 SECTION 3.0363. Section 121.004, Health and Safety Code, is
11 amended to read as follows:

12 Sec. 121.004. LOCAL HEALTH UNITS. A local health unit is a
13 division of municipal or county government that provides public
14 health services but does not provide each service listed [~~required~~
~~of a local health department~~] under Section 121.006(d) [~~121.032~~(a)]
16 or required of a public health district under Section 121.043(a).

17 SECTION 3.0364. Section 121.005(d), Health and Safety Code,
18 is amended to read as follows:

19 (d) The executive commissioner [~~board~~] may adopt rules
20 necessary to implement this section.

21 SECTION 3.0365. Section 121.006(c), Health and Safety Code,
22 is amended to read as follows:

23 (c) Chapter 783, Government Code, [~~The Uniform Grant and~~
~~Contract Management Act of 1981 (Article 4413(32g), Vernon's Texas~~
~~Civil Statutes)~~] and standards adopted under that chapter [~~Act~~]
26 control, if applicable, if the local health unit, local health
27 department, or public health district receives state support for

1 the provision of public health services.

2 SECTION 3.0366. Section [121.0065\(c\)](#), Health and Safety
3 Code, is amended to read as follows:

4 (c) The executive commissioner [board] shall adopt rules
5 governing:

6 (1) the allocation formula for grants awarded under
7 this section;

8 (2) the manner in which a municipality, county, public
9 health district, or other political subdivision applies for a
10 grant;

11 (3) the procedures for awarding grants; and

12 (4) the minimum essential public health services to be
13 provided under the grant and other standards applicable to the
14 services to be provided under the grant.

15 SECTION 3.0367. Section [121.007](#), Health and Safety Code, is
16 amended to read as follows:

17 Sec. 121.007. PUBLIC HEALTH REGIONS. (a) The department
18 [board] may designate geographic areas of the state as public
19 health regions to provide public health services.

20 (b) The department [board] shall appoint a physician to
21 serve as regional director for each public health region. The
22 regional director is the chief administrative officer of the
23 region. The department [board] shall establish the qualifications
24 and terms of employment of a regional director.

25 (c) The department [board or its designee] may require a
26 regional director to perform the duties of a health authority. The
27 regional director may perform those duties, as authorized by the

1 department [~~board or commissioner~~], in a jurisdiction in the region
2 in which the health authority fails to perform duties prescribed
3 [~~by the board~~] under Section 121.024. The regional director shall
4 perform the duties of a health authority in a jurisdiction in the
5 region in which there is not a health authority.

6 SECTION 3.0368. Section 121.008(a), Health and Safety Code,
7 is amended to read as follows:

8 (a) The department [~~board~~] shall hold an annual conference
9 for health authorities and for directors of local health
10 departments and public health districts. The commissioner or the
11 commissioner's designee shall preside over the conference.

12 SECTION 3.0369. Section 121.022(b), Health and Safety Code,
13 is amended to read as follows:

14 (b) To be qualified to serve as a health authority, the
15 appointee must:

16 (1) take and subscribe to the official oath; and
17 (2) file a copy of the oath and appointment with the
18 department [~~board~~].

19 SECTION 3.0370. Sections 121.024(b) and (c), Health and
20 Safety Code, are amended to read as follows:

21 (b) A health authority shall perform each duty that is:

22 (1) necessary to implement and enforce a law to
23 protect the public health; or

24 (2) prescribed by the department [~~board~~].

25 (c) The duties of a health authority include:

26 (1) establishing, maintaining, and enforcing
27 quarantine in the health authority's jurisdiction;

1 (2) aiding the department [board] in relation to local
2 quarantine, inspection, disease prevention and suppression, birth
3 and death statistics, and general sanitation in the health
4 authority's jurisdiction;

5 (3) reporting the presence of contagious, infectious,
6 and dangerous epidemic diseases in the health authority's
7 jurisdiction to the department [board] in the manner and at the
8 times prescribed by the department [board];

9 (4) reporting to the department [board] on any subject
10 on which it is proper for the department [board] to direct that a
11 report be made; and

12 (5) aiding the department [board] in the enforcement
13 of the following in the health authority's jurisdiction:

- 14 (A) proper rules, requirements, and ordinances;
15 (B) sanitation laws;
16 (C) quarantine rules; and
17 (D) vital statistics collections.

18 SECTION 3.0371. Sections [121.029\(a\)](#) and (b), Health and
19 Safety Code, are amended to read as follows:

20 (a) A health authority, unless otherwise restricted by law,
21 may delegate a power or duty imposed on the health authority by the
22 department [board], or by this or any other law, to a properly
23 qualified physician to act while the health authority is absent or
24 incapacitated.

25 (b) The physician designated by the health authority must:

26 (1) meet the qualifications set out in Section
27 [121.022\(a\)](#);

1 (2) be appointed as a designee in the same manner as
2 the appointment of the health authority;

3 (3) take, subscribe, and file the official oath and
4 appointment with the department [board] as required by Section
5 [121.022\(b\)](#); and

6 (4) file a certified copy of the written delegation
7 with the department [board].

8 SECTION 3.0372. Section [121.033\(d\)](#), Health and Safety Code,
9 is amended to read as follows:

10 (d) A director of a local health department who is not a
11 physician shall appoint a physician as the health authority in the
12 local health department's jurisdiction, subject to the approval of
13 the governing body or the commissioners court, as appropriate, and
14 the department [board].

15 SECTION 3.0373. Sections [121.0331\(a\)](#) and (b), Health and
16 Safety Code, are amended to read as follows:

17 (a) A health authority, unless otherwise restricted by law,
18 may delegate a power or duty imposed on the health authority by the
19 department [board], or by this or any other law, to a properly
20 qualified physician who is employed by the municipality's or
21 county's local health department to act while the health authority
22 is absent or incapacitated.

23 (b) The physician designated by the health authority must:

24 (1) meet the qualifications set out in Section
25 [121.022\(a\)](#);

26 (2) be appointed as a designee in the same manner as
27 the appointment of the health authority;

1 (3) take, subscribe, and file the official oath and
2 appointment with the department [board] as required by Section
3 121.022(b); and

4 (4) file a certified copy of the written delegation
5 with the department [board].

6 SECTION 3.0374. Section 121.043(b), Health and Safety Code,
7 is amended to read as follows:

8 (b) For purposes of Section 121.005, a public health
9 district shall be identified by its program of public health
10 services and shall, at a minimum, provide the services listed [~~for a~~
11 ~~local health department~~] under Section 121.006(d) [121.032(b)].

12 SECTION 3.0375. Section 121.045(d), Health and Safety Code,
13 is amended to read as follows:

14 (d) A director of a public health district who is not a
15 physician shall appoint a physician as the health authority for the
16 district, subject to the approval of the members and the department
17 [board].

18 SECTION 3.0376. Sections 121.0451(a) and (b), Health and
19 Safety Code, are amended to read as follows:

20 (a) A health authority, unless otherwise restricted by law,
21 may delegate a power or duty imposed on the health authority by the
22 department [board], or by this or any other law, to a properly
23 qualified physician who is employed by the public health district
24 to act while the health authority is absent or incapacitated.

25 (b) The physician designated by the health authority must:

26 (1) meet the qualifications set out in Section
27 121.022(a);

1 (2) be appointed as a designee in the same manner as
2 the appointment of the health authority;

3 (3) take, subscribe, and file the official oath and
4 appointment with the department [board] as required by Section
5 121.022(b); and

6 (4) file a certified copy of the written delegation
7 with the department [board].

8 SECTION 3.0377. Section 122.008(b), Health and Safety Code,
9 is amended to read as follows:

10 (b) A nurse employed under Subsection (a) shall:

11 (1) investigate the health conditions and sanitary
12 surroundings of the schools and the personal, physical, and health
13 condition of students in the schools;

14 (2) cooperate with the department [~~Texas Department of~~
15 ~~Health~~] and local health authorities; and

16 (3) perform other duties required by the commissioners
17 court.

18 SECTION 3.0378. Sections 141.002(2) and (5), Health and
19 Safety Code, are amended to read as follows:

20 (2) "Day camp" includes any camp that primarily
21 operates during any portion of the day between 7 a.m. and 10 p.m.
22 for a period of four or more consecutive days but may incidentally
23 offer not more than two overnight stays each camp session. The term
24 does not include a facility required to be licensed with the
25 Department of Family and Protective [~~and Regulatory~~] Services.

26 (5) "Youth camp" means a facility or property, other
27 than a facility required to be licensed by the Department of Family

1 and Protective [and Regulatory] Services, that:

2 (A) has the general characteristics of a day

3 camp, resident camp, or travel camp;

4 (B) is used primarily or partially for
5 recreational, athletic, religious, or educational activities; and

6 (C) accommodates at least five minors who attend
7 or temporarily reside at the camp for all or part of at least four
8 days.

9 SECTION 3.0379. Section [141.0035](#), Health and Safety Code,
10 is amended to read as follows:

11 Sec. 141.0035. LICENSE FEES. (a) The executive
12 commissioner [~~board~~] by rule shall establish the amount of the fee
13 for obtaining or renewing a license under this chapter. The
14 executive commissioner [~~board~~] shall set the fee in a reasonable
15 amount designed to recover the direct and indirect costs to the
16 department of administering and enforcing this chapter. The
17 executive commissioner [~~board~~] may set fees in a different amount
18 for resident youth camps and day youth camps to reflect differences
19 in the costs of administering and enforcing this chapter for
20 resident and day camps.

21 (b) Before the executive commissioner adopts or amends
22 [~~adopting or amending~~] a rule under Subsection (a), the department
23 [~~board~~] shall solicit comments and information from the operators
24 of affected youth camps and allow affected youth camp operators the
25 opportunity to meet with appropriate department staff who are
26 involved with the rulemaking process.

27 SECTION 3.0380. Section [141.004](#)(a), Health and Safety Code,

1 is amended to read as follows:

2 (a) To obtain a license, a person must submit a license
3 application accompanied by a license fee in an amount set by the
4 executive commissioner by rule [board].

5 SECTION 3.0381. Section 141.005, Health and Safety Code, is
6 amended to read as follows:

7 Sec. 141.005. LICENSE RENEWAL. (a) A person holding a
8 license issued under this chapter must renew the license annually
9 by submitting a renewal application on a date determined by
10 department [board] rule on a form provided by the department.

11 (b) The application must be accompanied by a renewal fee in
12 an amount set by the executive commissioner by rule [board].

13 (c) The department may not renew the license of a youth camp
14 which has not corrected deficiencies before the application for
15 renewal is submitted. The executive commissioner [board] shall
16 adopt substantive and procedural rules for the submission by a
17 youth camp operator of evidence that a deficiency or deficiencies
18 have been corrected.

19 SECTION 3.0382. Sections 141.007(b) and (c), Health and
20 Safety Code, are amended to read as follows:

21 (b) An employee or agent who enters a youth camp to
22 investigate and inspect conditions shall notify the person in
23 charge of the camp of the inspector's presence and shall present
24 proper credentials. The department may exercise the remedies
25 authorized by Section 141.015(b) [141.014(b)] if the employee or
26 agent is not allowed to enter.

27 (c) The executive commissioner [department] may prescribe

1 reasonable record-keeping requirements for licensed youth camps,
2 including a requirement that the youth camp keep records relating
3 to matters involving the health and safety of campers. An employee
4 or agent of the department may examine, during regular business
5 hours, any records relating to the health and safety of campers.

6 SECTION 3.0383. Section 141.008(a), Health and Safety Code,
7 is amended to read as follows:

8 (a) The executive commissioner [board] may adopt rules to
9 implement this chapter. In adopting the rules the executive
10 commissioner [board] shall comply with Subchapter B, Chapter 2001,
11 Government Code, including Sections 2001.032(b) and 2001.033,
12 Government Code. In developing the rules to be adopted by the
13 executive commissioner, the department [board] shall consult
14 parents, youth camp operators, and appropriate public and private
15 officials and organizations.

16 SECTION 3.0384. Section 141.009, Health and Safety Code, is
17 amended to read as follows:

18 Sec. 141.009. STANDARDS. The executive commissioner
19 [board] by rule shall establish health and safety standards for
20 youth camps. The standards may relate to:

21 (1) adequate and proper supervision at all times of
22 camp activities;

23 (2) qualifications for directors, supervisors, and
24 staff and sufficient numbers of those persons;

25 (3) proper safeguards for sanitation and public
26 health;

27 (4) adequate medical services for personal health and

1 first aid;

2 (5) proper procedures for food preparation, handling,

3 and mass feeding;

4 (6) healthful and sufficient water supply;

5 (7) proper waste disposal;

6 (8) proper water safety procedures for swimming pools,

7 lakes, and waterways;

8 (9) safe boating equipment;

9 (10) proper maintenance and safe use of motor

10 vehicles;

11 (11) safe buildings and physical facilities;

12 (12) proper fire precautions;

13 (13) safe and proper recreational and other equipment;

14 (14) proper regard for density and use of the

15 premises; and

16 (15) records of criminal convictions of camp

17 personnel.

18 SECTION 3.0385. Sections [141.0095](#)(d) and (f), Health and

19 Safety Code, are amended to read as follows:

20 (d) In accordance with this section and the criteria and

21 guidelines developed by the training advisory committee

22 established under Section [141.0096](#), the executive commissioner [~~or~~

23 ~~the Health and Human Services Commission~~] by rule shall establish

24 criteria and guidelines for training and examination programs on

25 sexual abuse and child molestation. The department may approve

26 training and examination programs offered by trainers under

27 contract with youth camps or by online training organizations or

1 may approve programs offered in another format authorized by the
2 department.

3 (f) The department may assess a fee in the amount set by the
4 executive commissioner by rule as necessary to cover the costs of
5 administering this section to each person that applies for the
6 department's approval of a training and examination program on
7 sexual abuse and child molestation under this section.

8 SECTION 3.0386. Sections [141.0096\(a\), \(b\), and \(c\)](#), Health
9 and Safety Code, are amended to read as follows:

10 (a) The department shall appoint a training advisory
11 committee to advise the department and the executive commissioner
12 [~~of the Health and Human Services Commission~~] in the development of
13 criteria and guidelines for the training and examination program on
14 sexual abuse and child molestation required under Section [141.0095](#)
15 and to perform any other functions requested by the department.

16 (b) The training advisory committee consists of not more
17 than nine members selected by the commissioner [~~of state health~~
18 ~~services~~] as follows:

19 (1) at least two members who represent the general
20 public; and

21 (2) other members, who include experienced camping
22 professionals representing the camping communities of this state,
23 representatives of youth camps selected by the department, and
24 representatives of the Council on Sex Offender Treatment
25 established under Chapter 110, Occupations Code.

26 (c) The training advisory committee shall meet at the call
27 of the commissioner [~~of state health services~~].

1 SECTION 3.0387. Sections [141.010](#)(a), (b), and (d), Health
2 and Safety Code, are amended to read as follows:

3 (a) The executive commissioner [board] shall appoint a
4 committee to advise the executive commissioner [board] in the
5 development of standards and procedures, make recommendations to
6 the executive commissioner [board] regarding the content of the
7 rules adopted to implement this chapter [~~Act~~], and perform any
8 other functions requested by the executive commissioner [board] in
9 the implementation and administration of the chapter [~~Act~~].

10 (b) The advisory committee may not exceed nine members, at
11 least two of whom shall be members of the general public. The other
12 members should be experienced camping professionals who represent
13 the camping communities of the state. In making the appointments,
14 the executive commissioner [board] shall attempt to reflect the
15 geographic diversity of the state in proportion to the number of
16 camps licensed by the department in each geographic area of the
17 state.

18 (d) A vacancy on the advisory committee is filled by the
19 executive commissioner [board] in the same manner as other
20 appointments to the advisory committee.

21 SECTION 3.0388. The heading to Section [141.013](#), Health and
22 Safety Code, is amended to read as follows:

23 Sec. 141.013. [BOARD] HEARINGS.

24 SECTION 3.0389. Section [141.013](#)(a), Health and Safety Code,
25 is amended to read as follows:

26 (a) The department [board] may:

27 (1) call and conduct hearings;

8 SECTION 3.0390. Sections 141.016(a) and (b), Health and
9 Safety Code, are amended to read as follows:

10 (a) The department [commissioner] may assess an
11 administrative penalty if a person violates this chapter [Act] or a
12 rule or order adopted or license issued under this chapter [Act].

13 (b) In determining the amount of the penalty, the department
14 [commissioner] shall consider:

20 SECTION 3.0391. Sections 141.017(b), (c), and (d), Health
21 and Safety Code, are amended to read as follows:

22 (b) If a hearing is held, the administrative law judge
23 [commissioner] shall make findings of fact and shall issue a
24 written proposal for decision regarding the occurrence of the
25 violation and the amount of the penalty that may be warranted.

26 (c) If the person charged with the violation does not
27 request a hearing, the department [commissioner] may assess a

1 penalty after determining that a violation has occurred and the
2 amount of the penalty that may be warranted.

3 (d) After making a determination under this section that a
4 penalty is to be assessed against a person, the department
5 [~~commissioner~~] shall issue an order requiring that the person pay
6 the penalty.

7 SECTION 3.0392. Section 141.018, Health and Safety Code, is
8 amended to read as follows:

9 Sec. 141.018. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not
10 later than the 30th day after the date an order finding that a
11 violation has occurred is issued, the department [~~commissioner~~]
12 shall inform the person against whom the order is issued of the
13 amount of the penalty for the violation.

14 (b) Not later than the 30th day after the date on which a
15 decision or order charging a person with a penalty is final, the
16 person shall:

17 (1) pay the penalty in full; or
18 (2) file a petition for [~~if the person seeks~~] judicial
19 review of the department's order contesting the amount of the
20 penalty, the fact of the violation, or both.

21 (b-1) Within the period prescribed by Subsection (b), a
22 person who files a petition for judicial review may:

23 (1) stay enforcement of the penalty by:
24 (A) paying [~~send the amount of~~] the penalty to
25 the court [~~commissioner~~] for placement in an escrow account; or
26 (B) posting [~~post~~] with the court [~~commissioner~~]
27 a supersedeas bond for the amount of the penalty; or

1 (2) request that the department stay enforcement of
2 the penalty by:

3 (A) filing with the court a sworn affidavit of
4 the person stating that the person is financially unable to pay the
5 penalty and is financially unable to give the supersedeas bond; and
6 (B) sending a copy of the affidavit to the
7 department.

8 (b-2) If the department receives a copy of an affidavit
9 under Subsection (b-1)(2), the department may file with the court,
10 within five days after the date the copy is received, a contest to
11 the affidavit. The court shall hold a hearing on the facts alleged
12 in the affidavit as soon as practicable and shall stay the
13 enforcement of the penalty on finding that the alleged facts are
14 true. The person who files an affidavit has the burden of proving
15 that the person is financially unable to pay the penalty or to give
16 a supersedeas bond.

17 (c) A bond posted under this section must be in a form
18 approved by the court [commissioner] and be effective until all
19 judicial review of the order or decision is final.

20 (d) A person who does not send money to, [the commissioner
21 ~~or]~~ post the bond with, or file the affidavit with the court within
22 the period prescribed by Subsection (b) waives all rights to
23 contest the violation or the amount of the penalty.

24 SECTION 3.0393. Section 141.019, Health and Safety Code, is
25 amended to read as follows:

26 Sec. 141.019. REFUND OF ADMINISTRATIVE PENALTY. On [Not
27 ~~later than the 30th day after]~~ the date the court's judgment [of a

1 ~~judicial determination~~] that an administrative penalty against a
2 person should be reduced or not assessed becomes final, the court
3 [~~commissioner~~] shall order that:

4 (1) [~~remit to the person~~] the appropriate amount of
5 any penalty payment plus accrued interest be remitted to the person
6 not later than the 30th day after that date; or

7 (2) [~~execute a release of~~] the bond be released, if the
8 person has posted a bond.

9 SECTION 3.0394. Section 141.020, Health and Safety Code, is
10 amended to read as follows:

11 Sec. 141.020. RECOVERY OF ADMINISTRATIVE PENALTY BY
12 ATTORNEY GENERAL. The attorney general at the request of the
13 department [~~commissioner~~] may bring a civil action to recover an
14 administrative penalty under this chapter.

15 SECTION 3.0395. Sections 142.001(6) and (22), Health and
16 Safety Code, are amended to read as follows:

17 (6) "Certified agency" means a home and community
18 support services agency, or a portion of the agency, that:

19 (A) provides a home health service; and

20 (B) is certified by an official of the United
21 States Department of Health and Human Services as in compliance
22 with conditions of participation in Title XVIII, Social Security
23 Act (42 U.S.C. Section 1395 et seq.).

24 (22) "Personal assistance service" means routine
25 ongoing care or services required by an individual in a residence or
26 independent living environment that enable the individual to engage
27 in the activities of daily living or to perform the physical

1 functions required for independent living, including respite
2 services. The term includes:

3 (A) personal care;

4 (B) health-related services performed under
5 circumstances that are defined as not constituting the practice of
6 professional nursing by the Texas Board of Nursing under the terms
7 of [~~through~~] a memorandum of understanding executed by [~~with~~] the
8 board and the department [~~in accordance with Section 142.016~~]; and

9 (C) health-related tasks provided by unlicensed
10 personnel under the delegation of a registered nurse or that a
11 registered nurse determines do not require delegation.

12 SECTION 3.0396. Section 142.0011, Health and Safety Code,
13 is amended by amending Subsection (b) and adding Subsection (c) to
14 read as follows:

15 (b) The executive commissioner [~~department~~] shall protect
16 clients of home and community support services agencies by
17 [~~regulating those agencies and~~]

18 [~~(1)~~] adopting rules relating to quality of care and
19 quality of life.

20 (c) The department shall protect clients of home and
21 community support services agencies by:

22 (1) regulating those agencies;

23 (2) strictly monitoring factors relating to the
24 health, safety, welfare, and dignity of each client;

25 (3) imposing prompt and effective remedies for
26 violations of this chapter and rules and standards adopted under
27 this chapter;

1 (4) enabling agencies to provide services that allow
2 clients to maintain the highest possible degree of independence and
3 self-determination; and

4 (5) providing the public with helpful and
5 understandable information relating to agencies in this state.

6 SECTION 3.0397. Section [142.0012\(d\)](#), Health and Safety
7 Code, is amended to read as follows:

8 (d) The executive commissioner [~~department~~] may adopt rules
9 that specify the ownership interests and other relationships that
10 qualify a person as a controlling person.

11 SECTION 3.0398. Section [142.004\(c\)](#), Health and Safety Code,
12 is amended to read as follows:

13 (c) The executive commissioner [~~board~~] by rule shall
14 require that, at a minimum, before the department may approve a
15 license application, the applicant must provide to the department:

16 (1) documentation establishing that, at a minimum, the
17 applicant has sufficient financial resources to provide the
18 services required by this chapter and by the department during the
19 term of the license;

20 (2) a list of the management personnel for the
21 proposed home and community support services agency, a description
22 of personnel qualifications, and a plan for providing continuing
23 training and education for the personnel during the term of the
24 license;

25 (3) documentation establishing that the applicant is
26 capable of meeting the minimum standards established by the
27 executive commissioner [~~board~~] relating to the quality of care;

1 (4) a plan that provides for the orderly transfer of
2 care of the applicant's clients if the applicant cannot maintain or
3 deliver home health, hospice, or personal assistance services under
4 the license;

5 (5) identifying information on the home and community
6 support services agency owner, administrator, and chief financial
7 officer to enable the department to conduct criminal background
8 checks on those persons;

9 (6) identification of any controlling person with
10 respect to the applicant; and

11 (7) documentation relating to any controlling person
12 identified under Subdivision (6), if requested by the department
13 and relevant to the controlling person's compliance with any
14 applicable licensing standard required or adopted [by the board]
15 under this chapter.

16 SECTION 3.0399. Sections [142.006](#)(a), (b), and (c), Health
17 and Safety Code, are amended to read as follows:

18 (a) The department shall issue a home and community support
19 services agency license to provide home health, hospice, or
20 personal assistance services for each place of business to an
21 applicant if:

22 (1) the applicant:

23 (A) qualifies for the license to provide the type
24 of service that is to be offered by the applicant;

25 (B) submits an application and license fee as
26 required by this chapter; and

27 (C) complies with all applicable licensing

1 standards required or adopted [~~by the board~~] under this chapter;
2 and

3 (2) any controlling person with respect to the
4 applicant complies with all applicable licensing standards
5 required or adopted [~~by the board~~] under this chapter.

6 (b) A license issued under this chapter expires two years
7 after the date of issuance. The executive commissioner [~~of the~~
8 ~~Health and Human Services Commission~~] by rule may adopt a system
9 under which licenses expire on various dates during the two-year
10 period. For the year in which a license expiration date is changed,
11 the department shall prorate the license fee on a monthly basis.
12 Each license holder shall pay only that portion of the license fee
13 allocable to the number of months for which the license is valid. A
14 license holder shall pay the total license renewal fee at the time
15 of renewal. The department may issue an initial license for a
16 shorter term to conform expiration dates for a locality or an
17 applicant. The department may issue a temporary license to an
18 applicant for an initial license.

19 (c) The department may find that a home and community
20 support services agency has satisfied the requirements for
21 licensing if the agency is accredited by an accreditation
22 organization, such as The [~~the~~] Joint Commission [~~on Accreditation~~
23 ~~of Healthcare Organizations~~] or the Community Health Accreditation
24 Program, and the department finds that the accreditation
25 organization has standards that meet or exceed the requirements for
26 licensing under this chapter. A license fee is required of the home
27 and community support services agency at the time of a license

1 application.

2 SECTION 3.0400. Section 142.008(b), Health and Safety Code,
3 is amended to read as follows:

4 (b) The executive commissioner [board] by rule shall
5 establish eligibility requirements for a branch office license.

6 SECTION 3.0401. Section 142.0085(b), Health and Safety
7 Code, is amended to read as follows:

8 (b) The executive commissioner [board] by rule shall
9 establish standards required for the issuance of an alternate
10 delivery site license.

11 SECTION 3.0402. Sections 142.009(h) and (l), Health and
12 Safety Code, are amended to read as follows:

13 (h) Except for the investigation of complaints, a home and
14 community support services agency licensed by the department under
15 this chapter is not subject to additional surveys relating to home
16 health, hospice, or personal assistance services while the agency
17 maintains accreditation for the applicable service from The [~~the~~]
18 Joint Commission [~~for Accreditation of Healthcare Organizations~~],
19 the Community Health Accreditation Program, or other accreditation
20 organizations that meet or exceed the regulations adopted under
21 this chapter. Each provider must submit to the department
22 documentation from the accrediting body indicating that the
23 provider is accredited when the provider is applying for the
24 initial license and annually when the license is renewed.

25 (l) The department and other state agencies that are under
26 the commission [~~Health and Human Services Commission~~] and that
27 contract with home and community support services agencies to

1 deliver services for which a license is required under this chapter
2 shall execute a memorandum of understanding that establishes
3 procedures to eliminate or reduce duplication of standards or
4 conflicts between standards and of functions in license,
5 certification, or compliance surveys and complaint investigations.
6 [The Health and Human Services Commission shall review the
7 recommendation of the council relating to the memorandum of
8 understanding before considering approval.] The memorandum of
9 understanding must be approved by the commission.

10 SECTION 3.0403. Sections 142.010(a) and (b), Health and
11 Safety Code, are amended to read as follows:

12 (a) The executive commissioner by rule [department] shall
13 set license fees for home and community support services agencies
14 in amounts that are reasonable to meet the costs of administering
15 this chapter, except that the fees may not be less than \$600 or more
16 than \$2,000 for a license to provide home health, hospice, or
17 personal assistance services.

18 (b) The executive commissioner [board] shall consider the
19 size of the home and community support services agency, the number
20 of clients served, the number of services provided, and the
21 necessity for review of other accreditation documentation in
22 determining the amount collected by the department for [or] initial
23 and renewal license fees.

24 SECTION 3.0404. Section 142.0104(a), Health and Safety
25 Code, is amended to read as follows:

26 (a) If certain application information as specified by
27 department [executive commissioner] rule changes after the

1 applicant submits an application to the department for a license
2 under this chapter or after the department issues the license, the
3 license holder shall report the change to the department and pay a
4 fee not to exceed \$50 not later than the time specified by
5 department [~~executive commissioner~~] rule.

6 SECTION 3.0405. Section 142.011(d), Health and Safety Code,
7 is amended to read as follows:

8 (d) A person whose application is denied or whose license is
9 suspended or revoked is entitled to a hearing [~~before the~~
10 ~~department~~] if the person submits a written request to the
11 commission [~~department~~]. Chapter 2001, Government Code, and the
12 department's rules for contested case hearings apply to hearings
13 conducted under this section and to appeals from department
14 decisions.

15 SECTION 3.0406. Sections 142.017(c), (d), (e), and (g),
16 Health and Safety Code, are amended to read as follows:

17 (c) The executive commissioner [~~department~~] by rule shall
18 specify each violation for which the department may assess an
19 administrative penalty [~~may be assessed~~]. In determining which
20 violations warrant penalties, the department shall consider:

21 (1) the seriousness of the violation, including the
22 nature, circumstances, extent, and gravity of the violation and the
23 hazard of the violation to the health or safety of clients; and

24 (2) whether the affected home and community support
25 services agency had identified the violation as a part of its
26 internal quality assurance process and had made appropriate
27 progress on correction.

1 (d) The executive commissioner [department] by rule shall
2 establish a schedule of appropriate and graduated penalties for
3 each violation based on:

4 (1) the seriousness of the violation, including the
5 nature, circumstances, extent, and gravity of the violation and the
6 hazard or safety of clients;

7 (2) the history of previous violations by the person
8 or a controlling person with respect to that person;

9 (3) whether the affected home and community support
10 services agency had identified the violation as a part of its
11 internal quality assurance process and had made appropriate
12 progress on correction;

13 (4) the amount necessary to deter future violations;

14 (5) efforts made to correct the violation; and

15 (6) any other matters that justice may require.

16 (e) Except as provided by Subsection (j), the executive
17 commissioner [department] by rule shall provide the home and
18 community support services agency with a reasonable period of time
19 following the first day of a violation to correct the violation
20 before the department assesses [assessing] an administrative
21 penalty if a plan of correction has been implemented.

22 (g) The executive commissioner [department] shall establish
23 a system to ensure standard and consistent application of penalties
24 regardless of the home and community support services agency
25 location.

26 SECTION 3.0407. Section 142.0171(c), Health and Safety
27 Code, is amended to read as follows:

1 (c) If the person notified of the violation accepts the
2 determination of the department or if the person fails to respond in
3 a timely manner to the notice, the department [~~commissioner or the~~
4 ~~commissioner's designee~~] shall [~~issue an~~] order [~~approving the~~
5 ~~determination and ordering that~~] the person to pay the proposed
6 penalty.

7 SECTION 3.0408. Section 142.0172, Health and Safety Code,
8 is amended to read as follows:

9 Sec. 142.0172. HEARING; ORDER. (a) If the person notified
10 requests a hearing, the department shall refer the case to the State
11 Office of Administrative Hearings and an administrative law judge
12 of that office shall conduct the hearing.

13 (a-1) The department shall[~~+~~

14 [~~(1) set a hearing,~~

15 [~~(2)~~] give written notice of the hearing to the
16 person[~~, and~~

17 [~~(3) designate a hearings examiner to conduct the~~
18 ~~hearing~~].

19 (b) The administrative law judge [~~hearings examiner~~] shall
20 make findings of fact and conclusions of law and shall promptly
21 issue to the department [~~commissioner or the commissioner's~~
22 ~~designee~~] a proposal for decision as to the occurrence of the
23 violation and a recommendation as to the amount of the proposed
24 penalty if a penalty is determined to be warranted.

25 (c) Based on the findings of fact and conclusions of law and
26 the recommendations of the administrative law judge [~~hearings~~
27 ~~examiner~~], the department [~~commissioner or the commissioner's~~

1 designee] by order may find that a violation has occurred and may
2 assess a penalty or may find that no violation has occurred.

3 SECTION 3.0409. Sections [142.018](#)(a) and (b), Health and
4 Safety Code, are amended to read as follows:

5 (a) In this section, "abuse," "exploitation," and "neglect"
6 have the meanings applicable through a rule adopted by the
7 executive commissioner [~~of the Health and Human Services~~
8 ~~Commission~~] under Section [48.002](#)(c), Human Resources Code, except
9 that if the executive commissioner has not adopted applicable rules
10 under that section, the statutory definitions of those terms under
11 Section [48.002](#)(a), Human Resources Code, shall be used.

12 (b) A home and community support services agency that has
13 cause to believe that a person receiving services from the agency
14 has been abused, exploited, or neglected by an employee of the
15 agency shall report the information to:

16 (1) the department; and
17 (2) the Department of Family and Protective [~~and~~
18 ~~Regulatory~~] Services or other appropriate state agency as required
19 by Section [48.051](#), Human Resources Code.

20 SECTION 3.0410. Section [142.021](#), Health and Safety Code, is
21 amended to read as follows:

22 Sec. 142.021. ADMINISTRATION OF MEDICATION. A person may
23 not administer medication to a client of a home and community
24 support services agency unless the person:

25 (1) holds a license under state law that authorizes
26 the person to administer medication;
27 (2) holds a permit issued under Section [142.025](#) and

1 acts under the delegated authority of a person who holds a license
2 under state law that authorizes the person to administer
3 medication;

4 (3) administers a medication to a client of a home and
5 community support service agency in accordance with rules of the
6 Texas Board of Nursing that permit delegation of the administration
7 of medication to a person not holding a permit under Section
8 142.025; or

9 (4) administers noninjectable medication under
10 circumstances authorized by the memorandum of understanding
11 executed by the department and the Texas Board of Nursing [adopted
under Section 142.016].

13 SECTION 3.0411. Section 142.023, Health and Safety Code, is
14 amended to read as follows:

15 Sec. 142.023. RULES FOR ADMINISTRATION OF MEDICATION. The
16 executive commissioner [~~board~~] by rule shall establish:

17 (1) minimum requirements for the issuance, denial,
18 renewal, suspension, emergency suspension, and revocation of a
19 permit to a home health medication aide;

20 (2) curricula to train a home health medication aide;

21 (3) minimum standards for the approval of home health
22 medication aide training programs and for rescinding approval;

23 (4) the acts and practices that are allowed or
24 prohibited to a permit holder; and

25 (5) minimum standards for on-site supervision of a
26 permit holder by a registered nurse.

27 SECTION 3.0412. Section 142.024(a), Health and Safety Code,

1 is amended to read as follows:

2 (a) An application for the approval of a home health
3 medication aide training program must be made to the department on a
4 form prescribed by the department and under department rules
5 [~~prescribed by the board~~].

6 SECTION 3.0413. Sections [142.025](#)(a) and (d), Health and
7 Safety Code, are amended to read as follows:

8 (a) To be issued or to have renewed a home health medication
9 aide permit, a person shall apply to the department on a form
10 prescribed by the department and under department rules [~~adopted by~~
11 ~~the board~~].

12 (d) The department shall issue a permit or renew a permit to
13 an applicant who:

14 (1) meets the minimum requirements adopted under
15 Section [142.023](#);

16 (2) successfully completes the examination or the
17 continuing education requirements; and

18 (3) pays a nonrefundable application fee specified in
19 department rules [~~determined by the board~~].

20 SECTION 3.0414. Section [142.026](#)(a), Health and Safety Code,
21 is amended to read as follows:

22 (a) The executive commissioner by rule [~~board~~] shall set the
23 fees in amounts reasonable and necessary to recover the amount
24 projected by the department as required to administer its functions
25 under this subchapter. The fees may not exceed:

26 (1) \$25 for a combined permit application and
27 examination fee; and

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2 SECTION 3.0415. Section [144.013\(f\)](#), Health and Safety Code,
3 is amended to read as follows:

4 (f) If the department denies an application twice, the
5 application is canceled. The applicant is entitled to a hearing
6 [before the commissioner] on the denial if the applicant requests
7 the hearing not later than the 30th day after the date of the second
8 denial.

9 SECTION 3.0416. Section 144.021(b), Health and Safety Code,
10 is amended to read as follows:

11 (b) As a condition of licensure, the department, in
12 accordance with department rules, may prescribe other reasonable
13 and appropriate construction, operational, maintenance, and
14 inspection requirements to ensure compliance with this chapter and
15 other applicable rules [~~of the department~~].

16 SECTION 3.0417. Section 144.022(a), Health and Safety Code,
17 is amended to read as follows:

18 (a) Each licensed rendering establishment, related station,
19 or dead animal hauler shall have a dead animal log that meets the
20 requirements prescribed by [the] department rule. The name of the
21 licensed rendering establishment, related station, or dead animal
22 hauler must be on the front of the log.

23 SECTION 3.0418. Section 144.026(b), Health and Safety Code,
24 is amended to read as follows:

25 (b) Liquid waste shall be treated in the manner required by
26 the department and disposed of in a manner approved by [the]
27 department rule.

1 SECTION 3.0419. Section 144.043(e), Health and Safety Code,
2 is amended to read as follows:

3 (e) If the department denies an application twice, the
4 application is canceled. The applicant is entitled to a hearing
5 [before the commissioner] on the denial if the applicant requests
6 the hearing not later than the 30th day after the date of the second
7 denial.

8 SECTION 3.0420. Sections 144.063(b) and (c), Health and
9 Safety Code, are amended to read as follows:

10 (b) The term of a [An operating] license issued under this
11 chapter is two years [is valid for one year and may be renewed
12 annually by the license holder]. The executive commissioner by
13 rule [department] shall set a [an annual] renewal fee.

14 (c) A license holder may renew a license by paying the
15 renewal fee to the department on or before the expiration date of
16 the license [January 1 of each year]. On receipt of the fee, the
17 license is automatically renewed [for the next calendar year].

18 SECTION 3.0421. Section 144.064, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 144.064. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE
21 OR PERMIT; REINSTATEMENT. (a) The department [commissioner] may
22 deny, suspend, or revoke an operating license, construction permit,
23 or renewal of an operating license or construction permit if the
24 department [commissioner] finds that:

25 (1) the license holder or permit holder has violated
26 this chapter or a rule or order adopted under this chapter or did
27 not exercise due care to prevent the violation; or

1 (2) a fact or condition exists that would have
2 justified the denial of the license or permit application if the
3 fact or condition was known at the time the original application was
4 filed.

5 (b) On the discovery of such a violation, the department
6 ~~[commissioner]~~ shall notify the license holder or permit holder of
7 the violation. If the license holder or permit holder fails to make
8 the necessary corrections, the department shall notify the license
9 holder or permit holder of a hearing to suspend or revoke the
10 license or permit.

11 (c) The department ~~[commissioner]~~ may reinstate a suspended
12 license or permit, or may issue a new license or permit to a person
13 whose license or permit has been revoked, if a ground to deny the
14 original license or permit application does not exist.

15 SECTION 3.0422. Section 144.072(e), Health and Safety Code,
16 is amended to read as follows:

17 (e) The executive commissioner ~~[department]~~ by rule shall
18 set the fees authorized by this chapter in amounts that allow the
19 department to recover the annual expenditures of state funds by the
20 department in:

21 (1) reviewing and acting on a license renewal or
22 registration;

23 (2) amending a license, renewal license, or
24 registration;

25 (3) inspecting a licensed facility or vehicles and
26 equipment regulated under this chapter; and

27 (4) implementing and enforcing this chapter,

1 including a rule or order adopted or a license issued under this
2 chapter.

3 SECTION 3.0423. Section 144.073, Health and Safety Code, is
4 amended to read as follows:

5 Sec. 144.073. FEES [ACCOUNT]. All fees collected under
6 this chapter are payable to the department and shall be deposited to
7 the credit of the [~~rendering fee account in the~~] general revenue
8 fund[~~. Money in the account may be appropriated only to the~~
9 ~~department~~] to be used to process and investigate applications
10 filed under this chapter and to administer this chapter.

11 SECTION 3.0424. Section 144.074, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 144.074. ADOPTION OF RULES. The executive
14 commissioner [~~board~~] may adopt rules consistent with this chapter
15 as necessary for the enforcement of this chapter.

16 SECTION 3.0425. Section 144.076, Health and Safety Code, is
17 amended to read as follows:

18 Sec. 144.076. PUBLIC RECORDS. The transcript of any
19 hearing held by the State Office of Administrative Hearings
20 [~~commissioner~~] and findings made by the administrative law judge
21 [~~commissioner~~] or the department under this chapter are public
22 records open to inspection at all reasonable times.

23 SECTION 3.0426. Sections 144.081(a) and (b), Health and
24 Safety Code, are amended to read as follows:

25 (a) The department [~~commissioner~~] may assess an
26 administrative penalty against a person who violates this chapter,
27 a rule adopted [~~by the board~~] under the authority of this chapter,

1 or an order or license issued under this chapter.

2 (b) In determining the amount of the penalty, the department
3 [commissioner] shall consider:

- 4 (1) the person's previous violations;
5 (2) the seriousness of the violation;
6 (3) any hazard to the health and safety of the public;
7 (4) the person's demonstrated good faith; and
8 (5) such other matters as justice may require.

9 SECTION 3.0427. Sections 144.082(b), (c), and (d), Health
10 and Safety Code, are amended to read as follows:

11 (b) If a hearing is held, the administrative law judge
12 [commissioner] shall make findings of fact and shall issue a
13 written proposal for decision regarding the occurrence of the
14 violation and the amount of the penalty that may be warranted.

15 (c) If the person notified of the violation does not request
16 a hearing, the department [commissioner] may assess a penalty after
17 determining that a violation has occurred and the amount of the
18 penalty that may be warranted.

19 (d) After making a determination under this section that a
20 penalty is to be assessed against a person, the department
21 [commissioner] shall issue an order requiring that the person pay
22 the penalty.

23 SECTION 3.0428. Section 144.083, Health and Safety Code,
24 is amended to read as follows:

25 Sec. 144.083. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not
26 later than the 30th day after the date an order finding that a
27 violation has occurred is issued, the department [commissioner]

1 shall inform the person against whom the order is issued of the
2 amount of the penalty for the violation.

3 (b) Not later than the 30th day after the date on which a
4 decision or order charging a person with a penalty is final, the
5 person shall:

6 (1) pay the penalty in full; or
7 (2) file a petition for [if the person seeks] judicial
8 review of the department's order contesting the amount of the
9 penalty, the fact of the violation, or both.

10 (b-1) Within the period prescribed by Subsection (b), a
11 person who files a petition for judicial review may:

12 (1) stay enforcement of the penalty by:
13 (A) paying [send the amount of] the penalty to
14 the court [commissioner] for placement in an escrow account; or
15 (B) posting [post] with the court [commissioner]
16 a supersedeas bond for the amount of the penalty; or
17 (2) request that the department stay enforcement of
18 the penalty by:

19 (A) filing with the court a sworn affidavit of
20 the person stating that the person is financially unable to pay the
21 penalty and is financially unable to give the supersedeas bond; and
22 (B) sending a copy of the affidavit to the
23 department.

24 (b-2) If the department receives a copy of an affidavit
25 under Subsection (b-1)(2), the department may file with the court,
26 within five days after the date the copy is received, a contest to
27 the affidavit. The court shall hold a hearing on the facts alleged

1 in the affidavit as soon as practicable and shall stay the
2 enforcement of the penalty on finding that the alleged facts are
3 true. The person who files an affidavit has the burden of proving
4 that the person is financially unable to pay the penalty or to give
5 a supersedeas bond.

6 (c) A bond posted under this section must be in a form
7 approved by the court [~~commissioner~~] and be effective until all
8 judicial review of the order or decision is final.

9 (d) A person who does not send money to, [~~the commissioner~~
10 ~~or~~] post the bond with, or file the affidavit with the court within
11 the period prescribed by Subsection (b) waives all rights to
12 contest the violation or the amount of the penalty.

13 SECTION 3.0429. Section 144.084, Health and Safety Code, is
14 amended to read as follows:

15 Sec. 144.084. REFUND OF ADMINISTRATIVE PENALTY. On [Not
16 ~~later than the 30th day after~~] the date the court's judgment [~~of a~~
17 ~~judicial determination~~] that an administrative penalty against a
18 person should be reduced or not assessed becomes final, the court
19 [~~commissioner~~] shall order that:

20 (1) [~~remit to the person~~] the appropriate amount of
21 any penalty payment plus accrued interest be remitted to the person
22 not later than the 30th day after that date; or

23 (2) [~~execute a release of~~] the bond be released, if the
24 person has posted a bond.

25 SECTION 3.0430. Section 144.085, Health and Safety Code, is
26 amended to read as follows:

27 Sec. 144.085. RECOVERY OF ADMINISTRATIVE PENALTY BY

1 ATTORNEY GENERAL. The attorney general at the request of the
2 department [~~commissioner~~] may bring a civil action to recover an
3 administrative penalty under this subchapter.

4 SECTION 3.0431. Section 145.004(b), Health and Safety Code,
5 is amended to read as follows:

6 (b) The department [~~Texas Department of Health~~] may enforce
7 Chapter 431 against a person who adulterates or misbrands a tanning
8 device. The department may investigate a person accused of
9 adulterating or misbranding a tanning device. For the purposes of
10 this subsection, a tanning device is adulterated or misbranded if
11 the tanning device would be an adulterated or misbranded device
12 under Section 431.111 or 431.112[~~, Health and Safety Code~~].

13 SECTION 3.0432. Section 145.006, Health and Safety Code, is
14 amended to read as follows:

15 Sec. 145.006. WARNING SIGNS. (a) A tanning facility shall
16 post a warning sign in a conspicuous location where it is readily
17 visible by persons entering the establishment. The executive
18 commissioner [~~board~~] by rule shall specify the size, design, and
19 graphic design of the sign. The sign must have dimensions of at
20 least 11 inches by 17 inches and must contain the following wording:

21 Repeated exposure to ultraviolet radiation may cause chronic
22 sun damage characterized by wrinkling, dryness, fragility,
23 bruising of the skin, and skin cancer.

24 DANGER: ULTRAVIOLET RADIATION

25 Failure to use protective eyewear may result in severe burns
26 or permanent injury to the eyes.

27 Medications or cosmetics may increase your sensitivity to

1 ultraviolet radiation. Consult a physician before using a sunlamp
2 if you are using medications, have a history of skin problems, or
3 believe you are especially sensitive to sunlight. Pregnant women
4 or women taking oral contraceptives who use this product may
5 develop discolored skin.

6 A customer may call the [Texas] Department of State Health
7 Services at (insert toll-free telephone number) to report an
8 alleged injury regarding this tanning facility.

9 IF YOU DO NOT TAN IN THE SUN, YOU ARE UNLIKELY TO TAN FROM USE OF AN
10 ULTRAVIOLET LAMP OR SUNLAMP.

11 (b) A tanning facility operator shall also post a warning
12 sign at each tanning device in a conspicuous location that is
13 readily visible to a person about to use the device. The executive
14 commissioner [board] by rule shall specify the size, design, and
15 graphic design of the sign. The sign must have dimensions of at
16 least 11 inches by 17 inches and must contain the following wording:

17 DANGER: ULTRAVIOLET RADIATION

18 1. Follow the manufacturer's instructions for use of this
19 device.

20 2. Avoid too frequent or lengthy exposure. As with natural
21 sunlight, exposure can cause serious eye and skin injuries and
22 allergic reactions. Repeated exposure may cause skin cancer.

23 3. Wear protective eyewear. Failure to use protective
24 eyewear may result in severe burns or permanent damage to the eyes.

25 4. Do not sunbathe before or after exposure to ultraviolet
26 radiation from sunlamps.

27 5. Medications or cosmetics may increase your sensitivity

1 to ultraviolet radiation. Consult a physician before using a
2 sunlamp if you are using medication, have a history of skin
3 problems, or believe you are especially sensitive to sunlight.
4 Pregnant women or women using oral contraceptives who use this
5 product may develop discolored skin.

6 A customer may call the [Texas] Department of State Health
7 Services at (insert toll-free telephone number) to report an
8 alleged injury regarding this tanning device.

9 IF YOU DO NOT TAN IN THE SUN, YOU ARE UNLIKELY TO TAN FROM USE OF
10 THIS DEVICE.

11 (c) The department [Texas Department of Health] shall
12 include with a license application and an application for renewal
13 of a license a description of the design standards required for
14 signs under this section.

15 SECTION 3.0433. Sections 145.008(i), (j), and (k), Health
16 and Safety Code, are amended to read as follows:

17 (i) A record of each customer using a tanning device shall
18 be maintained at the tanning facility at least until the third
19 anniversary of the date of the customer's last use of a tanning
20 device. The executive commissioner [~~of the Health and Human~~
21 ~~Services Commission~~] by rule shall prescribe the form and content
22 of the records. The record shall include:

23 (1) the date and time of the customer's use of a
24 tanning device;

25 (2) the length of time the tanning device was used;

26 (3) any injury or illness resulting from the use of a
27 tanning device;

1 (4) any written informed consent statement required to
2 be signed under Subsection (e);

3 (5) the customer's skin type, as determined by the
4 customer by using the Fitzpatrick scale for classifying a skin
5 type;

6 (6) whether the customer has a family history of skin
7 cancer; and

8 (7) whether the customer has a past medical history of
9 skin cancer.

10 (j) An operator shall keep an incident log at each tanning
11 facility. The log shall be maintained at the tanning facility at
12 least until the third anniversary of the date of an incident. The
13 executive commissioner [board] by rule shall prescribe the form and
14 content of the log. The log shall include each:

15 (1) alleged injury;

16 (2) use of a tanning device by a customer not wearing
17 protective eyewear;

18 (3) mechanical problem with a tanning device; and

19 (4) customer complaint.

20 (k) The department [~~Texas Department of Health~~] shall
21 provide to each applicant for an original or renewal license a
22 written copy of the Fitzpatrick scale.

23 SECTION 3.0434. Sections 145.009(a), (c), (d), and (e),
24 Health and Safety Code, are amended to read as follows:

25 (a) A person may not operate a tanning facility unless the
26 person holds a license issued by the department to operate the
27 facility. Unless revoked or suspended, a license is valid until the

1 second [~~first~~] anniversary of the date the license was issued. A
2 separate license is required for each tanning facility.

3 (c) The department [~~board annually~~] shall renew licenses
4 after application for renewal is made on forms provided by the
5 department for this purpose and after receipt of renewal fees.

6 (d) The executive commissioner [~~department~~] by rule may
7 adopt a system under which licenses expire on various dates during
8 the year. As part of this system the license fees and [~~the annual~~]
9 renewal fees may be prorated on a monthly basis to reflect the
10 actual number of months the license is valid.

11 (e) The department may revoke, suspend, suspend on an
12 emergency basis, or probate by an emergency order of the
13 commissioner, or the commissioner's designee, a license to operate
14 a tanning facility for:

15 (1) a failure to pay a license fee or [~~an annual~~]
16 renewal fee for a license;

17 (2) an applicant's acquisition or attempted
18 acquisition of a license by fraud or deception;

19 (3) a violation of this chapter;

20 (4) a violation of a rule of the department adopted
21 under this chapter; or

22 (5) a violation of an order issued under this chapter.

23 SECTION 3.0435. Sections **145.010(a), (b), (c), and (e)**,
24 Health and Safety Code, are amended to read as follows:

25 (a) The department [~~board~~] shall collect a fee for:

26 (1) a license issued or renewed; or

27 (2) a license that is modified.

1 (b) The department [board] may charge prorated [~~or annual~~]
2 fees.

3 (c) The executive commissioner [board] by rule shall set the
4 fees for issuance or renewal of a license in the amounts prescribed
5 by Section 12.0111 and for modification of a license in an amount
6 [~~in amounts~~] that allows [~~allow~~] the department to recover not less
7 than 50 percent of the costs to the department in:

- 8 (1) reviewing and acting on a license application;
- 9 (2) modifying [~~or renewing~~] a license;
- 10 (3) inspecting a licensed facility; and
- 11 (4) implementing and enforcing this chapter or rules
12 relating to this chapter.

13 (e) A license fee received by the department shall be
14 deposited in the state treasury to the credit of the food and drug
15 registration account in the general revenue fund. The fees are
16 dedicated to the department for the administration and enforcement
17 of this chapter.

18 SECTION 3.0436. Section 145.011(a), Health and Safety Code,
19 is amended to read as follows:

20 (a) The executive commissioner [board] may adopt rules as
21 necessary to implement this chapter.

22 SECTION 3.0437. Section 145.012(c), Health and Safety Code,
23 is amended to read as follows:

24 (c) If an emergency order is issued without a hearing, the
25 department shall refer the matter to the State Office of
26 Administrative Hearings. An administrative law judge of that
27 office shall determine a time and place for a hearing and hold the

1 hearing [~~at which the emergency order is affirmed, modified, or set aside~~]. The hearing shall be held under rules of the department.

3 SECTION 3.0438. Sections [145.0121](#)(a) and (f), Health and
4 Safety Code, are amended to read as follows:

5 (a) If it appears that a person has violated or is violating
6 this chapter or an order issued or a rule adopted under this
7 chapter, the department [~~commissioner~~] may request the attorney
8 general or the district or county attorney or the municipal
9 attorney of a municipality in the jurisdiction where the violation
10 is alleged to have occurred or may occur to institute a civil suit
11 for:

12 (1) an order enjoining the violation;

13 (2) a permanent or temporary injunction, a temporary
14 restraining order, or other appropriate remedy if the department
15 shows that the person has engaged in or is engaging in a violation;

16 (3) the assessment and recovery of a civil penalty; or

17 (4) both injunctive relief and a civil penalty.

18 (f) The department [~~commissioner~~] or the attorney general
19 may each recover reasonable expenses incurred in obtaining
20 injunctive relief or a civil penalty under this section, including
21 investigation and court costs, reasonable attorney's fees, witness
22 fees, and other expenses. The expenses recovered by the department
23 [~~commissioner~~] under this section shall be used for the
24 administration and enforcement of this chapter. The expenses
25 recovered by the attorney general shall be used by the attorney
26 general.

27 SECTION 3.0439. Sections [145.0122](#)(a), (d), (e), (f), (g),

1 (h), (i), (j), (k), (l), (m), and (n), Health and Safety Code, are
2 amended to read as follows:

3 (a) The department [~~board or the board's designee~~] may
4 impose an administrative penalty against a person licensed or
5 regulated under this chapter who violates this chapter or a rule or
6 order adopted under this chapter.

7 (d) If the department [~~commissioner or the commissioner's~~
8 ~~designee~~] determines a violation has occurred, the department shall
9 give to the person written notice [~~commissioner or the~~
10 ~~commissioner's designee may issue to the board or the board's~~
11 ~~designee a report~~] that states the facts on which the determination
12 is based and the department's [~~commissioner's or the designee's~~]
13 recommendation on the imposition of a penalty[, including a
14 ~~recommendation on the amount of the penalty~~].

15 [(e) Within 14 days after the date the report is issued, the
16 ~~commissioner or the commissioner's designee shall give written~~
17 ~~notice of the report to the person.~~] The notice may be given by
18 certified mail. The notice must include a brief summary of the
19 alleged violation and a statement of the amount of the recommended
20 penalty and must inform the person that the person has a right to a
21 hearing on the occurrence of the violation, the amount of the
22 penalty, or both the occurrence of the violation and the amount of
23 the penalty.

24 (f) Within 20 days after the date the person receives the
25 notice, the person in writing may accept the determination and
26 recommended penalty of the department [~~commissioner or the~~
27 ~~commissioner's designee~~] or may make a written request for a

1 hearing on the occurrence of the violation, the amount of the
2 penalty, or both the occurrence of the violation and the amount of
3 the penalty.

4 (g) If the person accepts the determination and recommended
5 penalty of the department [~~commissioner or the commissioner's~~
6 ~~designee~~], the department [board] by order shall [~~approve the~~
7 ~~determination and~~] impose the recommended penalty.

8 (h) If the person requests a hearing or fails to respond
9 timely to the notice, the department shall refer the matter to the
10 State Office of Administrative Hearings [~~commissioner or the~~
11 ~~commissioner's designee shall set a hearing~~] and shall give notice
12 of the hearing to the person. The hearing shall be held by an
13 administrative law judge of that office [~~the department~~]. The
14 administrative law judge shall make findings of fact and
15 conclusions of law and promptly issue to the department [board] a
16 written proposal for a decision about the occurrence of the
17 violation and the amount of a proposed penalty. Based on the
18 findings of fact, conclusions of law, and proposal for a decision,
19 the department [board] by order may find that a violation has
20 occurred and impose a penalty or may find that no violation
21 occurred.

22 (i) The notice of the department's [board's] order given to
23 the person under Chapter 2001, Government Code, must include a
24 statement of the right of the person to judicial review of the
25 order.

26 (j) Within 30 days after the date the department's [board's]
27 order becomes final as provided by Section 2001.144, Government

1 Code, the person shall:

2 (1) pay the amount of the penalty;

3 (2) pay the amount of the penalty and file a petition
4 for judicial review contesting the occurrence of the violation, the
5 amount of the penalty, or both the occurrence of the violation and
6 the amount of the penalty; or

7 (3) without paying the amount of the penalty, file a
8 petition for judicial review in a district court in Travis County
9 contesting the occurrence of the violation, the amount of the
10 penalty, or both the occurrence of the violation and the amount of
11 the penalty.

12 (k) Within the 30-day period, a person who acts under
13 Subsection (j)(3) may:

14 (1) stay enforcement of the penalty by:

15 (A) paying the amount of the penalty to the court
16 for placement in an escrow account; or

17 (B) giving to the court a supersedeas bond that
18 is approved by the court for the amount of the penalty and that is
19 effective until all judicial review of the department's [board's]
20 order is final; or

21 (2) request the court to stay enforcement of the
22 penalty by:

23 (A) filing with the court a sworn affidavit of
24 the person stating that the person is financially unable to pay the
25 amount of the penalty and is financially unable to give the
26 supersedeas bond; and

27 (B) giving a copy of the affidavit to the

1 department [~~commissioner~~] by certified mail.

2 (1) If the department [~~commissioner~~] receives a copy of an
3 affidavit under Subsection (k)(2), the department [~~commissioner~~]
4 may file with the court, not later than the fifth day after the date
5 the copy is received, a contest to the affidavit. The court shall
6 hold a hearing on the facts alleged in the affidavit as soon as
7 practicable and shall stay the enforcement of the penalty on
8 finding that the alleged facts are true. The person who files an
9 affidavit has the burden of proving that the person is financially
10 unable to pay the amount of the penalty and give a supersedeas bond.

11 (m) If the person does not pay the amount of the penalty and
12 the enforcement of the penalty is not stayed, the department
13 [~~commissioner~~] may refer the matter to the attorney general for
14 collection of the amount of the penalty.

15 (n) Judicial review of the department's order [~~of the~~
16 board]:

17 (1) is instituted by filing a petition as provided by
18 Subchapter G, Chapter 2001, Government Code; and
19 (2) is under the substantial evidence rule.

20 SECTION 3.0440. Section 146.0025(a), Health and Safety
21 Code, is amended to read as follows:

22 (a) This chapter does not apply to:

23 (1) a medical facility licensed under other law;
24 (2) an office or clinic of a person licensed by the
25 Texas [~~State Board of~~] Medical Board [~~Examiners~~];
26 (3) a person who performs only ear piercing; or
27 (4) a facility in which only ear piercing is

1 performed.

2 SECTION 3.0441. Section 146.003(b), Health and Safety Code,
3 as amended by Chapters 516 (S.B. 61) and 1528 (S.B. 932), Acts of
4 the 76th Legislature, Regular Session, 1999, is reenacted to read
5 as follows:

6 (b) The department may issue a license or temporary location
7 license for a tattoo or body piercing studio after determining that
8 the studio is in compliance with applicable statutes, rules, and
9 zoning codes.

10 SECTION 3.0442. Section 146.004, Health and Safety Code, is
11 amended to read as follows:

12 Sec. 146.004. LICENSE TERM; RENEWAL. (a) A tattoo studio
13 or body piercing studio license is valid for two years [~~one year~~]
14 from the date of issuance. A temporary tattooing or body piercing
15 location license is valid for a specified period not to exceed seven
16 days.

17 (b) A tattoo studio or body piercing studio license may be
18 renewed [~~annually~~] on payment of the required renewal fee.

19 SECTION 3.0443. Section 146.0041(a), Health and Safety
20 Code, is amended to read as follows:

21 (a) The department may refuse to issue an original or
22 renewal tattoo studio or body piercing studio license if it has
23 reasonable grounds to believe and finds that any of the following
24 circumstances exist:

25 (1) the applicant has been convicted of a violation of
26 this chapter during the two years immediately preceding the filing
27 of the application;

1 (2) three years have not elapsed since the
2 termination, by pardon or otherwise, of a sentence imposed on the
3 applicant for a conviction associated with tattooing or body
4 piercing;

5 (3) the applicant violated or caused to be violated a
6 provision of this chapter or a rule [~~of the department~~] adopted
7 under this chapter involving moral turpitude during the six months
8 immediately preceding the filing of the application;

9 (4) the applicant failed to answer or falsely or
10 incorrectly answered a question in an original or renewal
11 application;

12 (5) the applicant is indebted to the state for a fee or
13 penalty imposed by this chapter or by rule [~~of the department~~] adopted under this chapter;

15 (6) the applicant is a minor; or

16 (7) the applicant does not provide an adequate
17 building available at the address for which the license is sought
18 before conducting any activity authorized by the license.

19 SECTION 3.0444. Section [146.0042\(b\)](#), Health and Safety
20 Code, is amended to read as follows:

21 (b) The department may suspend for not more than 60 days or
22 revoke an original or renewal tattoo studio or body piercing studio
23 license if it is found, after notice and hearing, that any of the
24 following is true:

25 (1) the license holder has been finally convicted of a
26 violation of this chapter;

27 (2) the license holder violated a provision of this

1 chapter or a rule [~~of the department~~] adopted under this chapter;

2 (3) the license holder made a false or misleading
3 statement in connection with the original or renewal application,
4 either in the formal application itself or in any other written
5 instrument relating to the application submitted to the department;

6 (4) the license holder is indebted to the state for
7 fees or payment of penalties imposed by this chapter or by a rule
8 [~~of the department~~] adopted under this chapter;

9 (5) the license holder knowingly misrepresented to a
10 customer or the public any tattoo or body piercing jewelry sold by
11 the license holder; or

12 (6) the license holder was intoxicated on the licensed
13 premises.

14 SECTION 3.0445. Section 146.005, Health and Safety Code, is
15 amended to read as follows:

16 Sec. 146.005. FEES. [~~(a)~~] The executive commissioner by
17 rule [~~board~~] shall set license and registration fees and license
18 and registration renewal fees in amounts necessary for the
19 department to administer this chapter.

20 ~~[(b) Fees collected under this section may only be
21 appropriated to the department to administer and enforce this
22 chapter.]~~

23 SECTION 3.0446. Section 146.007(b), Health and Safety Code,
24 is amended to read as follows:

25 (b) The [~~board, commissioner, and~~] department may enforce
26 Chapter 431 in relation to a drug, cosmetic, or device that is used
27 in tattooing and that is not otherwise subject to that chapter as if

1 the drug, cosmetic, or device satisfied the definitions assigned
2 those terms under Section [431.002](#).

3 SECTION 3.0447. Section [146.010](#)(a), Health and Safety Code,
4 is amended to read as follows:

5 (a) The executive commissioner [~~board~~] by rule shall
6 establish sanitation requirements for tattoo and body piercing
7 studios and any other necessary requirements relating to the
8 building or part of the building in which a tattoo or body piercing
9 studio is located.

10 SECTION 3.0448. Section [146.013](#)(a), Health and Safety Code,
11 is amended to read as follows:

12 (a) A tattooist shall maintain a permanent record of each
13 person tattooed by the tattooist for a period established by
14 department rule [~~the board~~]. A person who performs body piercing
15 shall maintain a permanent record of each individual whose body is
16 pierced by the person for a period established by department rule
17 [~~the board~~].

18 SECTION 3.0449. Section [146.015](#)(a), Health and Safety Code,
19 is amended to read as follows:

20 (a) The executive commissioner [~~board~~] shall adopt rules to
21 implement this chapter.

22 SECTION 3.0450. Section [146.017](#)(b), Health and Safety Code,
23 is amended to read as follows:

24 (b) The refusal to issue a license, the suspension or
25 revocation of a license, and any appeals are governed by the
26 department's [~~board's~~] formal hearing procedures and the procedures
27 for a contested case hearing under Chapter 2001, Government Code. A

1 person may appeal a final decision of the department as provided by
2 that chapter.

3 SECTION 3.0451. Sections 146.019(a), (d), (e), (f), (g),
4 (h), (i), (j), (k), (l), (m), and (n), Health and Safety Code, are
5 amended to read as follows:

6 (a) The department [~~commissioner~~] may impose an
7 administrative penalty against a person who violates a rule adopted
8 under Section 146.007 or an order adopted or license issued under
9 this chapter.

10 (d) The department [~~commissioner who determines that a~~
11 ~~violation has occurred~~] shall issue an order that states the facts
12 on which a [~~the~~] determination that a violation occurred is based,
13 including an assessment of the penalty.

14 (e) The department [~~Within 14 days after the date the report~~
15 ~~is issued, the commissioner~~] shall give written notice of the order
16 [~~report~~] to the person. The notice may be given by certified mail.
17 The notice must include a brief summary of the alleged violation and
18 a statement of the amount of the recommended penalty and must inform
19 the person that the person has a right to a hearing on the
20 occurrence of the violation, the amount of the penalty, or both the
21 occurrence of the violation and the amount of the penalty.

22 (f) Within 20 days after the date the person receives the
23 notice, the person in writing may accept the determination and
24 recommended penalty of the department [~~commissioner~~] or may make
25 written request for a hearing on the occurrence of the violation,
26 the amount of the penalty, or both the occurrence of the violation
27 and the amount of the penalty.

1 (g) If the person accepts the determination and recommended
2 penalty of the department [~~commissioner~~], the department
3 [~~commissioner~~] by order shall [~~approve the determination and~~]
4 impose the recommended penalty.

5 (h) If the person requests a hearing or fails to respond
6 timely to the notice, the department [~~commissioner~~] shall refer the
7 case to the State Office of Administrative Hearings and [~~set a~~
8 ~~hearing and give notice of the hearing to the person. The hearing~~
9 ~~shall be held by~~] an administrative law judge of that office shall
10 hold the hearing. The department shall give written notice of the
11 hearing to the person [~~the State Office of Administrative~~
12 ~~Hearings~~]. The administrative law judge shall make findings of
13 fact and conclusions of law and promptly issue to the department
14 [~~commissioner~~] a proposal for a decision about the occurrence of
15 the violation and the amount of a proposed penalty. Based on the
16 findings of fact, conclusions of law, and proposal for a decision,
17 the department [~~commissioner~~] by order may find that a violation
18 has occurred and impose a penalty or may find that no violation
19 occurred.

20 (i) The notice of the department's [~~commissioner's~~] order
21 given to the person under Chapter 2001, Government Code, must
22 include a statement of the right of the person to judicial review of
23 the order.

24 (j) Within 30 days after the date the department's
25 [~~commissioner's~~] order is final as provided by Subchapter F,
26 Chapter 2001, Government Code, the person shall:

27 (1) pay the amount of the penalty;

1 (2) pay the amount of the penalty and file a petition
2 for judicial review contesting the occurrence of the violation, the
3 amount of the penalty, or both the occurrence of the violation and
4 the amount of the penalty; or

5 (3) without paying the amount of the penalty, file a
6 petition for judicial review contesting the occurrence of the
7 violation, the amount of the penalty, or both the occurrence of the
8 violation and the amount of the penalty.

9 (k) Within the 30-day period, a person who acts under
10 Subsection (j)(3) [~~of this section~~] may:

11 (1) stay enforcement of the penalty by:

12 (A) paying the amount of the penalty to the court
13 for placement in an escrow account; or

14 (B) giving to the court a supersedeas bond
15 approved by the court for the amount of the penalty and that is
16 effective until all judicial review of the department's
17 [~~commissioner's~~] order is final; or

18 (2) request the court to stay enforcement of the
19 penalty by:

20 (A) filing with the court a sworn affidavit of
21 the person stating that the person is financially unable to pay the
22 amount of the penalty and is financially unable to give the
23 supersedeas bond; and

24 (B) giving a copy of the affidavit to the
25 department [~~commissioner~~] by certified mail.

26 (1) The department on receipt of [~~commissioner who~~
27 ~~receives~~] a copy of an affidavit under Subsection (k)(2) [~~of this~~

1 section] may file, with the court within five days after the date
2 the copy is received, a contest to the affidavit. The court shall
3 hold a hearing on the facts alleged in the affidavit as soon as
4 practicable and shall stay the enforcement of the penalty on
5 finding that the alleged facts are true. The person who files an
6 affidavit has the burden of proving that the person is financially
7 unable to pay the amount of the penalty and to give a supersedeas
8 bond.

9 (m) If the person does not pay the amount of the penalty and
10 the enforcement of the penalty is not stayed, the department
11 [~~commissioner~~] may refer the matter to the attorney general for
12 collection of the amount of the penalty.

13 (n) Judicial review of the order of the department
14 [~~commissioner~~]:

15 (1) is instituted by filing a petition as provided by
16 Subchapter G, Chapter 2001, Government Code [~~and its subsequent~~
17 ~~amendments~~]; and

18 (2) is under the substantial evidence rule.

19 SECTION 3.0452. Section 146.024, Health and Safety Code, is
20 amended to read as follows:

21 Sec. 146.024. REGISTRATION TERM; RENEWAL. (a) A tattooist
22 or body piercer registration is valid for two years [~~one year~~] from
23 the date of issuance.

24 (b) A tattooist or body piercer registration may be renewed
25 [~~annually~~] on:

26 (1) payment of the required renewal fee; and
27 (2) submission of proof of completion of a training

1 course approved by the department that includes not less than four
2 hours related to bloodborne pathogens, infection control, and
3 aseptic technique.

4 SECTION 3.0453. Sections [146.025](#)(b) and (d), Health and
5 Safety Code, are amended to read as follows:

6 (b) The department may approve a course of instruction based
7 on any standards set by the executive commissioner [department] to
8 reasonably ensure that a tattooist or body piercer develops the job
9 skills and knowledge necessary to protect public health and safety.

10 (d) The executive commissioner [department] by rule shall
11 set a fee in an amount reasonable and necessary to cover the cost to
12 the department of reviewing the course content and issuing the
13 approval.

14 SECTION 3.0454. Section [161.001](#)(a), Health and Safety Code,
15 is amended to read as follows:

16 (a) A person who administers or authorizes the
17 administration of a vaccine or immunizing agent is not liable for an
18 injury caused by the vaccine or immunizing agent if the
19 immunization is required by department rule [~~the board~~] or is
20 otherwise required by law or other rules [~~rule~~].

21 SECTION 3.0455. Sections [161.004](#)(a) and (f), Health and
22 Safety Code, are amended to read as follows:

23 (a) Every child in the state shall be immunized against
24 vaccine preventable diseases caused by infectious agents in
25 accordance with the immunization schedule adopted in department
26 rules [~~by the board~~].

27 (f) The executive commissioner [~~board~~] shall adopt rules

1 that are necessary to administer this section.

2 SECTION 3.0456. Sections 161.005(a) and (b), Health and
3 Safety Code, are amended to read as follows:

4 (a) On admission of a child to a mental health facility of
5 the department, a state supported living center of the [Texas]
6 Department of Aging and Disability Services, or a facility of
7 [Mental Health and Mental Retardation,] the Texas Department of
8 Criminal Justice[~~T~~] or the Texas Juvenile Justice Department [~~Youth~~
9 ~~Commission~~], the facility physician shall review the immunization
10 history of the child and administer any needed vaccinations or
11 refer the child for immunization.

12 (b) The department and the executive commissioner [~~board~~]
13 have the same powers and duties under this section as the department
14 and the executive commissioner [~~those entities~~] have under Sections
15 38.001 and 51.933, Education Code. In addition, the provisions of
16 those sections relating to provisional admissions and exceptions
17 apply to this section.

18 SECTION 3.0457. Sections 161.0051(b) and (c), Health and
19 Safety Code, are amended to read as follows:

20 (b) The executive commissioner [~~board~~] by rule may require
21 nursing facilities [~~homes~~] to offer, in accordance with an
22 immunization schedule adopted in department rules [~~by the board~~],
23 immunizations to elderly residents or to staff who are in contact
24 with elderly residents against diseases that the executive
25 commissioner [~~board~~] determines to be:

26 (1) caused by infectious agents;
27 (2) potentially deadly; and

2 (c) The executive commissioner [board] by rule shall
3 require nursing homes to offer, in accordance with an immunization
4 schedule adopted in department rules [by the board]:

(1) pneumococcal vaccine to elderly residents; and

(2) influenza vaccine to elderly residents and to staff who are in contact with elderly residents.

8 SECTION 3.0458. Sections 161.0052(b), (c), (d), (f), and
9 (h), Health and Safety Code, are amended to read as follows:

(b) The executive commissioner [of the Health and Human Services Commission] by rule shall require a hospital to inform each elderly person admitted to the hospital for a period of 24 hours or more that the pneumococcal and influenza vaccines are available. If the elderly person requests a vaccine, and if a physician, or an advanced nurse practitioner or physician assistant on behalf of a physician, determines that the vaccine is in the person's best interest, the hospital must make the vaccination available to the person before the person is discharged from the hospital.

1 it is not feasible to offer the vaccine, the facility must provide
2 the person with information on other options for obtaining the
3 vaccine.

4 (d) The Texas [State Board of] Medical Board [~~Examiners~~] by
5 rule shall require a physician responsible for the management of a
6 physician's office that provides ongoing medical care to elderly
7 persons to offer, to the extent possible as determined by the
8 physician, the opportunity to receive the pneumococcal and
9 influenza vaccines to each elderly person who receives ongoing care
10 at the office. If the physician decides it is not feasible to offer
11 the vaccine, the physician must provide the person with information
12 on other options for obtaining the vaccine.

13 (f) In adopting rules under this section, the executive
14 commissioner [~~of the Health and Human Services Commission~~] and the
15 Texas [State Board of] Medical Board [~~Examiners~~] shall consider the
16 recommendations of the Advisory Committee on Immunization
17 Practices of the Centers for Disease Control and Prevention.

18 (h) The department shall make available to hospitals and end
19 stage renal disease facilities, and the Texas [State Board of]
20 Medical Board [~~Examiners~~] shall make available to physicians'
21 offices, educational and informational materials concerning
22 vaccination against influenza virus and pneumococcal disease.

23 SECTION 3.0459. Sections 161.007(a), (a-3), and (k), Health
24 and Safety Code, are amended to read as follows:

25 (a) The department, for the primary purpose of establishing
26 and maintaining a single repository of accurate, complete, and
27 current immunization records to be used in aiding, coordinating,

1 and promoting efficient and cost-effective communicable disease
2 prevention and control efforts, shall establish and maintain an
3 immunization registry. The executive commissioner [~~of the Health~~
4 ~~and Human Services Commission~~] by rule shall develop guidelines to:

5 (1) protect the confidentiality of patients in
6 accordance with Section [159.002](#), Occupations Code;

7 (2) inform the individual or the individual's legally
8 authorized representative about the registry and that registry
9 information may be released under Section [161.00735](#);

10 (3) require the written or electronic consent of the
11 individual or the individual's legally authorized representative
12 before any information relating to the individual is included in
13 the registry;

14 (4) permit the individual or the individual's legally
15 authorized representative to withdraw consent for the individual to
16 be included in the registry; and

17 (5) determine the process by which consent is
18 verified, including affirmation by a health care provider, birth
19 registrar, regional health information exchange, or local
20 immunization registry that consent has been obtained.

21 (a-3) The executive commissioner [~~of the Health and Human~~
22 ~~Services Commission~~] by rule shall develop guidelines and
23 procedures for obtaining consent from an individual after the
24 individual's 18th birthday, including procedures for retaining
25 immunization information in a separate database that is
26 inaccessible by any person other than the department during the
27 one-year period during which an 18-year-old may consent to

1 inclusion in the registry under Subsection (a-2).

2 (k) The executive commissioner [~~of the Health and Human~~
3 ~~Services Commission~~] shall adopt rules to implement this section.

4 SECTION 3.0460. Sections [161.00705](#)(e) and (i), Health and
5 Safety Code, are amended to read as follows:

6 (e) The executive commissioner [~~of the Health and Human~~
7 ~~Services Commission~~] by rule shall determine the period during
8 which the information collected under this section must remain in
9 the immunization registry following the end of the disaster, public
10 health emergency, terrorist attack, hostile military or
11 paramilitary action, or extraordinary law enforcement emergency.

12 (i) The executive commissioner [~~of the Health and Human~~
13 ~~Services Commission~~] shall adopt rules necessary to implement this
14 section.

15 SECTION 3.0461. Section [161.00706](#)(c), Health and Safety
16 Code, is amended to read as follows:

17 (c) The executive commissioner [~~of the Health and Human~~
18 ~~Services Commission~~] shall:

19 (1) develop rules to ensure that immunization history
20 submitted under Subsection (a)(2) is medically verified
21 immunization information;

22 (2) develop guidelines for use by the department in
23 informing first responders about the registry and that registry
24 information may be released under Section [161.00735](#); and

25 (3) adopt rules necessary for the implementation of
26 this section.

27 SECTION 3.0462. Section [161.0072](#)(c), Health and Safety

1 Code, is amended to read as follows:

2 (c) The executive commissioner [board] shall develop rules
3 to ensure that the immunization history submitted by an individual
4 or the individual's legally authorized representative is medically
5 verified immunization information.

6 SECTION 3.0463. Sections 161.00735(e) and (h), Health and
7 Safety Code, are amended to read as follows:

8 (e) The executive commissioner [~~of the Health and Human~~
9 ~~Services Commission,~~] by rule[~~-~~] shall determine the period during
10 which the information collected under Subsection (c) must remain in
11 the immunization registry following the end of the disaster.

12 (h) The executive commissioner [~~of the Health and Human~~
13 ~~Services Commission~~] shall make every effort to enter into a
14 memorandum of agreement with each state to which residents of this
15 state are likely to evacuate in a disaster on:

16 (1) the release and use of registry information under
17 this section to the appropriate health authority or local health
18 authority of that state, including the length of time the
19 information may be retained by that state; and

20 (2) the receipt and use of information submitted by
21 the health authority or local health authority of that state for
22 inclusion in the registry under this section.

23 SECTION 3.0464. Section 161.008(h), Health and Safety Code,
24 is amended to read as follows:

25 (h) The executive commissioner [~~of the Health and Human~~
26 ~~Services Commission~~] shall adopt rules to implement this section.

27 SECTION 3.0465. Section 161.0105(c), Health and Safety

1 Code, is amended to read as follows:

2 (c) The immunity created by this section is in addition to
3 any immunity created by Sections 161.001 and 161.007(i)
4 [~~161.007(g)~~].

5 SECTION 3.0466. Section 161.0107(c), Health and Safety
6 Code, is amended to read as follows:

7 (c) The executive commissioner [~~of the Health and Human~~
8 ~~Services Commission~~] by rule shall specify:

9 (1) the fields necessary to populate the immunization
10 registry, including a field that indicates the patient's consent to
11 be listed in the immunization registry has been obtained; and

12 (2) the data standards that must be used for
13 electronic submission of immunization information.

14 SECTION 3.0467. Section 161.0109(b), Health and Safety
15 Code, is amended to read as follows:

16 (b) The department shall collaborate with the Cancer
17 Prevention and Research Institute of Texas [~~Cancer Council~~] or its
18 successor entity to develop educational programs for parents
19 regarding human papillomavirus and promoting awareness of a minor's
20 need for preventive services for cervical cancer and its
21 precursors.

22 SECTION 3.0468. Section 161.021(a), Health and Safety Code,
23 is amended to read as follows:

24 (a) Unless prohibited by other law, a person, including a
25 hospital, sanatorium, nursing facility [~~home~~], rest home, medical
26 society, cancer registry, or other organization, may provide
27 interviews, reports, statements, memoranda, or other information

1 relating to the condition and treatment of any person, to be used in
2 a study to reduce morbidity or mortality or to identify persons who
3 may need immunization, to:

- 4 (1) the department;
- 5 (2) a person that makes inquiries under immunization
6 surveys conducted for the department;
- 7 (3) a medical organization;
- 8 (4) a hospital;
- 9 (5) a hospital committee; or
- 10 (6) a cancer registry, including a cancer registry of
11 a cancer treatment center [~~as defined by Section 82.002~~].

12 SECTION 3.0469. Section [161.0213](#), Health and Safety Code,
13 is amended to read as follows:

14 Sec. 161.0213. CONFIDENTIALITY. Reports, records, and
15 information furnished to the commissioner or the commissioner's
16 designee or the Texas [~~Natural Resource Conservation~~] Commission on
17 Environmental Quality that relate to an epidemiologic or
18 toxicologic investigation of human illnesses or conditions and of
19 environmental exposures that are harmful or believed to be harmful
20 to the public health are not public information under Chapter 552,
21 Government Code, and are subject to the same confidentiality
22 requirements as described by Section [81.046](#).

23 SECTION 3.0470. Sections [161.0315](#)(c) and (e), Health and
24 Safety Code, are amended to read as follows:

25 (c) A hospital district may require in a contract with a
26 health care facility described by Subsection (b) a provision that
27 allows the governing body of the district to appoint a specified

1 number of members to the facility's medical peer review committee
2 or medical committee to evaluate medical and health care services
3 for which the district contracts with the facility to provide. The
4 governing body of a hospital district may receive a report from the
5 facility's medical peer review committee or medical committee under
6 this section in a closed meeting. A report, information, or a
7 record that the district receives from the facility related to a
8 review action conducted under the terms of the contract is:

9 (1) confidential;

10 (2) not subject to disclosure under Chapter 552,
11 Government Code; and

12 (3) subject to the same confidentiality and disclosure
13 requirements to which a report, information, or record of a medical
14 peer review committee under Section 160.007 [~~160.006~~], Occupations
15 Code, is subject.

16 (e) The governing body of a hospital district may receive a
17 report under Subsection (d)(3) in a closed meeting. A report,
18 information, or a record that the hospital district receives under
19 Subsection (d)(3) is:

20 (1) confidential;

21 (2) not subject to disclosure under Chapter 552,
22 Government Code; and

23 (3) subject to the same confidentiality and disclosure
24 requirements to which a report, information, or record of a medical
25 peer review committee under Section 160.007 [~~160.006~~], Occupations
26 Code, is subject.

27 SECTION 3.0471. Section 161.083(a), Health and Safety Code,

1 is amended to read as follows:

2 (a) Pursuant to federal regulation under 21 C.F.R. Section
3 1140.14(b) [~~897.14(b)~~], a person may not sell, give, or cause to be
4 sold or given a cigarette or tobacco product to someone who is
5 younger than 27 years of age unless the person to whom the cigarette
6 or tobacco product was sold or given presents an apparently valid
7 proof of identification.

8 SECTION 3.0472. Section 161.101(c), Health and Safety Code,
9 is amended to read as follows:

10 (c) The executive commissioner [~~board~~] shall adopt rules to
11 implement this section.

12 SECTION 3.0473. Sections 161.131(1) and (8), Health and
13 Safety Code, are amended to read as follows:

14 (1) "Abuse" has the meaning assigned by the federal
15 Protection and Advocacy for [~~Mentally Ill~~] Individuals with Mental
16 Illness Act [~~of 1986~~] (42 U.S.C. Section 10801 et seq.).

17 (8) "Neglect" has the meaning assigned by the federal
18 Protection and Advocacy for [~~Mentally Ill~~] Individuals with Mental
19 Illness Act [~~of 1986~~] (42 U.S.C. Section 10801 et seq.).

20 SECTION 3.0474. Sections 161.132(d) and (f), Health and
21 Safety Code, are amended to read as follows:

22 (d) The executive commissioner by rule for the department
23 and the Department of Aging and Disability Services, and [~~Texas~~
24 ~~Board of Mental Health and Mental Retardation, Texas Board of~~
25 ~~Health, Texas Commission on Alcohol and Drug Abuse, and~~] each state
26 health care regulatory agency by rule, shall:

27 (1) prescribe procedures for the investigation of

1 reports received under Subsection (a) or (b) and for coordination
2 with and referral of reports to law enforcement agencies or other
3 appropriate agencies; and

4 (2) prescribe follow-up procedures to ensure that a
5 report referred to another agency receives appropriate action.

6 (f) The executive commissioner by rule and each [Each] state
7 health care regulatory agency by rule shall provide for appropriate
8 disciplinary action against a health care professional licensed by
9 the agency who fails to report as required by this section.

10 SECTION 3.0475. Section 161.133, Health and Safety Code, is
11 amended to read as follows:

12 Sec. 161.133. [MEMORANDUM OF UNDERSTANDING ON] INSERVICE
13 TRAINING. (a) The executive commissioner [Texas Board of Mental
Health and Mental Retardation, Texas Board of Health, and Texas
Commission on Alcohol and Drug Abuse] by rule shall require [adopt a
joint memorandum of understanding that requires] each inpatient
17 mental health facility, treatment facility, or hospital that
18 provides comprehensive medical rehabilitation services to annually
19 provide as a condition of continued licensure a minimum of eight
20 hours of inservice training designed to assist employees and health
21 care professionals associated with the facility in identifying
22 patient abuse or neglect and illegal, unprofessional, or unethical
23 conduct by or in the facility.

24 (b) The rules [memorandum] must prescribe:

25 (1) minimum standards for the training program; and

26 (2) a means for monitoring compliance with the
27 requirement.

1 (c) The department [~~Each agency~~] shall review and the
2 executive commissioner shall modify the rules [~~memorandum~~] as
3 necessary not later than the last month of each state fiscal year.

4 SECTION 3.0476. Section 161.134(a), Health and Safety Code,
5 is amended to read as follows:

6 (a) A hospital, mental health facility, or treatment
7 facility may not suspend or terminate the employment of or
8 discipline or otherwise discriminate against an employee for
9 reporting to the employee's supervisor, an administrator of the
10 facility, a state regulatory agency, or a law enforcement agency a
11 violation of law, including a violation of this chapter, a rule
12 adopted under this chapter, or a rule of another agency [~~adopted by~~
13 ~~the Texas Board of Mental Health and Mental Retardation, the Texas~~
14 ~~Board of Health, or the Texas Commission on Alcohol and Drug Abuse~~].

15 SECTION 3.0477. Sections 161.135(a) and (c), Health and
16 Safety Code, are amended to read as follows:

17 (a) A hospital, mental health facility, or treatment
18 facility may not retaliate against a person who is not an employee
19 for reporting a violation of law, including a violation of this
20 chapter, a rule adopted under this chapter, or a rule of another
21 agency [~~adopted by the Texas Board of Mental Health and Mental~~
22 ~~Retardation, the Texas Board of Health, or the Texas Commission on~~
23 ~~Alcohol and Drug Abuse~~].

24 (c) A person suing under this section has the burden of
25 proof, except that it is a rebuttable presumption that the
26 plaintiff was retaliated against if:

27 (1) before the 60th day after the date on which the

1 plaintiff made a report in good faith, the hospital, mental health
2 facility, or treatment facility:

3 (A) discriminates in violation of Section
4 [161.134](#) against a relative who is an employee of the facility;

5 (B) transfers, disciplines, suspends,
6 terminates, or otherwise discriminates against the person or a
7 relative who is a volunteer in the facility or who is employed under
8 the patient work program administered by the department [~~Texas~~
9 ~~Department of Mental Health and Mental Retardation~~];

10 (C) commits or threatens to commit, without
11 justification, the person or a relative of the person; or

12 (D) transfers, discharges, punishes, or
13 restricts the privileges of the person or a relative of the person
14 who is receiving inpatient or outpatient services in the facility;
15 or

16 (2) a person expected to testify on behalf of the
17 plaintiff is intentionally made unavailable through an action of
18 the facility, including a discharge, resignation, or transfer.

19 SECTION 3.0478. Sections [161.301\(a\)](#), (b), and (d), Health
20 and Safety Code, are amended to read as follows:

21 (a) The department [~~commissioner~~] shall develop and
22 implement a public awareness campaign designed to reduce tobacco
23 use by minors in this state. The campaign may use advertisements or
24 similar media to provide educational information about tobacco use.

25 (b) The department [~~commissioner~~] may contract with another
26 person to develop and implement the public awareness campaign. The
27 contract shall be awarded on the basis of competitive bids.

1 (d) The department [~~commissioner~~] may not award a contract
2 under Subsection (b) to:

3 (1) a person or entity that is required to register
4 with the Texas Ethics Commission under Chapter 305, Government
5 Code, except as provided by Subsection (f);

6 (2) any partner, employee, employer, relative,
7 contractor, consultant, or related entity of a person or entity
8 described by Subdivision (1) and not described by Subsection (f);
9 or

10 (3) a person or entity who has been hired to represent
11 associations or other entities for the purpose of affecting the
12 outcome of legislation, agency rules, or other government policies
13 through grassroots or media campaigns.

14 SECTION 3.0479. Section [161.352](#)(c), Health and Safety Code,
15 is amended to read as follows:

16 (c) The executive commissioner [~~department~~] by rule shall
17 establish the time for filing an annual report under this section
18 and shall prescribe the form for the report.

19 SECTION 3.0480. Section [161.353](#)(a), Health and Safety Code,
20 is amended to read as follows:

21 (a) Each manufacturer shall assign a nicotine yield rating
22 to each cigarette or tobacco product distributed in this state. The
23 rating shall be assigned in accordance with department standards
24 [~~adopted by the department~~].

25 SECTION 3.0481. Section [161.402](#), Health and Safety Code, is
26 amended to read as follows:

27 Sec. 161.402. MATERIAL SAFETY DATA SHEET REQUIRED; ASBESTOS

1 INSTALLATION OR REINSTALLATION PROHIBITED. The executive
2 commissioner [board] shall adopt rules designating the materials or
3 replacement parts for which a person must obtain a material safety
4 data sheet before installing the materials or parts in a public
5 building. A person may not install materials or replacement parts
6 in a public building if:

7 (1) the person does not obtain a required material
8 safety data sheet; or

9 (2) the materials or parts, according to the material
10 safety data sheet, contain more than one percent asbestos and there
11 is an alternative material or part.

12 SECTION 3.0482. Section 161.501(a), Health and Safety Code,
13 is amended to read as follows:

14 (a) A hospital, birthing center, physician, nurse midwife,
15 or midwife who provides prenatal care to a pregnant woman during
16 gestation or at delivery of an infant shall:

17 (1) provide the woman and the father of the infant, if
18 possible, or another adult caregiver for the infant, with a
19 resource pamphlet that includes:

20 (A) a list of the names, addresses, and phone
21 numbers of professional organizations that provide postpartum
22 counseling and assistance to parents relating to postpartum
23 depression and other emotional trauma associated with pregnancy and
24 parenting;

25 (B) information regarding the prevention of
26 shaken baby syndrome including:

27 (i) techniques for coping with anger caused

1 by a crying baby;

2 (ii) different methods for preventing a

3 person from shaking a newborn, infant, or other young child;

4 (iii) the dangerous effects of shaking a

5 newborn, infant, or other young child; and

6 (iv) the symptoms of shaken baby syndrome

7 and who to contact, as recommended by the American Academy of

8 Pediatrics, if a parent suspects or knows that a baby has been

9 shaken in order to receive prompt medical treatment;

10 (C) a list of diseases for which a child is

11 required by state law to be immunized and the appropriate schedule

12 for the administration of those immunizations;

13 (D) the appropriate schedule for follow-up

14 procedures for newborn screening;

15 (E) information regarding sudden infant death

16 syndrome, including current recommendations for infant sleeping

17 conditions to lower the risk of sudden infant death syndrome; and

18 (F) educational information in both English and

19 Spanish on pertussis disease and the availability of a vaccine to

20 protect against pertussis, including information on the Centers for

21 Disease Control and Prevention recommendation that parents receive

22 Tdap during the postpartum period to protect newborns from the

23 transmission of pertussis;

24 (2) if the woman is a recipient of medical assistance

25 under Chapter 32, Human Resources Code, provide the woman and the

26 father of the infant, if possible, or another adult caregiver with a

27 resource guide that includes information in both English and

1 Spanish relating to the development, health, and safety of a child
2 from birth until age five, including information relating to:

3 (A) selecting and interacting with a primary
4 health care practitioner and establishing a "medical home" for the
5 child;

6 (B) dental care;

7 (C) effective parenting;

8 (D) child safety;

9 (E) the importance of reading to a child;

10 (F) expected developmental milestones;

11 (G) health care resources available in the state;

12 (H) selecting appropriate child care; and

13 (I) other resources available in the state;

14 (3) document in the woman's record that the woman
15 received the resource pamphlet described in Subdivision (1) and the
16 resource guide described in Subdivision (2), if applicable; and

17 (4) retain the documentation for at least five years
18 in the hospital's, birthing center's, physician's, nurse midwife's,
19 or midwife's records.

20 SECTION 3.0483. The heading to Section [161.502](#), Health and
21 Safety Code, is amended to read as follows:

22 Sec. 161.502. DUTIES OF DEPARTMENT, EXECUTIVE
23 COMMISSIONER, AND COMMISSION.

24 SECTION 3.0484. Sections [161.502\(c\)](#) and (d), Health and
25 Safety Code, are amended to read as follows:

26 (c) The executive commissioner [~~Health and Human Services~~
27 ~~Commission~~] shall develop specific performance measures by which

1 the commission may evaluate the effectiveness of the resource guide
2 under Section 161.501(a)(2) in:

- 3 (1) reducing costs to the state; and
4 (2) improving outcomes for children.

5 (d) Not later than December 1 of each even-numbered year,
6 the commission [~~Health and Human Services Commission~~] shall submit
7 a report to the legislature on the effectiveness of the resource
8 guide under Section 161.501(a)(2), including legislative
9 recommendations concerning the guide.

10 SECTION 3.0485. Section 161.551, Health and Safety Code, is
11 amended to read as follows:

12 Sec. 161.551. DEFINITIONS. (a) In this subchapter,

13 "servicemember" [+]

14 [+(1) "Commission" means the ~~Health and Human Services~~
15 ~~Commission~~.]

16 [+(2) "Department" means the ~~Department of State Health~~
17 ~~Services~~.]

18 [+(3) "Servicemember"] means a member or former member
19 of the state military forces or a component of the United States
20 armed forces, including a reserve component.

21 (b) In this section, "state military forces" has the meaning
22 assigned by Section 437.001, Government Code.

23 SECTION 3.0486. Sections 162.001(1) and (2), Health and
24 Safety Code, are amended to read as follows:

25 (1) "Blood bank" means a facility that obtains blood
26 from voluntary donors, as that term is defined by the United States
27 Food and Drug Administration, the AABB (formerly known as the

1 American Association of Blood Banks), and the American Red Cross
2 Blood Services and that is registered or licensed by the Center for
3 [~~Office of~~] Biologics Evaluation and Research of the United States
4 Food and Drug Administration and accredited by the AABB [~~American~~
5 ~~Association of Blood Banks~~] or the American Red Cross Blood
6 Services, or is qualified for membership in the American
7 Association of Tissue Banks. The term includes a blood center,
8 regional collection center, tissue bank, and transfusion service.

9 (2) "AIDS" means acquired immune deficiency syndrome
10 as defined by the Centers for Disease Control and Prevention of the
11 United States Public Health Service.

12 SECTION 3.0487. Section 162.002(a), Health and Safety Code,
13 is amended to read as follows:

14 (a) For each donation of blood, a blood bank shall require
15 the donor to submit to tests for communicable [~~infectious~~]
16 diseases, including tests for AIDS, HIV, or hepatitis, and
17 serological tests for contagious venereal diseases.

18 SECTION 3.0488. Section 162.004, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 162.004. DISCLOSURE REQUIRED BY LAW. A blood bank
21 shall disclose all information required by law, including HIV test
22 results, to:

23 (1) the department and a local health authority as
24 required under Chapter 81 (Communicable Disease Prevention and
25 Control Act);

26 (2) the Centers for Disease Control and Prevention of
27 the United States Public Health Service, as required by federal law

1 or regulation; or

(3) any other local, state, or federal entity, as required by law, rule, or regulation.

4 SECTION 3.0489. Sections 162.006(a) and (b), Health and
5 Safety Code, are amended to read as follows:

6 (a) A blood bank may report to other blood banks the name of
7 a donor with a possible communicable [~~infectious~~] disease according
8 to positive blood test results.

9 (b) A blood bank that reports a donor's name to other blood
10 banks under this section may not disclose the communicable
11 [~~infectious~~] disease that the donor has or is suspected of having.

12 SECTION 3.0490. Section 162.007(a), Health and Safety Code,
13 is amended to read as follows:

14 (a) A blood bank shall report blood test results for blood
15 confirmed as HIV positive by the normal procedures blood banks
16 presently use or found to be contaminated by any other communicable
17 [infectious] disease to:

20 (2) the physician who transfused the infected blood;
21 or

22 (3) the recipient of the blood.

23 SECTION 3.0491. Section 162.016, Health and Safety Code, is
24 amended to read as follows:

25 Sec. 162.016. BE A BLOOD DONOR ACCOUNT; DEDICATION. (a)
26 The be a blood donor account is a separate account in the general
27 revenue fund. The account is composed of:

1 (1) money deposited to the credit of the account under
2 Section 504.641, Transportation Code; and
3 (2) gifts, grants, donations, and legislative
4 appropriations.

5 (b) The department administers the account.

6 (b-1) The department [and] may spend money credited to the
7 account or money deposited to the associated trust fund account
8 created under Section 504.6012, Transportation Code, only to:

9 (1) make grants to nonprofit blood centers in this
10 state for programs to recruit and retain volunteer blood donors;
11 and

12 (2) defray the cost of administering the account.

13 (c) The department [board].

14 [~~(1)~~] may accept gifts, grants, and donations from any
15 source for the benefit of the account. The executive commissioner
16 of the Health and Human Services Commission [~~; and~~

17 [~~(2)~~] by rule shall establish guidelines for spending
18 money described by Subsection (b-1) [~~credited to the account~~].

19 SECTION 3.0492. Section 162.018, Health and Safety Code, is
20 amended to read as follows:

21 Sec. 162.018. BROCHURE ON UMBILICAL CORD BLOOD OPTIONS.
22 (a) The executive commissioner [~~of the Health and Human Services~~
23 ~~Commission~~] shall prepare and update as necessary a brochure based
24 on nationally accepted, peer reviewed, scientific research
25 information regarding stem cells contained in the umbilical cord
26 blood after delivery of an infant. The information in the brochure
27 must include:

1 (1) the current and potential uses, risks, and
2 benefits of stem cells contained in umbilical cord blood to a
3 potential recipient of donated stem cells, including a biological
4 family member, extended family member, or nonrelated individual;

5 (2) the options available for future use or storage of
6 umbilical cord blood after delivery of an infant, including:

7 (A) discarding the stem cells;

8 (B) donating the stem cells to a public umbilical
9 cord blood bank;

10 (C) storing the stem cells in a private family
11 umbilical cord blood bank for use by immediate and extended family
12 members; and

13 (D) storing the stem cells for immediate and
14 extended family use through a family or sibling donor banking
15 program that provides free collection, processing, and storage when
16 a medical need exists;

17 (3) the medical process used to collect umbilical cord
18 blood after delivery of an infant;

19 (4) any risk associated with umbilical cord blood
20 collection to the mother and the infant;

21 (5) any costs that may be incurred by a pregnant woman
22 who chooses to donate or store umbilical cord blood after delivery
23 of the woman's infant; and

24 (6) the average cost of public and private umbilical
25 cord blood banking.

26 (b) The department [Department of State Health Services]
27 shall make the brochure available on the department's website and

1 shall distribute the brochure on request to physicians or other
2 persons permitted by law to attend a pregnant woman during
3 gestation or at delivery of an infant.

4 SECTION 3.0493. Section 164.003(5), Health and Safety Code,
5 is amended to read as follows:

6 (5) "Mental health facility" means:

7 (A) a "mental health facility" as defined by
8 Section 571.003;

9 (B) a residential treatment facility, other than
10 a mental health facility, in which persons are treated for
11 emotional problems or disorders in a 24-hour supervised living
12 environment; and

13 (C) an adult day-care facility [~~or adult day~~
14 ~~health care facility~~] as defined by Section 103.003, Human
15 Resources Code.

16 SECTION 3.0494. Section 164.004, Health and Safety Code, is
17 amended to read as follows:

18 Sec. 164.004. EXEMPTIONS. This chapter does not apply to:

19 (1) a treatment facility:

20 (A) operated by the department [~~Texas Department~~
21 ~~of Mental Health and Mental Retardation~~], a federal agency, or a
22 political subdivision; or

23 (B) funded by the department [~~Texas Commission on~~
24 ~~Alcohol and Drug Abuse~~];

25 (2) a community center established under Subchapter A,
26 Chapter 534, or a facility operated by a community center; or

27 (3) a facility owned and operated by a nonprofit or

1 not-for-profit organization offering counseling concerning family
2 violence, help for runaway children, or rape.

3 SECTION 3.0495. Section [164.006](#), Health and Safety Code, is
4 amended to read as follows:

5 Sec. 164.006. SOLICITING AND CONTRACTING WITH CERTAIN
6 REFERRAL SOURCES. A treatment facility or a person employed or
7 under contract with a treatment facility, if acting on behalf of the
8 treatment facility, may not:

9 (1) contact a referral source or potential client for
10 the purpose of soliciting, directly or indirectly, a referral of a
11 patient to the treatment facility without disclosing its soliciting
12 agent's, employee's, or contractor's affiliation with the treatment
13 facility;

14 (2) offer to provide or provide mental health or
15 chemical dependency services to a public or private school in this
16 state, on a part-time or full-time basis, the services of any of its
17 employees or agents who make, or are in a position to make, a
18 referral, if the services are provided on an individual basis to
19 individual students or their families. Nothing herein prohibits a
20 treatment facility from:

21 (A) offering or providing educational programs
22 in group settings to public schools in this state if the affiliation
23 between the educational program and the treatment facility is
24 disclosed;

25 (B) providing counseling services to a public
26 school in this state in an emergency or crisis situation if the
27 services are provided in response to a specific request by a school;

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- 1 provided that, under no circumstances may a student be referred to
- 2 the treatment facility offering the services; or

3 (C) entering into a contract under Section
4 **464.020** with the board of trustees of a school district with a
5 disciplinary alternative education program, or with the board's
6 designee, for the provision of chemical dependency treatment
7 services;

19 (B) the employee, agent, or contractor makes a
20 referral only if:

24 (ii) the employee, agent, or contractor
25 discloses to the prospective patient the employee's, agent's, or
26 contractor's relationship to the facility at initial contact; or

27 (4) in relation to intervention and assessment

1 services, contract with, offer to remunerate, or remunerate a
2 person who operates an intervention and assessment service that
3 makes referrals to a treatment facility for inpatient treatment of
4 mental illness or chemical dependency unless the intervention and
5 assessment service is:

6 (A) operated by a community mental health and
7 intellectual disability [~~mental retardation~~] center funded by the
8 department and the Department of Aging and Disability Services
9 [~~Texas Department of Mental Health and Mental Retardation~~];

10 (B) operated by a county or regional medical
11 society;

12 (C) a qualified mental health referral service as
13 defined by Section [164.007](#); or

14 (D) owned and operated by a nonprofit or
15 not-for-profit organization offering counseling concerning family
16 violence, help for runaway children, or rape.

17 SECTION 3.0496. Section [164.007](#)(a), Health and Safety Code,
18 is amended to read as follows:

19 (a) A qualified mental health referral service means a
20 service that conforms to all of the following standards:

21 (1) the referral service does not exclude as a
22 participant in the referral service an individual who meets the
23 qualifications for participation and qualifications for
24 participation cannot be based in whole or in part on an individual's
25 or entity's affiliation or nonaffiliation with other participants
26 in the referral service;

27 (2) a payment the participant makes to the referral

1 service is assessed equally against and collected equally from all
2 participants, and is only based on the cost of operating the
3 referral service and not on the volume or value of any referrals to
4 or business otherwise generated by the participants of the referral
5 service;

6 (3) the referral service imposes no requirements on
7 the manner in which the participant provides services to a referred
8 person, except that the referral service may require that the
9 participant charge the person referred at the same rate as it
10 charges other persons not referred by the referral service, or that
11 these services be furnished free of charge or at a reduced charge;

12 (4) a referral made to a mental health professional or
13 chemical dependency treatment facility is made only in accordance
14 with Subdivision (1) and the referral service does not make
15 referrals to mental health facilities other than facilities
16 maintained or operated by the department [~~Texas Department of~~
17 ~~Mental Health and Mental Retardation~~], community mental health [~~and~~
18 ~~mental retardation~~] centers, or other political subdivisions,
19 provided that a physician may make a referral directly to any mental
20 health facility;

21 (5) the referral service is staffed by appropriately
22 licensed and trained mental health professionals and a person who
23 makes assessments for the need for treatment of mental illness or
24 chemical dependency is a mental health professional as defined by
25 this chapter;

26 (6) in response to each inquiry or after personal
27 assessment, the referral service makes referrals, on a clinically

1 appropriate, rotational basis, to at least three mental health
2 professionals or chemical dependency treatment facilities whose
3 practice addresses or facilities are located in the county of
4 residence of the person seeking the referral or assessment, but if
5 there are not three providers in the inquirer's county of
6 residence, the referral service may include additional providers
7 from other counties nearest the inquirer's county of residence;

8 (7) no information that identifies the person seeking
9 a referral, such as name, address, or telephone number, is used,
10 maintained, distributed, or provided for a purpose other than
11 making the requested referral or for administrative functions
12 necessary to operating the referral service;

13 (8) the referral service makes the following
14 disclosures to each person seeking a referral:

15 (A) the manner in which the referral service
16 selects the group of providers participating in the referral
17 service;

18 (B) whether the provider participant has paid a
19 fee to the referral service;

20 (C) the manner in which the referral service
21 selects a particular provider from its list of provider
22 participants to which to make a referral;

23 (D) the nature of the relationship or any
24 affiliation between the referral service and the group of provider
25 participants to whom it could make a referral; and

26 (E) the nature of any restriction that would
27 exclude a provider from continuing as a provider participant;

1 (9) the referral service maintains each disclosure in
2 a written record certifying that the disclosure has been made and
3 the record certifying that the disclosure has been made is signed by
4 either the person seeking a referral or by the person making the
5 disclosure on behalf of the referral service; and

6 (10) if the referral service refers callers to a 1-900
7 telephone number or another telephone number that requires the
8 payment of a toll or fee payable to or collected by the referral
9 service, the referral service discloses the per minute charge.

10 SECTION 3.0497. Section 164.009(a), Health and Safety Code,
11 is amended to read as follows:

12 (a) A treatment facility may not admit a patient to its
13 facilities without fully disclosing to the patient or, if the
14 patient is a minor, the patient's parent, managing conservator, or
15 guardian, in, if possible, the primary language of the patient,
16 managing conservator, or guardian, as the case may be, the
17 following information in writing before admission:

18 (1) the treatment facility's estimated average daily
19 charge for inpatient treatment with an explanation that the patient
20 may be billed separately for services provided by mental health
21 professionals;

22 (2) the name of the attending physician, if the
23 treatment facility is a mental health facility, or the name of the
24 attending mental health professional, if the facility is a chemical
25 dependency facility; and

26 (3) the current "patient's bill of rights" as adopted
27 by the executive commissioner [Texas Department of Mental Health

1 ~~and Mental Retardation, the Texas Commission on Alcohol and Drug~~
2 ~~Abuse, or the Texas Department of Health]~~ that sets out
3 restrictions to the patient's freedom that may be imposed on the
4 patient during the patient's stay in a treatment facility.

5 SECTION 3.0498. Section [164.014](#), Health and Safety Code, is
6 amended to read as follows:

7 Sec. 164.014. RULE-MAKING AUTHORITY. The executive
8 commissioner [~~Texas Commission on Alcohol and Drug Abuse and Texas~~
9 ~~Board of Mental Health and Mental Retardation~~] may adopt rules
10 interpreting the provisions of this chapter relating to the
11 activities of a chemical dependency facility or mental health
12 facility under the department's [~~its~~] jurisdiction.

13 SECTION 3.0499. Section [166.002](#)(12), Health and Safety
14 Code, is amended to read as follows:

15 (12) "Physician" means:

16 (A) a physician licensed by the Texas Medical
17 [~~State~~] Board [~~of Medical Examiners~~]; or

18 (B) a properly credentialed physician who holds a
19 commission in the uniformed services of the United States and who is
20 serving on active duty in this state.

21 SECTION 3.0500. Section [166.004](#)(a), Health and Safety Code,
22 is amended to read as follows:

23 (a) In this section, "health care provider" means:

24 (1) a hospital;

25 (2) an institution licensed under Chapter 242,
26 including a skilled nursing facility;

27 (3) a home and community support services agency;

1 (4) an assisted living [~~a personal care~~] facility;
2 and

3 (5) a special care facility.

4 SECTION 3.0501. Section [166.011](#)(c), Health and Safety Code,
5 is amended to read as follows:

6 (c) The executive commissioner [~~of the Health and Human~~
7 ~~Services Commission~~] by rule shall modify the advance directive
8 forms required under this chapter as necessary to provide for the
9 use of a digital or electronic signature that complies with the
10 requirements of this section.

11 SECTION 3.0502. Section [166.039](#)(g), Health and Safety Code,
12 is amended to read as follows:

13 (g) A person listed in Subsection (b) who wishes to
14 challenge a treatment decision made under this section must apply
15 for temporary guardianship under Chapter 1251, Estates [~~Section~~
16 ~~875, Texas Probate~~] Code. The court may waive applicable fees in
17 that proceeding.

18 SECTION 3.0503. Sections [166.046](#)(b) and (c), Health and
19 Safety Code, are amended to read as follows:

20 (b) The patient or the person responsible for the health
21 care decisions of the individual who has made the decision
22 regarding the directive or treatment decision:

23 (1) may be given a written description of the ethics or
24 medical committee review process and any other policies and
25 procedures related to this section adopted by the health care
26 facility;

27 (2) shall be informed of the committee review process

1 not less than 48 hours before the meeting called to discuss the
2 patient's directive, unless the time period is waived by mutual
3 agreement;

4 (3) at the time of being so informed, shall be
5 provided:

6 (A) a copy of the appropriate statement set forth
7 in Section 166.052; and

8 (B) a copy of the registry list of health care
9 providers and referral groups that have volunteered their readiness
10 to consider accepting transfer or to assist in locating a provider
11 willing to accept transfer that is posted on the website maintained
12 by the department [~~Texas Health Care Information Council~~] under
13 Section 166.053; and

14 (4) is entitled to:

15 (A) attend the meeting; and

16 (B) receive a written explanation of the decision
17 reached during the review process.

18 (c) The written explanation required by Subsection
19 (b)(4)(B) [~~(b)(2)(B)~~] must be included in the patient's medical
20 record.

21 SECTION 3.0504. Sections 166.052(a) and (b), Health and
22 Safety Code, are amended to read as follows:

23 (a) In cases in which the attending physician refuses to
24 honor an advance directive or treatment decision requesting the
25 provision of life-sustaining treatment, the statement required by
26 Section 166.046(b)(3)(A) [~~166.046(b)(2)(A)~~] shall be in
27 substantially the following form:

When There Is A Disagreement About Medical Treatment: The Physician Recommends Against Life-Sustaining Treatment That You Wish To Continue

You have been given this information because you have requested life-sustaining treatment,* which the attending physician believes is not appropriate. This information is being provided to help you understand state law, your rights, and the resources available to you in such circumstances. It outlines the process for resolving disagreements about treatment among patients, families, and physicians. It is based upon Section 166.046 of the Texas Advance Directives Act, codified in Chapter 166 of the Texas Health and Safety Code.

When an attending physician refuses to comply with an advance directive or other request for life-sustaining treatment because of the physician's judgment that the treatment would be inappropriate, the case will be reviewed by an ethics or medical committee. Life-sustaining treatment will be provided through the review.

18 You will receive notification of this review at least 48
19 hours before a meeting of the committee related to your case. You
20 are entitled to attend the meeting. With your agreement, the
21 meeting may be held sooner than 48 hours, if possible.

22 You are entitled to receive a written explanation of the
23 decision reached during the review process.

24 If after this review process both the attending physician and
25 the ethics or medical committee conclude that life-sustaining
26 treatment is inappropriate and yet you continue to request such
27 treatment, then the following procedure will occur:

1 1. The physician, with the help of the health care facility,
2 will assist you in trying to find a physician and facility willing
3 to provide the requested treatment.

4 2. You are being given a list of health care providers and
5 referral groups that have volunteered their readiness to consider
6 accepting transfer, or to assist in locating a provider willing to
7 accept transfer, maintained by the Department of State Health
8 Services [~~Texas Health Care Information Council~~]. You may wish to
9 contact providers or referral groups on the list or others of your
10 choice to get help in arranging a transfer.

11 3. The patient will continue to be given life-sustaining
12 treatment until he or she can be transferred to a willing provider
13 for up to 10 days from the time you were given the committee's
14 written decision that life-sustaining treatment is not
15 appropriate.

16 4. If a transfer can be arranged, the patient will be
17 responsible for the costs of the transfer.

18 5. If a provider cannot be found willing to give the requested
19 treatment within 10 days, life-sustaining treatment may be
20 withdrawn unless a court of law has granted an extension.

21 6. You may ask the appropriate district or county court to
22 extend the 10-day period if the court finds that there is a
23 reasonable expectation that a physician or health care facility
24 willing to provide life-sustaining treatment will be found if the
25 extension is granted.

26 *"Life-sustaining treatment" means treatment that, based on
27 reasonable medical judgment, sustains the life of a patient and

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1 without which the patient will die. The term includes both
2 life-sustaining medications and artificial life support, such as
3 mechanical breathing machines, kidney dialysis treatment, and
4 artificial nutrition and hydration. The term does not include the
5 administration of pain management medication or the performance of
6 a medical procedure considered to be necessary to provide comfort
7 care, or any other medical care provided to alleviate a patient's
8 pain.

9 (b) In cases in which the attending physician refuses to
10 comply with an advance directive or treatment decision requesting
11 the withholding or withdrawal of life-sustaining treatment, the
12 statement required by Section [166.046](#)(b)(3)(A) shall be in
13 substantially the following form:

14 When There Is A Disagreement About Medical Treatment: The
15 Physician Recommends Life-Sustaining Treatment That You Wish To
16 Stop

You have been given this information because you have requested the withdrawal or withholding of life-sustaining treatment* and the attending physician refuses to comply with that request. The information is being provided to help you understand state law, your rights, and the resources available to you in such circumstances. It outlines the process for resolving disagreements about treatment among patients, families, and physicians. It is based upon Section [166.046](#) of the Texas Advance Directives Act, codified in Chapter 166 of the Texas Health and Safety Code.

When an attending physician refuses to comply with an advance directive or other request for withdrawal or withholding of

1 life-sustaining treatment for any reason, the case will be reviewed
2 by an ethics or medical committee. Life-sustaining treatment will
3 be provided through the review.

4 You will receive notification of this review at least 48
5 hours before a meeting of the committee related to your case. You
6 are entitled to attend the meeting. With your agreement, the
7 meeting may be held sooner than 48 hours, if possible.

8 You are entitled to receive a written explanation of the
9 decision reached during the review process.

10 If you or the attending physician do not agree with the
11 decision reached during the review process, and the attending
12 physician still refuses to comply with your request to withhold or
13 withdraw life-sustaining treatment, then the following procedure
14 will occur:

15 1. The physician, with the help of the health care facility,
16 will assist you in trying to find a physician and facility willing
17 to withdraw or withhold the life-sustaining treatment.

18 2. You are being given a list of health care providers and
19 referral groups that have volunteered their readiness to consider
20 accepting transfer, or to assist in locating a provider willing to
21 accept transfer, maintained by the Department of State Health
22 Services [~~Texas Health Care Information Council~~]. You may wish to
23 contact providers or referral groups on the list or others of your
24 choice to get help in arranging a transfer.

25 *"Life-sustaining treatment" means treatment that, based on
26 reasonable medical judgment, sustains the life of a patient and
27 without which the patient will die. The term includes both

1 life-sustaining medications and artificial life support, such as
2 mechanical breathing machines, kidney dialysis treatment, and
3 artificial nutrition and hydration. The term does not include the
4 administration of pain management medication or the performance of
5 a medical procedure considered to be necessary to provide comfort
6 care, or any other medical care provided to alleviate a patient's
7 pain.

8 SECTION 3.0505. Sections [166.053\(a\), \(c\), and \(d\)](#), Health
9 and Safety Code, are amended to read as follows:

10 (a) The department [~~Texas Health Care Information Council~~] shall maintain a registry listing the identity of and contact information for health care providers and referral groups, situated inside and outside this state, that have voluntarily notified the department [~~council~~] they may consider accepting or may assist in locating a provider willing to accept transfer of a patient under Section [166.045](#) or [166.046](#).

17 (c) The department [~~Texas Health Care Information Council~~] shall post the current registry list on its website in a form appropriate for easy comprehension by patients and persons responsible for the health care decisions of patients [~~and shall provide a clearly identifiable link from its home page to the registry page~~]. The list shall separately indicate those providers and groups that have indicated their interest in assisting the transfer of:

- 25 (1) those patients on whose behalf life-sustaining treatment is being sought;
- 27 (2) those patients on whose behalf the withholding or

1 withdrawal of life-sustaining treatment is being sought; and
2 (3) patients described in both Subdivisions (1) and
3 (2).

4 (d) The registry list described in this section shall
5 include the following disclaimer:

6 "This registry lists providers and groups that have
7 indicated to the Department of State Health Services [~~Texas Health~~
8 ~~Care Information Council~~] their interest in assisting the transfer
9 of patients in the circumstances described, and is provided for
10 information purposes only. Neither the Department of State Health
11 Services [~~Texas Health Care Information Council~~] nor the State of
12 Texas endorses or assumes any responsibility for any
13 representation, claim, or act of the listed providers or groups."

14 SECTION 3.0506. Sections 166.081(2), (6), and (10), Health
15 and Safety Code, are amended to read as follows:

22 (6) "Out-of-hospital DNR order":

23 (A) means a legally binding out-of-hospital
24 do-not-resuscitate order, in the form specified by department rule
25 [~~the board~~] under Section [166.083](#), prepared and signed by the
26 attending physician of a person, that documents the instructions of
27 a person or the person's legally authorized representative and

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1 directs health care professionals acting in an out-of-hospital
2 setting not to initiate or continue the following life-sustaining
3 treatment:

4 (i) cardiopulmonary resuscitation;

5 (ii) advanced airway management;

6 (iii) artificial ventilation;

7 (iv) defibrillation;

8 (v) transcutaneous cardiac pacing; and

9 (vi) other life-sustaining treatment

10 specified by department rule [~~the board~~] under Section 166.101(a);

11 and

12 (B) does not include authorization to withhold
13 medical interventions or therapies considered necessary to provide
14 comfort care or to alleviate pain or to provide water or nutrition.

21 SECTION 3.0507. Sections 166.082(a) and (f), Health and
22 Safety Code, are amended to read as follows:

23 (a) A competent person may at any time execute a written
24 out-of-hospital DNR order directing health care professionals
25 acting in an out-of-hospital setting to withhold cardiopulmonary
26 resuscitation and certain other life-sustaining treatment
27 designated by department rule [the board].

1 (f) The executive commissioner [board], on the
2 recommendation of the department, shall by rule adopt procedures
3 for the disposition and maintenance of records of an original
4 out-of-hospital DNR order and any copies of the order.

5 SECTION 3.0508. Sections 166.083(a), (b), and (c), Health
6 and Safety Code, are amended to read as follows:

7 (a) A written out-of-hospital DNR order shall be in the
8 standard form specified by department [board] rule as recommended
9 by the department.

10 (b) The standard form of an out-of-hospital DNR order
11 specified by department rule [~~the board~~] must, at a minimum,
12 contain the following:

13 (1) a distinctive single-page format that readily
14 identifies the document as an out-of-hospital DNR order;

15 (2) a title that readily identifies the document as an
16 out-of-hospital DNR order;

17 (3) the printed or typed name of the person;

18 (4) a statement that the physician signing the
19 document is the attending physician of the person and that the
20 physician is directing health care professionals acting in
21 out-of-hospital settings, including a hospital emergency
22 department, not to initiate or continue certain life-sustaining
23 treatment on behalf of the person, and a listing of those procedures
24 not to be initiated or continued;

25 (5) a statement that the person understands that the
26 person may revoke the out-of-hospital DNR order at any time by
27 destroying the order and removing the DNR identification device, if

1 any, or by communicating to health care professionals at the scene
2 the person's desire to revoke the out-of-hospital DNR order;

3 (6) places for the printed names and signatures of the
4 witnesses or the notary public's acknowledgment and for the printed
5 name and signature of the attending physician of the person and the
6 medical license number of the attending physician;

7 (7) a separate section for execution of the document
8 by the legal guardian of the person, the person's proxy, an agent of
9 the person having a medical power of attorney, or the attending
10 physician attesting to the issuance of an out-of-hospital DNR order
11 by nonwritten means of communication or acting in accordance with a
12 previously executed or previously issued directive to physicians
13 under Section 166.082(c) that includes the following:

14 (A) a statement that the legal guardian, the
15 proxy, the agent, the person by nonwritten means of communication,
16 or the physician directs that each listed life-sustaining treatment
17 should not be initiated or continued in behalf of the person; and

18 (B) places for the printed names and signatures
19 of the witnesses and, as applicable, the legal guardian, proxy,
20 agent, or physician;

21 (8) a separate section for execution of the document
22 by at least one qualified relative of the person when the person
23 does not have a legal guardian, proxy, or agent having a medical
24 power of attorney and is incompetent or otherwise mentally or
25 physically incapable of communication, including:

26 (A) a statement that the relative of the person
27 is qualified to make a treatment decision to withhold

1 cardiopulmonary resuscitation and certain other designated
2 life-sustaining treatment under Section [166.088](#) and, based on the
3 known desires of the person or a determination of the best interest
4 of the person, directs that each listed life-sustaining treatment
5 should not be initiated or continued in behalf of the person; and

6 (B) places for the printed names and signatures
7 of the witnesses and qualified relative of the person;

8 (9) a place for entry of the date of execution of the
9 document;

10 (10) a statement that the document is in effect on the
11 date of its execution and remains in effect until the death of the
12 person or until the document is revoked;

13 (11) a statement that the document must accompany the
14 person during transport;

15 (12) a statement regarding the proper disposition of
16 the document or copies of the document, as the executive
17 commissioner [board] determines appropriate; and

18 (13) a statement at the bottom of the document, with
19 places for the signature of each person executing the document,
20 that the document has been properly completed.

21 (c) The executive commissioner [board] may, by rule and as
22 recommended by the department, modify the standard form of the
23 out-of-hospital DNR order described by Subsection (b) in order to
24 accomplish the purposes of this subchapter.

25 SECTION 3.0509. Sections [166.088\(e\)](#) and (g), Health and
26 Safety Code, are amended to read as follows:

27 (e) The fact that an adult person has not executed or issued

1 an out-of-hospital DNR order does not create a presumption that the
2 person does not want a treatment decision made to withhold
3 cardiopulmonary resuscitation and certain other designated
4 life-sustaining treatment designated by department rule [~~the~~
5 ~~board~~].

6 (g) A person listed in Section 166.039(b) who wishes to
7 challenge a decision made under this section must apply for
8 temporary guardianship under Chapter 1251, Estates [~~Section 875,~~
9 ~~Texas Probate~~] Code. The court may waive applicable fees in that
10 proceeding.

11 SECTION 3.0510. Section 166.089(h), Health and Safety Code,
12 is amended to read as follows:

13 (h) An out-of-hospital DNR order executed or issued and
14 documented or evidenced in the manner prescribed by this subchapter
15 is valid and shall be honored by responding health care
16 professionals unless the person or persons found at the scene:

17 (1) identify themselves as the declarant or as the
18 attending physician, legal guardian, qualified relative, or agent
19 of the person having a medical power of attorney who executed or
20 issued the out-of-hospital DNR order on behalf of the person; and

21 (2) request that cardiopulmonary resuscitation or
22 certain other life-sustaining treatment designated by department
23 rule [~~the board~~] be initiated or continued.

24 SECTION 3.0511. Section 166.090(a), Health and Safety Code,
25 is amended to read as follows:

26 (a) A person who has a valid out-of-hospital DNR order under
27 this subchapter may wear a DNR identification device around the

1 neck or on the wrist as prescribed by department [board] rule
2 adopted under Section 166.101.

3 SECTION 3.0512. Section 166.092(b), Health and Safety Code,
4 is amended to read as follows:

5 (b) An oral revocation under Subsection (a)(3) or (a)(4)
6 takes effect only when the declarant or a person who identifies
7 himself or herself as the legal guardian, a qualified relative, or
8 the agent of the declarant having a medical power of attorney who
9 executed the out-of-hospital DNR order communicates the intent to
10 revoke the order to the responding health care professionals or the
11 attending physician at the scene. The responding health care
12 professionals shall record the time, date, and place of the
13 revocation in accordance with the statewide out-of-hospital DNR
14 protocol and rules adopted by the executive commissioner [board]
15 and any applicable local out-of-hospital DNR protocol. The
16 attending physician or the physician's designee shall record in the
17 person's medical record the time, date, and place of the revocation
18 and, if different, the time, date, and place that the physician
19 received notice of the revocation. The attending physician or the
20 physician's designee shall also enter the word "VOID" on each page
21 of the copy of the order in the person's medical record.

22 SECTION 3.0513. Section 166.094, Health and Safety Code, is
23 amended to read as follows:

24 Sec. 166.094. LIMITATION ON LIABILITY FOR WITHHOLDING
25 CARDIOPULMONARY RESUSCITATION AND CERTAIN OTHER LIFE-SUSTAINING
26 PROCEDURES. (a) A health care professional or health care facility
27 or entity that in good faith causes cardiopulmonary resuscitation

1 or certain other life-sustaining treatment designated by
2 department rule [~~the board~~] to be withheld from a person in
3 accordance with this subchapter is not civilly liable for that
4 action.

5 (b) A health care professional or health care facility or
6 entity that in good faith participates in withholding
7 cardiopulmonary resuscitation or certain other life-sustaining
8 treatment designated by department rule [~~the board~~] from a person
9 in accordance with this subchapter is not civilly liable for that
10 action.

11 (c) A health care professional or health care facility or
12 entity that in good faith participates in withholding
13 cardiopulmonary resuscitation or certain other life-sustaining
14 treatment designated by department rule [~~the board~~] from a person
15 in accordance with this subchapter is not criminally liable or
16 guilty of unprofessional conduct as a result of that action.

17 (d) A health care professional or health care facility or
18 entity that in good faith causes or participates in withholding
19 cardiopulmonary resuscitation or certain other life-sustaining
20 treatment designated by department rule [~~the board~~] from a person
21 in accordance with this subchapter and rules adopted under this
22 subchapter is not in violation of any other licensing or regulatory
23 laws or rules of this state and is not subject to any disciplinary
24 action or sanction by any licensing or regulatory agency of this
25 state as a result of that action.

26 SECTION 3.0514. Section 166.096, Health and Safety Code, is
27 amended to read as follows:

1 Sec. 166.096. HONORING OUT-OF-HOSPITAL DNR ORDER DOES NOT
2 CONSTITUTE OFFENSE OF AIDING SUICIDE. A person does not commit an
3 offense under Section 22.08, Penal Code, by withholding
4 cardiopulmonary resuscitation or certain other life-sustaining
5 treatment designated by department rule [~~the board~~] from a person
6 in accordance with this subchapter.

7 SECTION 3.0515. Section 166.097(b), Health and Safety Code,
8 is amended to read as follows:

9 (b) A person is subject to prosecution for criminal homicide
10 under Chapter 19, Penal Code, if the person, with the intent to
11 cause cardiopulmonary resuscitation or certain other
12 life-sustaining treatment designated by department rule [~~the~~
13 ~~board~~] to be withheld from another person contrary to the other
14 person's desires, falsifies or forges an out-of-hospital DNR order
15 or intentionally conceals or withholds personal knowledge of a
16 revocation and thereby directly causes cardiopulmonary
17 resuscitation and certain other life-sustaining treatment
18 designated by department rule [~~the board~~] to be withheld from the
19 other person with the result that the other person's death is
20 hastened.

21 SECTION 3.0516. Section 166.098, Health and Safety Code, is
22 amended to read as follows:

23 Sec. 166.098. PREGNANT PERSONS. A person may not withhold
24 cardiopulmonary resuscitation or certain other life-sustaining
25 treatment designated by department rule [~~the board~~] under this
26 subchapter from a person known by the responding health care
27 professionals to be pregnant.

1 SECTION 3.0517. Sections 166.100 and 166.101, Health and
2 Safety Code, are amended to read as follows:

3 Sec. 166.100. LEGAL RIGHT OR RESPONSIBILITY NOT AFFECTED.
4 This subchapter does not impair or supersede any legal right or
5 responsibility a person may have under a constitution, other
6 statute, regulation, or court decision to effect the withholding of
7 cardiopulmonary resuscitation or certain other life-sustaining
8 treatment designated by department rule [~~the board~~].

9 Sec. 166.101. DUTIES OF DEPARTMENT AND EXECUTIVE
10 COMMISSIONER [~~BOARD~~]. (a) The executive commissioner [~~board~~]
11 shall, on the recommendation of the department, adopt all
12 reasonable and necessary rules to carry out the purposes of this
13 subchapter, including rules:

14 (1) adopting a statewide out-of-hospital DNR order
15 protocol that sets out standard procedures for the withholding of
16 cardiopulmonary resuscitation and certain other life-sustaining
17 treatment by health care professionals acting in out-of-hospital
18 settings;

19 (2) designating life-sustaining treatment that may be
20 included in an out-of-hospital DNR order, including all procedures
21 listed in Sections 166.081(6)(A)(i) through (v); and

22 (3) governing recordkeeping in circumstances in which
23 an out-of-hospital DNR order or DNR identification device is
24 encountered by responding health care professionals.

25 (b) The rules adopted [~~by the board~~] under Subsection (a)
26 are not effective until approved by the Texas Medical [~~State~~] Board
27 [~~of Medical Examiners~~].

1 (c) Local emergency medical services authorities may adopt
2 local out-of-hospital DNR order protocols if the local protocols do
3 not conflict with the statewide out-of-hospital DNR order protocol
4 adopted by the executive commissioner [board].

5 (d) The executive commissioner [board] by rule shall
6 specify a distinctive standard design for a necklace and a bracelet
7 DNR identification device that signifies, when worn by a person,
8 that the possessor has executed or issued a valid out-of-hospital
9 DNR order under this subchapter or is a person for whom a valid
10 out-of-hospital DNR order has been executed or issued.

11 (e) The department shall report to the executive
12 commissioner [board] from time to time regarding issues identified
13 in emergency medical services responses in which an out-of-hospital
14 DNR order or DNR identification device is encountered. The report
15 may contain recommendations to the executive commissioner [board]
16 for necessary modifications to the form of the standard
17 out-of-hospital DNR order or the designated life-sustaining
18 procedures listed in the standard out-of-hospital DNR order, the
19 statewide out-of-hospital DNR order protocol, or the DNR
20 identification devices.

21 SECTION 3.0518. Section 171.012(a-1), Health and Safety
22 Code, is amended to read as follows:

23 (a-1) During a visit made to a facility to fulfill the
24 requirements of Subsection (a), the facility and any person at the
25 facility may not accept any form of payment, deposit, or exchange or
26 make any financial agreement for an abortion or abortion-related
27 services other than for payment of a service required by Subsection

1 (a). The amount charged for a service required by Subsection (a)
2 may not exceed the reimbursement rate established for the service
3 by the executive commissioner [~~Health and Human Services~~
4 ~~Commission~~] for statewide medical reimbursement programs.

5 SECTION 3.0519. Section [171.0124](#), Health and Safety Code,
6 is amended to read as follows:

7 Sec. 171.0124. EXCEPTION FOR MEDICAL EMERGENCY. A
8 physician may perform an abortion without obtaining informed
9 consent under this subchapter in a medical emergency. A physician
10 who performs an abortion in a medical emergency shall:

11 (1) include in the patient's medical records a
12 statement signed by the physician certifying the nature of the
13 medical emergency; and

14 (2) not later than the 30th day after the date the
15 abortion is performed, certify to the department [~~Department of~~
16 ~~State Health Services~~] the specific medical condition that
17 constituted the emergency.

18 SECTION 3.0520. Section [171.014\(d\)](#), Health and Safety Code,
19 is amended to read as follows:

20 (d) The department shall annually review the materials to
21 determine if changes to the contents of the materials are
22 necessary. The executive commissioner [~~department~~] shall adopt
23 rules necessary for considering and making changes to the
24 materials.

25 SECTION 3.0521. Section [181.053](#), Health and Safety Code, is
26 amended to read as follows:

27 Sec. 181.053. NONPROFIT AGENCIES. The executive

1 commissioner [department] shall by rule exempt from this chapter a
2 nonprofit agency that pays for health care services or prescription
3 drugs for an indigent person only if the agency's primary business
4 is not the provision of health care or reimbursement for health care
5 services.

6 SECTION 3.0522. Section 181.102(c), Health and Safety Code,
7 is amended to read as follows:

8 (c) For purposes of Subsection (a), the executive
9 commissioner, in consultation with the department [Department of
10 ~~State Health Services~~], the Texas Medical Board, and the Texas
11 Department of Insurance, by rule may recommend a standard
12 electronic format for the release of requested health records. The
13 standard electronic format recommended under this section must be
14 consistent, if feasible, with federal law regarding the release of
15 electronic health records.

16 SECTION 3.0523. Section 181.103, Health and Safety Code, is
17 amended to read as follows:

18 Sec. 181.103. CONSUMER INFORMATION WEBSITE. The attorney
19 general shall maintain an Internet website that provides:

20 (1) information concerning a consumer's privacy rights
21 regarding protected health information under federal and state law;
22 (2) a list of the state agencies, including the
23 department [Department of State Health Services], the Texas Medical
24 Board, and the Texas Department of Insurance, that regulate covered
25 entities in this state and the types of entities each agency
26 regulates;

27 (3) detailed information regarding each agency's

1 complaint enforcement process; and

2 (4) contact information, including the address of the
3 agency's Internet website, for each agency listed under Subdivision
4 (2) for reporting a violation of this chapter.

5 SECTION 3.0524. Section 182.053(b), Health and Safety Code,
6 is amended to read as follows:

7 (b) The governor shall also appoint at least two ex officio,
8 nonvoting members representing the department [~~Department of State~~
9 ~~Health Services~~].

10 SECTION 3.0525. Section 182.103(b), Health and Safety Code,
11 is amended to read as follows:

12 (b) The corporation shall comply with all state and federal
13 laws and rules relating to the transmission of health information,
14 including Chapter 181, and rules adopted under that chapter, and
15 the Health Insurance Portability and Accountability Act of 1996
16 (Pub. L. No. 104-191) and rules adopted under that Act.

17 SECTION 3.0526. Section 182.108(b), Health and Safety Code,
18 is amended to read as follows:

19 (b) The commission shall review and the executive
20 commissioner by rule shall adopt acceptable standards submitted for
21 ratification under Subsection (a).

22 SECTION 3.0527. Section 191.001, Health and Safety Code, is
23 amended to read as follows:

24 Sec. 191.001. DEFINITIONS. In this title:

25 (1) ~~"Board" means the Texas Board of Health.~~

26 ~~(2)~~ "Department" means the ~~Texas~~ Department of
27 State Health Services.

1 (2) "Executive commissioner" means the executive
2 commissioner of the Health and Human Services Commission.

3 (3) "Vital statistics unit" means the vital statistics
4 unit established in the Department of State Health Services.

5 SECTION 3.0528. Subchapter A, Chapter 191, Health and
6 Safety Code, is amended by adding Section 191.0011 to read as
7 follows:

8 Sec. 191.0011. REFERENCE IN OTHER LAW. A reference in other
9 law to the bureau of vital statistics of the department or of the
10 former Texas Department of Health means the vital statistics unit
11 established in the department.

12 SECTION 3.0529. Section 191.002(b), Health and Safety Code,
13 is amended to read as follows:

14 (b) The department shall:

15 (1) establish a [bureau of] vital statistics unit in
16 the department with suitable offices that are properly equipped for
17 the preservation of its official records;

18 (2) establish a statewide system of vital statistics;

19 (3) provide instructions and prescribe forms for
20 collecting, recording, transcribing, compiling, and preserving
21 vital statistics;

22 (4) require the enforcement of this title and rules
23 adopted under this title;

24 (5) prepare, print, and supply to local registrars
25 forms for registering, recording, and preserving returns or
26 otherwise carrying out the purposes of this title; and

27 (6) propose legislation necessary for the purposes of

1 this title.

2 SECTION 3.0530. Section 191.003, Health and Safety Code, is
3 amended to read as follows:

4 Sec. 191.003. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER
5 AND DEPARTMENT [BOARD]. (a) The executive commissioner [board]
6 shall[~~+~~

7 [~~(1)~~] adopt necessary rules for collecting,
8 recording, transcribing, compiling, and preserving vital
9 statistics.

10 (a-1) The department shall:

11 (1) [~~+ (2)~~] supervise the [bureau of] vital
12 statistics unit; and

13 (2) [~~(3)~~] appoint the director of the [bureau of]
14 vital statistics unit.

15 (b) In an emergency, the executive commissioner [board] may
16 suspend any part of this title that hinders the uniform and
17 efficient registration of vital events and may substitute emergency
18 rules designed to expedite that registration under disaster
19 conditions.

20 SECTION 3.0531. Section 191.004(a), Health and Safety Code,
21 is amended to read as follows:

22 (a) The director of the [bureau of] vital statistics unit is
23 the state registrar of vital statistics. The director must be a
24 competent vital statistician.

25 SECTION 3.0532. Sections 191.0045(a), (b), (c), (d), (e),
26 and (g), Health and Safety Code, are amended to read as follows:

27 (a) The department [bureau of vital statistics] may collect

1 [charge] fees for providing services to the public and performing
2 other activities in connection with maintenance of the vital
3 statistics system, including:

4 (1) performing searches of birth, death, fetal death,
5 marriage, divorce, annulment, and other records;

6 (2) preparing and issuing copies and certified copies
7 of birth, death, fetal death, marriage, divorce, annulment, and
8 other records; and

9 (3) filing a record, amendment, or affidavit under
10 this title.

11 (b) The executive commissioner [board] by rule may
12 prescribe a schedule of fees for vital statistics services. The
13 aggregate of the amounts of the fees may not exceed the cost of
14 administering the vital statistics system.

15 (c) The department [~~bureau of vital statistics~~] shall
16 refund to an applicant any fee received for services that the
17 department [~~bureau~~] cannot perform. If the money has been
18 deposited to the credit of the vital statistics account in the
19 general revenue fund, the comptroller shall issue a warrant against
20 the fund for refund of the payment on presentation of a claim signed
21 by the state registrar.

22 (d) A local registrar or county clerk who issues a certified
23 copy of a birth or death certificate shall collect [charge] the same
24 fees as collected [charged] by the department [~~bureau of vital~~
25 ~~statistics~~], including the additional fee required under
26 Subsection (e), except as provided by Subsections (g) and (h).

27 (e) In addition to fees charged [~~collected~~] by the

1 department [~~bureau of vital statistics~~] under Subsection (b), the
2 department [~~bureau~~] shall collect an additional \$2 fee for each of
3 the following:

4 (1) issuing a certified copy of a certificate of
5 birth;

6 (2) issuing a wallet-sized certification of birth; and

7 (3) conducting a search for a certificate of birth.

8 (g) A local registrar or county clerk that on March 31,
9 1995, was collecting [~~charging~~] a fee for the issuance of a
10 certified copy of a birth certificate that exceeded the fee
11 collected [~~charged~~] by the department [~~bureau of vital statistics~~]
12 for the same type of certificate may continue to do so but shall not
13 raise this fee until the fee collected [~~charged~~] by the department
14 [~~bureau~~] exceeds the fee collected [~~charged~~] by the local registrar
15 or county clerk. A local registrar or county clerk to which this
16 subsection applies shall collect [~~charge~~] the additional fee as
17 required under Subsection (e).

18 SECTION 3.0533. Section 191.0047, Health and Safety Code,
19 is amended to read as follows:

20 Sec. 191.0047. BIRTH INFORMATION FOR DEPARTMENT OF FAMILY
21 AND PROTECTIVE SERVICES. (a) The department [~~Department of State~~
22 ~~Health Services~~] shall implement an efficient and effective method
23 to verify birth information or provide a certified copy of a birth
24 record necessary to provide services for the benefit of a minor
25 being served by the Department of Family and Protective Services.

26 (b) The department [~~Department of State Health Services~~]
27 shall enter into a memorandum of understanding with the Department

1 of Family and Protective Services to implement this section.
2 Subject to Subsection (c), the terms of the memorandum of
3 understanding must include methods for reimbursing the department
4 [~~Department of State Health Services~~] in an amount that is not more
5 than the actual costs the department incurs in verifying the birth
6 information or providing the birth record to the Department of
7 Family and Protective Services.

8 (c) The department [~~Department of State Health Services~~]
9 may not collect a fee or other amount for verification of birth
10 information or provision of a certified copy of the birth record
11 under Subsection (a) for a child in the managing conservatorship of
12 the Department of Family and Protective Services if parental rights
13 to the child have been terminated and the child is eligible for
14 adoption.

15 SECTION 3.0534. Section [191.0048\(b\)](#), Health and Safety
16 Code, is amended to read as follows:

17 (b) On each paper or electronic application form for a copy
18 or certified copy of a birth, marriage, or divorce record, the
19 department [~~bureau of vital statistics~~] shall include a printed box
20 for the applicant to check indicating that the applicant wishes to
21 make a voluntary contribution of \$5 to promote healthy early
22 childhood by supporting the Texas Home Visiting Program
23 administered by the Office of Early Childhood Coordination of the
24 Health and Human Services Commission.

25 SECTION 3.0535. Section [191.005](#), Health and Safety Code, is
26 amended to read as follows:

27 Sec. 191.005. VITAL STATISTICS ACCOUNT [~~FUND~~]. (a) The

1 vital statistics account [~~fund~~] is an account in the general
2 revenue fund in the state treasury.

3 (b) The legislature shall make appropriations to the
4 department from the vital statistics account [~~fund~~] to be used to
5 defray expenses incurred in the administration and enforcement of
6 the system of vital statistics.

7 (c) All fees collected by the department under this chapter
8 [~~bureau of vital statistics~~] shall be deposited to the credit of the
9 vital statistics account [~~fund~~].

10 SECTION 3.0536. Section 191.021(b), Health and Safety Code,
11 is amended to read as follows:

12 (b) To facilitate registration, the department [~~board~~] may
13 combine or divide registration districts.

14 SECTION 3.0537. Section 191.022(d), Health and Safety Code,
15 is amended to read as follows:

16 (d) The local registrar shall sign each report made to the
17 department [~~bureau of vital statistics~~].

18 SECTION 3.0538. Section 191.025(c), Health and Safety Code,
19 is amended to read as follows:

20 (c) A local registrar shall supply forms of certificates to
21 persons who need them. The executive commissioner [~~board~~] shall
22 establish and promulgate rules for strict accountability of birth
23 certificates to prevent birth certificate fraud.

24 SECTION 3.0539. Sections 191.026(c) and (e), Health and
25 Safety Code, are amended to read as follows:

26 (c) The local registrar shall copy in the record book
27 required under Section 191.025 each certificate that the local

1 registrar registers, unless the local registrar keeps duplicates
2 under Subsection (d) or makes photographic duplications as
3 authorized by Chapter [181 or] 201, Local Government Code, or the
4 provisions of Chapter 204, Local Government Code, derived from
5 former Chapter 181, Local Government Code. Except as provided by
6 Subsection (e), the copies shall be permanently preserved in the
7 local registrar's office as the local record, in the manner
8 directed by the state registrar.

9 (e) The local registrar may, after the first anniversary of
10 the date of registration of a birth, death, or fetal death, destroy
11 the permanent record of the birth, death, or fetal death maintained
12 by the local registrar if:

13 (1) the local registrar has access to electronic
14 records of births, deaths, and fetal deaths maintained by the
15 [bureau of] vital statistics unit; and

16 (2) before destroying the records, the local registrar
17 certifies to the state registrar that each record maintained by the
18 local office that is to be destroyed has been verified against the
19 records contained in the unit's [bureau's] database and that each
20 record is included in the database or otherwise accounted for.

21 SECTION 3.0540. Section 191.032(b), Health and Safety Code,
22 is amended to read as follows:

23 (b) The executive commissioner [board] shall adopt rules
24 necessary to implement this section.

25 SECTION 3.0541. Section 191.033(a), Health and Safety Code,
26 is amended to read as follows:

27 (a) The state registrar may attach to the original record an

1 addendum that sets out any information received by the state
2 registrar that may contradict the information in a birth, death, or
3 fetal death record required to be maintained in the [bureau of]
4 vital statistics unit.

5 SECTION 3.0542. Section 191.051(a), Health and Safety Code,
6 is amended to read as follows:

7 (a) Subject to department [board] rules controlling the
8 accessibility of vital records, the state registrar shall supply to
9 a properly qualified applicant, on request, a certified copy of a
10 record, or part of a record, of a birth, death, or fetal death
11 registered under this title.

12 SECTION 3.0543. Section 191.056(b), Health and Safety Code,
13 is amended to read as follows:

14 (b) The department [bureau of vital statistics] may
15 contract with the national agency to have copies of vital records
16 that are filed with the vital statistics unit [bureau] transcribed
17 for that agency.

18 SECTION 3.0544. Section 191.057(b), Health and Safety Code,
19 is amended to read as follows:

20 (b) If the [bureau of] vital statistics unit or any local
21 registration official receives an application for a certified copy
22 of a birth, death, or fetal death record to which an addendum has
23 been attached under Section 191.033, the application shall be sent
24 immediately to the state registrar. After examining the
25 application, the original record, and the addendum, the state
26 registrar may refuse to issue a certified copy of the record or part
27 of the record to the applicant.

1 SECTION 3.0545. Sections [192.002](#)(b) and (d), Health and
2 Safety Code, are amended to read as follows:

3 (b) The section of the birth certificate entitled "For
4 Medical and Health Use Only" is not part of the legal birth
5 certificate. Information held by the department under that section
6 of the certificate is confidential. That information may not be
7 released or made public on subpoena or otherwise, except that
8 release may be made for statistical purposes only so that no person,
9 patient, or facility is identified, or to medical personnel of a
10 health care entity, as that term is defined in Subtitle B, Title 3,
11 Occupations Code, or to a faculty member at a medical school, as
12 that term is defined in Section [61.501](#), Education Code, for
13 statistical or medical research, or to appropriate state or federal
14 agencies for statistical research. The executive commissioner
15 [~~board~~] may adopt rules to implement this subsection.

16 (d) The social security numbers of the mother and father
17 recorded on the form shall be made available to the United States
18 [~~federal~~] Social Security Administration.

19 SECTION 3.0546. Sections [192.0021](#)(a) and (b), Health and
20 Safety Code, are amended to read as follows:

21 (a) The department shall promote and sell copies of an
22 heirloom birth certificate. The department shall solicit donated
23 designs for the certificate from Texas artists and select the best
24 donated designs for the form of the certificate. An heirloom birth
25 certificate must contain the same information as, and have the same
26 effect of, a certified copy of another birth record. The executive
27 commissioner by rule [~~department~~] shall prescribe a fee for the

1 issuance of an heirloom birth certificate in an amount that does not
2 exceed \$50. The heirloom birth certificate must be printed on
3 high-quality paper with the appearance of parchment not smaller
4 than 11 inches by 14 inches.

5 (b) The department shall deposit 50 percent of the proceeds
6 from the sale of heirloom birth certificates to the credit of the
7 childhood immunization account and the other 50 percent to the
8 credit of the undedicated portion of the general revenue fund. The
9 childhood immunization account is an account in the general revenue
10 fund. Money in the account may be used only by the department
11 [~~Department of State Health Services~~] for:

12 (1) making grants to fund childhood immunizations and
13 related education programs; and
14 (2) administering this section.

15 SECTION 3.0547. Sections 192.0022(b), (c), (f), (g), (h),
16 and (i), Health and Safety Code, are amended to read as follows:

17 (b) The person who is required to file a fetal death
18 certificate under Section 193.002 shall advise the parent or
19 parents of a stillborn child:

20 (1) that a parent may, but is not required to, request
21 the preparation of a certificate of birth resulting in stillbirth;

22 (2) that a parent may obtain a certificate of birth
23 resulting in stillbirth by contacting the [~~bureau of~~] vital
24 statistics unit to request the certificate and paying the required
25 fee; and

26 (3) regarding the way or ways in which a parent may
27 contact the [~~bureau of~~] vital statistics unit to request the

1 certificate.

2 (c) A parent may provide a name for a stillborn child on the
3 request for a certificate of birth resulting in stillbirth. If the
4 requesting parent does not wish to provide a name, the [bureau of]
5 vital statistics unit shall fill in the certificate with the name
6 "baby boy" or "baby girl" and the last name of the parent. The name
7 of the stillborn child provided on or later added by amendment to
8 the certificate of birth resulting in stillbirth shall be the same
9 name as placed on the original or amended fetal death certificate.

10 (f) The department [bureau of vital statistics] may not use
11 a certificate of birth resulting in stillbirth to calculate live
12 birth statistics.

13 (g) On issuance of a certificate of birth resulting in
14 stillbirth to a parent who has requested the certificate as
15 provided by this section, the [bureau of] vital statistics unit
16 shall file an exact copy of the certificate with the local registrar
17 of the registration district in which the stillbirth occurred. The
18 local registrar shall file the certificate of birth resulting in
19 stillbirth with the fetal death certificate.

20 (h) A parent may request the [bureau of] vital statistics
21 unit to issue a certificate of birth resulting in stillbirth
22 without regard to the date on which the fetal death certificate was
23 issued.

24 (i) The executive commissioner [of the Health and Human
25 Services Commission] may adopt rules necessary to administer this
26 section.

27 SECTION 3.0548. Section 192.005(a), Health and Safety Code,

1 is amended to read as follows:

2 (a) The items on a birth certificate relating to the child's

3 father shall be completed only if:

4 (1) the child's mother was married to the father:

5 (A) at the time of the child's conception;

6 (B) at the time of the child's birth; or

7 (C) after the child's birth;

8 (2) paternity is established by order of a court of
9 competent jurisdiction; or

10 (3) a valid acknowledgment of paternity executed by
11 the father has been filed with the ~~bureau of~~ vital statistics unit
12 as provided by Subchapter D, Chapter 160, Family Code.

13 SECTION 3.0549. Sections 192.006(c), (d), and (e), Health
14 and Safety Code, are amended to read as follows:

15 (c) The state registrar shall require proof of the change in
16 status that the executive commissioner ~~board~~ by rule may
17 prescribe.

18 (d) Supplementary birth certificates and applications for
19 supplementary birth certificates shall be prepared and filed in
20 accordance with department ~~board~~ rules.

21 (e) In accordance with department ~~board~~ rules, a
22 supplementary birth certificate may be filed for a person whose
23 parentage has been determined by an acknowledgment of paternity.

24 SECTION 3.0550. Section 192.008(c), Health and Safety Code,
25 is amended to read as follows:

26 (c) The executive commissioner ~~board~~ shall adopt rules
27 and procedures to ensure that birth records and indexes under the

1 control of the department or local registrars and accessible to the
2 public do not contain information or cross-references through which
3 the confidentiality of adoption placements may be directly or
4 indirectly violated. The rules and procedures may not interfere
5 with the registries established under Subchapter E, Chapter 162,
6 Family Code, or with a court order under this section.

7 SECTION 3.0551. Section 192.009(d), Health and Safety Code,
8 is amended to read as follows:

9 (d) If the department [bureau of vital statistics]
10 determines that a certificate filed with the state registrar under
11 this section requires correction, the department [bureau] shall
12 mail the certificate directly to an attorney of record with respect
13 to the petition of adoption, annulment of adoption, or revocation
14 of adoption. The attorney shall return the corrected certificate to
15 the department [bureau]. If there is no attorney of record, the
16 department [bureau] shall mail the certificate to the clerk of the
17 court for correction.

18 SECTION 3.0552. Section 192.010, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 192.010. CHANGE OF NAME. (a) Subject to department
21 [board] rules, an adult whose name is changed by court order, or the
22 legal representative of any person whose name is changed by court
23 order, may request that the state registrar attach an amendment
24 showing the change to the person's original birth record.

25 (b) The state registrar shall require proof of the change of
26 name that the executive commissioner [board] by rule may prescribe.

27 SECTION 3.0553. Section 192.012(a), Health and Safety Code,

1 is amended to read as follows:

2 (a) If the mother of a child is not married to the father of
3 the child, a person listed in Section 192.003 who is responsible for
4 filing the birth certificate shall:

5 (1) provide an opportunity for the child's mother and
6 putative father to sign an acknowledgment of paternity as provided
7 by Subchapter D [E], Chapter 160, Family Code; and

8 (2) provide oral and written information to the
9 child's mother and putative father about:

10 (A) establishing paternity, including an
11 explanation of the rights and responsibilities that result from
12 acknowledging paternity; and

13 (B) the availability of child support services.

14 SECTION 3.0554. Section 192.021(c), Health and Safety Code,
15 is amended to read as follows:

16 (c) Registration under this section is subject to
17 department [board] rules.

18 SECTION 3.0555. Section 192.022, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 192.022. DELAY OF ONE YEAR OR MORE: APPLICATION FILED
21 WITH STATE REGISTRAR. Subject to department [board] rules, an
22 application to file a delayed birth certificate for a birth in this
23 state not registered before the one-year anniversary of the date of
24 birth shall be made to the state registrar.

25 SECTION 3.0556. Section 193.001(d), Health and Safety Code,
26 is amended to read as follows:

27 (d) The department [~~bureau of vital statistics~~] and each

1 local registrar shall make the information provided under
2 Subsection (c) available to the public and may collect [~~charge~~] a
3 fee in an amount prescribed under Section 191.0045 for providing
4 that service.

5 SECTION 3.0557. Section 193.003(b), Health and Safety Code,
6 is amended to read as follows:

7 (b) Subject to department [~~board~~] rules, a certificate of a
8 fetal death that occurs in this state shall be filed with the local
9 registrar of the registration district in which:

10 (1) the fetal death occurs; or
11 (2) the body is found, if the place of fetal death is
12 not known.

13 SECTION 3.0558. Section 193.006(d), Health and Safety Code,
14 is amended to read as follows:

15 (d) When the death certificate is filed with the [~~bureau of~~]
16 vital statistics unit, the state registrar shall notify the Texas
17 Veterans Commission.

18 SECTION 3.0559. Sections 193.007(c) and (f), Health and
19 Safety Code, are amended to read as follows:

20 (c) The department [~~bureau of vital statistics~~] shall
21 furnish a form for filing records under this section. Records
22 submitted under this section must be on the form furnished by the
23 department [~~bureau~~]. The state registrar may accept a certificate
24 that is verified as provided by this section.

25 (f) Not later than the seventh day after the date on which a
26 certificate is accepted and ordered filed by a court under this
27 section, the clerk of the court shall forward to the [~~bureau of~~]

1 vital statistics unit:

2 (1) the certificate; and

3 (2) an order from the court that the state registrar
4 accept the certificate.

5 SECTION 3.0560. Section 194.001, Health and Safety Code, is
6 amended to read as follows:

7 Sec. 194.001. REPORT OF MARRIAGE. (a) The county clerk
8 shall file with the [bureau of] vital statistics unit a copy of each
9 completed marriage license application and a copy of any affidavit
10 of an absent applicant submitted with an application. The clerk
11 shall file the copies not later than the 90th day after the date of
12 the application. The clerk may not collect a fee for filing the
13 copies.

14 (b) The county clerk shall file with the [bureau of] vital
15 statistics unit a copy of each declaration of informal marriage
16 executed under Section 2.402 [1.92], Family Code. The clerk shall
17 file the copy not later than the 90th day after the date on which the
18 declaration is executed.

19 SECTION 3.0561. Section 194.0011, Health and Safety Code,
20 is amended to read as follows:

21 Sec. 194.0011. MARRIAGE LICENSE APPLICATIONS. (a) The
22 executive commissioner [board] by rule shall prescribe the format
23 and content of the department form used for the marriage license
24 application.

25 (b) The [bureau of] vital statistics unit shall print and
26 distribute the department forms to each county clerk throughout the
27 state.

1 (c) The department form [~~adopted by the board~~] shall replace
2 locally adopted forms.

3 (d) A county clerk may reproduce the department [~~board's~~]
4 form locally.

5 SECTION 3.0562. Sections 194.002(a), (b), (d), (e), and
6 (f), Health and Safety Code, are amended to read as follows:

7 (a) The department [~~bureau of vital statistics~~] shall
8 prescribe a form for reporting divorces and annulments of marriage.
9 The form must require the following information:

10 (1) each party's:

11 (A) full name;
12 (B) usual residence;
13 (C) age;
14 (D) place of birth;
15 (E) color or race; and
16 (F) number of children;

17 (2) the date and place of the parties' marriage;

18 (3) the date the divorce or annulment of marriage was
19 granted; and

20 (4) the court and the style and docket number of the
21 case in which the divorce or annulment of marriage was granted.

22 (b) The [~~bureau of~~] vital statistics unit shall furnish
23 sufficient copies of the form to each district clerk.

24 (d) Not later than the ninth day of each month, each
25 district clerk shall file with the [~~bureau of~~] vital statistics
26 unit a completed report for each divorce or annulment of marriage
27 granted in the district court during the preceding calendar month.

1 If a report does not include the information required by Subsection
2 (a)(3) or (4), the clerk must complete that information on the
3 report before the clerk files the report with the unit [bureau].

4 (e) For each report that a district clerk files with the
5 [bureau of] vital statistics unit under this section, the clerk may
6 collect a \$1 fee as costs in the case in which the divorce or
7 annulment of marriage is granted.

8 (f) If the department [bureau of vital statistics]
9 determines that a report filed with the department [bureau] under
10 this section requires correction, the department [bureau] shall
11 mail the report form directly to an attorney of record with respect
12 to the divorce or annulment of marriage. The attorney shall return
13 the corrected report form to the department [bureau]. If there is
14 no attorney of record, the department [bureau] shall mail the
15 report form to the district clerk for correction.

16 SECTION 3.0563. Section 194.003, Health and Safety Code, is
17 amended to read as follows:

18 Sec. 194.003. STATE INDEX. (a) The [bureau of] vital
19 statistics unit shall maintain a statewide alphabetical index,
20 under the names of both parties, of each marriage license
21 application or declaration of informal marriage. The statewide
22 index does not replace the indexes required in each county.

23 (b) The [bureau of] vital statistics unit shall maintain a
24 statewide alphabetical index, under the names of both parties, of
25 each report of divorce or annulment of marriage.

26 SECTION 3.0564. Section 194.004, Health and Safety Code, is
27 amended to read as follows:

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1 Sec. 194.004. RELEASE OF INFORMATION. (a) The [bureau of]
2 vital statistics unit shall furnish on request any information it
3 has on record relating to any marriage, divorce, or annulment of
4 marriage.

5 (b) The [bureau of] vital statistics unit may not issue:

6 (1) a certificate or a certified copy of information

7 relating to a marriage; or

8 (2) a certified copy of a report of divorce or

9 annulment of marriage.

10 SECTION 3.0565. Sections 194.005(b) and (c), Health and
11 Safety Code, are amended to read as follows:

12 (b) The department shall collect [~~prescribe~~] a \$50 fee for
13 the issuance of an heirloom wedding anniversary certificate.

14 (c) The executive commissioner [~~of the Health and Human~~
15 ~~Services Commission~~] shall adopt rules designating certain
16 milestone wedding anniversary dates and shall design and promote
17 heirloom wedding anniversary certificates celebrating those
18 anniversary dates.

19 SECTION 3.0566. Chapter 222, Health and Safety Code, is
20 amended to read as follows:

21 CHAPTER 222. HEALTH CARE FACILITY SURVEY, CONSTRUCTION,
22 INSPECTION, AND REGULATION

23 SUBCHAPTER A. SURVEY AND CONSTRUCTION OF HOSPITALS

24 Sec. 222.001. SHORT TITLE. This subchapter may be

25 the Texas Hospital Survey and Construction Act.

26 Sec. 222.002. DEFINITIONS. In this subchapter:

[(1) "Board" means the Texas Board of Health.]

1 (2) "Commissioner" means the commissioner of state
2 health services.

3 (3) "Department" means the [Texas] Department of State
4 Health Services.

5 (3-a) "Executive commissioner" means the executive
6 commissioner of the Health and Human Services Commission.

7 (4) "Hospital" includes a public health center, a
8 general hospital, or a tuberculosis, mental, chronic disease, or
9 other type of hospital, and related facilities such as a
10 laboratory, outpatient department, nurses' home and training
11 facility, or central service facility operated in connection with a
12 hospital.

13 (5) "Public health center" means a publicly owned
14 facility for providing public health services and includes related
15 facilities such as a laboratory, clinic, or administrative office
16 operated in connection with a facility for providing public health
17 services.

18 Sec. 222.003. EXCEPTION. This subchapter does not apply to
19 a hospital furnishing primarily domiciliary care.

20 [Sec. 222.004. DIVISION OF HOSPITAL SURVEY AND
21 CONSTRUCTION. (a) The division of hospital survey and
construction is a division of the department.

23 [(b) The division is administered by a full-time salaried
24 director appointed by the commissioner and under the supervision
25 and direction of the board.

26 [(c) The commissioner shall appoint other personnel of the
27 division.]

1 Sec. 222.005. SURVEY, PLANNING, AND CONSTRUCTION OF
2 HOSPITALS. (a) The department[~~, through the division of hospital~~
3 ~~survey and construction,~~] is the only agency of the state
4 authorized to make an inventory of existing hospitals, survey the
5 need for construction of hospitals, and develop a program of
6 hospital construction as provided by the federal Hospital Survey
7 and Construction Act (42 U.S.C. Section 291 et seq.).

8 (b) The executive commissioner [~~board~~] may [~~establish~~
9 ~~methods of administration and~~] adopt rules to meet the requirements
10 of the federal Hospital Survey and Construction Act relating to
11 survey, planning, and construction of hospitals and public health
12 centers. The executive commissioner shall adopt other rules the
13 executive commissioner considers necessary.

14 (c) The commissioner may establish methods of
15 administration and shall:

16 (1) require reports and[~~,~~] make inspections and
17 investigations[~~, and prescribe rules~~] as the commissioner
18 considers necessary; and

19 (2) take other action that the commissioner considers
20 necessary to carry out the federal Hospital Survey and Construction
21 Act and the regulations adopted under that Act.

22 Sec. 222.006. FUNDING. (a) The department [~~commissioner~~]
23 shall accept, on behalf of the state, a payment of federal funds or
24 a gift or grant made to assist in meeting the cost of carrying out
25 the purpose of this subchapter, and may spend the payment, gift, or
26 grant for that purpose.

27 (b) The department [~~commissioner~~] shall deposit the

1 payment, gift, or grant in the state treasury to the credit of the
2 hospital construction fund.

3 (c) The department [~~commissioner~~] shall deposit to the
4 credit of the hospital construction fund money received from the
5 federal government for a construction project approved by the
6 surgeon general of the United States Public Health Service. The
7 department [~~commissioner~~] shall use the money only for payments to
8 applicants for work performed and purchases made in carrying out
9 approved projects.

10 Sec. 222.007. AGREEMENTS FOR USE OF FACILITIES AND SERVICES
11 OF OTHER ENTITIES. To the extent the department [~~commissioner~~]
12 considers desirable to carry out the purposes of this subchapter,
13 the department [~~commissioner~~] may enter into an agreement for the
14 use of a facility or service of another public or private
15 department, agency, or institution.

16 Sec. 222.008. EXPERTS AND CONSULTANTS. The department
17 [~~commissioner~~] may contract for services of experts or consultants,
18 or organizations of experts or consultants, on a part-time or
19 fee-for-service basis. The contracts may not involve the
20 performance of administrative duties.

21 Sec. 222.009. [COMMISSIONER'S] REPORT. (a) The department
22 [~~commissioner~~] annually shall report to the executive commissioner
23 [~~board~~] on activities and expenditures under this subchapter.

24 (b) The department [~~commissioner~~] shall include in the
25 report recommendations for additional legislation that the
26 department [~~commissioner~~] considers appropriate to furnish
27 adequate hospital, clinic, and similar facilities to the public.

SUBCHAPTER B. LIMITATION ON INSPECTION AND OTHER REGULATION OF
HEALTH CARE FACILITIES

[Sec. 222.021. PURPOSE. The purpose of this subchapter is to require that state agencies that perform inspections of health care facilities, including the Texas Department of Health, the Texas Department of Human Services, the Texas Department of Mental Health and Mental Retardation, and other agencies with which each of those agencies contracts, do not duplicate their procedures or subject health care facilities to duplicative rules.]

10 Sec. 222.022. DEFINITIONS. In this subchapter:

13 (2) "Health care facility" has the meaning assigned by
14 Section 104.002, except that the term does not include a chemical
15 dependency treatment facility licensed by the Department of State
16 Health Services under Chapter 464 [Texas Commission on Alcohol and
17 Drug Abuse].

18 (3) [-(2)] "Inspection" includes a survey, inspection,
19 investigation, or other procedure necessary for a state agency to
20 carry out an obligation imposed by federal and state laws, rules,
21 and regulations.

Sec. 222.023. LIMITATION ON INSPECTIONS. (a) A state agency may make or require only those inspections necessary to carry out obligations imposed on the agency by federal and state laws, rules, and regulations.

26 (b) Instead of making an on-site inspection, a state agency
27 shall accept an on-site inspection by another state agency charged

1 with making an inspection if the inspection substantially complies
2 with the accepting agency's inspection requirements.

3 (c) A state agency shall coordinate its inspections within
4 the agency and with inspections required of other agencies to
5 ensure compliance with this section.

6 Sec. 222.024. CERTIFICATION OR ACCREDITATION INSTEAD OF
7 INSPECTION. (a) Except as provided by Subsection (c), a hospital
8 licensed by the [Texas] Department of State Health Services is not
9 subject to additional annual licensing inspections before the
10 department issues the hospital a license while the hospital
11 maintains:

12 (1) certification under Title XVIII of the Social
13 Security Act (42 U.S.C. Section 1395 et seq.); or

14 (2) accreditation from The [the] Joint Commission [~~on~~
15 ~~Accreditation of Healthcare Organizations~~], the American
16 Osteopathic Association, or other national accreditation
17 organization for the offered services.

18 (b) If the Department of State Health Services [~~department~~]
19 licenses a hospital exempt from an annual licensing inspection
20 under Subsection (a), the department shall issue a renewal license
21 to the hospital if the hospital annually:

22 (1) submits a complete application required by the
23 department;

24 (2) remits any applicable fees;

25 (3) submits a copy of documentation from the
26 certification or accreditation body showing that the hospital is
27 certified or accredited; and

1 (4) submits a copy of the most recent fire safety
2 inspection report from the fire marshal in whose jurisdiction the
3 hospital is located.

4 (c) The Department of State Health Services [department]
5 may conduct an inspection of a hospital exempt from an annual
6 licensing inspection under Subsection (a) before issuing a renewal
7 license to the hospital if the certification or accreditation body
8 has not conducted an on-site inspection of the hospital in the
9 preceding three years and the department determines that an
10 inspection of the hospital by the certification or accreditation
11 body is not scheduled within 60 days.

12 [Sec. 222.025. LIMITATION OF OTHER REGULATION.] (a) The
13 ~~Texas Department of Human Services, the Texas Department of Health,~~
14 ~~and the Texas Department of Mental Health and Mental Retardation~~
15 ~~each by rule shall execute a memorandum of understanding that~~
16 ~~establishes procedures to eliminate or reduce duplication of~~
17 ~~functions in certifying or licensing hospitals, nursing homes, or~~
18 ~~other facilities under their jurisdiction for payments under the~~
19 ~~requirements of Chapter 32, Human Resources Code, and federal law~~
20 ~~and regulations relating to Titles XVIII and XIX of the Social~~
21 ~~Security Act (42 U.S.C. Sections 1395 et seq. and 1396 et seq.).~~
22 ~~The procedures must provide for use by each agency of information~~
23 ~~collected by the agencies in making inspections for certification~~
24 ~~purposes and in investigating complaints regarding matters that~~
25 ~~would affect the certification of a nursing home or other facility~~
26 ~~under their jurisdiction.~~

27 [(b) The Texas Department of Health shall coordinate all

1 ~~licensing or certification procedures conducted by the state~~
2 ~~agencies covered by this section.~~

3 [Sec. 222.0255. NURSING HOMES. (a) The Texas Department of
4 Human Services shall develop one set of standards for nursing homes
5 that apply to licensing and to certification for participation in
6 the medical assistance program under Chapter 32, Human Resources
7 Code.]

8 [(b) The standards must comply with federal regulations. If
9 the federal regulations at the time of adoption are less stringent
10 than the state standards, the department shall keep and comply with
11 the state standards.]

12 [(c) The department by rule shall adopt the standards and
13 any amendments to the standards.]

14 [(d) The department shall maintain a set of standards for
15 nursing homes that are licensed only.]

16 [(e) Chapter 242 establishes the minimum licensing
17 standards for an institution. The licensing standards adopted by
18 the department under this chapter shall be adopted subject to
19 Section 242.037(b) and must comply with Section 242.037(c) and the
20 other provisions of Chapter 242.]

21 Sec. 222.026. COMPLAINT INVESTIGATIONS AND ENFORCEMENT
22 AUTHORITY. (a) Section [Sections] 222.024 does[~~, 222.025,~~ and
23 ~~222.0255 do~~] not affect the authority of the [Texas] Department of
24 State Health Services to implement and enforce the provisions of
25 Chapter 241 (Texas Hospital Licensing Law) to:

26 (1) reinspect a hospital if a hospital applies for the
27 reissuance of its license after a final ruling upholding the

1 suspension or revocation of a hospital's license, the assessment of
2 administrative or civil penalties, or the issuance of an injunction
3 against the hospital for violations of provisions of the licensing
4 law, rules adopted under the licensing law, special license
5 conditions, or orders of the commissioner of state health services;
6 or

7 (2) investigate a complaint against a hospital and, if
8 appropriate, enforce the provisions of the licensing law on a
9 finding by the Department of State Health Services [~~department~~]
10 that reasonable cause exists to believe that the hospital has
11 violated provisions of the licensing law, rules adopted under the
12 licensing law, special license conditions, or orders of the
13 commissioner of state health services; provided, however, that the
14 Department of State Health Services [~~department~~] shall coordinate
15 with the federal Centers for Medicare and Medicaid Services [~~Health~~
16 ~~Care Financing Administration~~] and its agents responsible for the
17 inspection of hospitals to determine compliance with the conditions
18 of participation under Title XVIII of the Social Security Act (42
19 U.S.C. Section 1395 et seq.), so as to avoid duplicate
20 investigations.

21 (b) The executive commissioner [~~department~~] shall by rule
22 establish a procedure for the acceptance and timely review of
23 complaints received from hospitals concerning the objectivity,
24 training, and qualifications of the persons conducting the
25 inspection.

26 Sec. 222.027. PHYSICIAN ON SURVEY TEAM. The [~~Texas~~]
27 Department of State Health Services shall ensure that a licensed

1 physician involved in direct patient care as defined by the Texas
2 Medical [~~State~~] Board [~~of Medical Examiners~~] is included on a
3 survey team sent under Title XVIII of the Social Security Act (42
4 U.S.C. Section 1395 et seq.) when surveying the quality of services
5 provided by physicians in hospitals.

6 SUBCHAPTER C. SURVEYS OF INTERMEDIATE CARE FACILITIES FOR

7 INDIVIDUALS WITH AN INTELLECTUAL DISABILITY [~~MENTALLY RETARDED~~]

8 Sec. 222.041. DEFINITIONS. In this subchapter:

9 (1) ~~"Board"~~ means the ~~Texas Board of Human Services~~.

10 [~~(2)~~] "Commissioner" means the commissioner of aging
11 and disability services [~~human services~~].

12 (2) [~~(3)~~] "Department" means the [~~Texas~~] Department
13 of Aging and Disability [~~Human~~] Services.

14 (3) "Executive commissioner" means the executive
15 commissioner of the Health and Human Services Commission.

16 (4) "ICF-IID" [~~ICF-MR~~] means the medical assistance
17 program serving individuals with an intellectual or developmental
18 disability who receive [~~persons receiving~~] care in intermediate
19 care facilities [~~for mentally retarded persons~~].

20 Sec. 222.042. LICENSING OF [~~ICF-MR~~] BEDS AND FACILITIES.

21 The department may not license or approve as meeting licensing
22 standards new ICF-IID [~~ICF-MR~~] beds or the expansion of an existing
23 ICF-IID [~~ICF-MR~~] facility unless the new beds or the expansion was
24 included in the plan approved by the Health and Human Services
25 Commission in accordance with Section 533.062.

26 [Sec. 222.043. REVIEW OF ICF-MR SURVEYS.] (a) The board by
27 rule shall establish policies and procedures as prescribed by this

1 section to conduct an informal review of ICF-MR surveys when the
2 survey findings are disputed by the provider. The board shall
3 provide that the procedure may be used only if the deficiencies
4 cited in the survey report do not pose an imminent threat of danger
5 to the health or safety of a resident.

6 [(b) The department shall designate at least one employee to
7 conduct on a full-time basis the review provided by this section.
8 The person must be impartial and may not be directly involved in or
9 supervise any initial or recertification surveys. The person may
10 participate in or direct follow-up surveys for quality assurance
11 purposes only at the discretion of the commissioner or the
12 commissioner's designated representative or under Chapter 242.

13 [(c) The employee designated under Subsection (b) should
14 have current knowledge of applicable federal laws and survey
15 processes. The employee reports directly to the commissioner or
16 the commissioner's designated representative.

17 [(d) If a provider disputes the findings of a survey team or
18 files a complaint relating to the conduct of the survey, the
19 employee designated under Subsection (b) shall conduct an informal
20 review as soon as possible, but before the 45th day after the date
21 of receiving the request for a review or the expiration of the
22 period during which the provider is required to correct the alleged
23 deficiency, whichever is sooner.

24 [(e) The employee conducting the review shall sustain,
25 alter, or reverse the original findings of the survey team after
26 consulting with the commissioner or the commissioner's designated
27 representative.]

1 Sec. 222.044. FOLLOW-UP SURVEYS. (a) The department shall
2 conduct follow-up surveys of ICF-IID [~~ICF-MR~~] facilities to:

3 (1) evaluate and monitor the findings of the
4 certification or licensing survey teams; and

5 (2) ensure consistency in deficiencies cited and in
6 punitive actions recommended throughout the state.

7 (b) A provider shall correct any additional deficiency
8 cited by the department. The department may not impose an
9 additional punitive action for the deficiency unless the provider
10 fails to correct the deficiency within the period during which the
11 provider is required to correct the deficiency.

12 Sec. 222.046. SURVEYS OF ICF-IID [~~ICF-MR~~] FACILITIES. (a)
13 The department shall ensure that each survey team sent to survey an
14 ICF-IID [~~ICF-MR~~] facility includes a qualified intellectual
15 disabilities [~~mental retardation~~] professional, as that term is
16 defined by federal law.

17 (b) The department shall require that each survey team sent
18 to survey an ICF-IID [~~ICF-MR~~] facility conduct a final interview
19 with the provider to ensure that the survey team informs the
20 provider of the survey findings and that the survey team has
21 requested the necessary information from the provider. The survey
22 team shall allow the provider to record the interview. The provider
23 shall immediately give the survey team a copy of any recording.

24 SECTION 3.0567. Section 241.003, Health and Safety Code, is
25 amended by amending Subdivisions (2), (4), (11), and (12) and
26 adding Subdivisions (2-a) and (4-a) to read as follows:

27 (2) "Commission" means the Health and Human Services

1 Commission.

2 (2-a) "Commissioner" means the commissioner of state
3 health services [~~"Board"~~ means the Texas Board of Health].

4 (4) "Department" means the [Texas] Department of State
5 Health Services.

6 (4-a) "Executive commissioner" means the executive
7 commissioner of the Health and Human Services Commission.

8 (11) "Physician" means a physician licensed by the
9 Texas [~~State Board of~~] Medical Board [~~Examiners~~].

10 (12) "Physician assistant" means a physician
11 assistant licensed by the Texas Physician Assistant [~~State~~] Board
12 [~~of Physician Assistant Examiners~~].

13 SECTION 3.0568. Section 241.006(a), Health and Safety Code,
14 is amended to read as follows:

15 (a) The department is authorized to review current and
16 proposed state rules, including [~~issued by the~~] department rules
17 and rules of [~~or by~~] other state agencies, that mandate that a
18 hospital place or post a notice, poster, or sign in a conspicuous
19 place or in an area of high public traffic, concerning the rights of
20 patients or others or the responsibilities of the hospital, which
21 is directed at patients, patients' families, or others. The
22 purpose of this review shall be to coordinate the placement,
23 format, and language contained in the required notices in order to:

24 (1) eliminate the duplication of information;
25 (2) reduce the potential for confusion to patients,
26 patients' families, and others; and
27 (3) reduce the administrative burden of compliance on

1 hospitals.

2 SECTION 3.0569. Section 241.009, Health and Safety Code, is
3 amended to read as follows:

4 Sec. 241.009. PHOTO IDENTIFICATION BADGE REQUIRED. (a) In
5 this section, "health[~~+~~

6 [~~(1) "Health~~] care provider" means a person who
7 provides health care services at a hospital as a physician, as an
8 employee of the hospital, under a contract with the hospital, or in
9 the course of a training or educational program at the hospital.

10 [~~(2) "Hospital" means a hospital licensed under this~~
11 ~~chapter.~~]

12 (b) A hospital licensed under this chapter shall adopt a
13 policy requiring a health care provider providing direct patient
14 care at the hospital to wear a photo identification badge during all
15 patient encounters, unless precluded by adopted isolation or
16 sterilization protocols. The badge must be of sufficient size and
17 worn in a manner to be visible and must clearly state:

18 (1) at minimum the provider's first or last name;

19 (2) the department of the hospital with which the
20 provider is associated;

21 (3) the type of license held by the provider, if the
22 provider holds a license under Title 3, Occupations Code; and

23 (4) if applicable, the provider's status as a student,
24 intern, trainee, or resident.

25 SECTION 3.0570. Section 241.022(d), Health and Safety Code,
26 is amended to read as follows:

27 (d) The application must be accompanied by:

1 (1) a copy of the hospital's current patient transfer
2 policy;

3 (2) a nonrefundable license fee;

4 (3) copies of the hospital's patient transfer
5 agreements, unless the filing of copies has been waived by the
6 department [~~hospital licensing director~~] in accordance with the
7 rules adopted under this chapter; and

8 (4) a copy of the most recent annual fire safety
9 inspection report from the fire marshal in whose jurisdiction the
10 hospital is located.

11 SECTION 3.0571. Sections [241.023\(b\)](#), (c-2), (c-3), (d), and
12 (e), Health and Safety Code, are amended to read as follows:

13 (b) A license may be renewed every two years [~~annually~~]
14 after payment of the required fee and submission of an application
15 for license renewal that contains the information required by
16 Section [241.022\(b\)](#).

17 (c-2) The department [~~hospital licensing director~~] may
18 recommend a waiver of the requirement of Subsection (c-1)(7) for a
19 hospital if another hospital that is to be included in the license:

20 (1) complies with the emergency services standards for
21 a general hospital; and

22 (2) is in close geographic proximity to the hospital.

23 (c-3) The executive commissioner [~~of the Health and Human~~
24 ~~Services Commission~~] shall adopt rules to implement the waiver
25 provision of Subsection (c-2). The rules must provide for a
26 determination by the department that the waiver will facilitate the
27 creation or operation of the hospital seeking the waiver and that

1 the waiver is in the best interest of the individuals served or to
2 be served by the hospital.

3 (d) Subject to Subsection (e), a license issued under this
4 section for a hospital includes each outpatient facility that is
5 not separately licensed, that is located apart from the hospital,
6 and for which the hospital has submitted to the department:

7 (1) a copy of a fire safety survey that is dated not
8 earlier than one year before the submission date indicating
9 approval by:

10 (A) the local fire authority in whose
11 jurisdiction the outpatient facility is located; or
12 (B) the nearest fire authority, if the outpatient
13 facility is located outside of the jurisdiction of a local fire
14 authority; and

15 (2) if the hospital is accredited by The [the] Joint
16 Commission [~~on Accreditation of Healthcare Organizations~~] or the
17 American Osteopathic Association, a copy of documentation from the
18 accrediting body showing that the outpatient facility is included
19 within the hospital's accreditation.

20 (e) Subsection (d) applies only if the federal Department of
21 Health and Human Services, Centers for Medicare and Medicaid
Services [~~Health Care Financing Administration~~], or Office of
22 Inspector General adopts final or interim final rules requiring
23 state licensure of outpatient facilities as a condition of the
24 determination of provider-based status for Medicare reimbursement
25 purposes.

27 SECTION 3.0572. Sections 241.025(a), (b), (d), and (e),

1 Health and Safety Code, are amended to read as follows:

2 (a) The department shall charge each hospital a [an annual]
3 license fee for an initial license or a license renewal.

4 (b) The executive commissioner [~~board~~] by rule shall adopt
5 the fees authorized by Subsection (a) in amounts as prescribed by
6 Section 12.0111 and according to a schedule under which the number
7 of beds in the hospital determines the amount of the fee. [~~The fee~~
8 ~~may not exceed \$15 a bed.~~] A minimum license fee may be
9 established. [~~The minimum fee may not exceed \$1,000.~~]

10 (d) All license fees collected shall be deposited in the
11 state treasury to the credit of the department to administer and
12 enforce this chapter. [~~These fees are hereby appropriated to the~~
13 ~~department.~~]

14 (e) Notwithstanding Subsection (d), to the extent that
15 money received from the fees collected under this chapter exceeds
16 the costs to the department to conduct the activity for which the
17 fee is imposed, the department may use the money to administer
18 Chapter 324 and similar laws that require the department to provide
19 information related to hospital care to the public. The executive
20 commissioner [~~department~~] may not consider the costs of
21 administering Chapter 324 or similar laws in adopting a fee imposed
22 under this section.

23 SECTION 3.0573. Sections 241.026(a) through (e), Health and
24 Safety Code, are amended to read as follows:

25 (a) The executive commissioner [~~board~~] shall adopt rules
26 and the department shall enforce the rules to further the purposes
27 of this chapter. The rules at a minimum shall address:

1 (1) minimum requirements for staffing by physicians
2 and nurses;

3 (2) hospital services relating to patient care;

4 (3) fire prevention, safety, and sanitation
5 requirements in hospitals;

6 (4) patient care and a patient bill of rights;

7 (5) compliance with other state and federal laws
8 affecting the health, safety, and rights of hospital patients; and

9 (6) compliance with nursing peer review under
10 Subchapter I, Chapter 301, and Chapter 303, Occupations Code, and
11 the rules of the Texas Board of Nursing relating to peer review.

12 (b) In adopting rules, the executive commissioner [board]
13 shall consider the conditions of participation for certification
14 under Title XVIII of the Social Security Act (42 U.S.C. Section 1395
15 et seq.) and the standards of The [~~the~~] Joint Commission [~~on~~
16 ~~Accreditation of Healthcare Organizations~~] and will attempt to
17 achieve consistency with those conditions and standards.

18 (c) The department [~~Upon the recommendation of the hospital~~
19 ~~licensing director and the council, the board~~] by order may waive or
20 modify the requirement of a particular provision of this chapter
21 [~~Act~~] or minimum standard adopted by department [board] rule under
22 this section to a particular general or special hospital if the
23 department [board] determines that the waiver or modification will
24 facilitate the creation or operation of the hospital and that the
25 waiver or modification is in the best interests of the individuals
26 served or to be served by the hospital.

27 (d) The executive commissioner [board] shall adopt rules

1 establishing procedures and criteria for the issuance of the waiver
2 or modification order. The criteria must include at a minimum a
3 statement of the appropriateness of the waiver or modification
4 against the best interests of the individuals served by the
5 hospital.

6 (e) If the department [board] orders a waiver or
7 modification of a provision or standard, the licensing record of
8 the hospital granted the waiver or modification shall contain
9 documentation to support the [board's] action. Department [The
10 board's] rules shall specify the type and specificity of the
11 supporting documentation that must be included.

12 SECTION 3.0574. Section 241.0265, Health and Safety Code, is
13 amended to read as follows:

14 Sec. 241.0265. STANDARDS FOR CARE FOR MENTAL HEALTH AND
15 CHEMICAL DEPENDENCY. (a) The care and treatment of a patient
16 receiving mental health services in a facility licensed by the
17 department under this chapter or Chapter 577 are governed by the
18 applicable department standards adopted [by the Texas Department of
19 Mental Health and Mental Retardation to the same extent as if the
20 standards adopted by that department were rules adopted by the
21 board] under this chapter or Chapter 577.

22 (b) The care and treatment of a patient receiving chemical
23 dependency treatment in a facility licensed by the department under
24 this chapter are governed by the same standards that govern the care
25 and treatment of a patient receiving treatment in a treatment
26 facility licensed under Chapter 464 [and that are adopted by the
27 Texas Commission on Alcohol and Drug Abuse], to the same extent as

1 if the standards [~~adopted by the commission~~] were rules adopted [~~by~~
2 ~~the board~~] under this chapter.

3 (c) The department shall enforce the standards provided by
4 Subsections (a) and (b). A violation of a standard is subject to
5 the same consequence as a violation of a rule adopted [~~by the board~~]
6 under this chapter or Chapter 577. The department is not required
7 to enforce a standard if the enforcement violates a federal law,
8 rule, or regulation.

9 SECTION 3.0575. Section [241.027](#)(a), Health and Safety Code,
10 is amended to read as follows:

11 (a) The executive commissioner [~~board~~] shall adopt rules to
12 govern the transfer of patients between hospitals that do not have a
13 transfer agreement and governing services not included in transfer
14 agreements.

15 SECTION 3.0576. Sections [241.051](#)(a) and (b), Health and
16 Safety Code, are amended to read as follows:

17 (a) The department may make any inspection, survey, or
18 investigation that it considers necessary. A representative of the
19 department may enter the premises of a hospital at any reasonable
20 time to make an inspection, a survey, or an investigation to assure
21 compliance with or prevent a violation of this chapter, the rules
22 adopted under this chapter, an order or special order of the
23 commissioner [~~of health~~], a special license provision, a court
24 order granting injunctive relief, or other enforcement procedures.
25 The department shall maintain the confidentiality of hospital
26 records as applicable under state or federal law.

27 (b) The department or a representative of the department is

1 entitled to access to all books, records, or other documents
2 maintained by or on behalf of the hospital to the extent necessary
3 to enforce this chapter, the rules adopted under this chapter, an
4 order or special order of the commissioner [~~of health~~], a special
5 license provision, a court order granting injunctive relief, or
6 other enforcement procedures.

7 SECTION 3.0577. Sections [241.053\(a\)](#) and (d), Health and
8 Safety Code, are amended to read as follows:

9 (a) The department, after providing notice and an
10 opportunity for a hearing to the applicant or license holder, may
11 deny, suspend, or revoke a hospital's license if the department
12 finds that the hospital:

13 (1) failed to comply with:
14 (A) a provision of this chapter;
15 (B) a rule adopted under this chapter;
16 (C) a special license condition;
17 (D) an order or emergency order by the
18 commissioner [~~of health~~]; or
19 (E) another enforcement procedure permitted
20 under this chapter;

21 (2) has a history of noncompliance with the rules
22 adopted under this chapter relating to patient health, safety, and
23 rights which reflects more than nominal noncompliance; or

24 (3) has aided, abetted, or permitted the commission of
25 an illegal act.

26 (d) Administrative hearings required under this section
27 shall be conducted under the department's [~~board's~~] formal hearing

1 rules and the contested case provisions of Chapter 2001, Government
2 Code.

3 SECTION 3.0578. Sections [241.0531](#)(a) and (c), Health and
4 Safety Code, are amended to read as follows:

5 (a) Following notice to the hospital and opportunity for
6 hearing, the commissioner [~~of health~~] or a person designated by the
7 commissioner may issue an emergency order, either mandatory or
8 prohibitory in nature, in relation to the operation of a hospital
9 licensed under this chapter if the commissioner or the
10 commissioner's designee determines that the hospital is violating
11 or threatening to violate this chapter, a rule adopted pursuant to
12 this chapter, a special license provision, injunctive relief issued
13 pursuant to Section [241.054](#), an order of the commissioner or the
14 commissioner's designee, or another enforcement procedure
15 permitted under this chapter and the provision, rule, license
16 provision, injunctive relief, order, or enforcement procedure
17 relates to the health or safety of the hospital's patients.

18 (c) The hearing shall not be governed by the contested case
19 provisions of Chapter 2001, Government Code, but shall instead be
20 held in accordance with the department's [~~board's~~] informal hearing
21 rules.

22 SECTION 3.0579. Section [241.054](#)(b), Health and Safety Code,
23 is amended to read as follows:

24 (b) After the notice and opportunity to comply, the
25 commissioner [~~of health~~] may request the attorney general or the
26 appropriate district or county attorney to institute and conduct a
27 suit for a violation of this chapter or a rule adopted under this

1 chapter.

2 SECTION 3.0580. Section 241.058, Health and Safety Code, is
3 amended to read as follows:

4 Sec. 241.058. MINOR VIOLATIONS. (a) This chapter does not
5 require the commissioner [~~of health~~] or a designee of the
6 commissioner to report a minor violation for prosecution or the
7 institution of any other enforcement proceeding authorized under
8 this chapter, if the commissioner or [~~a~~] designee [~~of the~~
~~commissioner~~] determines that prosecution or enforcement is not in
10 the best interests of the persons served or to be served by the
11 hospital.

12 (b) For the purpose of this section, a "minor violation"
13 means a violation of this chapter, the rules adopted under this
14 chapter, a special license provision, an order or emergency order
15 issued by the commissioner [~~of health~~] or the commissioner's
16 designee, or another enforcement procedure permitted under this
17 chapter by a hospital that does not constitute a threat to the
18 health, safety, and rights of the hospital's patients or other
19 persons.

20 SECTION 3.0581. Sections 241.059(a), (b), and (d) through
21 (n), Health and Safety Code, are amended to read as follows:

22 (a) The department [~~commissioner of health~~] may assess an
23 administrative penalty against a hospital that violates this
24 chapter, a rule adopted pursuant to this chapter, a special license
25 provision, an order or emergency order issued by the commissioner
26 or the commissioner's designee, or another enforcement procedure
27 permitted under this chapter. The department [~~commissioner~~] shall

1 assess an administrative penalty against a hospital that violates
2 Section 166.004.

3 (b) In determining the amount of the penalty, the department
4 [~~commissioner of health~~] shall consider:

5 (1) the hospital's previous violations;
6 (2) the seriousness of the violation;
7 (3) any threat to the health, safety, or rights of the
8 hospital's patients;

9 (4) the demonstrated good faith of the hospital; and
10 (5) such other matters as justice may require.

11 (d) When it is determined that a violation has occurred, the
12 department [~~commissioner of health shall issue a report that states~~
13 ~~the facts on which the determination is based and the~~
14 ~~commissioner's recommendation on the imposition of a penalty,~~
15 ~~including a recommendation on the amount of the penalty.~~

16 [(e) Within 14 days after the date the report is issued, the
17 ~~commissioner of health~~] shall give written notice of the violation
18 [~~report~~] to the person, delivered by certified mail. The notice
19 must include a brief summary of the alleged violation and a
20 statement of the amount of the recommended penalty and must inform
21 the person that the person has a right to a hearing on the
22 occurrence of the violation, the amount of the penalty, or both the
23 occurrence of the violation and the amount of the penalty.

24 (f) Within 20 days after the date the person receives the
25 notice, the person in writing may accept the determination and
26 recommended penalty of the department [~~commissioner of health~~] or
27 may make a written request for a hearing on the occurrence of the

1 violation, the amount of the penalty, or both the occurrence of the
2 violation and the amount of the penalty.

3 (g) If the person accepts the determination and recommended
4 penalty of the department [~~commissioner of health~~], the department
5 [~~commissioner~~] by order shall impose the recommended penalty.

6 (h) If the person requests a hearing or fails to respond
7 timely to the notice, the department shall refer the matter to the
8 State Office of Administrative Hearings and an administrative law
9 judge of that office shall hold the hearing. The department
10 [~~commissioner of health~~] shall [~~set a hearing and~~] give notice of
11 the hearing to the person. [~~The hearing shall be held by the~~
12 ~~department.~~] The administrative law judge [~~person~~] conducting the
13 hearing shall make findings of fact and conclusions of law and
14 promptly issue to the department [~~commissioner~~] a written proposal
15 for a decision about the occurrence of the violation and the amount
16 of the penalty. Based on the findings of fact, conclusions of law,
17 and proposal for a decision, the department [~~commissioner~~] by order
18 may find that a violation has occurred and impose a penalty or may
19 find that no violation occurred.

20 (i) The notice of the department's [~~commissioner of~~
21 ~~health's~~] order given to the person under Chapter 2001, Government
22 Code, must include a statement of the right of the person to
23 judicial review of the order.

24 (j) Within 30 days after the date the department's
25 [~~commissioner of health's~~] order is final as provided by Subchapter
26 F, Chapter 2001, Government Code, the person shall:

27 (1) pay the amount of the penalty;

1 (2) pay the amount of the penalty and file a petition
2 for judicial review contesting the occurrence of the violation, the
3 amount of the penalty, or both the occurrence of the violation and
4 the amount of the penalty; or

5 (3) without paying the amount of the penalty, file a
6 petition for judicial review contesting the occurrence of the
7 violation, the amount of the penalty, or both the occurrence of the
8 violation and the amount of the penalty.

9 (k) Within the 30-day period, a person who acts under
10 Subsection (j)(3) may:

11 (1) stay enforcement of the penalty by:

12 (A) paying the amount of the penalty to the court
13 for placement in an escrow account; or

14 (B) giving to the court a supersedeas bond that
15 is approved by the court for the amount of the penalty and that is
16 effective until all judicial review of the department's [~~board's~~]
17 order is final; or

18 (2) request the court to stay enforcement of the
19 penalty by:

20 (A) filing with the court a sworn affidavit of
21 the person stating that the person is financially unable to pay the
22 amount of the penalty and is financially unable to give the
23 supersedeas bond; and

24 (B) giving a copy of the affidavit to the
25 department [~~commissioner of health~~] by certified mail.

26 (1) When the department [~~commissioner of health~~] receives a
27 copy of an affidavit under Subsection (k)(2), the department [~~he~~]

1 may file with the court, within five days after the date the copy is
2 received, a contest to the affidavit. The court shall hold a
3 hearing on the facts alleged in the affidavit as soon as practicable
4 and shall stay the enforcement of the penalty on finding that the
5 alleged facts are true. The person who files an affidavit has the
6 burden of proving that the person is financially unable to pay the
7 amount of the penalty and to give a supersedeas bond.

8 (m) If the person does not pay the amount of the penalty and
9 the enforcement of the penalty is not stayed, the department
10 [~~commissioner of health~~] may refer the matter to the attorney
11 general for collection of the amount of the penalty.

12 (n) Judicial review of the order of the department
13 [~~commissioner of health~~]:

14 (1) is instituted by filing a petition as provided by
15 Subchapter G, Chapter 2001, Government Code; and
16 (2) is under the substantial evidence rule.

17 SECTION 3.0582. Sections **241.060**(a), (d), (e), (f), (g),
18 (h), (i), (j), (k), (l), (m), and (n), Health and Safety Code, are
19 amended to read as follows:

20 (a) The department [~~board~~] may impose an administrative
21 penalty against a person licensed or regulated under this chapter
22 who violates this chapter or a rule or order adopted under this
23 chapter relating to the provision of mental health, chemical
24 dependency, or rehabilitation services.

25 (d) If the department [~~commissioner~~] determines that a
26 violation has occurred, the department [~~commissioner may issue to~~
27 ~~the board a report that states the facts on which the determination~~

1 ~~is based and the commissioner's recommendation on the imposition of~~
2 ~~a penalty, including a recommendation on the amount of the penalty.~~

3 [(e) ~~Within 14 days after the date the report is issued, the~~
4 ~~commissioner~~] shall give written notice of the violation [~~report~~]
5 to the person. The notice may be given by certified mail. The
6 notice must include a brief summary of the alleged violation and a
7 statement of the amount of the recommended penalty and must inform
8 the person that the person has a right to a hearing on the
9 occurrence of the violation, the amount of the penalty, or both the
10 occurrence of the violation and the amount of the penalty.

11 (f) Within 20 days after the date the person receives the
12 notice, the person in writing may accept the determination and
13 recommended penalty of the department [~~commissioner~~] or may make a
14 written request for a hearing on the occurrence of the violation,
15 the amount of the penalty, or both the occurrence of the violation
16 and the amount of the penalty.

17 (g) If the person accepts the determination and recommended
18 penalty of the department [~~commissioner~~], the department [~~board~~] by
19 order shall [~~approve the determination and~~] impose the recommended
20 penalty.

21 (h) If the person requests a hearing or fails to respond
22 timely to the notice, the department [~~commissioner~~] shall refer the
23 matter to the State Office of Administrative Hearings and an
24 administrative law judge of that office shall hold the hearing. The
25 department shall [~~set a hearing and~~] give notice of the hearing to
26 the person. The administrative law judge shall make findings of
27 fact and conclusions of law and promptly issue to the department

1 [board] a written proposal for a decision about the occurrence of
2 the violation and the amount of a proposed penalty. Based on the
3 findings of fact, conclusions of law, and proposal for a decision,
4 the department [board] by order may find that a violation has
5 occurred and impose a penalty or may find that no violation
6 occurred.

7 (i) The notice of the department's [board's] order given to
8 the person under Chapter 2001, Government Code, must include a
9 statement of the right of the person to judicial review of the
10 order.

11 (j) Within 30 days after the date the department's [board's]
12 order is final as provided by Subchapter F, Chapter 2001,
13 Government Code, the person shall:

14 (1) pay the amount of the penalty;

15 (2) pay the amount of the penalty and file a petition
16 for judicial review contesting the occurrence of the violation, the
17 amount of the penalty, or both the occurrence of the violation and
18 the amount of the penalty; or

19 (3) without paying the amount of the penalty, file a
20 petition for judicial review contesting the occurrence of the
21 violation, the amount of the penalty, or both the occurrence of the
22 violation and the amount of the penalty.

23 (k) Within the 30-day period, a person who acts under
24 Subsection (j)(3) may:

25 (1) stay enforcement of the penalty by:

26 (A) paying the amount of the penalty to the court
27 for placement in an escrow account; or

1 (B) giving to the court a supersedeas bond that
2 is approved by the court for the amount of the penalty and that is
3 effective until all judicial review of the department's [~~board's~~]
4 order is final; or

5 (2) request the court to stay enforcement of the
6 penalty by:

7 (A) filing with the court a sworn affidavit of
8 the person stating that the person is financially unable to pay the
9 amount of the penalty and is financially unable to give the
10 supersedeas bond; and

11 (B) giving a copy of the affidavit to the
12 commissioner by certified mail.

13 (1) The department [~~commissioner~~] on receipt of a copy of an
14 affidavit under Subsection (k)(2) may file with the court within
15 five days after the date the copy is received a contest to the
16 affidavit. The court shall hold a hearing on the facts alleged in
17 the affidavit as soon as practicable and shall stay the enforcement
18 of the penalty on finding that the alleged facts are true. The
19 person who files an affidavit has the burden of proving that the
20 person is financially unable to pay the amount of the penalty and to
21 give a supersedeas bond.

22 (m) If the person does not pay the amount of the penalty and
23 the enforcement of the penalty is not stayed, the department
24 [~~commissioner~~] may refer the matter to the attorney general for
25 collection of the amount of the penalty.

26 (n) Judicial review of the department's order [~~of the~~ the
27 ~~board~~]:

1 (1) is instituted by filing a petition as provided by

2 Subchapter G, Chapter 2001, Government Code; and

3 (2) is under the substantial evidence rule.

4 SECTION 3.0583. Section [241.101](#)(i), Health and Safety Code,
5 is amended to read as follows:

6 (i) Graduate medical education may be used as a standard or
7 qualification for medical staff membership or privileges for a
8 physician, provided that equal recognition is given to training
9 programs accredited by the Accreditation Council for [on] Graduate
10 Medical Education and by the American Osteopathic Association.

11 SECTION 3.0584. Sections [241.104](#)(a) and (c), Health and
12 Safety Code, are amended to read as follows:

13 (a) The executive commissioner [~~board~~] by rule shall adopt
14 fees for hospital plan reviews according to a schedule based on the
15 estimated construction costs.

16 (c) The department shall charge a fee for field surveys of
17 construction plans reviewed under this section. The executive
18 commissioner [~~board~~] by rule shall adopt a fee schedule for the
19 surveys that provides a minimum fee of \$500 and a maximum fee of
20 \$1,000 for each survey conducted.

21 SECTION 3.0585. Sections [241.123](#)(a), (b), (d), (e), (f),
22 and (g), Health and Safety Code, are amended to read as follows:

23 (a) The executive commissioner [~~board~~] by rule shall adopt
24 standards for the provision of rehabilitation services by a
25 hospital to ensure the health and safety of a patient receiving the
26 services.

27 (b) The standards [~~adopted by the board~~] at a minimum shall

1 require a hospital that provides comprehensive medical
2 rehabilitation:

3 (1) to have a director of comprehensive medical
4 rehabilitation who is:

5 (A) a licensed physician;
6 (B) either board certified or eligible for board
7 certification in a medical specialty related to rehabilitation; and
8 (C) qualified by training and experience to serve
9 as medical director;

10 (2) to have medical supervision by a licensed
11 physician for 24 hours each day; and

12 (3) to provide appropriate therapy to each patient by
13 an interdisciplinary team consisting of licensed physicians,
14 rehabilitation nurses, and therapists as are appropriate for the
15 patient's needs.

16 (d) A hospital shall prepare for each patient receiving
17 inpatient rehabilitation services a written treatment plan
18 designed for that patient's needs for treatment and care. The
19 executive commissioner [board] by rule shall specify a time after
20 admission of a patient for inpatient rehabilitation services by
21 which a hospital must evaluate the patient for the patient's
22 initial treatment plan and by which a hospital must provide copies
23 of the plan after evaluation.

24 (e) A hospital shall prepare for each patient receiving
25 inpatient rehabilitation services a written continuing care plan
26 that addresses the patient's needs for care after discharge,
27 including recommendations for treatment and care and information

1 about the availability of resources for treatment or care. The
2 executive commissioner [board] by rule shall specify the time
3 before discharge by which the hospital must provide a copy of the
4 continuing care plan. Department [~~The board's~~] rules may allow a
5 facility to provide the continuing care plan by a specified time
6 after discharge if providing the plan before discharge is
7 impracticable.

8 (f) A hospital shall provide a copy of a treatment or
9 continuing care plan prepared under this section to the following
10 persons in the person's primary language, if practicable:

11 (1) the patient;
12 (2) a person designated by the patient; and
13 (3) as specified by department [board] rule, family
14 members or other persons with responsibility for or demonstrated
15 participation in the patient's care or treatment.

16 (g) Rules adopted by the executive commissioner [board]
17 under this subchapter may not conflict with a federal rule,
18 regulation, or standard.

19 SECTION 3.0586. Section 241.151(5), Health and Safety Code,
20 is amended to read as follows:

21 (5) "Legally authorized representative" means:
22 (A) a parent or legal guardian if the patient is a
23 minor;
24 (B) a legal guardian if the patient has been
25 adjudicated incapacitated to manage the patient's personal
26 affairs;
27 (C) an agent of the patient authorized under a

1 medical [durable] power of attorney [~~for health care~~];
2 (D) an attorney ad litem appointed for the
3 patient;
4 (E) a person authorized to consent to medical
5 treatment on behalf of the patient under Chapter 313;
6 (F) a guardian ad litem appointed for the
7 patient;
8 (G) a personal representative or heir of the
9 patient, as defined by Chapter 22, Estates [~~Section 3, Texas~~
10 ~~Probate~~] Code, if the patient is deceased;
11 (H) an attorney retained by the patient or by the
12 patient's legally authorized representative; or
13 (I) a person exercising a power granted to the
14 person in the person's capacity as an attorney-in-fact or agent of
15 the patient by a statutory durable power of attorney that is signed
16 by the patient as principal.

17 SECTION 3.0587. Section 241.183(c), Health and Safety Code,
18 as added by Chapter 217 (H.B. 15), Acts of the 83rd Legislature,
19 Regular Session, 2013, is amended to read as follows:

20 (c) The commission [~~Health and Human Services Commission~~]
21 shall study patient transfers that are not medically necessary but
22 would be cost-effective. Based on the study under this subsection,
23 if the executive commissioner determines that the transfers are
24 feasible and desirable, the executive commissioner may adopt rules
25 addressing those transfers.

26 SECTION 3.0588. Section 241.183, Health and Safety Code, as
27 added by Chapter 917 (H.B. 1376), Acts of the 83rd Legislature,

1 Regular Session, 2013, is amended to read as follows:

2 Sec. 241.183. POSTED NOTICE. Subject to Section [241.006](#),
3 the executive commissioner [~~department~~] shall adopt rules for a
4 notice to be posted in a conspicuous place in the facility described
5 by Section [241.181](#) that notifies prospective patients that the
6 facility is an emergency room and charges rates comparable to a
7 hospital emergency room.

8 SECTION 3.0589. Section [241.184](#), Health and Safety Code, as
9 added by Chapter 917 (H.B. 1376), Acts of the 83rd Legislature,
10 Regular Session, 2013, is amended to read as follows:

11 Sec. 241.184. ADMINISTRATIVE PENALTY. The department
12 [~~commissioner of health~~] may assess an administrative penalty under
13 Section [241.059](#) against a hospital that violates this subchapter.

14 SECTION 3.0590. The heading to Chapter 242, Health and
15 Safety Code, is amended to read as follows:

16 CHAPTER 242. CONVALESCENT AND NURSING FACILITIES [~~HOMES~~] AND
17 RELATED INSTITUTIONS

18 SECTION 3.0591. Sections [242.002](#)(1) and (2), Health and
19 Safety Code, are amended to read as follows:

20 (1) "Commission" means the Health and [~~Board~~ means
21 ~~the Texas Board of~~] Human Services Commission.

22 (2) "Commissioner" means the commissioner of aging and
23 disability [~~human~~] services.

24 SECTION 3.0592. Section [242.0021](#)(d), Health and Safety
25 Code, is amended to read as follows:

26 (d) The executive commissioner [~~department~~] may adopt rules
27 that define the ownership interests and other relationships that

1 qualify a person as a controlling person.

2 SECTION 3.0593. Section 242.003, Health and Safety Code, is
3 amended to read as follows:

4 Sec. 242.003. EXEMPTIONS. Except as otherwise provided,
5 this chapter does not apply to:

6 (1) a hotel or other similar place that furnishes only
7 food, lodging, or both, to its guests;

8 (2) a hospital;

9 (3) an establishment conducted by or for the adherents
10 of a well-recognized church or religious denomination for the
11 purpose of providing facilities for the care or treatment of the
12 sick who depend exclusively on prayer or spiritual means for
13 healing, without the use of any drug or material remedy, if the
14 establishment complies with safety, sanitary, and quarantine laws
15 and rules;

16 (4) an establishment that furnishes, in addition to
17 food, shelter, and laundry, only baths and massages;

18 (5) an institution operated by a person licensed by
19 the Texas Board of Chiropractic Examiners;

20 (6) a facility that:

21 (A) primarily engages in training, habilitation,
22 rehabilitation, or education of clients or residents;

23 (B) is operated under the jurisdiction of a state
24 or federal agency, including the commission, department,
25 Department of Assistive and Rehabilitative Services, [Department
26 of Aging and Disability Services,] Department of State Health
27 Services, [Health and Human Services Commission,] Texas Department

1 of Criminal Justice, and United States Department of Veterans
2 Affairs; and

3 (C) is certified through inspection or
4 evaluation as meeting the standards established by the state or
5 federal agency;

6 (7) a foster care type residential facility that
7 serves fewer than five persons and operates under rules adopted by
8 [~~the Texas Department of Human Services or~~] the executive
9 commissioner [~~of the Health and Human Services Commission, as~~
10 ~~applicable~~]; and

11 (8) a facility licensed under Chapter 252 or exempt
12 from licensure under Section 252.003.

13 SECTION 3.0594. Section 242.013, Health and Safety Code, is
14 amended to read as follows:

15 Sec. 242.013. PAPERWORK REDUCTION RULES. (a) The
16 executive commissioner [~~department~~] shall[+]

17 [~~(1)~~] adopt rules to reduce the amount of paperwork an
18 institution must complete and retain.

19 (a-1) The department shall[; and

20 [~~(2)~~] attempt to reduce the amount of paperwork to the
21 minimum amount required by state and federal law unless the
22 reduction would jeopardize resident safety.

23 (b) The department[, ~~the contracting agency,~~] and providers
24 shall work together to review rules and propose changes in
25 paperwork requirements so that additional time is available for
26 direct resident care.

27 SECTION 3.0595. Section 242.032(e), Health and Safety Code,

1 is amended to read as follows:

2 (e) In making the evaluation required by Subsection (d), the
3 department shall require the applicant or license holder to file a
4 sworn affidavit of a satisfactory compliance history and any other
5 information required by the department to substantiate a
6 satisfactory compliance history relating to each state or other
7 jurisdiction in which the applicant or license holder and any other
8 person described by Subsection (d) operated an institution at any
9 time before the date on which the application is made. The
10 executive commissioner [department] by rule shall determine what
11 constitutes a satisfactory compliance history. The department may
12 consider and evaluate the compliance history of the applicant and
13 any other person described by Subsection (d) for any period during
14 which the applicant or other person operated an institution in this
15 state or in another state or jurisdiction. The department may also
16 require the applicant or license holder to file information
17 relating to the history of the financial condition of the applicant
18 or license holder and any other person described by Subsection (d)
19 with respect to an institution operated in another state or
20 jurisdiction at any time before the date on which the application is
21 made.

22 SECTION 3.0596. Section 242.033(e), Health and Safety Code,
23 is amended to read as follows:

24 (e) The report required for license renewal under
25 Subsection (d)(3) must comply with department rules [~~adopted by the~~
26 ~~board~~] that specify the date of submission of the report, the
27 information it must contain, and its form.

1 SECTION 3.0597. Sections [242.0335\(a\)](#) and (c), Health and
2 Safety Code, are amended to read as follows:

3 (a) The department shall maintain, and keep current, a list
4 of license holders that operate an institution in this state and
5 that have excellent operating records according to the information
6 available to the department. The executive commissioner
7 [~~department~~] by rule shall establish specific criteria for the
8 department to designate [~~designating~~] a license holder as eligible
9 for the list.

10 (c) An applicant for a change of ownership license must meet
11 all applicable requirements that an applicant for renewal of a
12 license must meet under this subchapter, including under Section
13 [242.032\(d\)](#), and under rules [~~that the department has~~] adopted under
14 this subchapter. Any requirement relating to inspections or to an
15 accreditation review applies only to institutions operated by the
16 license holder at the time the application is made for the change of
17 ownership license.

18 SECTION 3.0598. Sections [242.0336\(b-2\)](#), (b-3), (b-4), and
19 (d-1), Health and Safety Code, are amended to read as follows:

20 (b-2) Notwithstanding Section [242.0335](#), the executive
21 commissioner [~~department~~] shall establish criteria under which the
22 department may waive the 30-day requirement or the notification
23 requirement of Subsection (b-1). The criteria may include the
24 occurrence of forcible entry and detainer, death, or divorce or
25 other events that affect the ownership of the institution by the
26 existing license holder.

27 (b-3) After receipt of an application or written

1 notification described by Subsection (b-1), the department may
2 place a hold on payments to the existing license holder in an amount
3 not to exceed the average of the monthly vendor payments paid to the
4 facility, as determined by the department. The department shall
5 release funds to the previous license holder not later than the
6 120th day after the date on which the final reporting requirements
7 are met and any resulting informal reviews or formal appeals are
8 resolved. The department may reduce the amount of funds released to
9 the previous license holder by the amount owed to the department or
10 the commission [~~Health and Human Services Commission~~] under the
11 previous license holder's Medicaid contract or license.

12 (b-4) The executive commissioner [~~of the Health and Human~~
13 ~~Services Commission~~] shall adopt rules for the department that
14 define a change of ownership. In adopting the rules, the executive
15 commissioner shall consider:

16 (1) the proportion of ownership interest that is being
17 transferred to another person;

18 (2) the addition or removal of a stockholder, partner,
19 owner, or other controlling person;

20 (3) the reorganization of the license holder into a
21 different type of business entity; and

22 (4) the death or incapacity of a stockholder, partner,
23 or owner.

24 (d-1) The executive commissioner [~~department~~] shall
25 establish criteria under which the department may substitute a desk
26 review of the facility's compliance with applicable requirements
27 [~~may be substituted~~] for the on-site inspection or survey under

1 Subsection (d).

2 SECTION 3.0599. Sections [242.034](#)(a), (d), and (h), Health
3 and Safety Code, are amended to read as follows:

4 (a) The executive commissioner [board] may establish by
5 rule license fees for institutions licensed by the department under
6 this chapter. The license fee may not exceed \$375 plus:

7 (1) \$15 for each unit of capacity or bed space for
8 which a license is sought; and

9 (2) a background examination fee imposed under
10 Subsection (d).

11 (d) The executive commissioner by rule [board] may
12 establish a background examination fee in an amount necessary to
13 defray the department's expenses in administering its duties under
14 Sections [242.032](#)(d) and (e).

15 (h) The license fees established under this chapter are an
16 allowable cost for reimbursement under the medical assistance
17 program administered by the commission [~~Texas Department of Human~~
18 ~~Services~~] under Chapter 32, Human Resources Code. Any fee
19 increases shall be reflected in reimbursement rates prospectively.

20 SECTION 3.0600. Section [242.035](#)(b), Health and Safety Code,
21 is amended to read as follows:

22 (b) Unless prohibited by another state or federal
23 requirement, the department shall allow a licensed institution to
24 operate a portion of the institution under the standards of a lower
25 licensing category. The executive commissioner [board] shall
26 establish procedures and standards to accommodate an institution's
27 operation under the lower category.

1 SECTION 3.0601. Section 242.036(a), Health and Safety Code,
2 is amended to read as follows:

3 (a) The executive commissioner [board] may adopt and[~~–~~]
4 publish[~~–~~] and the department may enforce minimum standards
5 relating to the grading of an institution[, ~~other than an~~
6 ~~institution that provides maternity care,~~] in order to recognize
7 those institutions that provide more than the minimum level of
8 services and personnel as established by the executive commissioner
9 [board].

10 SECTION 3.0602. Sections 242.037(a), (c), (d), (e), (f),
11 (h), and (i), Health and Safety Code, are amended to read as
12 follows:

13 (a) The executive commissioner [~~department~~] shall make and
14 the department shall enforce rules and minimum standards to
15 implement this chapter, including rules and minimum standards
16 relating to quality of life, quality of care, and residents'
17 rights.

18 (c) The rules and standards adopted by the executive
19 commissioner [~~department~~] may not be less stringent than the
20 Medicaid certification standards and regulations imposed under the
21 Omnibus Budget Reconciliation Act of 1987 (OBRA), Pub.L.
22 No. 100-203.

23 (d) To implement Sections 242.032(d) and (e), the executive
24 commissioner [~~department~~] by rule shall adopt minimum standards for
25 the background and qualifications of any person described by
26 Section 242.032(d). The department may not issue or renew a license
27 if a person described by Section 242.032 does not meet the minimum

1 standards adopted under this section.

2 (e) In addition to standards or rules required by other
3 provisions of this chapter, the executive commissioner [board]
4 shall adopt and[~~T~~] publish[~~T~~] and the department shall enforce
5 minimum standards relating to:

6 (1) the construction of an institution, including
7 plumbing, heating, lighting, ventilation, and other housing
8 conditions, to ensure the residents' health, safety, comfort, and
9 protection from fire hazard;

10 (2) the regulation of the number and qualification of
11 all personnel, including management and nursing personnel,
12 responsible for any part of the care given to the residents;

13 (3) requirements for in-service education of all
14 employees who have any contact with the residents;

15 (4) training on the care of persons with Alzheimer's
16 disease and related disorders for employees who work with those
17 persons;

18 (5) sanitary and related conditions in an institution
19 and its surroundings, including water supply, sewage disposal, food
20 handling, and general hygiene in order to ensure the residents'
21 health, safety, and comfort;

22 (6) the nutritional needs of each resident according
23 to good nutritional practice or the recommendations of the
24 physician attending the resident;

25 (7) equipment essential to the residents' health and
26 welfare;

27 (8) the use and administration of medication in

1 conformity with applicable law and rules;

2 (9) care and treatment of residents and any other
3 matter related to resident health, safety, and welfare;

4 (10) licensure of institutions; and

5 (11) implementation of this chapter.

6 (f) The executive commissioner [board] shall adopt and[~~and~~]
7 publish[~~and~~] and the department shall enforce minimum standards
8 requiring appropriate training in geriatric care for each
9 individual who provides services to geriatric residents in an
10 institution and who holds a license or certificate issued by an
11 agency of this state that authorizes the person to provide the
12 services. The minimum standards may require that each licensed or
13 certified individual complete an appropriate program of continuing
14 education or in-service training, as determined by department
15 [board] rule, on a schedule determined by department [board] rule.

16 (h) [The board shall adopt each rule adopted by the Texas
17 Board of Health under] Section 161.0051 applies [as part of the
18 rules and standards adopted under this chapter that apply] to
19 institutions serving residents who are elderly persons, and any
20 rules and standards adopted under that section are considered to be
21 rules and standards adopted under this chapter.

22 (i) The minimum standards adopted [by the board] under this
23 section must require that each institution, as part of an existing
24 training program, provide each registered nurse, licensed
25 vocational nurse, nurse aide, and nursing assistant who provides
26 nursing services in the institution at least one hour of training
27 each year in caring for people with dementia.

1 SECTION 3.0603. Section [242.038](#), Health and Safety Code, is
2 amended to read as follows:

3 Sec. 242.038. REASONABLE TIME TO COMPLY. The executive
4 commissioner [board] by rule shall give an institution that is in
5 operation when a rule or standard is adopted under this chapter a
6 reasonable time to comply with the rule or standard.

7 SECTION 3.0604. Sections [242.0385\(a\)](#) and (d), Health and
8 Safety Code, are amended to read as follows:

9 (a) The executive commissioner [~~department~~] by rule shall
10 adopt a procedure under which a person proposing to construct or
11 modify an institution may submit building plans to the department
12 for review for compliance with the department's architectural
13 requirements before beginning construction or modification. In
14 adopting the procedure, the executive commissioner [~~department~~]
15 shall set reasonable deadlines by which the department must
16 complete review of submitted plans.

17 (d) A fee collected under this section shall be deposited in
18 the general revenue fund [~~and may be appropriated only to the~~
19 ~~department to conduct reviews under this section~~].

20 SECTION 3.0605. Section [242.039](#), Health and Safety Code, is
21 amended to read as follows:

22 Sec. 242.039. FIRE SAFETY REQUIREMENTS. (a) The executive
23 commissioner [board] shall adopt rules necessary to specify the
24 edition of the Life Safety Code of the National Fire Protection
25 Association that will be used to establish the life safety
26 requirements for an institution licensed under this chapter.

27 (b) The executive commissioner [board] shall adopt the

1 edition of the Life Safety Code of the National Fire Protection
2 Association for fire safety as designated by federal law and
3 regulations for an institution or portion of an institution that is
4 constructed after September 1, 1993, and for an institution or
5 portion of an institution that was operating or approved for
6 construction on or before September 1, 1993.

7 (c) The executive commissioner [board] may not require more
8 stringent fire safety standards than those required by federal law
9 and regulation. The rules adopted under this section may not
10 prevent an institution licensed under this chapter from voluntarily
11 conforming to fire safety standards that are compatible with, equal
12 to, or more stringent than those adopted by the executive
13 commissioner [board].

14 (d) Licensed health care facilities in existence at the time
15 of the effective date of this subsection may have their existing use
16 or occupancy continued if such facilities comply with fire safety
17 standards and ordinances in existence at the time of the effective
18 date of this subsection.

19 (e) Notwithstanding any other provision of this section, a
20 municipality shall have the authority to enact additional and
21 higher fire safety standards applicable to new construction
22 beginning on or after the effective date of this subsection.

23 [(f)(1) ~~An advisory committee is created to propose rules~~
24 ~~for adoption by the department concerning the applicability of~~
25 ~~municipal ordinances and regulations to the remodeling and~~
26 ~~renovation of existing structures to be used as health care~~
27 ~~facilities licensed under this chapter.~~

1 [+2) The advisory committee shall be appointed by the
2 board and composed as follows:

3 [(A) two municipal fire marshals;

4 [(B) four individuals representing the nursing
5 home industry;

6 [(C) the commissioner of human services or a
7 designee;

8 [(D) one building official from a municipality
9 that has adopted the Uniform Building Code;

10 [(E) one building official from a municipality
11 that has adopted the Standard Building Code;

12 [(F) one architect licensed under state law;

13 [(G) one member of the Texas Board of Human
14 Services; and

15 [(H) one state Medicaid director or designee.

16 [(3) The advisory committee shall serve without
17 compensation or remuneration of any kind.]

18 (g) The executive commissioner [of the Health and Human
19 Services Commission] shall adopt rules to implement an expedited
20 inspection process that allows an applicant for a license or for a
21 renewal of a license to obtain a life safety code and physical plant
22 inspection not later than the 15th day after the date the request is
23 made. The department may charge a fee to recover the cost of the
24 expedited inspection. The rules must permit the department to
25 charge [set] different fee amounts based on the size and type of
26 institution.

27 SECTION 3.0606. Sections 242.040(a), (c), and (d), Health

1 and Safety Code, are amended to read as follows:

2 (a) The department shall establish a system for certifying
3 institutions that meet standards adopted by the executive
4 commissioner [board] concerning the specialized care and treatment
5 of persons with Alzheimer's disease and related disorders.

6 (c) The executive commissioner [board] by rule may adopt
7 standards for the specialized care and treatment of persons with
8 Alzheimer's disease and related disorders and provide procedures
9 for institutions applying for certification under this section.

10 The rules must provide for a three-year certification period.

11 (d) The executive commissioner by rule [board] may
12 establish and the department may collect [charge] fees for the
13 certification in an amount necessary to administer this section.

14 SECTION 3.0607. Section 242.042(a), Health and Safety Code,
15 is amended to read as follows:

16 (a) Each institution shall prominently and conspicuously
17 post for display in a public area of the institution that is readily
18 available to residents, employees, and visitors:

19 (1) the license issued under this chapter;

20 (2) a sign prescribed by the department that specifies
21 complaint procedures established under this chapter or rules
22 adopted under this chapter and that specifies how complaints may be
23 registered with the department;

24 (3) a notice in a form prescribed by the department
25 stating that licensing inspection reports and other related reports
26 which show deficiencies cited by the department are available at
27 the institution for public inspection and providing the

1 department's toll-free telephone number that may be used to obtain
2 information concerning the institution;

3 (4) a concise summary of the most recent inspection
4 report relating to the institution;

5 (5) notice that the department can provide summary
6 reports relating to the quality of care, recent investigations,
7 litigation, and other aspects of the operation of the institution;

8 (6) notice that the Texas Board of Nursing Facility
9 Administrators, if applicable, can provide information about the
10 nursing facility administrator;

11 (7) any notice or written statement required to be
12 posted under Section [242.072\(c\)](#);

13 (8) notice that informational materials relating to
14 the compliance history of the institution are available for
15 inspection at a location in the institution specified by the sign;

16 (9) notice that employees, other staff, residents,
17 volunteers, and family members and guardians of residents are
18 protected from discrimination or retaliation as provided by
19 Sections [260A.014](#) and [260A.015](#); and

20 (10) a sign required to be posted under Section
21 [260A.006\(a\)](#).

22 SECTION 3.0608. Sections [242.043\(a\)](#) and (h), Health and
23 Safety Code, are amended to read as follows:

24 (a) The department or the department's representative may
25 make any inspection, survey, or investigation that it considers
26 necessary and may enter the premises of an institution at
27 reasonable times to make an inspection, survey, or investigation in

1 accordance with department [board] rules.

2 (h) The executive commissioner [department] shall establish
3 proper procedures to ensure that copies of all forms and reports
4 under this section are made available to consumers, service
5 recipients, and the relatives of service recipients as the
6 executive commissioner [department] considers proper.

7 SECTION 3.0609. Section 242.044(b), Health and Safety Code,
8 is amended to read as follows:

9 (b) For at least two unannounced inspections each licensing
10 period of an institution [~~other than one that provides maternity~~
11 ~~care~~], the department shall invite at least one person as a citizen
12 advocate from:

13 (1) the AARP [~~American Association of Retired~~
14 ~~Persons~~];

15 (2) the Texas Senior Citizen Association;

16 (3) [~~the Texas Retired Federal Employees,~~

17 [~~(4)~~] the department's Certified Long-term [~~Long Term~~]
18 Care Ombudsman; or

19 (4) [~~(5)~~] another statewide organization for the
20 elderly.

21 SECTION 3.0610. Section 242.045(b), Health and Safety Code,
22 is amended to read as follows:

23 (b) In this section, "unauthorized person" does not
24 include:

25 (1) the department;

26 (2) the office of the attorney general;

27 (3) a statewide organization for the elderly,

1 including the AARP and [~~American Association of Retired Persons,~~
2 the Texas Senior Citizen Association[~~, and the Texas Retired
3 Federal Employees~~];

4 (4) an ombudsman or representative of the department
5 [~~Texas Department on Aging~~];

6 (5) a representative of an agency or organization when
7 a Medicare or Medicaid survey is made concurrently with a licensing
8 inspection; or

9 (6) any other person or entity authorized by law to
10 make an inspection or to accompany an inspector.

11 SECTION 3.0611. Section 242.046(a), Health and Safety Code,
12 is amended to read as follows:

13 (a) The department shall hold an open hearing in a licensed
14 institution[~~, other than an institution that provides maternity
15 care,~~] if the department has taken a punitive action against the
16 institution in the preceding 12 months or if the department
17 receives a complaint from an ombudsman, advocate, resident, or
18 relative of a resident relating to a serious or potentially serious
19 problem in the institution and the department has reasonable cause
20 to believe the complaint is valid. The department is not required
21 to hold more than one open meeting in a particular institution in
22 each year.

23 SECTION 3.0612. Sections 242.047(a), (b), (c), and (e),
24 Health and Safety Code, are amended to read as follows:

25 (a) The department shall accept an annual accreditation
26 review from The [~~the~~] Joint Commission [~~on Accreditation of Health
27 Organizations~~] for a nursing facility [~~home~~] instead of an

1 inspection for renewal of a license under Section 242.033 and in
2 satisfaction of the requirements for certification [by the
3 ~~department~~] for participation in the medical assistance program
4 under Chapter 32, Human Resources Code, and the federal Medicare
5 program, but only if:

6 (1) the nursing facility [home] is accredited by The
7 Joint Commission [~~the commission~~] under The Joint Commission's [~~the~~
8 ~~commission's~~] long-term care standards;

9 (2) The Joint Commission [~~the commission~~] maintains an
10 annual inspection or review program [~~that,~~] for each nursing
11 facility that the department determines [home,] meets the
12 [~~department's~~] applicable minimum standards [~~as confirmed by the~~
13 ~~board~~];

14 (3) The Joint Commission [~~the commission~~] conducts an
15 annual on-site inspection or review of the facility [home];

16 (4) the nursing facility [home] submits to the
17 department a copy of its annual accreditation review from The Joint
18 Commission [~~the commission~~] in addition to the application, fee,
19 and any report required for renewal of a license or for
20 certification, as applicable; and

21 (5) the department has:

22 (A) determined whether a waiver or authorization
23 from a federal agency is necessary under federal law, including for
24 federal funding purposes, before the department accepts an annual
25 accreditation review from The Joint Commission [~~the joint~~
26 ~~commission~~]:

27 (i) instead of an inspection for license

1 renewal purposes;

2 (ii) as satisfying the requirements for
3 certification [by the department] for participation in the medical
4 assistance program; or

10 (b) The department shall coordinate its licensing and
11 certification activities with The Joint Commission [~~the~~
12 ~~commission~~].

13 (c) The department and The Joint Commission [~~the~~
14 ~~commission~~] shall sign a memorandum of agreement to implement this
15 section. The memorandum must provide that if all parties to the
16 memorandum do not agree in the development, interpretation, and
17 implementation of the memorandum, any area of dispute is to be
18 resolved by the executive commissioner [~~board~~].

19 (e) This section does not require a nursing facility [~~home~~]
20 to obtain accreditation from The Joint Commission [~~the commission~~].

21 SECTION 3.0613. Sections 242.049(a), (b), (c), (e), (f),
22 (g), and (i), Health and Safety Code, are amended to read as
23 follows:

24 (a) The department may evaluate data for quality of care in
25 nursing facilities [homes].

26 (b) The department may gather data on a form or forms to be
27 provided by the department to improve the quality of care in nursing

1 facilities [homes] and may provide information to nursing
2 facilities [homes] which will allow them to improve and maintain
3 the quality of care which they provide. Data referred to in this
4 section can include information compiled from documents otherwise
5 available under Chapter 552, Government Code, including but not
6 limited to individual survey reports and investigation reports.

7 (c) All licensed nursing facilities [homes] in the state may
8 be required to submit information designated by the department as
9 necessary to improve the quality of care in nursing facilities
10 [homes].

11 (e) The information and reports, compilations, and analyses
12 developed by the department for quality improvement shall be used
13 only for the evaluation and improvement of quality care in nursing
14 facilities [homes]. No department proceeding or record shall be
15 subject to discovery, subpoena, or other means of legal compulsion
16 for release to any person or entity, and shall not be admissible in
17 any civil, administrative, or criminal proceeding. This privilege
18 shall be recognized by Rules 501 and 502 of the Texas Rules of
19 Evidence.

20 (f) Notwithstanding Subsection (d), the department shall
21 transmit reports, compilations, and analyses of the information
22 provided by a nursing facility [home] to that nursing facility
23 [home], and such disclosure shall not be violative of this section
24 nor shall it constitute a waiver of confidentiality.

25 (g) A member, agent, or employee of the department may not
26 disclose or be required to disclose a communication made to the
27 department or a record or proceeding of the department required to

1 be submitted under this section except to the nursing facility
2 [home] in question or its agents or employees.

3 (i) Any information, reports, and other documents produced
4 which are subject to any means of legal compulsion or which are
5 considered to be public information under Chapter 260A [~~Subchapter~~
6 ~~E~~] and the rules adopted under that chapter [~~subchapter~~] shall
7 continue to be subject to legal compulsion and be treated as public
8 information under Chapter 260A [~~Subchapter E after the effective~~
9 ~~date of this Act~~], even though such information, reports, and other
10 documents may be used in the collection, compilation, and analysis
11 described in Subsections (b) and (d).

12 SECTION 3.0614. Section 242.052, Health and Safety Code, is
13 amended to read as follows:

14 Sec. 242.052. DRUG TESTING OF EMPLOYEES. (a) An
15 institution may establish a drug testing policy for employees of
16 the institution. An institution that establishes a drug testing
17 policy under this subsection may adopt the model drug testing
18 policy adopted by the executive commissioner [~~board~~] or may use
19 another drug testing policy.

20 (b) The executive commissioner [~~board~~] by rule shall adopt a
21 model drug testing policy for use by institutions. The model drug
22 testing policy must be designed to ensure the safety of residents
23 through appropriate drug testing and to protect the rights of
24 employees. The model drug testing policy must:

25 (1) require at least one scheduled drug test each year
26 for each employee of an institution that has direct contact with a
27 resident in the institution; and

1 (2) authorize random, unannounced drug testing for
2 employees described by Subdivision (1).

3 SECTION 3.0615. Section 242.062(b), Health and Safety Code,
4 is amended to read as follows:

5 (b) The executive commissioner [board] by rule shall
6 provide for the placement of residents during the institution's
7 suspension or closing to ensure their health and safety.

8 SECTION 3.0616. Sections 242.065(e) and (i), Health and
9 Safety Code, are amended to read as follows:

10 (e) If a person who is liable under this section fails to pay
11 any amount the person is obligated to pay under this section, the
12 state may seek satisfaction from any owner, other controlling
13 person, or affiliate of the person found liable. The owner, other
14 controlling person, or affiliate may be found liable in the same
15 suit or in another suit on a showing by the state that the amount to
16 be paid has not been paid or otherwise legally discharged. The
17 executive commissioner [department] by rule may establish a method
18 for satisfying an obligation imposed under this section from an
19 insurance policy, letter of credit, or other contingency fund.

20 (i) In this section, "affiliate" means:

21 (1) with respect to a partnership other than a limited
22 partnership, each partner of the partnership;

23 (2) with respect to a corporation:

24 (A) an officer;

25 (B) a director;

26 (C) a stockholder who owns, holds, or has the
27 power to vote at least 10 percent of any class of securities issued

1 by the corporation, regardless of whether the power is of record or
2 beneficial; and

3 (D) a controlling individual;

(3) with respect to an individual:

5 (A) each partnership and each partner in the
6 partnership in which the individual or any other affiliate of the
7 individual is a partner; and

(B) each corporation or other business entity in which the individual or another affiliate of the individual is:

10 (i) an officer;

(ii) a director;

12 (iii) a stockholder who owns, holds, or has
13 the power to vote at least 10 percent of any class of securities
14 issued by the corporation, regardless of whether the power is of
15 record or beneficial; and

(iv) a controlling individual;

17 (4) with respect to a limited partnership:

18 (A) a general partner; and

19 (B) a limited partner who is a controlling
20 individual;

21 (5) with respect to a limited liability company:

22 (A) an owner who is a manager as described by the
23 Texas Limited Liability Company Law, as described by Section
24 1.008(e), Business Organizations Code [Act (Article 1528n,
25 Vernon's Texas Civil Statutes]); and

26 (B) each owner who is a controlling individual;

27 and

1 (6) with respect to any other business entity, a
2 controlling individual.

3 SECTION 3.0617. Section 242.066(d), Health and Safety Code,
4 is amended to read as follows:

5 (d) The executive commissioner [board] shall establish
6 gradations of penalties in accordance with the relative seriousness
7 of the violation.

8 SECTION 3.0618. Sections 242.067(g) and (h), Health and
9 Safety Code, are amended to read as follows:

10 (g) If the person charged with the violation consents to the
11 administrative penalty recommended by the department, does not
12 timely respond to a notice sent under Subsection (c) or (e), or
13 fails to correct the violation to the department's satisfaction,
14 the department [~~commissioner or the commissioner's designee~~] shall
15 assess the recommended administrative penalty [~~recommended by the~~
16 ~~department~~].

17 (h) If the department [~~commissioner or the commissioner's~~
18 ~~designee~~] assesses the recommended penalty, the department shall
19 give written notice to the person charged of the decision and the
20 person shall pay the penalty.

21 SECTION 3.0619. Section 242.068(a), Health and Safety Code,
22 is amended to read as follows:

23 (a) An administrative law judge of the State Office of
24 Administrative Hearings shall order a hearing and the department
25 shall give notice of the hearing if a person charged under Section
26 242.067(c) requests a hearing.

27 SECTION 3.0620. Sections 242.069(a), (b), (e), (f), and

1 (g), Health and Safety Code, are amended to read as follows:

2 (a) The department [~~commissioner~~] shall give notice of the
3 decision taken under Section 242.068(d) to the person charged. If
4 the department [~~commissioner~~] finds that a violation has occurred
5 and has assessed an administrative penalty, the department
6 [~~commissioner~~] shall give written notice to the person charged of:

7 (1) the findings;

8 (2) the amount of the penalty;

9 (3) the rate of interest payable with respect to the
10 penalty and the date on which interest begins to accrue;

11 (4) whether payment of the penalty or other action
12 under Section 242.071 is required; and

13 (5) the person's right to judicial review of the order.

14 (b) Not later than the 30th day after the date on which the
15 department's [~~commissioner's~~] order is final, the person charged
16 with the penalty shall:

17 (1) pay the full amount of the penalty; or

18 (2) file a petition for judicial review contesting the
19 occurrence of the violation, the amount of the penalty, the failure
20 to correct the violation to the department's satisfaction, or all
21 of the above.

22 (e) If a penalty is reduced or not assessed, the department
23 [~~commissioner~~] shall:

24 (1) remit to the person charged the appropriate amount
25 of any penalty payment plus accrued interest; or

26 (2) execute a release of the supersedeas bond if one
27 has been posted.

1 (f) Accrued interest on amounts remitted by the department
2 [commissioner] under Subsection (e)(1) shall be paid:

3 (1) at a rate equal to the rate charged on loans to
4 depository institutions by the New York Federal Reserve Bank; and

5 (2) for the period beginning on the date the penalty is
6 paid under Subsection (b) and ending on the date the penalty is
7 remitted.

8 (g) Interest under Subsection (d) shall be paid:

9 (1) at a rate equal to the rate charged on loans to
10 depository institutions by the New York Federal Reserve Bank; and

11 (2) for the period beginning on the date the notice of
12 the department's [commissioner's] order is received by the person
13 and ending on the date the penalty is paid.

14 SECTION 3.0621. Sections 242.071(a) and (i), Health and
15 Safety Code, are amended to read as follows:

16 (a) In lieu of demanding payment of an administrative
17 penalty assessed under Section 242.066, the department
18 [commissioner] may, in accordance with this section, allow the
19 person to use, under the supervision of the department, any portion
20 of the penalty to ameliorate the violation or to improve services,
21 other than administrative services, in the institution affected by
22 the violation.

23 (i) The department shall approve or deny an amelioration
24 plan not later than the 45th day after the date the department
25 receives the plan. On approval of a person's plan, [the department
26 ~~shall deny~~] a pending request for a hearing submitted by the person
27 under Section 242.067(d) shall be denied.

1 SECTION 3.0622. Section 242.072(a), Health and Safety Code,
2 is amended to read as follows:

3 (a) If the department [commissioner] finds that an
4 institution has committed an act for which a civil penalty may be
5 imposed under Section 242.065, the department [commissioner] may,
6 as appropriate under the circumstances, order the institution to
7 immediately suspend admissions.

8 SECTION 3.0623. Section 242.074(d), Health and Safety Code,
9 is amended to read as follows:

10 (d) The executive commissioner [department] shall adopt
11 rules to implement this section. The rules shall include the
12 conditions that constitute a significant change in an institution's
13 financial condition that are required to be reported under
14 Subsection (a).

15 SECTION 3.0624. Section 242.095(b), Health and Safety Code,
16 is amended to read as follows:

17 (b) The trustee may petition the court to order the release
18 to the trustee of any payment owed the trustee for care and services
19 provided to the residents if the payment has been withheld,
20 including a payment withheld by the commission [~~Texas Department of~~
21 ~~Human Services~~] at the recommendation of the department.

22 SECTION 3.0625. Section 242.096(d), Health and Safety Code,
23 is amended to read as follows:

24 (d) The department shall disburse money from the nursing and
25 convalescent home trust fund as ordered by the court in accordance
26 with department [board] rules.

27 SECTION 3.0626. Sections 242.0965(d) and (e), Health and

1 Safety Code, are amended to read as follows:

2 (d) The department shall disburse money from the assisted
3 living facility trust fund as ordered by the court in accordance
4 with department [board] rules.

5 (e) Any unencumbered amount in the assisted living facility
6 trust fund in excess of \$500,000 at the end of each fiscal year
7 shall be transferred to the credit of the general revenue fund [~~and~~
8 ~~may be appropriated only to the department for its use in~~
9 ~~administering and enforcing Chapter 247~~].

10 SECTION 3.0627. Sections 242.097(a) and (c), Health and
11 Safety Code, are amended to read as follows:

12 (a) In addition to the license fee provided by Section
13 242.034, the executive commissioner by rule [~~department~~] shall
14 adopt an annual fee to be [~~charged and~~] collected by the department
15 if the amount of the nursing and convalescent home trust fund is
16 less than \$10,000,000. The fee shall be deposited to the credit of
17 the nursing and convalescent home trust fund created by this
18 subchapter.

19 (c) The executive commissioner [~~department~~] shall set the
20 fee for each nursing and convalescent home at \$1 for each licensed
21 unit of capacity or bed space in that home or in an amount necessary
22 to provide not more than \$10,000,000 in the fund. The total fees
23 assessed in a year may not exceed \$20 for each licensed unit of
24 capacity or bed space in a home.

25 SECTION 3.0628. Sections 242.0975(a) and (c), Health and
26 Safety Code, are amended to read as follows:

27 (a) In addition to the license fee provided by Section

1 247.024, the executive commissioner by rule [department] shall
2 adopt an annual fee to be [charged and] collected by the department
3 if the amount of the assisted living facility trust fund is less
4 than \$500,000. The fee shall be deposited to the credit of the
5 assisted living facility trust fund created by this subchapter.

6 (c) The executive commissioner [department] shall set the
7 fee on the basis of the number of beds in assisted living facilities
8 required to pay the fee and in an amount necessary to provide not
9 more than \$500,000 in the assisted living facility trust fund.

10 SECTION 3.0629. Section 242.098(d), Health and Safety Code,
11 is amended to read as follows:

12 (d) The amount that remains unreimbursed on the expiration
13 of one year after the date on which the funds were received is
14 delinquent and the department [~~Texas Department of Human Services~~]
15 may determine that the home is ineligible for a Medicaid provider
16 contract.

17 SECTION 3.0630. Section 242.156(b), Health and Safety Code,
18 is amended to read as follows:

19 (b) The executive commissioner [department] shall specify
20 the details of the examination.

21 SECTION 3.0631. Section 242.158, Health and Safety Code, is
22 amended to read as follows:

23 Sec. 242.158. IDENTIFICATION OF CERTAIN NURSING FACILITY
24 [~~HOME~~] RESIDENTS REQUIRING MENTAL HEALTH OR INTELLECTUAL
25 DISABILITY [~~MENTAL RETARDATION~~] SERVICES. (a) Each resident of a
26 nursing facility [~~home~~] who is considering making a transition to a
27 community-based care setting shall be identified to determine the

1 presence of a mental illness or intellectual disability [~~mental~~
2 ~~retardation~~], regardless of whether the resident is receiving
3 treatment or services for a mental illness or intellectual
4 disability [~~mental retardation~~].

5 (b) In identifying residents having a mental illness or
6 intellectual disability [~~mental retardation~~], the department shall
7 use an identification process that is at least as effective as the
8 mental health and intellectual disability [~~mental retardation~~]
9 identification process established by federal law. The results of
10 the identification process may not be used to prevent a resident
11 from remaining in the nursing facility [~~home~~] unless the nursing
12 facility [~~home~~] is unable to provide adequate care for the
13 resident.

14 (c) The department shall compile [~~and provide to the Texas~~
15 ~~Department of Mental Health and Mental Retardation~~] information
16 regarding each resident identified as having a mental illness or
17 intellectual disability [~~mental retardation~~] before the resident
18 makes a transition from the nursing facility [~~home~~] to a
19 community-based care setting. The department shall provide to the
20 Department of State Health Services information regarding each
21 resident identified as having a mental illness.

22 (d) The department and the [~~Texas~~] Department of State
23 Health Services [~~Mental Health and Mental Retardation~~] shall use
24 the information compiled and provided under Subsection (c) solely
25 for the purposes of:

26 (1) determining the need for and funding levels of
27 mental health and intellectual disability [~~mental retardation~~]

1 services for residents making a transition from a nursing facility
2 [home] to a community-based care setting;

3 (2) providing mental health or intellectual
4 disability [~~mental retardation~~] services to an identified resident
5 after the resident makes that transition; and

6 (3) referring an identified resident to a local mental
7 health or local intellectual and developmental disability [~~mental~~
8 ~~retardation~~] authority or private provider for additional mental
9 health or intellectual disability [~~mental retardation~~] services.

10 (e) This section does not authorize the department to decide
11 for a resident of a nursing facility [home] that the resident will
12 make a transition from the nursing facility [home] to a
13 community-based care setting.

14 SECTION 3.0632. Section 242.181(1), Health and Safety Code,
15 is amended to read as follows:

16 (1) "Person with a disability [~~Handicapped person~~]"
17 means a person whose physical or mental functioning is impaired to
18 the extent that the person needs medical attention, counseling,
19 physical therapy, therapeutic or corrective equipment, or another
20 person's attendance and supervision.

21 SECTION 3.0633. Section 242.182, Health and Safety Code, is
22 amended to read as follows:

23 Sec. 242.182. RESPITE CARE. (a) An institution licensed
24 under this chapter may provide respite care for an elderly person or
25 a [~~handicapped~~] person with a disability according to a plan of
26 care.

27 (b) The executive commissioner [~~board~~] may adopt rules for

1 the regulation of respite care provided by an institution licensed
2 under this chapter.

3 SECTION 3.0634. Section 242.185, Health and Safety Code, is
4 amended to read as follows:

5 Sec. 242.185. INSPECTIONS. The department, at the time of
6 an ordinary licensing inspection or at other times determined
7 necessary by the department, shall inspect an institution's records
8 of respite care services, physical accommodations available for
9 respite care, and the plan of care records to ensure that the
10 respite care services comply with the licensing standards of this
11 chapter and with any rules the executive commissioner [board] may
12 adopt to regulate respite care services.

13 SECTION 3.0635. Section 242.204, Health and Safety Code, is
14 amended to read as follows:

15 Sec. 242.204. RULES. The executive commissioner [board]
16 shall adopt rules governing:

17 (1) the content of the disclosure statement required
18 by this subchapter, consistent with the information categories
19 required by Section 242.202(d); and

20 (2) the amount of an administrative penalty to be
21 assessed for a violation of this subchapter.

22 SECTION 3.0636. Sections 242.221(c) and (e), Health and
23 Safety Code, are amended to read as follows:

24 (c) The department and the commission [Health and Human
25 Services Commission] shall work together to apply for all available
26 federal funds to help pay for the automated system.

27 (e) The department shall charge a fee to nursing facilities

1 that do not receive their Medicaid reimbursements electronically.
2 The executive commissioner by rule [department] shall set the fee
3 in an amount necessary to cover the costs of manually processing and
4 sending the reimbursements.

5 SECTION 3.0637. Section 242.226, Health and Safety Code, is
6 amended to read as follows:

7 Sec. 242.226. RULES. The executive commissioner
8 [department] shall adopt rules and make policy changes as necessary
9 to improve the efficiency of the reimbursement process and to
10 maximize the automated reimbursement system's capabilities.

11 SECTION 3.0638. Section 242.251, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 242.251. SCOPE OF SUBCHAPTER. This subchapter applies
14 to any dispute between an institution licensed under this chapter
15 and the department relating to:

16 (1) renewal of a license under Section 242.033;
17 (2) suspension or revocation of a license under
18 Section 242.061;

19 (3) assessment of a civil penalty under Section
20 242.065;

21 (4) assessment of a monetary penalty under Section
22 242.066; or

23 (5) assessment of a penalty as described by Section
24 32.021(n) [32.021(k)], Human Resources Code.

25 SECTION 3.0639. Section 242.264(a), Health and Safety Code,
26 is amended to read as follows:

27 (a) The arbitrator may enter any order that may be entered

1 by the department, executive commissioner [board], commissioner,
2 or court under this chapter in relation to a dispute described by
3 Section 242.251.

4 SECTION 3.0640. Section 242.302, Health and Safety Code, as
5 added by Section 1.01, Chapter 1280 (S.B. 84), Acts of the 75th
6 Legislature, Regular Session, 1997, is amended to read as follows:

7 Sec. 242.302. POWERS AND DUTIES OF DEPARTMENT AND EXECUTIVE
8 COMMISSIONER. (a) The executive commissioner [board] may adopt
9 rules consistent with this subchapter. The executive commissioner
10 shall adopt and publish a code of ethics for nursing facility
11 administrators.

12 (b) The department shall:

13 (1) ~~[adopt and publish a code of ethics for nursing~~
14 ~~facility administrators;~~

15 ~~[(2) establish the qualifications of applicants for~~
16 ~~licenses and the renewal of licenses issued under this subchapter,~~

17 [~~(3)~~] spend funds necessary for the proper
18 administration of the department's assigned duties under this
19 subchapter; and

20 (2) periodically assess the continuing education
21 needs of license holders to determine whether specific course
22 content should be required [~~(4) establish reasonable and~~
23 necessary fees for the administration and implementation of this
24 subchapter; and

25 ~~[(5) establish a minimum number of hours of continuing~~
26 ~~education required to renew a license issued under this subchapter~~
27 ~~and periodically assess the continuing education needs of license~~

1 ~~holders to determine whether specific course content should be~~
2 ~~required~~].

3 (c) The department is the licensing agency for the healing
4 arts, as provided by 42 U.S.C. Section 1396g.

5 (d) The executive commissioner shall establish:

6 (1) the qualifications of applicants for licenses and
7 the renewal of licenses issued under this subchapter;

8 (2) reasonable and necessary fees for the
9 administration and implementation of this subchapter; and

10 (3) a minimum number of hours of continuing education
11 required to renew a license issued under this subchapter.

12 SECTION 3.0641. Section 242.303(d), Health and Safety Code,
13 as added by Section 1.01, Chapter 1280 (S.B. 84), Acts of the 75th
14 Legislature, Regular Session, 1997, is amended to read as follows:

15 (d) The committee shall advise the department [~~board~~] on the
16 licensing of nursing facility administrators, including the
17 content of applications for licensure and of the examination
18 administered to license applicants under Section 242.306. The
19 committee shall review and recommend rules and minimum standards of
20 conduct for the practice of nursing facility administration. The
21 committee shall review all complaints against administrators and
22 make recommendations to the department regarding disciplinary
23 actions. Failure of the committee to review complaints and make
24 recommendations in a timely manner shall not prevent the department
25 from taking disciplinary action.

26 SECTION 3.0642. Section 242.304(a), Health and Safety Code,
27 as added by Section 1.01, Chapter 1280 (S.B. 84), Acts of the 75th

1 Legislature, Regular Session, 1997, is amended to read as follows:

2 (a) The executive commissioner, in consultation with the
3 department, [board] by rule shall set reasonable and necessary fees
4 in amounts necessary to cover the cost of administering this
5 subchapter. The executive commissioner [board] by rule may set
6 different licensing fees for different categories of licenses.

7 SECTION 3.0643. Sections 242.306(b) and (c), Health and
8 Safety Code, as added by Section 1.01, Chapter 1280 (S.B. 84), Acts
9 of the 75th Legislature, Regular Session, 1997, are amended to read
10 as follows:

11 (b) The department [board] shall prescribe the form of the
12 application and the executive commissioner may by rule establish
13 dates by which applications and fees must be received.

14 (c) An applicant for a nursing facility administrator's
15 license must take a licensing examination under this subchapter.
16 To qualify for the licensing examination, the applicant must have
17 satisfactorily completed a course of instruction and training
18 prescribed by the executive commissioner [board] that is conducted
19 by or in cooperation with an accredited postsecondary educational
20 institution and that is designed and administered to provide
21 sufficient knowledge of:

22 (1) the needs served by nursing facilities;
23 (2) the laws governing the operation of nursing
24 facilities and the protection of the interests of facility
25 residents; and
26 (3) the elements of nursing facility administration.

27 SECTION 3.0644. Section 242.307(d), Health and Safety Code,

1 as added by Section 1.01, Chapter 1280 (S.B. 84), Acts of the 75th
2 Legislature, Regular Session, 1997, is amended to read as follows:

3 (d) The executive commissioner [board] may establish by
4 rule additional educational requirements to be met by an applicant
5 who fails the examination three times.

6 SECTION 3.0645. Sections 242.308(c), (d), and (e), Health
7 and Safety Code, as added by Section 1.01, Chapter 1280 (S.B. 84),
8 Acts of the 75th Legislature, Regular Session, 1997, are amended to
9 read as follows:

10 (c) A license is valid for two years. The executive
11 commissioner [board] by rule may adopt a system under which
12 licenses expire on various dates during the two-year period. For
13 the year in which a license expiration date is changed, license fees
14 payable on the original expiration date shall be prorated on a
15 monthly basis so that each license holder shall pay only that
16 portion of the license fee that is allocable to the number of months
17 during which the license is valid. On renewal of the license on the
18 new expiration date, the total license renewal fee is payable.

19 (d) The executive commissioner [board] by rule may provide
20 for the issuance of a temporary license. Rules adopted under this
21 section shall include a time limit for a licensee to practice under
22 a temporary license.

23 (e) The executive commissioner [board] by rule may provide
24 for a license holder to be placed on inactive status.

25 SECTION 3.0646. Section 242.309, Health and Safety Code, as
26 added by Section 1.01, Chapter 1280 (S.B. 84), Acts of the 75th
27 Legislature, Regular Session, 1997, is amended to read as follows:

1 Sec. 242.309. PROVISIONAL LICENSE. (a) The department
2 [board] shall issue a provisional license to an applicant currently
3 licensed in another jurisdiction who seeks a license in this state
4 and who:

5 (1) has been licensed in good standing as a nursing
6 facility administrator for at least two years in another
7 jurisdiction, including a foreign country, that has licensing
8 requirements that are substantially equivalent to the requirements
9 of this subchapter;

10 (2) has passed a national or other examination
11 recognized by the department [board] relating to the practice of
12 nursing facility administration; and

13 (3) is sponsored by a person licensed by the
14 department [board] under this subchapter with whom the provisional
15 license holder will practice during the time the person holds a
16 provisional license.

17 (b) The department [board] may waive the requirement of
18 Subsection (a)(3) for an applicant if the department [board]
19 determines that compliance with that subsection would be a hardship
20 to the applicant.

21 (c) A provisional license is valid until the date the
22 department [board] approves or denies the provisional license
23 holder's application for a license. The department [board] shall
24 issue a license under this subchapter to the provisional license
25 holder if:

26 (1) the provisional license holder is eligible to be
27 licensed under Section 242.306; or

1 (2) the provisional license holder passes the part of
2 the examination under Section [242.307](#) that relates to the
3 applicant's knowledge and understanding of the laws and rules
4 relating to the practice of nursing facility administration in this
5 state and:

6 (A) the department [board] verifies that the
7 provisional license holder meets the academic and experience
8 requirements for a license under this subchapter; and

9 (B) the provisional license holder satisfies all
10 other license requirements under this subchapter.

11 (d) The department [board] must approve or deny a
12 provisional license holder's application for a license not later
13 than the 180th day after the date the provisional license is issued.
14 The department [board] may extend the 180-day period if the results
15 of an examination have not been received by the department [board]
16 before the end of that period.

17 (e) The executive commissioner by rule [board] may
18 establish a fee for provisional licenses in an amount reasonable
19 and necessary to cover the cost of issuing the license.

20 SECTION 3.0647. Section [242.311](#), Health and Safety Code, as
21 added by Section 1.01, Chapter 1280 (S.B. 84), Acts of the 75th
22 Legislature, Regular Session, 1997, is amended to read as follows:

23 Sec. 242.311. MANDATORY CONTINUING EDUCATION. (a) The
24 executive commissioner [board] by rule shall establish a minimum
25 number of hours of continuing education required to renew a license
26 under this subchapter. The department may assess the continuing
27 education needs of license holders and may require license holders

1 to attend continuing education courses specified by department rule
2 [~~the board~~].

3 (b) The executive commissioner [~~board~~] shall identify the
4 key factors for the competent performance by a license holder of the
5 license holder's professional duties. The department shall adopt a
6 procedure to assess a license holder's participation in continuing
7 education programs.

8 SECTION 3.0648. Sections 242.312(c), (e), (f), and (g),
9 Health and Safety Code, as added by Section 1.01, Chapter 1280 (S.B.
10 84), Acts of the 75th Legislature, Regular Session, 1997, are
11 amended to read as follows:

12 (c) The executive commissioner [~~board~~] by rule shall adopt a
13 form to standardize information concerning complaints made to the
14 department. The executive commissioner [~~board~~] by rule shall
15 prescribe information to be provided to a person when the person
16 files a complaint with the department.

17 (e) The executive commissioner [~~board~~] shall adopt rules
18 concerning the investigation of complaints filed with the
19 department. The rules adopted under this subsection shall:

20 (1) distinguish between categories of complaints;

21 (2) ensure that complaints are not dismissed without
22 appropriate consideration;

23 (3) require that the executive commissioner [~~board~~] be
24 advised at least quarterly of complaints that have been dismissed
25 and require that a letter be sent to each person who has filed a
26 complaint that is dismissed explaining the action taken on the
27 complaint;

1 (4) ensure that the person who filed the complaint has
2 an opportunity to explain the allegations made in the complaint;
3 and

4 (5) prescribe guidelines concerning the categories of
5 complaints that may require the use of a private investigator and
6 the procedures to be followed by the department in obtaining the
7 services of a private investigator.

8 (f) The department shall dispose of all complaints in a
9 timely manner. The executive commissioner [board] by rule shall
10 establish a schedule for initiating a complaint investigation that
11 is under the control of the department not later than the 30th day
12 after the date the complaint is received by the department. The
13 schedule shall be kept in the information file for the complaint,
14 and all parties shall be notified of the projected time
15 requirements for pursuing the complaint. A change in the schedule
16 must be noted in the complaint information file and all parties to
17 the complaint must be notified not later than the seventh day after
18 the date the change is made.

19 (g) The commissioner shall notify the executive
20 commissioner [board] at least quarterly of complaints that have
21 extended beyond the time prescribed by the executive commissioner
22 [board] for resolving complaints so that the department may take
23 any necessary corrective actions on the processing of complaints.

24 SECTION 3.0649. Section 242.315(a), Health and Safety Code,
25 as added by Section 1.01, Chapter 1280 (S.B. 84), Acts of the 75th
26 Legislature, Regular Session, 1997, is amended to read as follows:

27 (a) The department may impose an administrative penalty

1 against a person licensed or regulated under this subchapter who
2 violates this subchapter or a rule adopted [by the board] under this
3 subchapter.

4 SECTION 3.0650. Section 242.316(d), Health and Safety Code,
5 as added by Section 1.01, Chapter 1280 (S.B. 84), Acts of the 75th
6 Legislature, Regular Session, 1997, is amended to read as follows:

7 (d) If the person requests a hearing, the department shall
8 [set a hearing and] give notice of the hearing to the person. The
9 hearing shall be held in accordance with the rules on contested case
10 hearings adopted by the executive commissioner.

11 SECTION 3.0651. Section 242.317(a), Health and Safety Code,
12 as added by Section 1.01, Chapter 1280 (S.B. 84), Acts of the 75th
13 Legislature, Regular Session, 1997, is amended to read as follows:

14 (a) The executive commissioner [department] by rule shall
15 adopt procedures governing:

16 (1) informal disposition of a contested case under
17 Section 2001.056, Government Code; and

18 (2) informal proceedings held in compliance with
19 Section 2001.054, Government Code.

20 SECTION 3.0652. Section 242.318, Health and Safety Code, as
21 added by Section 1.01, Chapter 1280 (S.B. 84), Acts of the 75th
22 Legislature, Regular Session, 1997, is amended to read as follows:

23 Sec. 242.318. MONITORING OF LICENSE HOLDER. The executive
24 commissioner [department] by rule shall develop a system for
25 monitoring a license holder's compliance with the requirements of
26 this subchapter. Rules adopted under this section shall include
27 procedures for monitoring a license holder who is required by the

1 department to perform certain acts to ascertain that the license
2 holder performs the required acts and to identify and monitor
3 license holders who represent a risk to the public.

4 SECTION 3.0653. Section 242.403, Health and Safety Code, is
5 amended to read as follows:

6 Sec. 242.403. STANDARDS FOR QUALITY OF LIFE AND QUALITY OF
7 CARE. (a) The executive commissioner [department] shall adopt
8 standards to implement Sections 242.401 and 242.402. Those
9 standards must, at a minimum, address:

- 10 (1) admission of residents;
- 11 (2) care of residents younger than 18 years of age;
- 12 (3) an initial assessment and comprehensive plan of
13 care for residents;
- 14 (4) transfer or discharge of residents;
- 15 (5) clinical records;
- 16 (6) infection control at the institution;
- 17 (7) rehabilitative services;
- 18 (8) food services;
- 19 (9) nutrition services provided by a director of food
20 services who is licensed by the Texas State Board of Examiners of
21 Dietitians or, if not so licensed, who is in scheduled consultation
22 with a person who is so licensed as frequently and for such time as
23 the executive commissioner [department] shall determine necessary
24 to assure each resident a diet that meets the daily nutritional and
25 special dietary needs of each resident;
- 26 (10) social services and activities;
- 27 (11) prevention of pressure sores;

1 (12) bladder and bowel retraining programs for
2 residents;

3 (13) prevention of complications from nasogastric or
4 gastrotomy tube feedings;

5 (14) relocation of residents within an institution;

6 (15) postmortem procedures; and

7 (16) appropriate use of chemical and physical
8 restraints.

9 (b) The executive commissioner [department] may require an
10 institution to submit information to the department, including
11 Minimum Data Set Resident Assessments, necessary to ensure the
12 quality of care in institutions. Information submitted to the
13 department that identifies a resident of an institution is
14 confidential and not subject to disclosure under Chapter 552,
15 Government Code.

16 (c) The executive commissioner [department] may adopt
17 standards in addition to those required by Subsection (a) to
18 implement Sections 242.401 and 242.402.

19 SECTION 3.0654. Sections 242.501(a) and (c), Health and
20 Safety Code, are amended to read as follows:

21 (a) The executive commissioner [department] by rule shall
22 adopt a statement of the rights of a resident. The statement must
23 be consistent with Chapter 102, Human Resources Code, but shall
24 reflect the unique circumstances of a resident at an institution.
25 At a minimum, the statement of the rights of a resident must address
26 the resident's constitutional, civil, and legal rights and the
27 resident's right:

- 1 (1) to be free from abuse and exploitation;
- 2 (2) to safe, decent, and clean conditions;
- 3 (3) to be treated with courtesy, consideration, and
- 4 respect;
- 5 (4) to not be subjected to discrimination based on
- 6 age, race, religion, sex, nationality, or disability and to
- 7 practice the resident's own religious beliefs;
- 8 (5) to place in the resident's room an electronic
- 9 monitoring device that is owned and operated by the resident or
- 10 provided by the resident's guardian or legal representative;
- 11 (6) to privacy, including privacy during visits and
- 12 telephone calls;
- 13 (7) to complain about the institution and to organize
- 14 or participate in any program that presents residents' concerns to
- 15 the administrator of the institution;
- 16 (8) to have information about the resident in the
- 17 possession of the institution maintained as confidential;
- 18 (9) to retain the services of a physician the resident
- 19 chooses, at the resident's own expense or through a health care
- 20 plan, and to have a physician explain to the resident, in language
- 21 that the resident understands, the resident's complete medical
- 22 condition, the recommended treatment, and the expected results of
- 23 the treatment, including reasonably expected effects, side
- 24 effects, and risks associated with psychoactive medications;
- 25 (10) to participate in developing a plan of care, to
- 26 refuse treatment, and to refuse to participate in experimental
- 27 research;

- 1 (11) to a written statement or admission agreement
- 2 describing the services provided by the institution and the related
- 3 charges;
- 4 (12) to manage the resident's own finances or to
- 5 delegate that responsibility to another person;
- 6 (13) to access money and property that the resident
- 7 has deposited with the institution and to an accounting of the
- 8 resident's money and property that are deposited with the
- 9 institution and of all financial transactions made with or on
- 10 behalf of the resident;
- 11 (14) to keep and use personal property, secure from
- 12 theft or loss;
- 13 (15) to not be relocated within the institution,
- 14 except in accordance with standards adopted [by the department]
- 15 under Section 242.403;
- 16 (16) to receive visitors;
- 17 (17) to receive unopened mail and to receive
- 18 assistance in reading or writing correspondence;
- 19 (18) to participate in activities inside and outside
- 20 the institution;
- 21 (19) to wear the resident's own clothes;
- 22 (20) to discharge himself or herself from the
- 23 institution unless the resident is an adjudicated mental
- 24 incompetent;
- 25 (21) to not be discharged from the institution except
- 26 as provided in the standards adopted [by the department] under
- 27 Section 242.403;

1 (22) to be free from any physical or chemical
2 restraints imposed for the purposes of discipline or convenience,
3 and not required to treat the resident's medical symptoms; and

4 (23) to receive information about prescribed
5 psychoactive medication from the person prescribing the medication
6 or that person's designee, to have any psychoactive medications
7 prescribed and administered in a responsible manner, as mandated by
8 Section 242.505, and to refuse to consent to the prescription of
9 psychoactive medications.

10 (c) The executive commissioner [department] may adopt
11 rights of residents in addition to those required by Subsection (a)
12 and may consider additional rights applicable to residents in other
13 jurisdictions.

14 SECTION 3.0655. Section 242.601(b), Health and Safety Code,
15 is amended to read as follows:

16 (b) The medication administration procedures must comply
17 with this subchapter and the rules adopted [by the board] under
18 Section 242.608.

19 SECTION 3.0656. Section 242.608, Health and Safety Code, is
20 amended to read as follows:

21 Sec. 242.608. RULES FOR ADMINISTRATION OF MEDICATION. The
22 executive commissioner [board] by rule shall establish:

23 (1) minimum requirements for the issuance, denial,
24 renewal, suspension, emergency suspension, and revocation of a
25 permit to administer medication to a resident;

26 (2) curricula to train persons to administer
27 medication to a resident;

1 (3) minimum standards for the approval of programs to
2 train persons to administer medication to a resident and for
3 rescinding approval; and

4 (4) the acts and practices that are allowed or
5 prohibited to a permit holder.

6 SECTION 3.0657. Section 242.609(a), Health and Safety Code,
7 is amended to read as follows:

8 (a) An application for the approval of a training program
9 must be made to the department on a form and under rules prescribed
10 by the executive commissioner [board].

11 SECTION 3.0658. Sections 242.610(a), (c), (d), and (g),
12 Health and Safety Code, are amended to read as follows:

13 (a) To be issued or to have renewed a permit to administer
14 medication, a person shall apply to the department on a form
15 prescribed and under rules adopted by the executive commissioner
16 [board].

17 (c) The executive commissioner [department] shall require a
18 permit holder to satisfactorily complete a continuing education
19 course approved by the department for renewal of the permit.

20 (d) Subject to Subsections (h)-(m), the department shall
21 issue a permit or renew a permit to an applicant who:

22 (1) meets the minimum requirements adopted under
23 Section 242.608;

24 (2) successfully completes the examination or the
25 continuing education requirements; and

26 (3) pays a nonrefundable application fee determined by
27 the executive commissioner by rule [board].

1 (g) The executive commissioner [board] by rule may adopt a
2 system under which permits expire on various dates during the year.
3 For the year in which the permit expiration date is changed, the
4 department shall prorate permit fees on a monthly basis so that each
5 permit holder pays only that portion of the permit fee that is
6 allocable to the number of months during which the permit is valid.
7 On renewal of the permit on the new expiration date, the total
8 permit renewal fee is payable.

9 SECTION 3.0659. Section 242.611, Health and Safety Code, is
10 amended to read as follows:

11 Sec. 242.611. FEES FOR ISSUANCE AND RENEWAL OF PERMIT TO
12 ADMINISTER MEDICATION. The executive commissioner by rule [board]
13 shall set the fees in amounts reasonable and necessary to recover
14 the amount projected by the department as required to administer
15 its functions. Except as otherwise provided by Section 242.610,
16 the fees may not exceed:

17 (1) \$25 for a combined permit application and
18 examination fee; and

19 (2) \$15 for a renewal permit application fee.

20 SECTION 3.0660. Sections 242.612(a) and (c), Health and
21 Safety Code, are amended to read as follows:

22 (a) The department [board] shall revoke, suspend, or refuse
23 to renew a permit or shall reprimand a permit holder for a violation
24 of this subchapter or a rule [of the board] adopted under this
25 subchapter. In addition, the department [board] may suspend a
26 permit in an emergency or rescind training program approval.

27 (c) The department [board] may place on probation a person

1 whose permit is suspended. If a permit suspension is probated, the
2 department [board] may require the person:

3 (1) to report regularly to the department on matters
4 that are the basis of the probation;

5 (2) to limit practice to the areas prescribed by the
6 department [board]; or

7 (3) to continue or review professional education until
8 the person attains a degree of skill satisfactory to the department
9 [board] in those areas that are the basis of the probation.

10 SECTION 3.0661. Section 242.613(c), Health and Safety Code,
11 is amended to read as follows:

12 (c) If requested in writing by a permit holder whose permit
13 is suspended, an administrative law judge of the State Office of
14 Administrative Hearings [department] shall conduct a hearing to
15 continue, modify, or rescind the emergency suspension.

16 SECTION 3.0662. Section 242.844, Health and Safety Code, is
17 amended to read as follows:

18 Sec. 242.844. REQUIRED FORM ON ADMISSION. The executive
19 commissioner [department] by rule shall prescribe a form that must
20 be completed and signed on a resident's admission to an institution
21 by or on behalf of the resident. The form must state:

22 (1) that a person who places an electronic monitoring
23 device in the room of a resident or who uses or discloses a tape or
24 other recording made by the device may be civilly liable for any
25 unlawful violation of the privacy rights of another;

26 (2) that a person who covertly places an electronic
27 monitoring device in the room of a resident or who consents to or

1 acquiesces in the covert placement of the device in the room of a
2 resident has waived any privacy right the person may have had in
3 connection with images or sounds that may be acquired by the device;

4 (3) that a resident or the resident's guardian or legal
5 representative is entitled to conduct authorized electronic
6 monitoring under Subchapter R, Chapter 242, Health and Safety Code,
7 and that if the institution refuses to permit the electronic
8 monitoring or fails to make reasonable physical accommodations for
9 the authorized electronic monitoring that the person should contact
10 the [Texas] Department of Aging and Disability [Human] Services;

11 (4) the basic procedures that must be followed to
12 request authorized electronic monitoring;

13 (5) the manner in which this chapter affects the legal
14 requirement to report abuse or neglect when electronic monitoring
15 is being conducted; and

16 (6) any other information regarding covert or
17 authorized electronic monitoring that the executive commissioner
18 [~~department~~] considers advisable to include on the form.

19 SECTION 3.0663. Section 242.845(c), Health and Safety Code,
20 is amended to read as follows:

21 (c) If a resident does not have capacity to request
22 electronic monitoring but has not been judicially declared to lack
23 the required capacity, only the legal representative of the
24 resident may request electronic monitoring under this subchapter.

25 The executive commissioner [~~department~~] by rule shall prescribe:

26 (1) guidelines that will assist institutions, family
27 members of residents, advocates for residents, and other interested

1 persons to determine when a resident lacks the required capacity;
2 and

3 (2) who may be considered to be a resident's legal
4 representative for purposes of this subchapter, including:

5 (A) persons who may be considered the legal
6 representative under the terms of an instrument executed by the
7 resident when the resident had capacity; and

8 (B) persons who may become the legal
9 representative for the limited purpose of this subchapter under a
10 procedure prescribed by the executive commissioner [department].

11 SECTION 3.0664. Section 242.846(h), Health and Safety Code,
12 is amended to read as follows:

13 (h) The executive commissioner [department] may adopt rules
14 prescribing the place or places that a form signed under this
15 section must be maintained and the period for which it must be
16 maintained.

17 SECTION 3.0665. Section 242.847(g), Health and Safety Code,
18 is amended to read as follows:

19 (g) An institution may require an electronic monitoring
20 device to be installed in a manner that is safe for residents,
21 employees, or visitors who may be moving about the room. The
22 executive commissioner [department] may adopt rules regarding the
23 safe placement of an electronic monitoring device.

24 SECTION 3.0666. Section 242.849(c), Health and Safety Code,
25 is amended to read as follows:

26 (c) A person who sends more than one tape or recording to the
27 department shall identify for the department each tape or recording

1 on which the person believes that an incident of abuse or evidence
2 of neglect may be found. The executive commissioner [department]
3 may adopt rules encouraging persons who send a tape or recording to
4 the department to identify the place on the tape or recording that
5 an incident of abuse or evidence of neglect may be found.

6 SECTION 3.0667. Section 242.850, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 242.850. NOTICE AT ENTRANCE TO INSTITUTION. Each
9 institution shall post a notice at the entrance to the institution
10 stating that the rooms of some residents may be being monitored
11 electronically by or on behalf of the residents and that the
12 monitoring is not necessarily open and obvious. The executive
13 commissioner [department] by rule shall prescribe the format and
14 the precise content of the notice.

15 SECTION 3.0668. Section 242.901, Health and Safety Code, is
16 amended to read as follows:

17 Sec. 242.901. DEFINITION [DEFINITIONS]. In this
18 subchapter, "family"[+

19 [+(1) "Department" means the Department of Aging and
20 Disability Services.]

21 [+(2) "Executive commissioner" means the executive
22 commissioner of the Health and Human Services Commission.]

23 [+(3) "Family" council" means a group of family
24 members, friends, or legal guardians of residents, who organize and
25 meet privately or openly.]

26 SECTION 3.0669. Section 243.002, Health and Safety Code, is
27 amended by amending Subdivisions (2) and (3) and adding Subdivision

1 (3-a) to read as follows:

2 (2) "Commissioner" means the commissioner of state
3 health services [~~Board~~ means the Texas Board of Health].

4 (3) "Department" means the [Texas] Department of State
5 Health Services.

6 (3-a) "Executive commissioner" means the executive
7 commissioner of the Health and Human Services Commission.

8 SECTION 3.0670. Sections 243.005(b), (e), and (f), Health
9 and Safety Code, are amended to read as follows:

10 (b) Each application must be accompanied by a nonrefundable
11 license fee in an amount set by the executive commissioner by rule
12 [~~board~~].

13 (e) The license fee must be paid every two years [~~annually~~]
14 on renewal of the license.

15 (f) The department shall issue a renewal license to a center
16 certified under Title XVIII of the Social Security Act (42 U.S.C.
17 Section 1395 et seq.) when the center:

18 (1) remits any [~~annual~~] license fee; and

19 (2) submits the inspection results or the inspection
20 results report from the certification body.

21 SECTION 3.0671. Section 243.007, Health and Safety Code, is
22 amended to read as follows:

23 Sec. 243.007. FEE AMOUNTS [~~FEES~~]. The executive
24 commissioner by rule [~~board~~] shall set fees imposed by this chapter
25 in amounts reasonable and necessary to defray the cost of
26 administering this chapter and as prescribed by Section 12.0111.

27 SECTION 3.0672. Section 243.008, Health and Safety Code, is

1 amended to read as follows:

2 Sec. 243.008. DEPOSIT OF FEES [~~AMBULATORY SURGICAL CENTER~~
3 ~~LICENSING FUND~~]. All fees collected under this chapter shall be
4 deposited in the state treasury to the credit of the general revenue
5 [~~ambulatory surgical center licensing~~] fund [~~and may be~~
6 ~~appropriated to the department only to administer and enforce this~~
7 ~~chapter~~].

8 SECTION 3.0673. Section 243.009, Health and Safety Code, is
9 amended to read as follows:

10 Sec. 243.009. ADOPTION OF RULES. The executive
11 commissioner [~~board~~] shall adopt rules necessary to implement this
12 chapter, including requirements for the issuance, renewal, denial,
13 suspension, and revocation of a license to operate an ambulatory
14 surgical center.

15 SECTION 3.0674. Section 243.010(c), Health and Safety Code,
16 is amended to read as follows:

17 (c) This section does not authorize the executive
18 commissioner [~~board~~] to:

19 (1) establish the qualifications of a licensed
20 practitioner; or

21 (2) permit a person to provide health care services
22 who is not authorized to provide those services under another state
23 law.

24 SECTION 3.0675. Section 243.0115, Health and Safety Code,
25 is amended to read as follows:

26 Sec. 243.0115. EMERGENCY SUSPENSION. The department may
27 issue an emergency order to suspend a license issued under this

1 chapter if the department has reasonable cause to believe that the
2 conduct of a license holder creates an immediate danger to the
3 public health and safety. An emergency suspension is effective
4 immediately without a hearing on notice to the license holder. On
5 written request of the license holder to the department for a
6 hearing, the department shall refer the matter to the State Office
7 of Administrative Hearings. An administrative law judge of the
8 office [the department] shall conduct a hearing not earlier than
9 the 10th day or later than the 30th day after the date the hearing
10 request is received by the department to determine if the emergency
11 suspension is to be continued, modified, or rescinded. The hearing
12 and any appeal are governed by the department's rules for a
13 contested case hearing and Chapter 2001, Government Code.

14 SECTION 3.0676. Sections 243.015(h), (i), (j), (k), and
15 (l), Health and Safety Code, are amended to read as follows:

16 (h) If the person accepts the determination and recommended
17 penalty or if the person fails to respond to the notice, the
18 department [commissioner of public health] by order shall [approve
19 the determination and] impose the recommended penalty.

20 (i) If the person requests a hearing, the department
21 [commissioner of public health] shall refer the matter to the State
22 Office of Administrative Hearings, which shall promptly set a
23 hearing date, and the department shall give written notice of the
24 time and place of the hearing to the person. An administrative law
25 judge of that office [the State Office of Administrative Hearings]
26 shall conduct the hearing.

27 (j) The administrative law judge shall make findings of fact

1 and conclusions of law and promptly issue to the department
2 [~~commissioner of public health~~] a proposal for a decision about the
3 occurrence of the violation and the amount of a proposed penalty.

4 (k) Based on the findings of fact, conclusions of law, and
5 proposal for a decision, the department [~~commissioner of public~~
6 ~~health~~] by order may:

7 (1) find that a violation occurred and impose a
8 penalty; or

9 (2) find that a violation did not occur.

10 (1) The notice of the department's [~~commissioner's~~] order
11 under Subsection (k) that is sent to the person in accordance with
12 Chapter 2001, Government Code, must include a statement of the
13 right of the person to judicial review of the order.

14 SECTION 3.0677. Sections [243.016\(a\), \(b\), and \(c\)](#), Health
15 and Safety Code, are amended to read as follows:

16 (a) Within 30 days after the date an order of the department
17 [~~commissioner of public health~~] under Section [243.015\(k\)](#) that
18 imposes an administrative penalty becomes final, the person shall:

19 (1) pay the penalty; or

20 (2) file a petition for judicial review of the
21 department's [~~commissioner's~~] order contesting the occurrence of
22 the violation, the amount of the penalty, or both.

23 (b) Within the 30-day period prescribed by Subsection (a), a
24 person who files a petition for judicial review may:

25 (1) stay enforcement of the penalty by:

26 (A) paying the penalty to the court for placement
27 in an escrow account; or

1 (B) giving the court a supersedeas bond approved
2 by the court that:

3 (i) is for the amount of the penalty; and
4 (ii) is effective until all judicial review
5 of the department's [~~commissioner's~~] order is final; or

6 (2) request the court to stay enforcement of the
7 penalty by:

8 (A) filing with the court a sworn affidavit of
9 the person stating that the person is financially unable to pay the
10 penalty and is financially unable to give the supersedeas bond; and
11 (B) sending a copy of the affidavit to the
12 department [~~commissioner of public health~~] by certified mail.

13 (c) If the department [~~commissioner of public health~~]
14 receives a copy of an affidavit under Subsection (b)(2), the
15 department [~~commissioner~~] may file with the court, within five days
16 after the date the copy is received, a contest to the affidavit.
17 The court shall hold a hearing on the facts alleged in the affidavit
18 as soon as practicable and shall stay the enforcement of the penalty
19 on finding that the alleged facts are true. The person who files an
20 affidavit has the burden of proving that the person is financially
21 unable to pay the penalty or to give a supersedeas bond.

22 SECTION 3.0678. Section 244.002, Health and Safety Code, is
23 amended by amending Subdivision (3) and adding Subdivision (3-a) to
24 read as follows:

25 (3) "Department" means the [~~Texas~~] Department of State
26 Health Services.

27 (3-a) "Executive commissioner" means the executive

1 commissioner of the Health and Human Services Commission.

2 SECTION 3.0679. Sections 244.005(b), (c), and (e), Health
3 and Safety Code, are amended to read as follows:

4 (b) Each application must be accompanied by a nonrefundable
5 license fee in an amount set by the executive commissioner by rule
6 ~~[board]~~.

7 (c) The application must contain evidence that the
8 composition of the center's staff meets the standards adopted ~~by~~
9 ~~the board~~ under this chapter for the level of license for which the
10 application is submitted.

11 (e) The license fee shall be paid every two years ~~annually~~
12 on renewal of the license.

13 SECTION 3.0680. Section 244.007, Health and Safety Code, is
14 amended to read as follows:

15 Sec. 244.007. FEES. The executive commissioner by rule
16 ~~[board]~~ shall set fees imposed by this chapter in amounts
17 reasonable and necessary to defray the cost of administering this
18 chapter and as prescribed by Section 12.0111.

19 SECTION 3.0681. Section 244.009, Health and Safety Code, is
20 amended to read as follows:

21 Sec. 244.009. ADOPTION OF RULES. (a) The executive
22 commissioner ~~[board]~~ shall adopt rules necessary to implement this
23 chapter.

24 (b) The executive commissioner ~~[board]~~ shall adopt rules
25 that establish different levels of licenses to operate a birthing
26 center and that provide requirements for the issuance, renewal,
27 denial, suspension, and revocation of each level of license.

1 SECTION 3.0682. Section 244.010, Health and Safety Code, is
2 amended to read as follows:

3 Sec. 244.010. MINIMUM STANDARDS. (a) For each level of
4 license of a birthing center, the rules must contain minimum
5 standards for:

6 (1) the qualifications for professional and
7 nonprofessional personnel;

8 (2) the supervision of professional and
9 nonprofessional personnel;

10 (3) the provision and coordination of treatment and
11 services;

12 (4) the organizational structure, including the lines
13 of authority and the delegation of responsibility;

14 (5) the keeping of clinical records; and

15 (6) any other aspect of the operation of a birthing
16 center that the executive commissioner [board] considers necessary
17 to protect the public.

18 (b) This section does not authorize the executive
19 commissioner [board] to:

20 (1) establish the qualifications of a licensed
21 practitioner; or

22 (2) permit a person to provide health care services
23 who is not authorized to provide those services under another state
24 law.

25 SECTION 3.0683. Sections 244.015(h), (i), (j), (k), and
26 (l), Health and Safety Code, are amended to read as follows:

27 (h) If the person accepts the determination and recommended

1 penalty or if the person fails to respond to the notice, the
2 department [~~commissioner of public health~~] by order shall approve
3 the determination and impose the recommended penalty.

4 (i) If the person requests a hearing, the department
5 [~~commissioner of public health~~] shall refer the matter to the State
6 Office of Administrative Hearings, which shall promptly set a
7 hearing date. The department shall [~~and~~] give written notice of the
8 time and place of the hearing to the person. An administrative law
9 judge of that office [~~the State Office of Administrative Hearings~~]
10 shall conduct the hearing.

11 (j) The administrative law judge shall make findings of fact
12 and conclusions of law and promptly issue to the department
13 [~~commissioner of public health~~] a proposal for a decision about the
14 occurrence of the violation and the amount of a proposed penalty.

15 (k) Based on the findings of fact, conclusions of law, and
16 proposal for a decision, the department [~~commissioner of public~~
17 ~~health~~] by order may:

18 (1) find that a violation occurred and impose a
19 penalty; or

20 (2) find that a violation did not occur.

21 (1) The notice of the department's [~~commissioner's~~] order
22 under Subsection (k) that is sent to the person in accordance with
23 Chapter 2001, Government Code, must include a statement of the
24 right of the person to judicial review of the order.

25 SECTION 3.0684. Sections 244.016(a), (b), and (c), Health
26 and Safety Code, are amended to read as follows:

27 (a) Within 30 days after the date an order of the department

1 [commissioner of public health] under Section 244.015(k) that
2 imposes an administrative penalty becomes final, the person shall:

3 (1) pay the penalty; or

4 (2) file a petition for judicial review of the
5 department's [commissioner's] order contesting the occurrence of
6 the violation, the amount of the penalty, or both.

7 (b) Within the 30-day period prescribed by Subsection (a), a
8 person who files a petition for judicial review may:

9 (1) stay enforcement of the penalty by:

10 (A) paying the penalty to the court for placement
11 in an escrow account; or

12 (B) giving the court a supersedeas bond approved
13 by the court that:

14 (i) is for the amount of the penalty; and

15 (ii) is effective until all judicial review
16 of the department's [commissioner's] order is final; or

17 (2) request the court to stay enforcement of the
18 penalty by:

19 (A) filing with the court a sworn affidavit of
20 the person stating that the person is financially unable to pay the
21 penalty and is financially unable to give the supersedeas bond; and

22 (B) sending a copy of the affidavit to the
23 department [commissioner of public health] by certified mail.

24 (c) If the department [commissioner of public health]
25 receives a copy of an affidavit under Subsection (b)(2), the
26 department [commissioner] may file with the court, within five days
27 after the date the copy is received, a contest to the affidavit.

1 The court shall hold a hearing on the facts alleged in the affidavit
2 as soon as practicable and shall stay the enforcement of the penalty
3 on finding that the alleged facts are true. The person who files an
4 affidavit has the burden of proving that the person is financially
5 unable to pay the penalty or to give a supersedeas bond.

6 SECTION 3.0685. Section 245.002, Health and Safety Code, is
7 amended by amending Subdivision (4) and adding Subdivision (4-a) to
8 read as follows:

9 (4) "Department" means the [Texas] Department of State
10 Health Services.

11 (4-a) "Executive commissioner" means the executive
12 commissioner of the Health and Human Services Commission.

13 SECTION 3.0686. Sections 245.005(b) and (c), Health and
14 Safety Code, are amended to read as follows:

15 (b) Each application must be accompanied by a nonrefundable
16 license fee in an amount set by the executive commissioner by rule
17 [~~board~~].

18 (c) The application must contain evidence that there are one
19 or more physicians on the staff of the facility who are licensed by
20 the Texas [~~State Board of~~] Medical Board [~~Examiners~~].

21 SECTION 3.0687. Section 245.007, Health and Safety Code, is
22 amended to read as follows:

23 Sec. 245.007. FEES. The executive commissioner by rule
24 [~~board~~] shall set fees imposed by this chapter in amounts
25 reasonable and necessary to defray the cost of administering this
26 chapter and Chapter 171.

27 SECTION 3.0688. Section 245.009, Health and Safety Code, is

1 amended to read as follows:

2 Sec. 245.009. ADOPTION OF RULES. The executive
3 commissioner [~~board~~] shall adopt rules necessary to implement this
4 chapter, including requirements for the issuance, renewal, denial,
5 suspension, and revocation of a license to operate an abortion
6 facility.

7 SECTION 3.0689. Section 245.010(d), Health and Safety Code,
8 is amended to read as follows:

9 (d) This section does not authorize the executive
10 commissioner [~~board~~] to:

11 (1) establish the qualifications of a licensed
12 practitioner; or

13 (2) permit a person to provide health care services
14 who is not authorized to provide those services under other laws of
15 this state.

16 SECTION 3.0690. Section 245.018(c), Health and Safety Code,
17 is amended to read as follows:

18 (c) If the person notified of the violation accepts the
19 determination of the department, the department [~~commissioner of~~
20 ~~public health or the commissioner's designee~~] shall [~~issue an~~]
21 order [~~approving the determination and ordering~~] the person to pay
22 the recommended penalty.

23 SECTION 3.0691. Section 245.019, Health and Safety Code, is
24 amended to read as follows:

25 Sec. 245.019. HEARING; ORDER. (a) If the person requests a
26 hearing, the department shall transfer the case to the State Office
27 of Administrative Hearings and an administrative law judge of that

1 office shall hold the hearing.

2 (a-1) The department [commissioner of public health or the
3 commissioner's designee] shall[+]

4 [(1) set a hearing,

5 [(2)] give written notice of the hearing to the
6 person[, and]

7 [(3) designate a hearings examiner to conduct the
8 hearing].

9 (b) The administrative law judge [hearings examiner] shall
10 make findings of fact and conclusions of law and shall promptly
11 issue to the department [commissioner] a proposal for decision as
12 to the occurrence of the violation and a recommendation as to the
13 amount of the proposed penalty, if a penalty is determined to be
14 warranted.

15 (c) Based on the findings of fact and conclusions of law and
16 the recommendations of the administrative law judge [hearings
17 examiner], the department [commissioner] by order may find that a
18 violation has occurred and may assess a penalty or may find that no
19 violation has occurred.

20 SECTION 3.0692. Sections 245.020(a), (c), and (f), Health
21 and Safety Code, are amended to read as follows:

22 (a) The department [commissioner of public health or the
23 commissioner's designee] shall give notice of the department's
24 [commissioner's] order under Section 245.019(c) to the person
25 alleged to have committed the violation. The notice must include:

26 (1) separate statements of the findings of fact and
27 conclusions of law;

1 (2) the amount of any penalty assessed; and
2 (3) a statement of the right of the person to judicial
3 review of the department's [~~commissioner's~~] order.

4 (c) Within the 30-day period, a person who acts under
5 Subsection (b)(3) may:

6 (1) stay enforcement of the penalty by:

7 (A) paying the amount of the penalty to the court
8 for placement in an escrow account; or

9 (B) giving to the court a supersedeas bond that
10 is approved by the court for the amount of the penalty and that is
11 effective until all judicial review of the department's
12 [~~commissioner's~~] order is final; or

13 (2) request the court to stay enforcement of the
14 penalty by:

15 (A) filing with the court a sworn affidavit of
16 the person stating that the person is financially unable to pay the
17 amount of the penalty and is financially unable to give the
18 supersedeas bond; and

19 (B) giving a copy of the affidavit to the
20 department by certified mail.

21 (f) Judicial review of the order of the department
22 [~~commissioner of public health~~]:

23 (1) is instituted by filing a petition as provided by
24 Subchapter G, Chapter 2001, Government Code; and

25 (2) is under the substantial evidence rule.

26 SECTION 3.0693. Section **245.022**(a), Health and Safety Code,
27 is amended to read as follows:

1 (a) The department may assess reasonable expenses and costs
2 against a person in an administrative hearing if, as a result of the
3 hearing, the person's license is denied, suspended, or revoked or
4 if administrative penalties are assessed against the person. The
5 person shall pay expenses and costs assessed under this subsection
6 not later than the 30th day after the date a department [~~board~~]
7 order requiring the payment of expenses and costs is final. The
8 department may refer the matter to the attorney general for
9 collection of the expenses and costs.

10 SECTION 3.0694. Sections 245.023(b) and (d), Health and
11 Safety Code, are amended to read as follows:

12 (b) Subsection (a) does not require the department to
13 provide information that is not in the possession of the
14 department. The Texas [~~State Board of~~] Medical Board [~~Examiners~~]
15 shall provide to the department information in the possession of
16 the board that the department is required to provide under
17 Subsection (a).

18 (d) An abortion facility shall provide to a woman, at the
19 time the woman initially consults the facility, a written statement
20 indicating the number of the toll-free telephone line maintained
21 under Subsection (c). The written statement must be available in
22 English and Spanish and be in substantially the following form:

23 "(toll-free telephone number)

24 You have a right to access certain information
25 concerning this abortion facility by using the toll-free
26 telephone number listed above. If you make a call to the
27 number, your identity will remain anonymous. The toll-free

1 telephone line can provide you with the following
2 information:

3 (1) Whether this abortion facility is
4 licensed by the Texas Department of State Health Services.

5 (2) The date of the last inspection of this
6 facility by the Texas Department of State Health Services and
7 any violations of law or rules discovered during that
8 inspection that may pose a health risk to you.

9 (3) Any relevant fine, penalty, or judgment
10 rendered against this facility or a doctor who provides
11 services at this facility."

12 SECTION 3.0695. Section 247.0011, Health and Safety Code,
13 is amended by amending Subsection (b) and adding Subsection (b-1)
14 to read as follows:

15 (b) The executive commissioner [~~department~~] shall protect
16 residents of assisted living facilities by:

17 (1) adopting rules relating to quality of care and
18 quality of life; and

19 (2) adopting rules relating to the assessment of the
20 condition and service needs of each resident.[+]

21 (b-1) The department shall protect residents of assisted
22 living facilities by:

23 (1) [+] promoting policies that maximize the
24 dignity, autonomy, privacy, and independence of each resident;

25 (2) [+] regulating the construction, maintenance,
26 and operation of assisted living facilities;

27 (3) [+] strictly monitoring factors relating to the

1 health, safety, welfare, and dignity of each resident;
2 (4) [46] imposing prompt and effective remedies for
3 violations of this chapter and rules and standards adopted under
4 this chapter;

5 (5) promoting [(7) providing] a residential
6 environment that allows residents to maintain the highest possible
7 degree of independence and self-determination; and

8 (6) [48] providing the public with helpful and
9 understandable information relating to the operation of assisted
10 living facilities in this state.

11 SECTION 3.0696. Section 247.002, Health and Safety Code, is
12 amended by amending Subdivision (2) and adding Subdivision (4-a) to
13 read as follows:

14 (2) "Commission" means the Health and Human Services
15 Commission [Board means the executive commissioner of the Health
16 and Human Services Commission].

17 (4-a) "Executive commissioner" means the executive
18 commissioner of the Health and Human Services Commission.

19 SECTION 3.0697. Subdivision (7), Section 247.002, Health
20 and Safety Code, is redesignated as Subdivision (2-a), Section
21 247.002, Health and Safety Code, and amended to read as follows:

22 (2-a) [7] "Commissioner" means the commissioner of
23 aging and disability services [the department].

24 SECTION 3.0698. Section 247.004, Health and Safety Code, is
25 amended to read as follows:

26 Sec. 247.004. EXEMPTIONS. This chapter does not apply to:
27 (1) a boarding home facility as defined by Section

1 260.001;

2 (2) an establishment conducted by or for the adherents
3 of the Church of Christ, Scientist, for the purpose of providing
4 facilities for the care or treatment of the sick who depend
5 exclusively on prayer or spiritual means for healing without the
6 use of any drug or material remedy if the establishment complies
7 with local safety, sanitary, and quarantine ordinances and
8 regulations;

9 (3) a facility conducted by or for the adherents of a
10 qualified religious society classified as a tax-exempt
11 organization under an Internal Revenue Service group exemption
12 ruling for the purpose of providing personal care services without
13 charge solely for the society's professed members or ministers in
14 retirement, if the facility complies with local safety, sanitation,
15 and quarantine ordinances and regulations; or

16 (4) a facility that provides personal care services
17 only to persons enrolled in a program that:

18 (A) is funded in whole or in part by the
19 department and that is monitored by the department or its
20 designated local intellectual and developmental disability [~~mental~~
21 ~~retardation~~] authority in accordance with department rules
22 [~~standards set by the department~~]; or

23 (B) is funded in whole or in part by the
24 Department of State Health Services and that is monitored by that
25 department, or by its designated local mental health authority in
26 accordance with department rules [~~standards set by the department~~].

27 SECTION 3.0699. Section 247.005(d), Health and Safety Code,

1 is amended to read as follows:

2 (d) The executive commissioner [department] may adopt rules
3 that specify the ownership interests and other relationships that
4 qualify a person as a controlling person.

5 SECTION 3.0700. Section 247.021(d), Health and Safety Code,
6 is amended to read as follows:

7 (d) The executive commissioner [department] by rule shall
8 establish procedures to issue a six-month provisional license to
9 existing facilities with residents. The department may issue a
10 provisional license if:

11 (1) the facility is in compliance with resident care
12 standards;

13 (2) the facility voluntarily discloses that the
14 facility needs additional time to comply with life safety code and
15 physical plant standards;

16 (3) the disclosure is made in writing by certified
17 mail to the department;

18 (4) an investigation of the violation was not
19 initiated and the violation was not independently detected by the
20 department; and

21 (5) the disclosure is made promptly after knowledge of
22 the information disclosed is obtained by the facility.

23 SECTION 3.0701. Section 247.0211(a), Health and Safety
24 Code, is amended to read as follows:

25 (a) The executive commissioner [~~of the Health and Human~~
26 ~~Services Commission~~] shall adopt rules to implement an expedited
27 inspection process that allows an applicant for an assisted living

1 facility license or for a renewal of a license to obtain a life
2 safety code and physical plant inspection not later than the 15th
3 day after the date the request is made.

4 SECTION 3.0702. Section 247.022(b), Health and Safety Code,
5 is amended to read as follows:

6 (b) Each application must be accompanied by a nonrefundable
7 license fee in an amount set by the executive commissioner by rule
8 [~~board~~].

9 SECTION 3.0703. Sections 247.023(a) and (c), Health and
10 Safety Code, are amended to read as follows:

11 (a) The department shall issue a license if, after
12 inspection and investigation, it finds that the applicant, the
13 assisted living facility, and all controlling persons with respect
14 to the applicant or facility meet the requirements of this chapter
15 and the standards adopted under this chapter. The license expires
16 on the second anniversary of the date of its issuance. The
17 executive commissioner [~~of the Health and Human Services~~
18 ~~Commission~~] by rule may adopt a system under which licenses expire
19 on various dates during the two-year period. For the year in which
20 a license expiration date is changed, the department shall prorate
21 the license fee on a monthly basis. Each license holder shall pay
22 only that portion of the license fee allocable to the number of
23 months during which the license is valid. A license holder shall
24 pay the total license renewal fee at the time of renewal.

25 (c) The department [~~board~~] may require participation in a
26 continuing education program as a condition of renewal of a
27 license. The executive commissioner [~~board~~] shall adopt rules to

1 implement this subsection.

2 SECTION 3.0704. Sections [247.024](#)(a), (b), and (c), Health
3 and Safety Code, are amended to read as follows:

4 (a) The executive commissioner by rule ~~[department]~~ shall
5 set license fees imposed by this chapter:

6 (1) on the basis of the number of beds in assisted
7 living facilities required to pay the fee; and

8 (2) in amounts reasonable and necessary to defray the
9 cost of administering this chapter, but not to exceed \$1,500.

10 (b) The executive commissioner ~~[board]~~ shall establish by
11 rule a base fee schedule and a per bed fee schedule.

12 (c) All fees or penalties collected under this chapter shall
13 be deposited in the state treasury to the credit of the general
14 revenue fund ~~[and shall be appropriated to the department only to
15 administer and enforce this chapter]~~.

16 SECTION 3.0705. Section [247.025](#), Health and Safety Code, is
17 amended to read as follows:

18 Sec. 247.025. ADOPTION OF RULES. The executive
19 commissioner ~~[board]~~ shall adopt rules necessary to implement this
20 chapter, including requirements for the issuance, renewal, denial,
21 suspension, and revocation of a license to operate an assisted
22 living facility.

23 SECTION 3.0706. Sections [247.026](#)(a), (c), (d), (f), and
24 (i), Health and Safety Code, are amended to read as follows:

25 (a) The executive commissioner ~~[board]~~ by rule shall
26 prescribe minimum standards to protect the health and safety of an
27 assisted living facility resident.

1 (c) The executive commissioner [board] shall require an
2 assisted living facility that provides brain injury rehabilitation
3 services to include in the facility's consumer disclosure statement
4 a specific statement that licensure as an assisted living facility
5 does not indicate state review, approval, or endorsement of the
6 facility's rehabilitation services.

7 (d) The executive commissioner [board] may prescribe
8 different levels of minimum standards for assisted living
9 facilities according to the number of residents, the type of
10 residents, the level of personal care provided, the nutritional
11 needs of residents, and other distinctions the executive
12 commissioner [board] considers relevant. If the executive
13 commissioner [board] does not prescribe minimum standards for
14 facilities serving non-geriatric residents, the executive
15 commissioner [it] must develop procedures for consideration and
16 approval of alternate methods of compliance by such facilities with
17 the department's [board's] standards.

18 (f) The executive commissioner [board] by rule shall
19 prescribe minimum standards requiring appropriate training in
20 geriatric care for each individual who provides services to
21 geriatric residents as an employee of an assisted living facility
22 and who holds a license or certificate issued by an agency of this
23 state that authorizes the person to provide the services. The
24 minimum standards may require that each licensed or certified
25 individual complete an appropriate program of continuing education
26 or in-service training, as determined by department [board] rule,
27 on a schedule determined by department [board] rule.

1 (i) The executive commissioner [board] by rule shall
2 require each manager of an assisted living facility that has 17 beds
3 or more to complete at least one educational course on the
4 management of assisted living facilities not later than the first
5 anniversary of the date the manager begins employment in that
6 capacity.

7 SECTION 3.0707. Sections 247.0261(a) and (d), Health and
8 Safety Code, are amended to read as follows:

9 (a) The executive commissioner [department] by rule shall
10 adopt a procedure under which a person proposing to construct or
11 modify an assisted living facility may submit building plans to the
12 department for review for compliance with the department's
13 architectural requirements before beginning construction or
14 modification. In adopting the procedure, the executive
15 commissioner [department] shall set reasonable deadlines by which
16 the department must complete review of submitted plans.

17 (d) A fee collected under this section shall be deposited in
18 the general revenue fund to the credit of the assisted living
19 account [and shall be appropriated only to the department to
20 conduct reviews under this section].

21 SECTION 3.0708. Sections 247.029(a) and (b), Health and
22 Safety Code, are amended to read as follows:

23 (a) The executive commissioner [board] by rule shall
24 establish a classification and license for a facility that
25 advertises, markets, or otherwise promotes that the facility
26 provides personal care services to residents who have Alzheimer's
27 disease or related disorders. A facility is not required to be

1 classified under this section to provide care or treatment to
2 residents who have Alzheimer's disease or related disorders.

3 (b) The executive commissioner [~~board~~] shall adopt minimum
4 standards for an assisted living facility classified under this
5 section.

6 SECTION 3.0709. Sections 247.032(a) and (b), Health and
7 Safety Code, are amended to read as follows:

8 (a) In this section, "accreditation commission" means the
9 Commission on Accreditation of Rehabilitation Facilities (CARF),
10 The [~~the~~] Joint Commission [~~on Accreditation of Healthcare~~
11 ~~Organizations~~], or another organization approved by the executive
12 commissioner [~~of the Health and Human Services Commission~~].

13 (b) The department shall accept an accreditation survey
14 from an accreditation commission for an assisted living facility
15 instead of an inspection under Section 247.023 or an annual
16 inspection or survey conducted under the authority of Section
17 247.027, but only if:

18 (1) the accreditation commission's standards meet or
19 exceed the requirements for licensing of the executive commissioner
20 [~~of the Health and Human Services Commission~~] for an assisted
21 living facility;

22 (2) the accreditation commission maintains an
23 inspection or survey program that, for each assisted living
24 facility, meets the department's applicable minimum standards as
25 confirmed by the executive commissioner [~~of the Health and Human~~
26 ~~Services Commission~~];

27 (3) the accreditation commission conducts an on-site

1 inspection or survey of the facility at least as often as required
2 by Section 247.023 or 247.027 and in accordance with the
3 department's minimum standards;

4 (4) the assisted living facility submits to the
5 department a copy of its required accreditation reports to the
6 accreditation commission in addition to the application, the fee,
7 and any report required for renewal of a license;

8 (5) the inspection or survey results are available for
9 public inspection to the same extent that the results of an
10 investigation or survey conducted under Section 247.023 or 247.027
11 are available for public inspection; and

12 (6) the department ensures that the accreditation
13 commission has taken reasonable precautions to protect the
14 confidentiality of personally identifiable information concerning
15 the residents of the assisted living facility.

16 SECTION 3.0710. Section 247.033(a), Health and Safety Code,
17 is amended to read as follows:

18 (a) The department may develop and implement a pilot program
19 to authorize the use of an accreditation survey that complies with
20 Section 247.032(b) to fulfill the requirements for a life and
21 safety code survey or inspection or another survey or inspection
22 required by this subchapter. If the department implements the
23 pilot program, the department may implement the pilot program with
24 the goal that [not later than August 31, 2014,] at least one
25 assisted living facility will have used an accreditation survey for
26 the purposes of this section. The accreditation commission's
27 standards must meet or exceed the assisted living facility

1 licensing requirements established by the executive commissioner
2 [of the Health and Human Services Commission] as required by
3 Section 247.032(b)(1).

4 SECTION 3.0711. Section 247.043(b), Health and Safety Code,
5 is amended to read as follows:

6 (b) If the thorough investigation reveals that abuse,
7 exploitation, or neglect has occurred, the department shall:

8 (1) implement enforcement measures, including closing
9 the facility, revoking the facility's license, relocating
10 residents, and making referrals to law enforcement agencies;

11 (2) notify the Department of Family and Protective
12 [and Regulatory] Services of the results of the investigation;

13 (3) notify a health and human services agency, as
14 defined by Section 531.001, Government Code, that contracts with
15 the facility for the delivery of personal care services of the
16 results of the investigation; and

17 (4) provide to a contracting health and human services
18 agency access to the department's documents or records relating to
19 the investigation.

20 SECTION 3.0712. Sections 247.045(g), (h), and (i), Health
21 and Safety Code, are amended to read as follows:

22 (g) The commissioner [of human services] must approve any
23 settlement agreement to a suit brought under this chapter.

24 (h) If a person who is liable under this section fails to pay
25 any amount the person is obligated to pay under this section, the
26 state may seek satisfaction from any owner, other controlling
27 person, or affiliate of the person found liable. The owner, other

1 controlling person, or affiliate may be found liable in the same
2 suit or in another suit on a showing by the state that the amount to
3 be paid has not been paid or otherwise legally discharged. The
4 executive commissioner [department] by rule may establish a method
5 for satisfying an obligation imposed under this section from an
6 insurance policy, letter of credit, or other contingency fund.

7 (i) In this section, "affiliate" means:

8 (1) with respect to a partnership other than a limited
9 partnership, each partner of the partnership;

10 (2) with respect to a corporation:

11 (A) an officer;

12 (B) a director;

13 (C) a stockholder who owns, holds, or has the
14 power to vote at least 10 percent of any class of securities issued
15 by the corporation, regardless of whether the power is of record or
16 beneficial; and

17 (D) a controlling individual;

18 (3) with respect to an individual:

19 (A) each partnership and each partner in the
20 partnership in which the individual or any other affiliate of the
21 individual is a partner; and

22 (B) each corporation or other business entity in
23 which the individual or another affiliate of the individual is:

24 (i) an officer;

25 (ii) a director;

26 (iii) a stockholder who owns, holds, or has
27 the power to vote at least 10 percent of any class of securities

1 issued by the corporation, regardless of whether the power is of
2 record or beneficial; and

3 (iv) a controlling individual;

4 (4) with respect to a limited partnership:

5 (A) a general partner; and

6 (B) a limited partner who is a controlling
7 individual;

8 (5) with respect to a limited liability company:

9 (A) an owner who is a manager under [as described
10 by] the Texas Limited Liability Company Law as described by Section
11 1.008(e), Business Organizations Code [Act (Article 1528n,
12 Vernon's Texas Civil Statutes)]; and

13 (B) each owner who is a controlling individual;

14 and

15 (6) with respect to any other business entity, a
16 controlling individual.

17 SECTION 3.0713. Section 247.0451(c), Health and Safety
18 Code, is amended to read as follows:

19 (c) The executive commissioner [board] shall establish
20 gradations of penalties in accordance with the relative seriousness
21 of the violation.

22 SECTION 3.0714. Sections 247.0453(h) and (i), Health and
23 Safety Code, are amended to read as follows:

24 (h) If the person charged with the violation consents to the
25 penalty recommended by the department or does not timely respond to
26 a notice sent under Subsection (c) or (f)(2), the department
27 [commissioner or the commissioner's designee] shall assess the

1 [penalty] recommended penalty [~~by the department~~].

2 (i) If the department [~~commissioner or the commissioner's~~
3 ~~designee~~] assesses the recommended penalty, the department shall
4 give written notice to the person charged of the decision and the
5 person shall pay the penalty.

6 SECTION 3.0715. Sections [247.0454\(a\), \(c\), \(d\), and \(e\)](#),
7 Health and Safety Code, are amended to read as follows:

8 (a) An administrative law judge shall order a hearing and
9 the department shall give notice of the hearing if a person charged
10 with a violation under Section [247.0451](#) timely requests a hearing.

11 (c) The administrative law judge shall make findings of fact
12 and conclusions of law and promptly issue to the department
13 [~~commissioner or the commissioner's designee~~] a written proposal
14 for decision regarding the occurrence of a violation of this
15 chapter or a rule, standard, or order adopted under this chapter or
16 a term of a license issued under this chapter and a recommendation
17 regarding the amount of the proposed penalty if a penalty is
18 warranted.

19 (d) Based on the findings of fact and conclusions of law and
20 the recommendation of the administrative law judge, the department
21 [~~commissioner or the commissioner's designee~~] by order may:

22 (1) find that a violation has occurred and assess an
23 administrative penalty; or

24 (2) find that a violation has not occurred.

25 (e) If the department [~~commissioner or the commissioner's~~
26 ~~designee~~] finds that a violation has not occurred, the department
27 [~~commissioner or the commissioner's designee~~] shall order that all

1 records reflecting that the department found a violation had
2 occurred and attempted to impose an administrative penalty shall be
3 expunged except:

4 (1) records obtained by the department during its
5 investigation; and

6 (2) the administrative law judge's findings of fact.

7 SECTION 3.0716. Sections [247.0455](#)(a), (b), (f), and (g),
8 Health and Safety Code, are amended to read as follows:

9 (a) The department [~~commissioner or the commissioner's~~
10 ~~designee~~] shall give notice of the findings made under Section
11 [247.0454](#)(d) to the person charged. If the department [~~commissioner~~
12 ~~or the commissioner's designee~~] finds that a violation has
13 occurred, the department [~~commissioner or the commissioner's~~
14 ~~designee~~] shall give to the person charged written notice of:

15 (1) the findings;

16 (2) the amount of the administrative penalty;

17 (3) the rate of interest payable with respect to the
18 penalty and the date on which interest begins to accrue;

19 (4) whether action under Section [247.0457](#) is required
20 in lieu of payment of all or part of the penalty; and

21 (5) the person's right to judicial review of the
22 department order [~~of the commissioner or the commissioner's~~
23 ~~designee~~].

24 (b) Not later than the 30th day after the date on which the
25 department order [~~of the commissioner or the commissioner's~~
26 ~~designee~~] is final, the person charged with the penalty shall:

27 (1) pay the full amount of the penalty; or

5 (f) If the amount of the penalty is reduced or the
6 assessment of a penalty is not upheld on judicial review, the
7 department [commissioner] shall:

(1) remit to the person charged the appropriate amount
of any penalty payment plus accrued interest; or

10 (2) execute a release of the supersedeas bond if one
11 has been posted.

12 (g) Accrued interest on amounts remitted by the department
13 [commissioner] under Subsection (f)(1) shall be paid:

19 SECTION 3.0717. Sections 247.0457(a) and (h), Health and
20 Safety Code, are amended to read as follows:

21 (a) In lieu of demanding payment of an administrative
22 penalty assessed under Section [247.0451](#), the department
23 [~~commissioner~~] in accordance with this section may allow the person
24 to use, under the supervision of the department, any portion of the
25 penalty to ameliorate the violation or to improve services, other
26 than administrative services, in the assisted living facility
27 affected by the violation.

1 (h) The department shall approve or deny an amelioration
2 plan not later than the 45th day after the date the department
3 receives the plan. On approval of a person's plan, the commission
4 or the State Office of Administrative Hearings, as appropriate,
5 ~~[department]~~ shall deny a pending request for a hearing submitted
6 by the person under Section 247.0453.

7 SECTION 3.0718. Section 247.046, Health and Safety Code, is
8 amended to read as follows:

9 Sec. 247.046. COOPERATION AMONG AGENCIES. The executive
10 commissioner by rule for the department and [board] the Department
11 of Family and Protective [and Regulatory] Services[~~T~~] and the
12 attorney general by rule shall adopt [~~by rule~~] a memorandum of
13 understanding that:

14 (1) defines those agencies' [~~each agency's~~]
15 responsibilities concerning assisted living facilities and
16 coordinates those agencies' [~~each agency's~~] activities;

17 (2) details coordinated procedures to be used by those
18 agencies [~~each agency~~] in responding to complaints relating to
19 neglect or abuse of residents of facilities, to substandard
20 facilities, and to unlicensed facilities;

21 (3) identifies enforcement needs those agencies [~~each~~
22 agency] may have in order to perform their [~~its~~] duties under the
23 memorandum of understanding, including any need for access to
24 information or to facilities under investigation or operating under
25 a plan of correction; and

26 (4) provides a plan for correcting violations in
27 substandard or unlicensed assisted living facilities that

1 specifies the conditions under which it is appropriate to impose
2 such a plan and that outlines a schedule of implementation for the
3 plan.

4 SECTION 3.0719. Section 247.050(a), Health and Safety Code,
5 is amended to read as follows:

6 (a) The executive commissioner [board] shall adopt
7 procedures to monitor the status of unlicensed assisted living
8 facilities. As part of these procedures, the department shall:

9 (1) maintain a registry of all reported unlicensed
10 assisted living facilities for the purpose of periodic follow-up by
11 the field staff in each region; and

12 (2) prepare a quarterly report that shows the number
13 of:

14 (A) complaints relating to unlicensed assisted
15 living facilities that are received;

16 (B) complaints that are investigated;

17 (C) unsubstantiated complaints;

18 (D) substantiated complaints; and

19 (E) cases referred to the attorney general.

20 SECTION 3.0720. Sections 247.051(a) and (b), Health and
21 Safety Code, are amended to read as follows:

22 (a) The executive commissioner [Health and Human Services
23 Commission] by rule shall establish an informal dispute resolution
24 process to address disputes between a facility and the department
25 concerning a statement of violations prepared by the department in
26 accordance with this section. The process must provide for
27 adjudication by an appropriate disinterested person of disputes

1 relating to a statement of violations. The informal dispute
2 resolution process must require:

3 (1) the assisted living facility to request informal
4 dispute resolution not later than the 10th day after the date of
5 notification by the department of the violation of a standard or
6 standards;

7 (2) the commission [Health and Human Services
8 Commission] to complete the process not later than the 90th day
9 after the date of receipt of a request from the assisted living
10 facility for informal dispute resolution;

11 (3) that, not later than the 10th business day after
12 the date an assisted living facility requests an informal dispute
13 resolution, the department forward to the assisted living facility
14 a copy of all information that is referred to in the disputed
15 statement of violations or on which a citation is based in
16 connection with the survey, inspection, investigation, or other
17 visit, excluding:

18 (A) the name of any complainant, witness, or
19 informant;

20 (B) any information that would reasonably lead to
21 the identification of a complainant, witness, or informant;

22 (C) information obtained from or contained in the
23 records of the facility;

24 (D) information that is publicly available; or

25 (E) information that is confidential by law;

26 (4) the commission [Health and Human Services
27 Commission] to give full consideration to all factual arguments

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1 raised during the informal dispute resolution process that:

2 (A) are supported by references to specific
3 information that the facility or department relies on to dispute or
4 support findings in the statement of violations; and

5 (B) are provided by the proponent of the argument
6 to the commission [Health and Human Services Commission] and the
7 opposing party;

8 (5) that informal dispute resolution staff give full
9 consideration to the information provided by the assisted living
10 facility and the department;

21 (b) The commission [Health and Human Services Commission]
22 may not delegate its responsibility to administer the informal
23 dispute resolution process established by this section to another
24 state agency.

25 SECTION 3.0721. Section 247.061(a), Health and Safety Code,
26 is amended to read as follows:

(a) The executive commissioner [department] and the

1 attorney general shall adopt by rule a memorandum of understanding
2 that:

3 (1) defines the department's and the attorney
4 general's [~~each agency's~~] responsibilities concerning assisted
5 living facilities;

6 (2) outlines and coordinates procedures to be used by
7 those agencies in responding to complaints concerning assisted
8 living facilities; and

9 (3) provides a plan for correcting violations or
10 deficiencies in assisted living facilities.

11 SECTION 3.0722. Section 247.062(a), Health and Safety Code,
12 is amended to read as follows:

13 (a) The department shall prepare a directory of assisted
14 living facilities that includes the name of the owner, the address
15 and telephone number of the facility, the number of beds in the
16 facility, and the facility's accessibility to persons with
17 disabilities [~~disabled persons~~].

18 SECTION 3.0723. Section 247.063, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 247.063. REFERRALS. (a) If the [Texas] Department of
21 State Health Services, the department, [~~Mental Health and Mental~~
22 ~~Retardation or~~] a local mental health authority, or a local
23 intellectual and developmental disability [~~mental retardation~~]
24 authority refers a patient or client to an assisted living
25 facility, the referral may not be made to a facility that is not
26 licensed under this chapter.

27 (b) If the [Texas] Department of State Health Services

1 [Mental Health and Mental Retardation] or a local mental health or
2 intellectual and developmental disability [~~mental retardation~~] authority gains knowledge of an assisted living facility that is
3 not operated or licensed by the department or [~~Texas Department of~~
4 ~~Mental Health and Mental Retardation,~~] the authority[~~, or the Texas~~
5 ~~Department of Human Services~~] and that has four or more residents
6 who are unrelated to the proprietor of the facility, the [~~Texas7 Department of State Health Services [~~Mental Health and Mental~~
8 ~~Retardation~~] or the authority shall report the name, address, and
9 telephone number of the facility to the department [~~Texas~~
10 ~~Department of Human Services~~].~~

12 SECTION 3.0724. Section 247.0631, Health and Safety Code,
13 is amended to read as follows:

14 Sec. 247.0631. ACCESS. An employee of the [~~Texas15 Department of State Health Services [~~Mental Health and Mental~~
16 ~~Retardation~~] or an employee of a local mental health or
17 intellectual and developmental disability [~~and mental retardation~~] authority may enter an assisted living facility as necessary to
18 provide services to a resident of the facility.~~

20 SECTION 3.0725. Section 247.066(e), Health and Safety Code,
21 is amended to read as follows:

22 (e) To facilitate obtaining the written statements required
23 under Subsections (b-1) and (c)(1)-(3), the department shall
24 develop standard forms that must be used under Subsections (b-1) or
25 (c)(1)-(3), as appropriate. The executive commissioner by rule
26 [~~department~~] shall develop criteria under which the department will
27 determine, based on a resident's specific situation, whether it

1 will grant or deny a request for a waiver under Subsection (b-1) or
2 (c)(4).

3 SECTION 3.0726. Section 247.094(a), Health and Safety Code,
4 is amended to read as follows:

5 (a) The arbitrator may enter any order that may be entered
6 by the department, executive commissioner [board], commissioner,
7 or court under this chapter in relation to a dispute described by
8 Section 247.081.

9 SECTION 3.0727. Section 248.002, Health and Safety Code, is
10 amended by amending Subdivisions (1) and (2) and adding Subdivision
11 (2-a) to read as follows:

12 (1) "Commissioner" means the commissioner of state
13 health services [~~"Board"~~ means the Texas Board of Health].

14 (2) "Department" means the [Texas] Department of State
15 Health Services.

16 (2-a) "Executive commissioner" means the executive
17 commissioner of the Health and Human Services Commission.

18 SECTION 3.0728. Section 248.003, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 248.003. EXEMPTIONS. This chapter does not apply to:

21 (1) a home and community support services agency
22 required to be licensed under Chapter 142;

23 (2) a person required to be licensed under Chapter 241
24 (Texas Hospital Licensing Law);

25 (3) an institution required to be licensed under
26 Chapter 242;

27 (4) an ambulatory surgical center required to be

1 licensed under Chapter 243 (Texas Ambulatory Surgical Center
2 Licensing Act);

3 (5) a birthing center required to be licensed under
4 Chapter 244 (Texas Birthing Center Licensing Act);

5 (6) a facility required to be licensed under Chapter
6 245 (Texas Abortion Facility Reporting and Licensing Act);

7 (7) a general residential operation [~~child care~~
8 ~~institution~~], foster group home, foster [~~family~~] home, and
9 child-placing agency, for children in foster care or other
10 residential care who are under the conservatorship of the
11 Department of Family and Protective [~~and Regulatory~~] Services; or

12 (8) a person providing medical or nursing care or
13 services under a license or permit issued under other state law.

14 SECTION 3.0729. Sections 248.022(a) and (b), Health and
15 Safety Code, are amended to read as follows:

16 (a) An applicant for a license must submit an application to
17 the department on a form prescribed by the department and in
18 accordance with department [~~board~~] rules.

19 (b) Each application must be accompanied by a nonrefundable
20 license fee in an amount set by the executive commissioner by rule
21 [~~board~~].

22 SECTION 3.0730. Section 248.023, Health and Safety Code, is
23 amended to read as follows:

24 Sec. 248.023. ISSUANCE AND RENEWAL OF LICENSE. (a) The
25 department shall issue a license to an applicant if on inspection
26 and investigation it finds that the applicant meets the
27 requirements of this chapter and department [~~the~~] rules [~~adopted by~~

1 ~~the board~~].

2 (b) A license shall be renewed at the times and in
3 accordance with department [~~the~~] rules [~~established by the board~~].

4 SECTION 3.0731. Sections [248.024](#)(a), (b), and (d), Health
5 and Safety Code, are amended to read as follows:

6 (a) The executive commissioner by rule [~~board~~] shall
7 establish a license application fee and a license renewal fee in
8 amounts as prescribed by Section [12.011](#) [~~the amount of \$25 for each~~
9 ~~facility bed or \$200, whichever is greater, but the fees may not~~
10 ~~exceed \$1,000~~].

11 (b) The executive commissioner by rule [~~board~~] may
12 establish other reasonable and necessary fees in amounts that are
13 adequate, with the license application and license renewal fees, to
14 collect sufficient revenue to meet the expenses necessary to
15 administer this chapter. The fees may include construction plan
16 review and inspection fees.

17 (d) All fees received by the department shall be deposited
18 to the credit of the General Revenue Fund [~~and may be appropriated~~
19 ~~only to the department to administer this chapter~~].

20 SECTION 3.0732. Section [248.026](#), Health and Safety Code, is
21 amended to read as follows:

22 Sec. 248.026. DUTIES OF EXECUTIVE COMMISSIONER [~~BOARD~~]. (a)
23 The executive commissioner [~~board~~] shall adopt rules necessary to
24 implement this chapter. The rules must establish minimum standards
25 for special care facilities relating to:

26 (1) the issuance, renewal, denial, suspension, and
27 revocation of the license required by this chapter;

1 (2) the qualifications, duties, and supervision of
2 professional and nonprofessional personnel and volunteers;

3 (3) residents' rights;

4 (4) medical and nursing care and services provided by
5 a license holder;

6 (5) the organizational structure, lines of authority,
7 delegation of responsibility, and operation of a special care
8 facility;

9 (6) records of care and services kept by the license
10 holder, including the disposal or destruction of those records;

11 (7) safety, fire prevention, and sanitary provisions;

12 (8) transfer of residents in a medically appropriate
13 manner from or to a special care facility;

14 (9) construction plan approval and inspection; and

15 (10) any aspects of a special care facility as
16 necessary to protect the public or residents of the facility.

17 (b) Subsection (a) does not authorize the executive
18 commissioner [board] to establish the qualifications of licensed
19 health care providers or permit the executive commissioner [board]
20 to authorize persons to provide health care services who are not
21 authorized to provide those services under other state law.

22 SECTION 3.0733. Section 248.027(a), Health and Safety Code,
23 is amended to read as follows:

24 (a) If there are no local regulations in effect or enforced
25 in the area in which a special care facility is located, the
26 facility's construction must conform to the minimum standards
27 established by the executive commissioner [board].

1 SECTION 3.0734. Sections [248.029](#)(a) and (b), Health and
2 Safety Code, are amended to read as follows:

3 (a) The executive commissioner [board] by rule shall adopt
4 standards for the designation of a special care facility licensed
5 under this chapter as a residential AIDS hospice. Those standards
6 shall be consistent with other standards adopted under this chapter
7 and consistent with the purposes for which special care facilities
8 are created.

9 (b) In adopting the standards, the executive commissioner
10 [board] shall consider rules adopted for the designation of a
11 hospice under Chapter 142 and shall establish specific standards
12 requiring:

13 (1) the provision of exclusively palliative care by a
14 facility;

15 (2) the provision of bereavement services;

16 (3) the provision of support services to the family of
17 a client;

18 (4) the participation of a registered nurse in the
19 development of an initial plan of care for a client and periodic
20 review of the plan of care by an interdisciplinary team of the
21 facility; and

22 (5) clinical and medical review of patient care
23 services by a physician who acts as a medical consultant.

24 SECTION 3.0735. Section [248.052](#), Health and Safety Code, is
25 amended to read as follows:

26 Sec. 248.052. EMERGENCY SUSPENSION. The department may
27 issue an emergency order to suspend any license issued under this

1 chapter if the department has reasonable cause to believe that the
2 conduct of a license holder creates an immediate danger to the
3 public health and safety. An emergency suspension is effective
4 immediately without a hearing on notice to the license holder. On
5 written request of the license holder to the department for a
6 hearing, the department shall refer the matter to the State Office
7 of Administrative Hearings. An administrative law judge of that
8 office [the department] shall conduct a hearing not earlier than
9 the 10th day or later than the 30th day after the date the hearing
10 request is received by the department to determine if the emergency
11 suspension is to be continued, modified, or rescinded. The hearing
12 and any appeal are governed by the department's rules for a
13 contested case hearing and Chapter 2001, Government Code.

14 SECTION 3.0736. Section 248.053, Health and Safety Code, is
15 amended to read as follows:

16 Sec. 248.053. INJUNCTION. (a) The department may request
17 that the attorney general petition a district court to restrain a
18 license holder or other person from continuing to violate this
19 chapter or any rule adopted by the executive commissioner [~~board~~]
20 under this chapter. Venue for a suit for injunctive relief is in
21 Travis County.

22 (b) On application for injunctive relief and a finding that
23 a license holder or other person has violated this chapter or
24 department [~~board~~] rules, the district court shall grant the
25 injunctive relief that the facts warrant.

26 SECTION 3.0737. Section 248.054, Health and Safety Code, is
27 amended to read as follows:

1 Sec. 248.054. CIVIL PENALTY. A license holder or person who
2 violates this chapter or a rule adopted by the executive
3 commissioner [~~board~~] under this chapter is liable for a civil
4 penalty, to be imposed by a district court, of not more than \$1,000
5 for each day of violation. All penalties collected under this
6 section shall be deposited to the credit of the General Revenue
7 Fund.

8 SECTION 3.0738. Section 248.101(a), Health and Safety Code,
9 is amended to read as follows:

10 (a) The department [~~of health~~] may impose an administrative
11 penalty on a person licensed under this chapter who violates this
12 chapter or a rule or order adopted under this chapter.

13 SECTION 3.0739. Section 248.104(b), Health and Safety Code,
14 is amended to read as follows:

15 (b) If the person accepts the determination and recommended
16 penalty or if the person fails to respond to the notice, the
17 department [~~commissioner of public health~~] by order shall [~~approve~~
18 ~~the determination and~~] impose the recommended penalty.

19 SECTION 3.0740. Section 248.105, Health and Safety Code, is
20 amended to read as follows:

21 Sec. 248.105. HEARING. (a) If the person requests a
22 hearing, the department [~~commissioner of public health~~] shall refer
23 the matter to the State Office of Administrative Hearings, which
24 shall promptly set a hearing date. The department shall [~~and~~] give
25 written notice of the time and place of the hearing to the person.
26 An administrative law judge of the State Office of Administrative
27 Hearings shall conduct the hearing.

1 (b) The administrative law judge shall make findings of fact
2 and conclusions of law and promptly issue to the department
3 [~~commissioner of public health~~] a written proposal for a decision
4 about the occurrence of the violation and the amount of a proposed
5 penalty.

6 SECTION 3.0741. Section 248.106, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 248.106. DECISION BY DEPARTMENT [~~COMMISSIONER~~]. (a)
9 Based on the findings of fact, conclusions of law, and proposal for
10 a decision, the department [~~commissioner of public health~~] by order
11 may:

12 (1) find that a violation occurred and impose a
13 penalty; or

14 (2) find that a violation did not occur.

15 (b) The notice of the department's [~~commissioner's~~] order
16 under Subsection (a) that is sent to the person in accordance with
17 Chapter 2001, Government Code, must include a statement of the
18 right of the person to judicial review of the order.

19 SECTION 3.0742. Section 248.107, Health and Safety Code, is
20 amended to read as follows:

21 Sec. 248.107. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.
22 Within 30 days after the date the order of the department
23 [~~commissioner of public health~~] under Section 248.106 that imposes
24 an administrative penalty becomes final, the person shall:

25 (1) pay the penalty; or

26 (2) file a petition for judicial review of the
27 department's [~~commissioner's~~] order contesting the occurrence of

1 the violation, the amount of the penalty, or both.

2 SECTION 3.0743. Section 248.108, Health and Safety Code, is
3 amended to read as follows:

4 Sec. 248.108. STAY OF ENFORCEMENT OF PENALTY. (a) Within
5 the 30-day period prescribed by Section 248.107, a person who files
6 a petition for judicial review may:

7 (1) stay enforcement of the penalty by:

8 (A) paying the penalty to the court for placement
9 in an escrow account; or

10 (B) giving the court a supersedeas bond approved
11 by the court that:

12 (i) is for the amount of the penalty; and

13 (ii) is effective until all judicial review
14 of the department's [~~commissioner's~~] order is final; or

15 (2) request the court to stay enforcement of the
16 penalty by:

17 (A) filing with the court a sworn affidavit of
18 the person stating that the person is financially unable to pay the
19 penalty and is financially unable to give the supersedeas bond; and

20 (B) sending a copy of the affidavit to the
21 department [~~commissioner of public health~~] by certified mail.

22 (b) If the department [~~commissioner of public health~~]
23 receives a copy of an affidavit under Subsection (a)(2), the
24 department [~~commissioner~~] may file with the court, within five days
25 after the date the copy is received, a contest to the affidavit.
26 The court shall hold a hearing on the facts alleged in the affidavit
27 as soon as practicable and shall stay the enforcement of the penalty

1 on finding that the alleged facts are true. The person who files an
2 affidavit has the burden of proving that the person is financially
3 unable to pay the penalty or to give a supersedeas bond.

4 SECTION 3.0744. Section [248A.052\(a\)](#), Health and Safety
5 Code, is amended to read as follows:

6 (a) An applicant for a prescribed pediatric extended care
7 center license shall submit to the department in accordance with
8 department [~~executive commissioner~~] rules:

9 (1) a sworn application on the form prescribed by the
10 department;

11 (2) a letter of credit as prescribed by the department
12 to demonstrate the applicant's financial viability; and

13 (3) the required fees.

14 SECTION 3.0745. Section [248A.053\(b\)](#), Health and Safety
15 Code, is amended to read as follows:

16 (b) A person applying to renew a center license shall:

17 (1) submit a renewal application to the department on
18 the form prescribed by the department at least 60 days but not more
19 than 120 days before expiration of the license;

20 (2) submit the renewal fee in the amount required by
21 [the] department rule; and

22 (3) comply with any other requirements specified by
23 department [~~executive commissioner~~] rule.

24 SECTION 3.0746. Section [248A.101\(b\)](#), Health and Safety
25 Code, is amended to read as follows:

26 (b) To protect the health and safety of the public and
27 ensure the health, safety, and comfort of the minors served by a

1 center, the rules must establish minimum center standards,
2 including:

3 (1) standards relating to the issuance, renewal,
4 denial, suspension, probation, and revocation of a license to
5 operate a center;

6 (2) standards relating to the provision of
7 family-centered basic services that include individualized
8 medical, developmental, and family training services;

9 (3) based on the size of the building and the number of
10 minors served, building construction and renovation standards,
11 including standards for plumbing, electrical, glass, manufactured
12 buildings, accessibility for persons with physical disabilities
13 [~~the physically disabled~~], and fire protection;

14 (4) based on the size of the building and the number of
15 minors served, building maintenance conditions relating to
16 plumbing, heating, lighting, ventilation, adequate space, fire
17 protection, and other conditions;

18 (5) standards relating to the minimum number of and
19 qualifications required for personnel who provide personal care or
20 basic services to the minors served;

21 (6) standards relating to the sanitary conditions
22 within a center and its surroundings, including water supply,
23 sewage disposal, food handling, and general hygiene;

24 (7) standards relating to the programs offered by the
25 center to promote and maintain the health and development of the
26 minors served and to meet the training needs of the minors' parents
27 or legal guardians;

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(8) standards relating to physician-prescribed supportive services;

8 SECTION 3.0747. Sections 248A.103(a) and (b), Health and
9 Safety Code, are amended to read as follows:

10 (a) The executive commissioner by rule shall set fees
11 imposed by this chapter in amounts reasonable and necessary to
12 cover the cost of administering this chapter.

13 (b) A fee collected under this chapter shall be deposited in
14 the state treasury to the credit of the general revenue fund [and
15 shall be appropriated to the department to administer and enforce
16 this chapter].

17 SECTION 3.0748. Section 248A.152(b), Health and Safety
18 Code, is amended to read as follows:

19 (b) A center may not provide services other than services
20 regulated under this chapter and department [executive
21 ~~commissioner~~] rule.

22 SECTION 3.0749. Section [248A.251](#), Health and Safety Code,
23 is amended to read as follows:

24 Sec. 248A.251. IMPOSITION OF PENALTY. The department
25 [commissioner] may impose an administrative penalty on a person
26 licensed under this chapter who violates this chapter or a rule or
27 standard adopted or order issued under this chapter.

1 SECTION 3.0750. Section [248A.254](#)(b), Health and Safety
2 Code, is amended to read as follows:

3 (b) If the person accepts the determination and recommended
4 penalty or if the person fails to respond to the notice, the
5 department [~~commissioner~~] by order shall approve the determination
6 and impose the recommended penalty.

7 SECTION 3.0751. Section [248A.255](#), Health and Safety Code,
8 is amended to read as follows:

9 Sec. 248A.255. HEARING. (a) If the person requests a
10 hearing, the department [~~commissioner~~] shall refer the matter to
11 the State Office of Administrative Hearings, which shall promptly
12 set a hearing date and give written notice of the time and place of
13 the hearing to the person. An administrative law judge of the State
14 Office of Administrative Hearings shall conduct the hearing.

15 (b) The administrative law judge shall make findings of fact
16 and conclusions of law and promptly issue to the department
17 [~~commissioner~~] a proposal for a decision about the occurrence of
18 the violation and the amount of a proposed penalty.

19 SECTION 3.0752. Section [248A.256](#), Health and Safety Code,
20 is amended to read as follows:

21 Sec. 248A.256. DECISION BY DEPARTMENT [~~COMMISSIONER~~]. (a)
22 Based on the findings of fact, conclusions of law, and proposal for
23 a decision, the department [~~commissioner~~] by order may:

24 (1) find that a violation occurred and impose a
25 penalty; or

26 (2) find that a violation did not occur.

27 (b) The notice of the department's [~~commissioner's~~] order

1 under Subsection (a) that is sent to the person in accordance with
2 Chapter 2001, Government Code, must include a statement of the
3 right of the person to judicial review of the order.

4 SECTION 3.0753. Section [248A.257](#), Health and Safety Code,
5 is amended to read as follows:

6 Sec. 248A.257. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.
7 Not later than the 30th day after the date the order of the
8 department [~~commissioner~~] imposing an administrative penalty under
9 Section [248A.256](#) becomes final, the person shall:

10 (1) pay the penalty; or
11 (2) file a petition for judicial review of the
12 department's [~~commissioner's~~] order contesting the occurrence of
13 the violation, the amount of the penalty, or both.

14 SECTION 3.0754. Section [248A.258](#), Health and Safety Code,
15 is amended to read as follows:

16 Sec. 248A.258. STAY OF ENFORCEMENT OF PENALTY. (a) Within
17 the period prescribed by Section [248A.257](#), a person who files a
18 petition for judicial review may:

19 (1) stay enforcement of the penalty by:
20 (A) paying the penalty to the court for placement
21 in an escrow account in the court registry; or
22 (B) giving the court a supersedeas bond approved
23 by the court that:

24 (i) is for the amount of the penalty; and
25 (ii) is effective until all judicial review
26 of the department's [~~commissioner's~~] order is final; or
27 (2) request the court to stay enforcement of the

1 penalty by:

2 (A) filing with the court a sworn affidavit of
3 the person stating that the person is financially unable to pay the
4 penalty and is financially unable to give the supersedeas bond; and
5 (B) sending a copy of the affidavit to the
6 department [~~commissioner~~] by certified mail.

7 (b) If the department [~~commissioner~~] receives a copy of an
8 affidavit under Subsection (a)(2), the department [~~commissioner~~]
9 may file with the court, not later than the fifth day after the date
10 the copy is received, a contest to the affidavit. The court shall
11 hold a hearing on the facts alleged in the affidavit as soon as
12 practicable and shall stay the enforcement of the penalty on
13 finding that the alleged facts are true. The person who files an
14 affidavit has the burden of proving that the person is financially
15 unable to pay the penalty and to give a supersedeas bond.

16 SECTION 3.0755. Section 250.001(3), Health and Safety Code,
17 as amended by Chapters 605 (S.B. 944) and 1168 (S.B. 492), Acts of
18 the 83rd Legislature, Regular Session, 2013, is reenacted and
19 amended to read as follows:

20 (3) "Facility" means:

21 (A) a nursing facility [~~home~~], custodial care
22 home, or other institution licensed by the Department of Aging and
23 Disability Services under Chapter 242;

24 (B) an assisted living facility licensed by the
25 Department of Aging and Disability Services under Chapter 247;

26 (C) a home and community support services agency
27 licensed under Chapter 142;

1 (D) an adult day care facility licensed by the
2 Department of Aging and Disability Services under Chapter 103,
3 Human Resources Code;

4 (E) an ICF-IID [~~a facility for persons with~~
5 ~~mental retardation~~] licensed under Chapter 252;

6 (F) an adult foster care provider that contracts
7 with the Department of Aging and Disability Services;

8 (G) a facility that provides mental health
9 services and that is operated by or contracts with the Department of
10 State Health Services;

11 (H) a local mental health [~~or mental retardation~~]
12 authority designated under Section 533.035 or a local intellectual
13 and developmental disability authority designated under Section
14 533.035;

15 (I) a person exempt from licensing under Section
16 142.003(a)(19);

17 (J) a special care facility licensed by the
18 Department of State Health Services under Chapter 248; [~~or~~]

19 (K) a mental health service unit of a hospital
20 licensed under Chapter 241; or

21 (L) [~~(K)~~] a prescribed pediatric extended care
22 center licensed by the Department of Aging and Disability Services
23 under Chapter 248A.

24 SECTION 3.0756. Section 250.002(d), Health and Safety Code,
25 is amended to read as follows:

26 (d) The executive commissioner of the Health and Human
27 Services Commission [~~A regulatory agency~~] may adopt rules relating

1 to the processing of information requested or obtained under this
2 chapter.

3 SECTION 3.0757. Sections [250.006\(a\)](#) and (b), Health and
4 Safety Code, are amended to read as follows:

5 (a) A person for whom the facility or the individual
6 employer is entitled to obtain criminal history record information
7 may not be employed in a facility or by an individual employer if
8 the person has been convicted of an offense listed in this
9 subsection:

10 (1) an offense under Chapter 19, Penal Code (criminal
11 homicide);

12 (2) an offense under Chapter 20, Penal Code
13 (kidnapping, [and] unlawful restraint, and smuggling of persons);

14 (3) an offense under Section [21.02](#), Penal Code
15 (continuous sexual abuse of young child or children), or Section
16 [21.11](#), Penal Code (indecency with a child);

17 (4) an offense under Section [22.011](#), Penal Code
18 (sexual assault);

19 (5) an offense under Section [22.02](#), Penal Code
20 (aggravated assault);

21 (6) an offense under Section [22.04](#), Penal Code (injury
22 to a child, elderly individual, or disabled individual);

23 (7) an offense under Section [22.041](#), Penal Code
24 (abandoning or endangering child);

25 (8) an offense under Section [22.08](#), Penal Code (aiding
26 suicide);

27 (9) an offense under Section [25.031](#), Penal Code

1 (agreement to abduct from custody);
2 (10) an offense under Section 25.08, Penal Code (sale
3 or purchase of [a] child);
4 (11) an offense under Section 28.02, Penal Code
5 (arson);
6 (12) an offense under Section 29.02, Penal Code
7 (robbery);
8 (13) an offense under Section 29.03, Penal Code
9 (aggravated robbery);
10 (14) an offense under Section 21.08, Penal Code
11 (indecent exposure);
12 (15) an offense under Section 21.12, Penal Code
13 (improper relationship between educator and student);
14 (16) an offense under Section 21.15, Penal Code
15 (improper photography or visual recording);
16 (17) an offense under Section 22.05, Penal Code
17 (deadly conduct);
18 (18) an offense under Section 22.021, Penal Code
19 (aggravated sexual assault);
20 (19) an offense under Section 22.07, Penal Code
21 (terroristic threat);
22 (20) an offense under Section 32.53, Penal Code
23 (exploitation of [a] child, elderly individual, or disabled
24 individual);
25 (21) an offense under Section 33.021, Penal Code
26 (online solicitation of a minor);
27 (22) an offense under Section 34.02, Penal Code (money

1 laundering);
2 (23) an offense under Section [35A.02](#), Penal Code
3 (Medicaid fraud);
4 (24) an offense under Section [36.06](#), Penal Code
5 (obstruction or retaliation);
6 (25) an offense under Section [42.09](#), Penal Code
7 (cruelty to livestock animals), or under Section [42.092](#), Penal Code
8 (cruelty to nonlivestock animals); or
9 (26) a conviction under the laws of another state,
10 federal law, or the Uniform Code of Military Justice for an offense
11 containing elements that are substantially similar to the elements
12 of an offense listed by this subsection.

13 (b) A person may not be employed in a position the duties of
14 which involve direct contact with a consumer in a facility or may
15 not be employed by an individual employer before the fifth
16 anniversary of the date the person is convicted of:

17 (1) an offense under Section [22.01](#), Penal Code
18 (assault), that is punishable as a Class A misdemeanor or as a
19 felony;

20 (2) an offense under Section [30.02](#), Penal Code
21 (burglary);

22 (3) an offense under Chapter 31, Penal Code (theft),
23 that is punishable as a felony;

24 (4) an offense under Section [32.45](#), Penal Code
25 (misapplication of fiduciary property or property of [a] financial
26 institution), that is punishable as a Class A misdemeanor or a
27 felony;

1 (5) an offense under Section 32.46, Penal Code
2 (securing execution of [a] document by deception), that is
3 punishable as a Class A misdemeanor or a felony;

4 (6) an offense under Section 37.12, Penal Code (false
5 identification as peace officer; misrepresentation of property);
6 or

7 (7) an offense under Section 42.01(a)(7), (8), or (9),
8 Penal Code (disorderly conduct).

9 SECTION 3.0758. Section 251.001, Health and Safety Code, is
10 amended by amending Subdivisions (2), (3), and (8) and adding
11 Subdivision (7-a) to read as follows:

12 (2) "Commissioner" means the commissioner of state
13 [public] health services.

14 (3) "Department" means the [Texas] Department of State
15 Health Services.

16 (7-a) "Executive commissioner" means the executive
17 commissioner of the Health and Human Services Commission.

18 (8) "Medical review board" means a medical review
19 board that:

20 (A) is appointed by a renal disease network
21 organization which includes this state; and

22 (B) has a contract with the Centers for Medicare
23 and Medicaid Services [Health Care Financing Administration of the
24 United States Department of Health and Human Services] under
25 Section 1881, Title XVIII, Social Security Act (42 U.S.C. Section
26 1395rr).

27 SECTION 3.0759. Sections 251.002(a) and (b), Health and

1 Safety Code, are amended to read as follows:

2 (a) The executive commissioner by rule [board] shall set
3 fees imposed by this chapter in amounts reasonable and necessary to
4 defray the cost of administering this chapter and as prescribed by
5 Section 12.0111.

6 (b) In setting fees under this section, the executive
7 commissioner [board] shall consider setting a range of license and
8 renewal fees based on the number of dialysis stations at each end
9 stage renal disease facility and the patient census.

10 SECTION 3.0760. Section 251.003, Health and Safety Code, is
11 amended to read as follows:

12 Sec. 251.003. ADOPTION OF RULES. The executive
13 commissioner [board] shall adopt rules to implement this chapter,
14 including requirements for the issuance, renewal, denial,
15 suspension, and revocation of a license to operate an end stage
16 renal disease facility.

17 SECTION 3.0761. Sections 251.013(a), (f), and (g), Health
18 and Safety Code, are amended to read as follows:

19 (a) An applicant for a license under this chapter must
20 submit an application to the department on a form prescribed by the
21 department [board].

22 (f) The license is renewable every two years [annually]
23 after submission of:

24 (1) the renewal application and fee; and

25 (2) a [~~an annual~~] report on a form prescribed by the
26 department [board].

27 (g) The [~~annual~~] report required under Subsection (f) must

1 include information related to the quality of care at the end stage
2 renal disease facility. The report must be in the form and
3 documented by evidence as required by department [board] rule.

4 SECTION 3.0762. Section 251.015(a), Health and Safety Code,
5 is amended to read as follows:

6 (a) A medical review board shall advise the executive
7 commissioner and the department [board] on minimum standards and
8 rules to be adopted by the executive commissioner under this
9 chapter.

10 SECTION 3.0763. Section 251.032, Health and Safety Code, is
11 amended to read as follows:

12 Sec. 251.032. MINIMUM REQUIREMENTS; TRAINING. The
13 department rules adopted [~~by the board~~] under Section 251.003 shall
14 establish:

15 (1) minimum standards for the curricula and
16 instructors used to train individuals to act as dialysis
17 technicians;

18 (2) minimum standards for the determination of the
19 competency of individuals who have been trained as dialysis
20 technicians;

21 (3) minimum requirements for documentation that an
22 individual has been trained and determined to be competent as a
23 dialysis technician and the acceptance of that documentation by
24 another end stage renal disease facility that may later employ the
25 individual; and

26 (4) the acts and practices that are allowed or
27 prohibited for dialysis technicians.

1 SECTION 3.0764. Section 251.052(b), Health and Safety Code,
2 is amended to read as follows:

3 (b) In this section, "unauthorized person" does not
4 include:

5 (1) the department;

6 (2) the Health and Human Services Commission,
7 including the office of the inspector general;

8 (3) the office of the attorney general; or

9 (4) [+] any other person authorized by law to make
10 an inspection or to accompany an inspector.

11 SECTION 3.0765. Section 251.0621, Health and Safety Code,
12 is amended to read as follows:

13 Sec. 251.0621. EMERGENCY SUSPENSION. The department may
14 issue an emergency order to suspend a license issued under this
15 chapter if the department has reasonable cause to believe that the
16 conduct of a license holder creates an immediate danger to the
17 public health and safety. An emergency suspension is effective
18 immediately without a hearing on notice to the license holder. On
19 written request of the license holder, the department shall refer
20 the matter to the State Office of Administrative Hearings, and an
21 administrative law judge of that office [~~the department~~] shall
22 conduct a hearing not earlier than the 10th day or later than the
23 30th day after the date the hearing request is received to determine
24 if the emergency suspension is to be continued, modified, or
25 rescinded. The hearing and any appeal are governed by the
26 department's rules for a contested case hearing and Chapter 2001,
27 Government Code.

1 SECTION 3.0766. Section 251.067(c), Health and Safety Code,
2 is amended to read as follows:

3 (c) If the person notified of the violation accepts the
4 determination of the department, the department [~~commissioner or~~
5 ~~the commissioner's designee~~] shall [~~issue an~~] order [~~approving the~~
6 ~~determination and ordering that~~] the person to pay the recommended
7 penalty.

8 SECTION 3.0767. Section 251.068, Health and Safety Code, is
9 amended to read as follows:

10 Sec. 251.068. HEARING; ORDER. (a) If the person notified
11 fails to respond in a timely manner to the notice under Section
12 251.067(b) or if the person requests a hearing, the department
13 shall refer the matter to the State Office of Administrative
14 Hearings and an administrative law judge of that office shall
15 conduct the hearing.

16 (a-1) The department [~~commissioner or the commissioner's~~
17 ~~designee~~] shall[~~+~~

18 [~~(1)~~ set a hearing;

19 [~~(2)~~] give written notice of the hearing to the
20 person[~~+~~ and]

21 [~~(3)~~ designate a hearings examiner to conduct the
22 hearing].

23 (b) The administrative law judge [~~hearings examiner~~] shall
24 make findings of fact and conclusions of law and shall promptly
25 issue to the department [~~commissioner~~] a written proposal for
26 decision as to the occurrence of the violation and a recommendation
27 as to the amount of the proposed penalty if a penalty is determined

1 to be warranted.

2 (c) Based on the findings of fact and conclusions of law and
3 the recommendations of the administrative law judge [~~hearings~~
4 ~~examiner~~], the department [~~commissioner~~] by order may find that a
5 violation has occurred and may assess a penalty, or may find that no
6 violation has occurred.

7 SECTION 3.0768. Sections 251.069(a), (c), and (f), Health
8 and Safety Code, are amended to read as follows:

9 (a) The department [~~commissioner or the commissioner's~~
10 ~~designee~~] shall give notice of the department's [~~commissioner's~~]
11 order under Section 251.068(c) to the person notified. The notice
12 must include:

13 (1) separate statements of the findings of fact and
14 conclusions of law;

15 (2) the amount of any penalty assessed; and

16 (3) a statement of the right of the person to judicial
17 review of the department's [~~commissioner's~~] order.

18 (c) Within the 30-day period, a person who acts under
19 Subsection (b)(3) may:

20 (1) stay enforcement of the penalty by:

21 (A) paying the amount of the penalty to the court
22 for placement in an escrow account; or

23 (B) giving to the court a supersedeas bond that
24 is approved by the court for the amount of the penalty and that is
25 effective until all judicial review of the department's [~~board's~~]
26 order is final; or

27 (2) request the court to stay enforcement of the

1 penalty by:

2 (A) filing with the court a sworn affidavit of
3 the person stating that the person is financially unable to pay the
4 amount of the penalty and is financially unable to give the
5 supersedeas bond; and

6 (B) giving a copy of the affidavit to the
7 department by certified mail.

8 (f) Judicial review of the department's order [~~of the~~
9 ~~board~~]:

10 (1) is instituted by filing a petition as provided by
11 Subchapter G, Chapter 2001, Government Code; and

12 (2) is under the substantial evidence rule.

13 SECTION 3.0769. Section 251.071(a), Health and Safety Code,
14 is amended to read as follows:

15 (a) The department may assess reasonable expenses and costs
16 against a person in an administrative hearing if, as a result of the
17 hearing, the person's license is denied, suspended, or revoked or
18 if administrative penalties are assessed against the person. The
19 person shall pay expenses and costs assessed under this subsection
20 not later than the 30th day after the date a department [~~of a board~~]
21 order requiring the payment of expenses and costs is final. The
22 department may refer the matter to the attorney general for
23 collection of the expenses and costs.

24 SECTION 3.0770. The heading to Chapter 252, Health and
25 Safety Code, is amended to read as follows:

26 CHAPTER 252. INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN
27 INTELLECTUAL DISABILITY [~~THE MENTALLY RETARDED~~]

1 SECTION 3.0771. Section 252.001, Health and Safety Code, is
2 amended to read as follows:

3 Sec. 252.001. PURPOSE. The purpose of this chapter is to
4 promote the public health, safety, and welfare by providing for the
5 development, establishment, and enforcement of standards for the
6 provision of services to individuals residing in intermediate care
7 facilities for individuals with an intellectual disability [~~the~~
8 ~~mentally retarded~~] and the establishment, construction,
9 maintenance, and operation of facilities providing this service
10 that, in light of advancing knowledge, will promote quality in the
11 delivery of services and treatment of residents.

12 SECTION 3.0772. Section 252.002, Health and Safety Code, is
13 amended by amending Subdivisions (1), (2), (4), and (7) and adding
14 Subdivisions (1-a) and (3-a) to read as follows:

15 (1) "Commission" means the Health and Human Services
16 Commission [~~Board~~ means the Texas Board of Human Services].

17 (1-a) "Commissioner" means the commissioner of aging
18 and disability services.

19 (2) "Department" means the [Texas] Department of Aging
20 and Disability [~~Human~~] Services.

21 (3-a) "Executive commissioner" means the executive
22 commissioner of the Health and Human Services Commission.

23 (4) "Facility" means a home or an establishment that:

24 (A) furnishes food, shelter, and treatment or
25 services to four or more individuals [~~persons~~] unrelated to the
26 owner;

27 (B) is primarily for the diagnosis, treatment, or

1 rehabilitation of individuals [persons] with an intellectual
2 disability [~~mental retardation~~] or related conditions; and

3 (C) provides in a protected setting continuous
4 evaluation, planning, 24-hour supervision, coordination, and
5 integration of health or rehabilitative services to help each
6 resident function at the resident's greatest ability.

7 (7) "Resident" means an individual, including a
8 client, with an intellectual disability [~~mental retardation~~] or a
9 related condition who is residing in a facility licensed under this
10 chapter.

11 SECTION 3.0773. Section 252.003, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 252.003. EXEMPTIONS. Except as otherwise provided by
14 this chapter, this chapter does not apply to:

15 (1) an establishment that:

16 (A) [~~(1)~~] provides training, habilitation,
17 rehabilitation, or education to individuals with an intellectual
18 disability [~~mental retardation~~] or [a] related conditions
19 [~~condition~~];

20 (B) [~~(2)~~] is operated under the jurisdiction of a
21 state or federal agency, including the department, commission,
22 Department of Assistive and Rehabilitative Services, [~~Department~~
23 ~~of Aging and Disability Services,~~] Department of State Health
24 Services, [~~Health and Human Services Commission,~~] Texas Department
25 of Criminal Justice, and United States Department of Veterans
26 Affairs; and

27 (C) [~~(3)~~] is certified through inspection or

1 evaluation as meeting the standards established by the state or
2 federal agency; or [and]

3 (2) an establishment that [44] is conducted by or for
4 the adherents of a well-recognized church or religious denomination
5 for the purpose of providing facilities for the care or treatment of
6 individuals who are ill and [the sick] who depend exclusively on
7 prayer or spiritual means for healing, without the use of any drug
8 or material remedy, if the establishment complies with safety,
9 sanitary, and quarantine laws and rules.

10 SECTION 3.0774. Section 252.007, Health and Safety Code, is
11 amended to read as follows:

12 Sec. 252.007. PAPERWORK REDUCTION RULES. (a) The
13 executive commissioner [~~department and any designee of the~~
14 ~~department~~] shall[~~+~~

15 [1] adopt rules to reduce the amount of paperwork a
16 facility must complete and retain.

17 (a-1) The department shall[+ and

18 [2] attempt to reduce the amount of paperwork to the
19 minimum amount required by state and federal law unless the
20 reduction would jeopardize resident safety.

21 (b) The department[, ~~any designee of the department,~~] and
22 each facility shall work together to review rules and propose
23 changes in paperwork requirements so that additional time is
24 available for direct resident care.

25 SECTION 3.0775. Section 252.008, Health and Safety Code, is
26 amended to read as follows:

27 Sec. 252.008. RULES GENERALLY. [~~(a)~~] The executive

1 commissioner [board] shall adopt rules related to the
2 administration and implementation of this chapter.

3 ~~[(b) The department and the Texas Department of Mental~~
4 ~~Health and Mental Retardation shall cooperate in developing~~
5 ~~proposed rules under this section. Before the board adopts a rule~~
6 ~~applicable to a facility, the board shall present the proposed rule~~
7 ~~to the commissioner of mental health and mental retardation for~~
8 ~~review of the effects of the proposed rule. Not later than the 31st~~
9 ~~day after the date the proposed rule is received, the commissioner~~
10 ~~of mental health and mental retardation shall provide the board a~~
11 ~~written statement of the effects of the proposed rule. The board~~
12 ~~shall consider the statement in adopting a rule under this~~
13 ~~section.]~~

14 SECTION 3.0776. Section 252.009(a), Health and Safety Code,
15 is amended to read as follows:

16 (a) Whenever possible, the department shall:

17 (1) use the services of and consult with state and
18 local agencies in carrying out the department's functions under
19 this chapter; and

20 (2) use the facilities of the department [~~or a~~
21 ~~designee of the department~~], particularly in establishing and
22 maintaining standards relating to the humane treatment of
23 residents.

24 SECTION 3.0777. Section 252.0311(c), Health and Safety
25 Code, is amended to read as follows:

26 (c) The executive commissioner [~~of the Health and Human~~
27 ~~Services Commission~~] may adopt rules that specify the ownership

1 interests and other relationships that qualify a person as a
2 controlling person.

3 SECTION 3.0778. Sections 252.033(e), (f), and (h), Health
4 and Safety Code, are amended to read as follows:

5 (e) The renewal report required under Subsection (d)(2)
6 must be filed in accordance with rules adopted by the executive
7 commissioner [department] that specify the form of the report, the
8 date it must be submitted, and the information it must contain.

9 (f) The department may not issue a license for new beds or an
10 expansion of an existing facility under this chapter unless the
11 addition of new beds or the expansion is included in the plan
12 approved by the commission [~~Health and Human Services Commission~~]
13 in accordance with Section 533A.062 [~~533.062~~].

14 (h) The executive commissioner [department] by rule shall
15 define specific, appropriate, and objective criteria on which the
16 department [~~it~~] may deny an initial license application or license
17 renewal or revoke a license.

18 SECTION 3.0779. Sections 252.034(a) and (d), Health and
19 Safety Code, are amended to read as follows:

20 (a) The executive commissioner [~~board~~] by rule may adopt a
21 fee for a license issued under this chapter. The fee may not exceed
22 \$150 plus \$5 for each unit of capacity or bed space for which the
23 license is sought.

24 (d) The executive commissioner by rule [~~board~~] may adopt an
25 additional fee for the approval of an increase in bed space.

26 SECTION 3.0780. Section 252.036, Health and Safety Code, is
27 amended to read as follows:

1 Sec. 252.036. MINIMUM STANDARDS. (a) The executive
2 commissioner [board] may adopt [~~, publish, and enforce~~] minimum
3 standards relating to:

4 (1) the construction or remodeling of a facility,
5 including plumbing, heating, lighting, ventilation, and other
6 housing conditions, to ensure the residents' health, safety,
7 comfort, and protection from fire hazard;

8 (2) sanitary and related conditions in a facility and
9 its surroundings, including water supply, sewage disposal, food
10 handling, and general hygiene in order to ensure the residents'
11 health, safety, and comfort;

12 (3) equipment essential to the residents' health and
13 welfare;

14 (4) the reporting and investigation of injuries,
15 incidents, and unusual accidents and the establishment of other
16 policies and procedures necessary to ensure resident safety;

17 (5) behavior management, including use of seclusion
18 and physical restraints;

19 (6) policies and procedures for the control of
20 communicable diseases in employees and residents;

21 (7) the use and administration of medication in
22 conformity with applicable law and rules for pharmacy services;

23 (8) specialized nutrition support such as delivery of
24 enteral feedings and parenteral nutrients;

25 (9) requirements for in-service education of each
26 employee who has any contact with residents;

27 (10) the regulation of the number and qualification of

1 all personnel, including management and professional support
2 personnel, responsible for any part of the care given to residents;
3 and

4 (11) the quality of life and the provision of active
5 treatment to residents.

6 (b) The department shall enforce the adopted minimum
7 standards.

8 SECTION 3.0781. Section 252.037, Health and Safety Code, is
9 amended to read as follows:

10 Sec. 252.037. REASONABLE TIME TO COMPLY. The executive
11 commissioner [board] by rule shall give a facility that is in
12 operation when a rule or standard is adopted under this chapter a
13 reasonable time to comply with the rule or standard.

14 SECTION 3.0782. Sections 252.0375(a) and (d), Health and
15 Safety Code, are amended to read as follows:

16 (a) The executive commissioner [department] by rule shall
17 adopt a procedure under which a person proposing to construct or
18 modify a facility may submit building plans to the department for
19 review for compliance with the department's architectural
20 requirements before beginning construction or modification. In
21 adopting the procedure, the executive commissioner [department]
22 shall set reasonable deadlines by which the department must
23 complete review of submitted plans.

24 (d) A fee collected under this section shall be deposited in
25 the general revenue fund [~~and may be appropriated only to the~~
26 ~~department to conduct reviews under this section~~].

27 SECTION 3.0783. Sections 252.038(b) and (d), Health and

1 Safety Code, are amended to read as follows:

2 (b) The executive commissioner [board] by rule shall adopt
3 the fire safety standards applicable to the facility. The fire
4 safety standards must be the same as the fire safety standards
5 established by an edition of the Life Safety Code of the National
6 Fire Protection Association. If required by federal law or
7 regulation, the edition selected may be different for facilities or
8 portions of facilities operated or approved for construction at
9 different times.

10 (d) The rules adopted under this section do not prevent a
11 facility licensed under this chapter from voluntarily conforming to
12 fire safety standards that are compatible with, equal to, or more
13 stringent than those adopted by the executive commissioner [board].

14 SECTION 3.0784. Sections 252.040(a) and (h), Health and
15 Safety Code, are amended to read as follows:

16 (a) The department or the department's designee may make any
17 inspection, survey, or investigation that it considers necessary
18 and may enter the premises of a facility at reasonable times to make
19 an inspection, survey, or investigation in accordance with
20 department [board] rules.

21 (h) The executive commissioner [~~department~~] shall establish
22 proper procedures to ensure that copies of all forms and reports
23 under this section are made available to consumers, service
24 recipients, and the relatives of service recipients as the
25 department considers proper.

26 SECTION 3.0785. Section 252.041(d), Health and Safety Code,
27 is amended to read as follows:

1 (d) As considered appropriate and necessary by the
2 department, the department may invite at least one person as a
3 citizen advocate to participate in inspections. The invited
4 advocate must be an individual who has an interest in or who is
5 employed by or affiliated with an organization or entity that
6 represents, advocates for, or serves individuals with an
7 intellectual disability [~~mental retardation~~] or a related
8 condition.

9 SECTION 3.0786. Section [252.061](#)(b), Health and Safety Code,
10 is amended to read as follows:

11 (b) The executive commissioner [~~board~~] by rule shall
12 provide for the placement of residents during the facility's
13 suspension or closing to ensure their health and safety.

14 SECTION 3.0787. Sections [252.065](#)(c), (d), (e), and (g),
15 Health and Safety Code, are amended to read as follows:

16 (c) The executive commissioner [~~department~~] by rule shall
17 specify each violation for which an administrative penalty may be
18 assessed. In determining which violations warrant penalties, the
19 executive commissioner [~~department~~] shall consider:

20 (1) the seriousness of the violation, including the
21 nature, circumstances, extent, and gravity of the violation and the
22 hazard of the violation to the health or safety of clients; and

23 (2) whether the affected facility had identified the
24 violation as a part of its internal quality assurance process and
25 had made appropriate progress on correction.

26 (d) The executive commissioner [~~department~~] by rule shall
27 establish a specific and detailed schedule of appropriate and

1 graduated penalties for each violation based on:

2 (1) the seriousness of the violation, including the
3 nature, circumstances, extent, and gravity of the violation and the
4 hazard of the violation to the health or safety of clients;

5 (2) the history of previous violations;

6 (3) whether the affected facility had identified the
7 violation as a part of its internal quality assurance process and
8 had made appropriate progress on correction;

9 (4) the amount necessary to deter future violations;

10 (5) efforts made to correct the violation;

11 (6) the size of the facility; and

12 (7) any other matters that justice may require.

13 (e) The executive commissioner [department] by rule shall
14 provide the facility with a reasonable period of time, not less than
15 45 days, following the first day of a violation to correct the
16 violation before the department may assess [assessing] an
17 administrative penalty if a plan of correction has been
18 implemented. This subsection does not apply to a violation
19 described by Subsections (a)(2)-(8) or to a violation that the
20 department determines:

21 (1) has resulted in serious harm to or the death of a
22 resident;

23 (2) constitutes a serious threat to the health or
24 safety of a resident; or

25 (3) substantially limits the institution's capacity to
26 provide care.

27 (g) The executive commissioner [department] shall establish

1 a system to ensure standard and consistent application of penalties
2 regardless of the facility location.

3 SECTION 3.0788. Section 252.066(c), Health and Safety Code,
4 is amended to read as follows:

5 (c) If the person notified under this section of the
6 violation accepts the determination of the department or if the
7 person fails to respond in a timely manner to the notice, the
8 department [commissioner of human services or the commissioner's
9 designee] shall issue an order approving the determination and
10 ordering that the person pay the proposed penalty.

11 SECTION 3.0789. Section 252.067, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 252.067. HEARING; ORDER. (a) If the person notified
14 under Section 252.066 requests a hearing, an administrative law
15 judge [the department] shall[~~+~~

16 [~~(1)~~] set a hearing and the department shall[~~+~~

17 [~~(2)~~] give written notice of the hearing to the
18 person[~~,~~ and

19 [~~(3)~~ designate a hearings examiner to conduct the
20 hearing].

21 (b) The administrative law judge [hearings examiner] shall
22 make findings of fact and conclusions of law and shall promptly
23 issue to the department [commissioner of human services or the
24 commissioner's designee] a proposal for decision as to the
25 occurrence of the violation and a recommendation as to the amount of
26 the proposed penalty if a penalty is determined to be warranted.

27 (c) Based on the findings of fact and conclusions of law and

1 the recommendations of the administrative law judge [~~hearings~~
2 ~~examiner~~], the department [~~commissioner of human services or the~~
3 ~~commissioner's designee~~] by order may find that a violation has
4 occurred and may assess a penalty or may find that no violation has
5 occurred.

6 SECTION 3.0790. Section 252.071, Health and Safety Code, as
7 amended by Chapters 619 (S.B. 1376) and 1284 (S.B. 1839), Acts of
8 the 77th Legislature, Regular Session, 2001, is reenacted and
9 amended to read as follows:

10 Sec. 252.071. AMELIORATION OF VIOLATION. (a) In lieu of
11 demanding payment of an administrative penalty authorized by this
12 subchapter, the department may allow a person subject to the
13 penalty to use, under the supervision of the department, all or part
14 of the amount of the penalty to ameliorate the violation or to
15 improve services, other than administrative services, in the
16 facility affected by the violation.

17 (b) The department shall offer amelioration to a person for
18 a charged violation if the department determines that the violation
19 does not constitute immediate jeopardy to the health and safety of a
20 facility resident.

21 (c) The department may not offer amelioration to a person if
22 the department determines that the charged violation constitutes
23 immediate jeopardy to the health and safety of a facility resident.

24 (d) The department shall offer amelioration to a person
25 under this section not later than the 10th day after the date the
26 person receives from the department a final notification of
27 assessment of administrative penalty that is sent to the person

1 after an informal dispute resolution process but before an
2 administrative hearing under Section 252.067.

3 (e) A person to whom amelioration has been offered must file
4 a plan for amelioration not later than the 45th day after the date
5 the person receives the offer of amelioration from the department.
6 In submitting the plan, the person must agree to waive the person's
7 right to an administrative hearing under Section 252.067 if the
8 department approves the plan.

9 (f) At a minimum, a plan for amelioration must:

10 (1) propose changes to the management or operation of
11 the facility that will improve services to or quality of care of
12 residents of the facility;

13 (2) identify, through measurable outcomes, the ways in
14 which and the extent to which the proposed changes will improve
15 services to or quality of care of residents of the facility;

16 (3) establish clear goals to be achieved through the
17 proposed changes;

18 (4) establish a timeline for implementing the proposed
19 changes; and

20 (5) identify specific actions necessary to implement
21 the proposed changes.

22 (g) The department may require that an amelioration plan
23 propose changes that would result in conditions that exceed the
24 requirements of this chapter or the rules adopted under this
25 chapter.

26 (h) The department shall approve or deny an amelioration
27 plan not later than the 45th day after the date the department

1 receives the plan. On approval of a person's plan, the commission
2 or the State Office of Administrative Hearings, as appropriate,
3 [department] shall deny a pending request for a hearing submitted
4 by the person under Section [252.066\(b\)](#).

5 (i) The department may not offer amelioration to a person:
6 (1) more than three times in a two-year period; or
7 (2) more than one time in a two-year period for the
8 same or similar violation.

9 (j) In this section, "immediate jeopardy to health and
10 safety" means a situation in which immediate corrective action is
11 necessary because the facility's noncompliance with one or more
12 requirements has caused, or is likely to cause, serious injury,
13 harm, impairment, or death to a resident receiving care in the
14 facility.

15 SECTION 3.0791. Section [252.093\(d\)](#), Health and Safety Code,
16 is amended to read as follows:

17 (d) If possible, the court shall appoint as trustee an
18 individual whose background includes intellectual disability
19 [mental retardation] service administration.

20 SECTION 3.0792. Section [252.095\(b\)](#), Health and Safety Code,
21 is amended to read as follows:

22 (b) The fee collected under this section shall be in the
23 amount prescribed by Section [242.097\(c\)](#) [~~242.097(b)~~] and shall be
24 deposited to the credit of the nursing and convalescent home trust
25 fund established under Section [242.096](#).

26 SECTION 3.0793. Sections [252.096\(b\)](#) and (d), Health and
27 Safety Code, are amended to read as follows:

1 (b) Interest on unreimbursed amounts begins to accrue on the
2 date on which the money is disbursed to the facility. The rate of
3 interest is the rate determined under Section 304.003, Finance Code
4 [~~Section 2, Article 1.05, Title 79, Revised Statutes (Article~~
5 ~~5069-1.05, Vernon's Texas Civil Statutes)~~], to be applicable to
6 judgments rendered during the month in which the money is disbursed
7 to the facility.

8 (d) The amount that remains unreimbursed on the first
9 anniversary of the date on which the money is received is delinquent
10 and the commission [~~Texas Department of Mental Health and Mental~~
11 ~~Retardation~~] may determine that the facility is ineligible for a
12 Medicaid provider contract.

13 SECTION 3.0794. Section 252.151, Health and Safety Code, is
14 amended to read as follows:

15 Sec. 252.151. ADMINISTRATION OF MEDICATION. The executive
16 commissioner [~~department~~] shall adopt rules relating to the
17 administration of medication in facilities.

18 SECTION 3.0795. Section 252.152(b), Health and Safety Code,
19 is amended to read as follows:

20 (b) The executive commissioner [~~department~~] shall specify
21 the details of the examination.

22 SECTION 3.0796. Section 252.182, Health and Safety Code, is
23 amended to read as follows:

24 Sec. 252.182. RESPITE CARE. (a) A facility licensed under
25 this chapter may provide respite care for an individual who has a
26 diagnosis of an intellectual disability [~~mental retardation~~] or a
27 related condition without regard to whether the individual is

1 eligible to receive intermediate care services under federal law.

2 (b) The executive commissioner [board] may adopt rules for
3 the regulation of respite care provided by a facility licensed
4 under this chapter.

5 SECTION 3.0797. Section 252.185, Health and Safety Code, is
6 amended to read as follows:

7 Sec. 252.185. INSPECTIONS. The department, at the time of
8 an ordinary licensing inspection or at other times determined
9 necessary by the department, shall inspect a facility's records of
10 respite care services, physical accommodations available for
11 respite care, and the plan of care records to ensure that the
12 respite care services comply with the licensing standards of this
13 chapter and with any rules the executive commissioner [board] may
14 adopt to regulate respite care services.

15 SECTION 3.0798. Sections 252.202(a) and (b), Health and
16 Safety Code, are amended to read as follows:

17 (a) A quality assurance fee is imposed on each facility for
18 which a license fee must be paid under Section 252.034, on each
19 facility owned by a community mental health and intellectual
20 disability [~~mental retardation~~] center, as described by Subchapter
21 A, Chapter 534, and on each facility owned by the department [~~Texas~~
22 ~~Department of Mental Health and Mental Retardation~~]. The fee:

23 (1) is an amount established under Subsection (b)
24 multiplied by the number of patient days as determined in
25 accordance with Section 252.203;

26 (2) is payable monthly; and

27 (3) is in addition to other fees imposed under this

1 chapter.

2 (b) The commission [~~Health and Human Services Commission~~]
3 or the department at the direction of the commission shall set the
4 quality assurance fee for each day in the amount necessary to
5 produce annual revenues equal to an amount that is not more than six
6 percent of the facility's total annual gross receipts in this
7 state. The fee is subject to a prospective adjustment as necessary.

8 SECTION 3.0799. Section [252.204](#), Health and Safety Code, is
9 amended to read as follows:

10 Sec. 252.204. REPORTING AND COLLECTION. (a) The
11 commission [~~Health and Human Services Commission~~] or the department
12 at the direction of the commission shall collect the quality
13 assurance fee.

14 (b) Each facility shall:

15 (1) not later than the 20th day after the last day of a
16 month file a report with the commission [~~Health and Human Services~~
17 ~~Commission~~] or the department, as appropriate, stating the total
18 patient days for the month; and

19 (2) not later than the 30th day after the last day of
20 the month pay the quality assurance fee.

21 SECTION 3.0800. Sections [252.205\(a\)](#) and [\(b\)](#), Health and
22 Safety Code, are amended to read as follows:

23 (a) The executive commissioner [~~Health and Human Services~~
24 ~~Commission~~] shall adopt rules for the administration of this
25 subchapter, including rules related to the imposition and
26 collection of the quality assurance fee.

27 (b) The executive commissioner [~~Health and Human Services~~

1 Commission] may not adopt rules granting any exceptions from the
2 quality assurance fee.

3 SECTION 3.0801. Section 252.206, Health and Safety Code, is
4 amended to read as follows:

5 Sec. 252.206. QUALITY ASSURANCE FUND. (a) The quality
6 assurance fund is an account in the general revenue fund [~~a fund~~
7 ~~outside the state treasury held by the Texas Treasury Safekeeping~~
8 ~~Trust Company~~]. Notwithstanding any other law, the comptroller
9 shall deposit fees collected under this subchapter to the credit of
10 the fund.

11 (b) The quality assurance fund is composed of [•
12 [•(1)] fees deposited to the credit of the fund under
13 this subchapter [•, and
14 [•(2) the earnings of the fund].

15 (c) Money deposited to the quality assurance fund [~~remains~~
16 ~~the property of the fund and~~] may be appropriated [~~used~~] only for
17 the purposes of this subchapter.

18 SECTION 3.0802. Sections 252.207(a) and (c), Health and
19 Safety Code, are amended to read as follows:

20 (a) Subject to legislative appropriation and state and
21 federal law, the commission [~~Health and Human Services Commission~~]
22 may use money in the quality assurance fund, together with any
23 federal money available to match that money:

24 (1) to offset expenses incurred to administer the
25 quality assurance fee under this chapter;

26 (2) to increase reimbursement rates paid under the
27 Medicaid program to facilities or waiver programs for individuals

1 [persons] with an intellectual disability [mental retardation]
2 operated in accordance with 42 U.S.C. Section 1396n(c) and its
3 subsequent amendments; or

4 (3) for any other health and human services purpose
5 approved by the governor and Legislative Budget Board.

6 (c) If money in the quality assurance fund is used to
7 increase a reimbursement rate in the Medicaid program, the
8 commission [~~Health and Human Services Commission~~] shall ensure that
9 the reimbursement methodology used to set that rate describes how
10 the money in the fund will be used to increase the rate and provides
11 incentives to increase direct care staffing and direct care wages
12 and benefits.

13 SECTION 3.0803. Section 252.208, Health and Safety Code, is
14 amended to read as follows:

15 Sec. 252.208. INVALIDITY; FEDERAL FUNDS. If any portion of
16 this subchapter is held invalid by a final order of a court that is
17 not subject to appeal, or if the commission [~~Health and Human~~
18 ~~Services Commission~~] determines that the imposition of the fee and
19 the expenditure as prescribed by this subchapter of amounts
20 collected will not entitle the state to receive additional federal
21 funds under the Medicaid program, the commission shall stop
22 collection of the quality assurance fee and shall return, not later
23 than the 30th day after the date collection is stopped, any money
24 collected, but not spent, under this subchapter to the facilities
25 that paid the fees in proportion to the total amount paid by those
26 facilities.

27 SECTION 3.0804. Section 253.002(b), Health and Safety Code,

1 is amended to read as follows:

2 (b) If the department [Department of Aging and Disability
3 Services] receives a report that an employee of a facility licensed
4 under Chapter 252 or of an individual employer committed reportable
5 conduct, the department shall forward that report to the Department
6 of Family and Protective Services for investigation.

7 SECTION 3.0805. Section 253.003(c), Health and Safety Code,
8 is amended to read as follows:

9 (c) If the employee notified of the violation accepts the
10 determination of the department or fails to timely respond to the
11 notice, the department [~~commissioner or the commissioner's~~
12 ~~designee~~] shall [~~issue an~~] order [~~approving the determination and~~
13 ~~ordering~~] that the reportable conduct be recorded in the registry
14 under Section 253.007.

15 SECTION 3.0806. Section 253.004, Health and Safety Code, is
16 amended to read as follows:

17 Sec. 253.004. HEARING; ORDER. (a) If the employee
18 requests a hearing, an administrative law judge of the State Office
19 of Administrative Hearings shall conduct a hearing and the
20 department shall[+]

21 [+(1) ~~set a hearing;~~

22 [+(2) ~~give written notice of the hearing to the~~
23 employee[; and

24 [+(3) ~~designate a hearings examiner to conduct the~~
25 ~~hearing~~.]

26 (a-1) The administrative law judge [~~department~~] must
27 complete the hearing and the hearing record not later than the 120th

1 day after the date the department receives a request for a hearing.

2 (b) The hearings examiner shall make findings of fact and
3 conclusions of law and shall promptly issue to the department
4 [~~commissioner or the commissioner's designee~~] a proposal for
5 decision as to the occurrence of the reportable conduct.

6 (c) Based on the findings of fact and conclusions of law and
7 the recommendations of the hearings examiner, the department
8 [~~commissioner or the commissioner's designee~~] by order may find
9 that the reportable conduct has occurred. If the department
10 [~~commissioner or the commissioner's designee~~] finds that the
11 reportable conduct has occurred, the department [~~commissioner or~~
12 ~~the commissioner's designee~~] shall issue an order on that
13 [~~approving the~~] determination.

14 SECTION 3.0807. Section 253.0055, Health and Safety Code,
15 is amended to read as follows:

16 Sec. 253.0055. REMOVAL OF NURSE AIDE FINDING. If a finding
17 of reportable conduct is the basis for an entry in the nurse aide
18 registry maintained under Chapter 250 and the entry is subsequently
19 removed from the nurse aide registry, the department [~~commissioner~~
20 ~~or the commissioner's designee~~] shall immediately remove the record
21 of reportable conduct from the employee misconduct registry
22 maintained under Section 253.007.

23 SECTION 3.0808. Section 253.009(a), Health and Safety Code,
24 is amended to read as follows:

25 (a) Each facility or individual employer as defined in this
26 chapter and each agency as defined in Section 48.401, Human
27 Resources Code, shall notify its employees in a manner prescribed

1 by the department [Department of Aging and Disability Services]:

2 (1) about the employee misconduct registry; and

3 (2) that an employee may not be employed if the
4 employee is listed in the registry.

5 SECTION 3.0809. Section 254.001(5), Health and Safety Code,
6 is amended to read as follows:

7 (5) "Freestanding emergency medical care facility"
8 means a facility, structurally separate and distinct from a
9 hospital, that receives an individual and provides emergency care,
10 as defined by Subdivision [Subsection] (2).

11 SECTION 3.0810. Sections 254.051(b) and (e), Health and
12 Safety Code, are amended to read as follows:

13 (b) Except as provided by Section 254.052, a facility or
14 person may not hold itself out to the public as a freestanding
15 emergency medical care facility or use any similar term, as defined
16 by department rule, that would give the impression that the
17 facility or person is providing emergency care unless the facility
18 or person holds a license issued under this chapter. [~~The use of~~
19 ~~the term "emergency" or a similar term is also subject to Section~~
20 ~~254.152.~~]

21 (e) A license may be issued only for the establishment or
22 operation of [~~The executive commissioner by rule shall establish a~~
23 ~~classification for~~] a facility that is in continuous operation 24
24 hours per day and 7 days per week [~~and a classification for a~~
25 ~~facility that is in operation 7 days per week and at least 12 hours~~
26 ~~per day~~].

27 SECTION 3.0811. Section 254.053(b), Health and Safety Code,

1 is amended to read as follows:

2 (b) Each application must be accompanied by a nonrefundable
3 license fee in an amount set by the executive commissioner by rule.

4 SECTION 3.0812. Section 254.102, Health and Safety Code, is
5 amended to read as follows:

6 Sec. 254.102. FEES. The executive commissioner by rule
7 shall set fees imposed by this chapter in amounts reasonable and
8 necessary to defray the cost of administering this chapter.

9 SECTION 3.0813. Section 254.151(c), Health and Safety Code,
10 is amended to read as follows:

11 (c) The minimum standards under this section shall apply to
12 all facilities licensed under this chapter [operating 24 hours a
13 day and 7 days per week and facilities operating less than 24 hours
14 a day and 7 days per week].

15 SECTION 3.0814. Section 254.202(c), Health and Safety Code,
16 is amended to read as follows:

17 (c) On written request of the license holder to the
18 department for a hearing, the department shall refer the matter to
19 the State Office of Administrative Hearings. An administrative law
20 judge of that office [, the department] shall conduct a hearing not
21 earlier than the 10th day or later than the 30th day after the date
22 the hearing request is received by the department to determine if
23 the emergency suspension is to be continued, modified, or
24 rescinded.

25 SECTION 3.0815. Sections 254.205(h), (i), (j), and (k),
26 Health and Safety Code, are amended to read as follows:

27 (h) If the person accepts the determination and recommended

1 penalty or if the person fails to respond to the notice, the
2 department [~~commissioner of state health services~~] by order shall
3 [~~approve the determination and~~] impose the recommended penalty.

4 (i) If the person requests a hearing, the department
5 [~~commissioner of state health services~~] shall refer the matter to
6 the State Office of Administrative Hearings, which shall promptly
7 set a hearing date. The department shall [~~and~~] give written notice
8 of the time and place of the hearing to the person. An
9 administrative law judge of that office [~~the State Office of~~
10 ~~Administrative Hearings~~] shall conduct the hearing.

11 (j) The administrative law judge shall make findings of fact
12 and conclusions of law and promptly issue to the department
13 [~~commissioner of state health services~~] a written proposal for [~~a~~]
14 decision about the occurrence of the violation and the amount of a
15 proposed penalty.

16 (k) Based on the findings of fact, conclusions of law, and
17 proposal for [~~a~~] decision, the department [~~commissioner of state~~
18 ~~health services~~] by order may:

19 (1) find that a violation occurred and impose a
20 penalty; or
21 (2) find that a violation did not occur.

22 SECTION 3.0816. Sections 254.206(a), (b), (c), and (g),
23 Health and Safety Code, are amended to read as follows:

24 (a) Within 30 days after the date an order of the department
25 [~~commissioner of state health services~~] under Section 254.205(k)
26 that imposes an administrative penalty becomes final, the person
27 shall:

1 (1) pay the penalty; or
2 (2) file a petition for judicial review of the
3 department's [~~commissioner's~~] order contesting the occurrence of
4 the violation, the amount of the penalty, or both.

5 (b) Within the 30-day period prescribed by Subsection (a), a
6 person who files a petition for judicial review may:

7 (1) stay enforcement of the penalty by:
8 (A) paying the penalty to the court for placement
9 in an escrow account; or
10 (B) giving the court a supersedeas bond approved
11 by the court that:

12 (i) is for the amount of the penalty; and
13 (ii) is effective until all judicial review
14 of the department's [~~commissioner's~~] order is final; or

15 (2) request the court to stay enforcement of the
16 penalty by:

17 (A) filing with the court a sworn affidavit of
18 the person stating that the person is financially unable to pay the
19 penalty and is financially unable to give the supersedeas bond; and
20 (B) sending a copy of the affidavit to the
21 department [~~executive commissioner~~] by certified mail.

22 (c) If the department [~~commissioner of state health~~
23 ~~services~~] receives a copy of an affidavit under Subsection (b)(2),
24 the department [~~commissioner~~] may file with the court, within five
25 days after the date the copy is received, a contest to the
26 affidavit. The court shall hold a hearing on the facts alleged in
27 the affidavit as soon as practicable and shall stay the enforcement

1 of the penalty on finding that the alleged facts are true. The
2 person who files an affidavit has the burden of proving that the
3 person is financially unable to pay the penalty or to give a
4 supersedeas bond.

5 (g) If the person paid the penalty and if the amount of the
6 penalty is reduced or the penalty is not upheld by the court, the
7 court shall order, when the court's judgment becomes final, that
8 the appropriate amount plus accrued interest be remitted to the
9 person within 30 days after the date that the judgment [~~judgement~~]
10 of the court becomes final. The interest accrues at the rate
11 charged on loans to depository institutions by the New York Federal
12 Reserve Bank. The interest shall be paid for the period beginning
13 on the date the penalty is paid and ending on the date the penalty is
14 remitted.

15 SECTION 3.0817. Section [255.001](#)(2), Health and Safety Code,
16 is amended to read as follows:

17 (2) "Long-term care facility" means a nursing
18 institution, an assisted living facility, or an ICF-IID
19 [~~intermediate care facility for the mentally retarded~~] licensed
20 under Chapter 242, 247, or 252, or certified under Chapter 32, Human
21 Resources Code.

22 SECTION 3.0818. Section [259.006](#)(a), Health and Safety Code,
23 is amended to read as follows:

24 (a) The executive commissioner of the Health and Human
25 Services Commission [~~department~~] may adopt rules to administer and
26 enforce this chapter.

27 SECTION 3.0819. Section [260A.007](#)(d), Health and Safety

1 Code, is amended to read as follows:

2 (d) The executive commissioner [department] shall adopt
3 rules governing the conduct of investigations, including
4 procedures to ensure that the complainant and the resident, the
5 resident's next of kin, and any person designated to receive
6 information concerning the resident receive periodic information
7 regarding the investigation.

8 SECTION 3.0820. Subchapter A, Chapter 263, Health and
9 Safety Code, is amended by adding Section 263.0001 to read as
10 follows:

11 Sec. 263.0001. DEFINITION. In this chapter, "executive
12 commissioner" means the executive commissioner of the Health and
13 Human Services Commission.

14 SECTION 3.0821. Section 263.001(a), Health and Safety Code,
15 is amended to read as follows:

16 (a) Two or more adjacent counties may act together to carry
17 out the purposes of this chapter and construct one or more hospitals
18 for their joint use as provided by this chapter for a single county
19 if:

20 (1) each of the counties has fewer than 15,000
21 inhabitants; and

22 (2) the executive commissioner [Texas Board of Health]
23 approves.

24 SECTION 3.0822. Section 263.002, Health and Safety Code, is
25 amended to read as follows:

26 Sec. 263.002. ADDITIONAL HOSPITAL. A county may maintain
27 more than one county hospital if considered advisable by the

1 commissioners court of the county and approved by the executive
2 commissioner [~~Texas Board of Health~~].

3 SECTION 3.0823. Section 263.023(b), Health and Safety Code,
4 is amended to read as follows:

5 (b) The commissioners court shall provide for the
6 construction of the hospital within six months after the date the
7 number of inhabitants of the municipality exceeds 10,000 except
8 that the executive commissioner [~~Texas Board of Health~~] may, for
9 good cause, extend this period.

10 SECTION 3.0824. Section 263.027, Health and Safety Code, is
11 amended to read as follows:

12 Sec. 263.027. APPROVAL OF CONSTRUCTION OR REPAIR [~~BY BOARD~~
13 ~~OF HEALTH~~]. If requested by the commissioners court of a county,
14 the executive commissioner [~~Texas Board of Health~~] must approve
15 plans for the construction, alteration, or repair of a hospital or
16 facility under this chapter before the construction, alteration, or
17 repair may begin.

18 SECTION 3.0825. Section 263.101(c), Health and Safety Code,
19 is amended to read as follows:

20 (c) A hospital established or maintained under this chapter
21 is subject to inspection by an authorized representative of:

22 (1) the Department [~~Texas Board~~] of State Health
23 Services;

24 (2) the commissioners court; or

25 (3) a state board of charities, if such a board is
26 created.

27 SECTION 3.0826. The heading to Section 263.102, Health and

1 Safety Code, is amended to read as follows:

2 Sec. 263.102. [TEXAS BOARD OF HEALTH] RULES AND
3 PUBLICATIONS.

4 SECTION 3.0827. Section 263.102(a), Health and Safety Code,
5 is amended to read as follows:

6 (a) The board of managers shall print, or purchase from the
7 Department [Texas Board] of State Health Services at the actual
8 cost of printing:

9 (1) rules adopted by the executive commissioner [Texas
10 Board of Health] for the care of persons having a communicable
11 disease and for the prevention and spread of communicable disease;
12 and

13 (2) bulletins and other publications prepared by the
14 department [Texas Department of Health] providing information
15 about the cause, nature, treatment, and prevention of disease.

16 SECTION 3.0828. Section 281.001, Health and Safety Code, is
17 amended by adding Subdivision (3) to read as follows:

18 (3) "Executive commissioner" means the executive
19 commissioner of the Health and Human Services Commission.

20 SECTION 3.0829. Section 281.0515, Health and Safety Code,
21 is amended to read as follows:

22 Sec. 281.0515. PROCEDURES FOR HEALTH MAINTENANCE
23 ORGANIZATION. A district may establish a health maintenance
24 organization in accordance with Chapter 843, Insurance Code, [~~the~~
25 ~~Texas Health Maintenance Organization Act (Chapter 20A, Vernon's~~
26 ~~Texas Insurance Code)~~] to provide or arrange for health care
27 services for the residents of the district.

1 SECTION 3.0830. Section 281.053(a), Health and Safety Code,
2 is amended to read as follows:

3 (a) The district may be inspected by a representative of the
4 commissioners court or [~~T~~] the Department [~~Texas Board~~] of State
5 Health Services [~~, or the Texas Department of Human Services~~].

6 SECTION 3.0831. Section 281.073(b), Health and Safety Code,
7 is amended to read as follows:

8 (b) The period that medical records are retained shall be in
9 accordance with rules relating to the retention of medical records
10 adopted by the executive commissioner [~~Texas Department of Health~~]
11 and with other applicable federal and state laws and rules.

12 SECTION 3.0832. Section 281.092(a), Health and Safety Code,
13 is amended to read as follows:

14 (a) As soon as practicable after the close of the fiscal
15 year, the administrator shall make a report to the board,
16 commissioners court, executive commissioner [~~Texas Board of~~
17 ~~Health~~], and comptroller.

18 SECTION 3.0833. Section 283.049(a), Health and Safety Code,
19 is amended to read as follows:

20 (a) The district facilities may be inspected by a
21 representative of the Department [~~Texas Board~~] of State Health
22 Services or any other state agency or board authorized to supervise
23 a hospital.

24 SECTION 3.0834. Section 283.082(a), Health and Safety Code,
25 is amended to read as follows:

26 (a) As soon as practicable after the close of the fiscal
27 year, the administrator shall make a report to the commissioners

1 court, executive commissioner of the [Texas Board of] Health and
2 Human Services Commission, and comptroller.

3 SECTION 3.0835. Section 311.001(a), Health and Safety Code,
4 is amended to read as follows:

5 (a) A hospital may not, as a condition to beginning a
6 hospital internship or residency, require a United States citizen
7 who resides in this state and who holds a diploma from a medical
8 school outside the United States that is listed in the AVICENNA
9 [World] Directory for Medicine [of Medical Schools] published by
10 the University of Copenhagen, in collaboration with the World
11 Health Organization and the World Federation for Medical Education,
12 to:

13 (1) take an examination other than an examination
14 required by the Texas Medical [State] Board [of Medical Examiners]
15 to be taken by a graduate of a medical school in the United States
16 before allowing that graduate to begin an internship or residency;

17 (2) complete a period of internship or graduate
18 clinical training; or

19 (3) be certified by the Educational Commission
20 [Council] for Foreign Medical Graduates.

21 SECTION 3.0836. Section 311.002(g), Health and Safety Code,
22 is amended to read as follows:

23 (g) The [Texas] Department of State Health Services or other
24 appropriate licensing agency may enforce this section by assessing
25 an administrative penalty, obtaining an injunction, or providing
26 any other appropriate remedy, including suspending, revoking, or
27 refusing to renew a hospital's license.

1 SECTION 3.0837. Sections 311.003(c) and (d), Health and
2 Safety Code, are amended to read as follows:

3 (c) The ~~Texas~~ Department of State Health Services shall
4 administer the state funds for reimbursement under this section,
5 and may spend not more than \$100,000 each fiscal year from earned
6 federal funds or private donations to implement this section.

7 (d) The executive commissioner of the Health and Human
8 Services Commission [~~Texas Board of Health~~] shall adopt rules that
9 establish qualifications for reimbursement and provide procedures
10 for applying for reimbursement.

11 SECTION 3.0838. Section 311.004(a), Health and Safety Code,
12 is amended by adding Subdivision (1-a) to read as follows:

13 (1-a) "Executive commissioner" means the executive
14 commissioner of the Health and Human Services Commission.

15 SECTION 3.0839. Sections 311.004(c) and (f), Health and
16 Safety Code, are amended to read as follows:

17 (c) Unless the department authorizes an exemption for the
18 reason stated in Subsection (d), the [The] department shall require
19 each hospital to implement and enforce the statewide standardized
20 patient risk identification system under which a patient with a
21 specific medical risk may be readily identified through the use of
22 the system to communicate to hospital personnel the existence of
23 that risk [developed under Subsection (b) unless the department
24 authorizes an exemption for the reason stated in Subsection (d)].

25 (f) The executive commissioner [~~of the Health and Human~~
26 ~~Services Commission~~] may adopt rules to implement this section.

27 SECTION 3.0840. Section 311.031, Health and Safety Code, is

1 amended by amending Subdivision (4) and adding Subdivision (6-a) to
2 read as follows:

3 (4) "Department" means the [Texas] Department of State
4 Health Services.

5 (6-a) "Executive commissioner" means the executive
6 commissioner of the Health and Human Services Commission.

7 SECTION 3.0841. Section 311.032(b), Health and Safety Code,
8 is amended to read as follows:

9 (b) The executive commissioner [board] shall adopt
10 necessary rules consistent with this subchapter to govern the
11 reporting and collection of data.

12 SECTION 3.0842. Sections 311.033(a) and (c), Health and
13 Safety Code, are amended to read as follows:

14 (a) A hospital shall submit to the department financial and
15 utilization data for that hospital, including data relating to the
16 hospital's:

17 (1) total gross revenue, including:

18 (A) Medicare gross revenue;

19 (B) Medicaid gross revenue;

20 (C) other revenue from state programs;

21 (D) revenue from local government programs;

22 (E) local tax support;

23 (F) charitable contributions;

24 (G) other third party payments;

25 (H) gross inpatient revenue; and

26 (I) gross outpatient revenue;

27 (2) total deductions from gross revenue, including:

1 (A) contractual allowance; and
2 (B) any other deductions;
3 (3) charity care;
4 (4) bad debt expense;
5 (5) total admissions, including:
6 (A) Medicare admissions;
7 (B) Medicaid admissions;
8 (C) admissions under a local government program;
9 (D) charity care admissions; and
10 (E) any other type of admission;
11 (6) total discharges;
12 (7) total patient days;
13 (8) average length of stay;
14 (9) total outpatient visits;
15 (10) total assets;
16 (11) total liabilities;
17 (12) estimates of unreimbursed costs of subsidized
18 health services reported separately in the following categories:
19 (A) emergency care and trauma care;
20 (B) neonatal intensive care;
21 (C) free-standing community clinics;
22 (D) collaborative efforts with local government
23 or private agencies in preventive medicine, such as immunization
24 programs; and
25 (E) other services that satisfy the definition of
26 "subsidized health services" contained in Section 311.031(15)
27 [311.031(13)];

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1 (13) donations;

(14) total cost of reimbursed and unreimbursed research:

4 (15) total cost of reimbursed and unreimbursed
5 education separated into the following categories:

11 (C) education of patients concerning diseases
12 and home care in response to community needs:

13 (D) community health education through
14 informational programs, publications, and outreach activities in
15 response to community needs; and

16 (E) other educational services that satisfy the
17 definition of "education-related costs" under Section 311.031(6).

18 (c) The data must be submitted in the form prescribed by the
19 department and at the time established by [the] department rule.

20 SECTION 3.0843. Section 311.0335, Health and Safety Code,
21 is amended to read as follows:

22 Sec. 311 Q335 MENTAL HEALTH AND CHEMICAL DEPENDENCY DATA

23 (a) A hospital that provides mental health or chemical dependency
24 services shall submit to the department financial and utilization
25 data relating to the mental health and chemical dependency services
26 provided by the hospital, including data for inpatient and
27 outpatient services relating to:

1 (1) patient demographics, including race, ethnicity,
2 age, gender, and county of residence;
3 (2) admissions;
4 (3) discharges, including length of inpatient
5 treatment;
6 (4) specific diagnoses and procedures according to
7 criteria prescribed by the Diagnostic and Statistical Manual of
8 Mental Disorders, 3rd Edition, Revised, or a later version
9 prescribed by [the] department rule;
10 (5) total charges and the components of the charges;
11 (6) payor sources; and
12 (7) use of mechanical restraints.

13 (b) The data must be submitted in the form prescribed by the
14 department and at the time established by [the] department rule.

15 SECTION 3.0844. Section 311.035(c), Health and Safety Code,
16 is amended to read as follows:

17 (c) The department shall enter into an interagency
18 agreement with the [Texas Department of Mental Health and Mental
19 Retardation, Texas Commission on Alcohol and Drug Abuse, and] Texas
20 Department of Insurance relating to the mental health and chemical
21 dependency data collected under Section 311.0335. The agreement
22 shall address the collection, analysis, and sharing of the data by
23 the agencies.

24 SECTION 3.0845. Section 311.042, Health and Safety Code, is
25 amended by adding Subdivision (3-a) and amending Subdivisions (7),
26 (11), (13), and (14) to read as follows:

27 (3-a) "Department" means the Department of State

1 Health Services.

2 (7) "Government-sponsored program unreimbursed costs"
3 means the unreimbursed cost to the hospital of providing health
4 care services to the beneficiaries of Medicare, the TRICARE program
5 of the United States Department of Defense [~~Civilian Health and~~
6 ~~Medical Program of the Uniformed Services~~], and other federal,
7 state, or local government health care programs.

8 (11) "Research-related costs" means those amounts
9 defined as research-related costs in Section 311.031(14)
10 [~~311.031(12)~~].

11 (13) "Subsidized health services" means those amounts
12 defined as subsidized health services in Section 311.031(15)
13 [~~311.031(13)~~].

14 (14) "Unreimbursed costs" means costs as defined in
15 Section 311.031(16) [~~311.031(14)~~].

16 SECTION 3.0846. Section 311.045(a), Health and Safety Code,
17 is amended to read as follows:

18 (a) A nonprofit hospital or hospital system shall annually
19 satisfy the requirements of this subchapter and of Sections
20 11.18(d)(1), 151.310(a)(2) and (e), and 171.063(a)(1), Tax Code, to
21 provide community benefits which include charity care and
22 government-sponsored indigent health care by complying with one or
23 more of the standards set forth in Subsection (b). The hospital or
24 hospital system shall file a statement with the Center for [~~Bureau~~
25 ~~of State~~] Health Statistics [~~Data and Policy Analysis~~] at the
26 department and the chief appraiser of the local appraisal district
27 no later than the 120th day after the hospital's or hospital

1 system's fiscal year ends, stating which of the standards in
2 Subsection (b) have been satisfied, provided, however, that the
3 first report shall be filed no later than the 120th day after the
4 end of the hospital's or hospital system's fiscal year ending during
5 1994. For hospitals in a hospital system, the corporate parent may
6 elect to satisfy the charity care requirements of this subchapter
7 for each of the hospitals within the system on a consolidated basis.

8 SECTION 3.0847. Sections [311.0456\(a\)](#) and (e), Health and
9 Safety Code, are amended to read as follows:

10 (a) In this section, "nonprofit[+
11 [+(1) ~~"Department"~~ means the ~~Department of State Health~~
12 ~~Services.~~

13 [+(2) ~~"Nonprofit"~~ hospital] has the meaning assigned by
14 Section [311.042\(9\)\(A\)](#).

15 (e) For the purposes of Subsection (b), a corporation
16 certified by the Texas ~~State Board of~~ Medical Board [~~Examiners~~]
17 as a nonprofit organization under Section [162.001](#), Occupations
18 Code, whose sole member is a qualifying hospital or hospital system
19 is considered a nonprofit hospital or hospital system.

20 SECTION 3.0848. Section [311.046\(b\)](#), Health and Safety Code,
21 is amended to read as follows:

22 (b) A nonprofit hospital shall file the annual report of the
23 community benefits plan with the Center for [~~Bureau of State~~]
24 Health Statistics [~~Data and Policy Analysis~~] at the department.
25 The report shall be filed no later than April 30 of each year. In
26 addition to the annual report, a completed worksheet as required by
27 Subsection (a)(5) shall be filed no later than 10 working days after

1 the date the hospital files its Medicare cost report.

2 SECTION 3.0849. Section 312.002, Health and Safety Code, is
3 amended by amending Subdivision (3) and adding Subdivision (3-a) to
4 read as follows:

5 (3) "Coordinating entity" means a nonprofit
6 corporation under the Texas Nonprofit Corporation Law as described
7 by Section 1.008(d), Business Organizations Code, [~~Non-Profit~~
8 ~~Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil~~
9 ~~Statutes)~~] that is a health organization approved and certified by
10 the Texas Medical [~~State~~] Board [~~of Medical Examiners~~] under
11 Chapter 162, Occupations Code.

12 (3-a) "Department" means the Department of State
13 Health Services.

14 SECTION 3.0850. Section 312.005, Health and Safety Code, is
15 amended to read as follows:

16 Sec. 312.005. APPROVAL OF CONTRACTS. (a) To be effective,
17 a contract under Section 312.004 must be submitted to the
18 department [~~board~~].

19 (b) [~~The commissioner shall review the contract on behalf of~~
20 ~~the board.~~] The department [~~commissioner~~] shall approve the
21 contract if the [~~commissioner finds the~~] contract furthers the
22 purposes of this chapter.

23 (c) The department [~~commissioner~~] may disapprove a contract
24 only after notice to all parties and a hearing.

25 (d) The department [~~commissioner~~] may not modify a
26 contract.

27 (e) The contract takes effect:

1 (1) when it is approved by the department
2 [commissioner]; or

3 (2) on the 31st day after the date on which the
4 contract is filed with the department [board] by a medical and
5 dental unit, supported medical or dental school, or coordinating
6 entity that is a party to the contract, if the department
7 [commissioner] does not approve or disapprove the contract within
8 30 days after the date on which the contract is filed.

9 SECTION 3.0851. Section 314.001, Health and Safety Code, is
10 amended by amending Subdivision (3) and adding Subdivision (3-a) to
11 read as follows:

12 (3) "Department" means the [Texas] Department of State
13 Health Services.

14 (3-a) "Executive commissioner" means the executive
15 commissioner of the Health and Human Services Commission.

16 SECTION 3.0852. Section 314.002(c), Health and Safety Code,
17 is amended to read as follows:

18 (c) The department shall review the application in
19 accordance with the standards set forth in Subsections (e) and (f)
20 and shall, if requested, hold a public hearing in accordance with
21 rules adopted by the executive commissioner [department]. The
22 department shall grant or deny the application within 120 days of
23 the date of filing of the application and that decision must be in
24 writing and set forth the basis for the decision. The department
25 shall furnish a copy of the decision to the applicants, the attorney
26 general, and any intervenor within 10 days of its issuance.

27 SECTION 3.0853. Section 314.008, Health and Safety Code, is

1 amended to read as follows:

2 Sec. 314.008. EXCLUSIONS; AUTHORITY TO ADOPT RULES [~~+~~
3 ~~EFFECTIVE DATE~~]. (a) This chapter [Act] specifically excludes
4 ground and/or air ambulance services.

5 (b) The executive commissioner [~~department~~] shall have the
6 authority to adopt rules to implement the requirements of this
7 chapter. [~~Such rules shall be adopted by March 1, 1994, at which~~
8 ~~time hospitals may file an application with the department for a~~
9 ~~certification of public advantage.~~]

10 SECTION 3.0854. Section 321.001, Health and Safety Code, is
11 amended by adding Subdivision (1-a) to read as follows:

12 (1-a) "Executive commissioner" means the executive
13 commissioner of the Health and Human Services Commission.

14 SECTION 3.0855. Sections 321.002(a) and (b), Health and
15 Safety Code, are amended to read as follows:

16 (a) The executive commissioner [~~Texas Board of Mental~~
17 ~~Health and Mental Retardation, Texas Board of Health, and Texas~~
18 ~~Commission on Alcohol and Drug Abuse~~] by rule shall [~~each~~] adopt a
19 "patient's bill of rights" that includes the applicable rights
20 included in this chapter, Subtitle C of Title 7, Chapters 241, 462,
21 464, and 466, and any other provisions the executive commissioner
22 considers [~~agencies consider~~] necessary to protect the health,
23 safety, and rights of a patient receiving voluntary or involuntary
24 mental health, chemical dependency, or comprehensive medical
25 rehabilitation services in an inpatient facility. In addition, the
26 executive commissioner [~~each agency~~] shall adopt rules that:

27 (1) provide standards to prevent the admission of a

1 minor to a facility for treatment of a condition that is not
2 generally recognized as responsive to treatment in an inpatient
3 treatment setting; and

4 (2) prescribe the procedure for presenting the
5 applicable bill of rights and obtaining each necessary signature
6 if:

7 (A) the patient cannot comprehend the
8 information because of illness, age, or other factors; or

9 (B) an emergency exists that precludes immediate
10 presentation of the information.

11 (b) The executive commissioner [Board of Protective and
12 ~~Regulatory Services~~] by rule shall adopt a "children's bill of
13 rights" for a minor receiving treatment in a child-care facility
14 for an emotional, mental health, or chemical dependency problem.

15 SECTION 3.0856. Section 322.001(1), Health and Safety Code,
16 is amended to read as follows:

17 (1) "Facility" means:

18 (A) a general residential operation [~~child-care~~
19 ~~institution~~], as defined by Section 42.002, Human Resources Code,
20 including a state-operated facility, [~~that is a residential~~
21 ~~treatment center or a child-care institution~~] serving children with
22 an intellectual disability [~~mental retardation~~];

23 (B) an ICF-IID [~~intermediate care facility~~]
24 licensed by the Department of Aging and Disability Services under
25 Chapter 252 or operated by that department and exempt under Section
26 252.003 from the licensing requirements of that chapter;

27 (C) a mental hospital or mental health facility,

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1 as defined by Section 571.003;

2 (D) an institution, as defined by Section
3 242.002:

4 (E) an assisted living facility, as defined by
5 Section 247.002; or

6 (F) a treatment facility, as defined by Section
7 464.001

8 SECTION 3.0857. Section 323.002(b), Health and Safety Code,
8 is amended to read as follows:

10 (b) The executive commissioner of the Health and Human
11 Services Commission [department] shall adopt procedures for
12 submission, approval, and modification of a plan required under
13 this section.

14 SECTION 3.0858. Section 341.001, Health and Safety Code, is
15 amended by amending Subdivision (2) and adding Subdivision (3-a) to
16 read as follows:

21 SECTION 3.0859. Section 341.002, Health and Safety Code, is
22 amended to read as follows:

SOC. 341.003 RULES FOR SANITATION AND HEALTH PROTECTION

24 The executive commissioner [board] may:

(2) establish standards and procedures for the

1 management and control of sanitation and for health protection
2 measures.

3 SECTION 3.0860. Sections 341.014(c) and (e), Health and
4 Safety Code, are amended to read as follows:

5 (c) A privy may not be constructed within 75 feet of a
6 drinking water well or of a human habitation, other than a
7 habitation to which the privy is appurtenant, without approval by
8 the local health authority or the department [board]. A privy may
9 not be constructed or maintained over an abandoned well or over a
10 stream.

11 (e) Material and human excreta removed from a privy vault or
12 from any other place shall be handled in a manner that does not
13 create a public health nuisance. The material and human excreta may
14 not be deposited within 300 feet of a highway unless buried or
15 treated in accordance with the instructions of the local health
16 authority or the department [board].

17 SECTION 3.0861. Section 341.017(a), Health and Safety Code,
18 is amended to read as follows:

19 (a) The executive commissioner [board] shall adopt
20 reasonable rules to require railroads to provide adequate
21 sanitation facilities for railroad maintenance-of-way employees.

22 SECTION 3.0862. Section 341.018(c), Health and Safety Code,
23 is amended to read as follows:

24 (c) The department [board] shall promote rodent control
25 programs in rat-infested areas and in localities in which typhus
26 fever has appeared.

27 SECTION 3.0863. Sections 341.064(b) and (1), Health and

1 Safety Code, are amended to read as follows:

2 (b) The bacterial content of the water in a public swimming
3 pool may not exceed the safe limits prescribed by department [~~the~~
4 ~~board's~~] standards. A minimum free residual chlorine of 2.0 parts
5 for each one million units of water in a public spa and a minimum
6 free residual chlorine of 1.0 part for each one million units of
7 water in other public swimming pools, or any other method of
8 disinfectant approved by the department, must be maintained in a
9 public swimming pool in use.

10 (l) In adopting rules governing lifesaving equipment to be
11 maintained by a public swimming pool, the executive commissioner
12 [~~board~~] may not require a separate throwing line longer than
13 two-thirds the maximum width of the pool.

14 SECTION 3.0864. Section [341.0645](#)(b), Health and Safety
15 Code, is amended to read as follows:

16 (b) The executive commissioner [~~of the Health and Human~~
17 ~~Services Commission~~] shall adopt by rule pool safety standards
18 necessary to prevent drowning. The standards must be at least as
19 stringent as those imposed under the federal Virginia Graeme Baker
20 Pool and Spa Safety Act (15 U.S.C. Section 8001 et seq.).

21 SECTION 3.0865. Sections [341.068](#)(b) and (d), Health and
22 Safety Code, are amended to read as follows:

23 (b) The executive commissioner [~~board~~] shall adopt rules to
24 implement Subsection (a), including a rule that in providing
25 sufficient restrooms a ratio of not less than 2:1 women's-to-men's
26 restrooms or other minimum standards established in consultation
27 with the Texas State Board of Plumbing Examiners shall be

1 maintained if the use of the restrooms is designated by gender. The
2 rules shall apply to facilities where the public congregates and on
3 which construction is started on or after January 1, 1994, or on
4 which structural alterations, repairs, or improvements exceeding
5 50 percent of the entire facility are undertaken on or after January
6 1, 1994.

7 (d) The executive commissioner [board] may adopt rules
8 consistent with Subsection (c)(1) to define "facilities where the
9 public congregates."

10 SECTION 3.0866. Section 341.0695, Health and Safety Code,
11 is amended by amending Subsection (f) and adding Subsection (i-1)
12 to read as follows:

13 (f) The executive commissioner [department] may by rule
14 adopt methods other than chlorination for the purpose of
15 disinfecting interactive water features and fountains.

16 (i-1) The executive commissioner by rule shall prescribe
17 the amount of the fee the department may collect under Subsection
18 (i).

19 SECTION 3.0867. Sections 341.082(b) and (c), Health and
20 Safety Code, are amended to read as follows:

21 (b) The environmental health officer must be a registered
22 professional engineer. The officer must file a copy of the
23 officer's oath and appointment with the department [board].

24 (c) The environmental health officer shall assist the
25 department [board] in enforcing this chapter and is subject to:

- 26 (1) the authority of the department [board]; and
27 (2) removal from office in the same manner as a

1 municipal health authority.

2 SECTION 3.0868. Section 345.001, Health and Safety Code, is
3 amended by amending Subdivisions (2) and (2-a) and adding
4 Subdivisions (2-b) and (2-c) to read as follows:

5 (2) "Commissioner" means the commissioner of state
6 health services.

7 (2-a) "Department" means the [Texas] Department of
8 State Health Services.

9 (2-b) "Executive commissioner" means the executive
10 commissioner of the Health and Human Services Commission.

11 (2-c) [(2-a)] "Floor model" means new bedding placed in
12 a retail sales area for display purposes.

13 SECTION 3.0869. Section 345.0055(a), Health and Safety
14 Code, is amended to read as follows:

15 (a) The executive commissioner [~~department~~] may adopt rules
16 relating to material used in new or renovated bedding, including
17 rules:

18 (1) requiring the use of burn resistant material; and
19 (2) prohibiting or restricting the use of secondhand
20 or recycled material.

21 SECTION 3.0870. Section 345.007, Health and Safety Code, is
22 amended to read as follows:

23 Sec. 345.007. ADVISORY COMMISSION. The executive
24 commissioner [~~Texas Board of Health~~] may appoint an advisory
25 commission composed of representatives of consumers and the bedding
26 industry to assist the executive commissioner and the department
27 [~~board~~] in implementing this chapter.

1 SECTION 3.0871. Section 345.022(f), Health and Safety Code,
2 is amended to read as follows:

3 (f) The executive commissioner [department] may adopt rules
4 that:

5 (1) require that the label state conformity with burn
6 resistant material requirements or identify any chemical treatment
7 applied to the bedding; and

8 (2) exempt from the requirements of this section a
9 custom upholstery business that does not repair or renovate bedding
10 for resale.

11 SECTION 3.0872. Section 345.024(c), Health and Safety Code,
12 is amended to read as follows:

13 (c) A person may not use in the manufacture, repair, or
14 renovation of bedding a material that has not been cleaned and
15 germicidally treated by a process or treatment approved by the
16 department if the material:

17 (1) has been used by a person with a communicable
18 disease; or

19 (2) is filthy, oily, or stained, or harbors
20 [~~leathsome~~] insects or pathogenic organisms.

21 SECTION 3.0873. Section 345.027, Health and Safety Code, is
22 amended to read as follows:

23 Sec. 345.027. COLOR OF LABEL AND LETTERING. The executive
24 commissioner [department] may adopt rules governing the color of
25 label required under this subchapter and the color of the lettering
26 on the label.

27 SECTION 3.0874. Section 345.041(c), Health and Safety Code,

1 is amended to read as follows:

2 (c) The executive commissioner [Texas Board of Health] by
3 rule may exempt from the permit requirement of this section a custom
4 upholstery business that does not repair or renovate bedding for
5 resale.

6 SECTION 3.0875. Sections 345.043(a) and (c), Health and
7 Safety Code, are amended to read as follows:

8 (a) The executive commissioner by rule [Texas Board of
9 Health] shall set the fees for an initial permit issued under this
10 chapter and for renewal of a permit issued under this chapter in
11 amounts reasonable and necessary to defray the cost of
12 administering this chapter.

13 (c) A permit expires two years [~~one year~~] after the date of
14 issuance.

15 SECTION 3.0876. Section 345.0435(a), Health and Safety
16 Code, is amended to read as follows:

17 (a) The executive commissioner [~~of the Health and Human~~
18 ~~Services Commission~~] shall adopt rules necessary to implement this
19 subchapter, including requirements for the issuance, renewal,
20 denial, suspension, and revocation of a permit issued under this
21 subchapter.

22 SECTION 3.0877. Section 345.045(b), Health and Safety Code,
23 is amended to read as follows:

24 (b) The executive commissioner [~~of the Health and Human~~
25 ~~Services Commission,~~] by rule[~~r~~] may establish additional
26 requirements regulating the sanitary condition of a permit holder's
27 place of business. The holder of a germicidal treatment permit who

1 germicidally treats not more than 10 items at the permit holder's
2 place of business each week is exempt from any additional
3 requirements regulating the sanitary condition of a permit holder's
4 place of business adopted under this subsection.

5 SECTION 3.0878. Section 345.082, Health and Safety Code, is
6 amended to read as follows:

7 Sec. 345.082. RULEMAKING AUTHORITY. The executive
8 commissioner [~~department~~] may adopt rules to implement and enforce
9 this chapter.

10 SECTION 3.0879. Section 345.102(c), Health and Safety Code,
11 is amended to read as follows:

12 (c) If the person notified of the violation accepts the
13 determination of the department or if the person fails to respond in
14 a timely manner to the notice, the department [~~commissioner of~~
15 ~~public health or the commissioner's designee~~] shall [~~issue an~~]
16 order [~~approving the determination and ordering that~~] the person to
17 pay the proposed penalty.

18 SECTION 3.0880. Section 345.103, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 345.103. HEARING; ORDER. (a) If the person notified
21 requests a hearing, the department shall refer the matter to the
22 State Office of Administrative Hearings. The department shall[+]

23 [~~(1) set a hearing;~~]

24 [~~(2)~~] give written notice of the hearing to the
25 person[~~, and~~]

26 [~~(3) designate a hearings examiner to conduct the~~
27 ~~hearing~~].

1 (b) An administrative law judge of the State of Office of
2 Administrative Hearings [~~The hearings examiner~~] shall make
3 findings of fact and conclusions of law and shall promptly issue to
4 the department [~~commissioner of public health or the commissioner's~~
5 ~~designee~~] a written proposal for decision as to the occurrence of
6 the violation and a recommendation as to the amount of the proposed
7 penalty if a penalty is determined to be warranted.

8 (c) Based on the findings of fact and conclusions of law and
9 the recommendations of the administrative law judge [~~hearings~~
10 ~~examiner~~], the department [~~commissioner of public health or the~~
11 ~~commissioner's designee~~] by order may find that a violation has
12 occurred and may assess a penalty or may find that no violation has
13 occurred.

14 SECTION 3.0881. Section 345.106(a), Health and Safety Code,
15 is amended to read as follows:

16 (a) At the request of the department [~~commissioner of public~~
17 ~~health~~], the attorney general may petition the district court for a
18 temporary restraining order to restrain a continuing violation of
19 this chapter or a threat of a continuing violation of this chapter
20 if the department [~~commissioner of public health~~] finds that:

21 (1) a person has violated, is violating, or is
22 threatening to violate this chapter; and

23 (2) the violation or threatened violation creates an
24 immediate threat to the health and safety of the public.

25 SECTION 3.0882. Section 345.107(a), Health and Safety Code,
26 is amended to read as follows:

27 (a) The department may assess reasonable expenses and costs

1 against a person in an administrative hearing if, as a result of the
2 hearing, the person's permit is denied, suspended, or revoked or if
3 administrative penalties are assessed against the person. The
4 person shall pay expenses and costs assessed under this subsection
5 not later than the 30th day after the date on which the order issued
6 by the department [~~commissioner of public health or the~~
7 ~~commissioner's designee~~] requiring the payment of expenses and
8 costs is final. The department may refer the matter to the attorney
9 general for collection of the expenses and costs.

10 SECTION 3.0883. Section 345.131(1), Health and Safety Code,
11 is amended to read as follows:

12 (1) "Authorized agent" means an employee of the
13 department who is designated by the commissioner [~~of public health~~]
14 to enforce the provisions of this chapter.

15 SECTION 3.0884. Section 345.132, Health and Safety Code, is
16 amended to read as follows:

17 Sec. 345.132. DETAINED OR EMBARGOED BEDDING. (a) The
18 department [~~commissioner of public health or an authorized agent~~]
19 may detain or embargo bedding under this section if the department
20 [~~commissioner or the authorized agent~~] finds or has probable cause
21 to believe that the article violates this chapter or a rule or
22 standard adopted under this chapter.

23 (b) The department [~~commissioner of public health or an~~
24 ~~authorized agent~~] shall affix to detained or embargoed bedding a
25 tag or other appropriate marking that gives notice that:

26 (1) the bedding violates or is suspected of violating
27 this chapter or a rule or standard adopted under this chapter; and

(2) the bedding has been detained or embargoed.

(c) The tag or marking on detained or embargoed bedding must
 11 persons not to use the bedding, remove the bedding from the
 ses, or dispose of the bedding by sale or otherwise until
 ssion for use, removal, or disposal is given by the department
 ssioner of public health, the authorized agent,] or a court.

7 (d) A person may not use detained or embargoed bedding,
8 remove detained or embargoed bedding from the premises, or dispose
9 of detained or embargoed bedding by sale or otherwise without
10 permission of the department [~~commissioner of public health, the~~
11 ~~authorized agent.~~] or a court.

12 (e) The department [~~commissioner of public health or an~~
13 ~~authorized agent~~] shall remove the tag or other marking from
14 detained or embargoed bedding if the department [~~commissioner or an~~
15 ~~authorized agent~~] finds that the bedding does not violate this
16 chapter or a rule or standard adopted under this chapter.

17 SECTION 3.0885. Sections 345.133(a), (b), and (d), Health
18 and Safety Code, are amended to read as follows:

19 (a) If the claimant of the detained or embargoed bedding or
20 the claimant's agent fails or refuses to transfer the bedding to a
21 secure place after the tag or other appropriate marking has been
22 affixed as provided by Section [345.132](#), the department
23 [~~commissioner of public health or an authorized agent~~] may order
24 the transfer of the bedding to one or more secure storage areas to
25 prevent unauthorized use, removal, or disposal.

(b) The department [~~commissioner of public health or an authorized agent~~] may provide for the transfer of the bedding if the

1 claimant of the bedding or the claimant's agent does not carry out
2 the transfer order in a timely manner.

3 (d) The commissioner [~~of public health~~] may request the
4 attorney general to bring an action in the district court in Travis
5 County to recover the costs of the transfer. In a judgment in favor
6 of the state, the court may award costs, attorney's fees, court
7 costs, and interest from the time the expense was incurred through
8 the date the department is reimbursed.

9 SECTION 3.0886. Sections [345.135\(a\), \(b\), \(c\), \(e\), \(g\),](#)
10 and (h), Health and Safety Code, are amended to read as follows:

11 (a) In conjunction with the detention or embargo of bedding
12 under this subchapter, the commissioner [~~of public health~~] may
13 order bedding to be recalled from commerce.

14 (b) The commissioner's [~~commissioner of public health's~~]
15 recall order may require the bedding to be removed to one or more
16 secure areas approved by the commissioner or an authorized agent.

17 (c) The recall order must be in writing and signed by the
18 commissioner [~~of public health~~].

19 (e) The recall order is effective until the order:

20 (1) expires on its own terms;

21 (2) is withdrawn by the commissioner [~~of public~~
22 ~~health~~]; or

23 (3) is reversed by a court in an order denying
24 condemnation under Section [345.134](#).

25 (g) If the claimant or the claimant's agent fails or refuses
26 to carry out the recall order in a timely manner, the commissioner
27 [~~of public health~~] may provide for the recall of the bedding. The

1 costs of the recall shall be assessed against the claimant of the
2 bedding or the claimant's agent.

3 (h) The commissioner [~~of public health~~] may request the
4 attorney general to bring an action in the district court of Travis
5 County to recover the costs of the recall. In a judgment in favor of
6 the state, the court may award costs, attorney's fees, court costs,
7 and interest from the time the expense was incurred through the date
8 the department is reimbursed.

9 SECTION 3.0887. Section 345.137, Health and Safety Code, is
10 amended to read as follows:

11 Sec. 345.137. CORRECTION BY PROPER LABELING OR PROCESSING.
12 (a) A court may order the delivery of detained or embargoed bedding
13 that violates this chapter or a rule or standard adopted under this
14 chapter to the claimant of the bedding for labeling or processing
15 under the supervision of an agent of the commissioner [~~of public~~
16 ~~health~~] or an authorized agent if:

17 (1) the decree has been entered in the suit relating to
18 the detained or embargoed bedding;

19 (2) the claimant has paid the costs, fees, and
20 expenses of the suit;

21 (3) the violation can be corrected by proper labeling
22 or processing; and

23 (4) a good and sufficient bond, conditioned on the
24 correction of the violation by proper labeling or processing, has
25 been executed.

26 (b) The claimant shall pay the costs of the supervision of
27 the labeling or processing by the agent of the commissioner [~~of~~

1 ~~public health~~] or an authorized agent.

2 (c) The court shall order that the bedding be returned to
3 the claimant and the bond discharged on the representation to the
4 court by the commissioner [~~of public health~~] or an authorized agent
5 that the article no longer violates this chapter or a rule or
6 standard adopted under this chapter and that the expenses of the
7 supervision are paid.

8 SECTION 3.0888. Section 361.003(5), Health and Safety Code,
9 is amended to read as follows:

10 (5) "Commission" means the Texas [~~Natural Resource~~
11 ~~Conservation~~] Commission on Environmental Quality.

12 SECTION 3.0889. Sections 361.018(a) and (b), Health and
13 Safety Code, are amended to read as follows:

14 (a) The commission has the powers under this chapter
15 necessary or convenient to carry out its responsibilities
16 concerning the regulation of the management of hazardous waste
17 components of radioactive waste under the jurisdiction of the
18 [~~Texas~~] Department of State Health Services.

19 (b) The commission shall consult with the [~~Texas~~]
20 Department of State Health Services concerning regulation and
21 management under this section, except for activities solely under
22 the commission's jurisdiction.

23 SECTION 3.0890. Section 361.039, Health and Safety Code, is
24 amended to read as follows:

25 Sec. 361.039. CONSTRUCTION OF OTHER LAWS. Except as
26 specifically provided by this chapter, this chapter does not
27 diminish or limit the authority of the commission, the [~~Texas~~]

1 Department of State Health Services, or a local government in
2 performing the powers, functions, and duties vested in those
3 governmental entities by other law.

4 SECTION 3.0891. The heading to Subchapter B, Chapter 361,
5 Health and Safety Code, is amended to read as follows:

6 SUBCHAPTER B. POWERS AND DUTIES OF ~~TEXAS NATURAL RESOURCE~~
7 ~~CONSERVATION~~] COMMISSION

8 SECTION 3.0892. Section 361.560(3), Health and Safety Code,
9 is amended to read as follows:

10 (3) "Medical waste" includes animal waste, bulk blood
11 and blood products, microbiological waste, pathological waste,
12 sharps, and special waste from health care-related facilities as
13 those terms are defined in 25 TAC Section 1.132 (~~[Tex. Dept. of~~
14 ~~Health,~~] Definition, Treatment, and Disposition of Special Waste
15 from Health Care-Related Facilities). The term does not include
16 medical waste produced on farmland and ranchland as defined in
17 former Section 252.001(6), Agriculture Code. The term does not
18 include artificial, nonhuman materials removed from a patient and
19 requested by the patient, including but not limited to orthopedic
20 devices and breast implants.

21 SECTION 3.0893. Section 382.002(b), Health and Safety Code,
22 is amended to read as follows:

23 (b) It is intended that this chapter be vigorously enforced
24 and that violations of this chapter or any rule or order of the
25 Texas ~~Natural Resource Conservation~~ Commission on Environmental
26 Quality result in expeditious initiation of enforcement actions as
27 provided by this chapter.

1 SECTION 3.0894. Section 382.003(4), Health and Safety Code,
2 is amended to read as follows:

3 (4) "Commission" means the Texas [Natural Resource
4 Conservation] Commission on Environmental Quality.

5 SECTION 3.0895. Section 382.019(c), Health and Safety Code,
6 is amended to read as follows:

7 (c) The commission or any other state agency may not adopt a
8 rule requiring the use of Stage II vapor recovery systems that
9 control motor vehicle refueling emissions at a gasoline dispensing
10 facility in this state until the United States Environmental
11 Protection Agency determines that the use of the system is required
12 for compliance with the federal Clean Air Act (42 U.S.C. 7401 et
13 seq.), except the commission may adopt rules requiring such vapor
14 recovery systems installed in nonattainment areas if it can be
15 demonstrated to be necessary for the attainment of federal ozone
16 ambient air quality standards or, following appropriate health
17 studies and in consultation with the [Texas] Department of State
18 Health Services, it is determined to be necessary for the
19 protection of public health.

20 SECTION 3.0896. Section 385.001(2), Health and Safety Code,
21 is amended to read as follows:

22 (2) "Executive commissioner" [Board] means the
23 executive commissioner of the Health and Human Services Commission
24 [Texas Board of Health].

25 SECTION 3.0897. The heading to Section 385.002, Health and
26 Safety Code, is amended to read as follows:

27 Sec. 385.002. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER

1 [BOARD].

2 SECTION 3.0898. Sections 385.002(a), (b), and (d), Health
3 and Safety Code, are amended to read as follows:

4 (a) The executive commissioner [board] by rule shall
5 establish voluntary guidelines for indoor air quality in government
6 buildings, including guidelines for ventilation and indoor air
7 pollution control systems. The executive commissioner [board] may
8 adopt other rules necessary to implement this chapter.

9 (b) In establishing the guidelines, the executive
10 commissioner [board] shall consider:

11 (1) the potential chronic effects of air contaminants
12 on human health;

13 (2) the potential effects of insufficient ventilation
14 of the indoor environment on human health;

15 (3) the potential costs of health care for the
16 short-term and long-term effects on human health that may result
17 from exposure to indoor air contaminants; and

18 (4) the potential costs of compliance with a proposed
19 guideline.

20 (d) The executive commissioner's [board's] guidelines may
21 differ for different pollution sources or different areas of the
22 state and may differ for buildings that are regularly occupied or
23 visited by children.

24 SECTION 3.0899. Section 401.003, Health and Safety Code, is
25 amended by amending Subdivision (6) and adding Subdivision (9-a) to
26 read as follows:

27 (6) "Department" means the Department of State Health

1 Services or other department designated by the executive
2 commissioner [~~of the Health and Human Services Commission~~].

3 (9-a) "Executive commissioner" means the executive
4 commissioner of the Health and Human Services Commission.

5 SECTION 3.0900. Section [401.004](#)(a), Health and Safety Code,
6 is amended to read as follows:

7 (a) Except as provided by Subsection (b), "low-level
8 radioactive waste" means radioactive material that:

9 (1) is discarded or unwanted and is not exempt by
10 department [~~board~~] rule adopted under Section [401.106](#);

11 (2) is waste, as that term is defined by 10 C.F.R.
12 Section 61.2; and

13 (3) is subject to:

14 (A) concentration limits established under 10
15 C.F.R. Section 61.55, or compatible rules established by the
16 executive commissioner [~~department~~] or commission, as applicable;
17 and

18 (B) disposal criteria established under Title
19 10, Code of Federal Regulations, or established by the department
20 or commission, as applicable.

21 SECTION 3.0901. Section [401.015](#)(a), Health and Safety Code,
22 is amended to read as follows:

23 (a) The radiation advisory board is composed of the
24 following 18 members appointed by the governor:

25 (1) one representative from industry who is trained in
26 nuclear physics, science, or nuclear engineering;

27 (2) one representative from labor;

27 SECTION 3.0902. Section [401.0152](#), Health and Safety Code,

1 is amended to read as follows:

2 Sec. 401.0152. INFORMATION ABOUT STANDARDS OF CONDUCT. The
3 department [~~commissioner or the commissioner's designee~~] shall
4 provide to members of the advisory board, as often as necessary,
5 information regarding the requirements for office under this
6 subchapter, including information regarding a person's
7 responsibilities under applicable laws relating to standards of
8 conduct for state officers.

9 SECTION 3.0903. Section 401.019, Health and Safety Code, as
10 amended by Chapters 553 (H.B. 212) and 554 (H.B. 213), Acts of the
11 75th Legislature, Regular Session, 1997, is reenacted and amended
12 to read as follows:

13 Sec. 401.019. ADVISORY BOARD DUTIES. The advisory board
14 shall:

15 (1) review and evaluate state radiation policies and
16 programs;

17 (2) make recommendations and furnish technical advice
18 to the department, the commission, the Railroad Commission of
19 Texas, and other state agencies that may be required on matters
20 relating to development, use, and regulation of sources of
21 radiation [~~to the department, the Texas Natural Resource~~
~~Conservation Commission, the Railroad Commission of Texas, and~~
~~other state agencies~~]; and

24 (3) review proposed rules and guidelines of any state
25 agency [~~of the department, the Texas Natural Resource Conservation~~
~~Commission, the Railroad Commission of Texas, and other state~~
~~agencies~~] relating to regulation of sources of radiation and

1 recommend changes in proposed or existing rules and guidelines
2 relating to those matters.

3 SECTION 3.0904. Section 401.051, Health and Safety Code, is
4 amended to read as follows:

5 Sec. 401.051. ADOPTION OF RULES AND GUIDELINES. The
6 executive commissioner [board] and commission each within the [~~its~~]
7 jurisdiction of that officer or agency may adopt rules and
8 guidelines relating to control of sources of radiation.

9 SECTION 3.0905. Sections 401.052(a), (b), (c), and (e),
10 Health and Safety Code, are amended to read as follows:

11 (a) The executive commissioner [board] shall adopt rules
12 that provide for transportation and routing of radioactive material
13 and waste in this state.

14 (b) Rules adopted under this section for low-level
15 radioactive waste must:

16 (1) to the extent practicable, be compatible with
17 United States Department of Transportation and federal commission
18 [~~United States Nuclear Regulatory Commission~~] regulations relating
19 to the transportation of low-level radioactive waste;

20 (2) require each shipper and carrier [~~transporter~~] of
21 low-level radioactive waste to adopt an emergency plan approved by
22 the department for responding to transportation accidents;

23 (3) require the notification and reporting of
24 accidents to the department and to local emergency planning
25 committees in the county where the accident occurs;

26 (4) require each shipper to adopt a quality control
27 program approved by the department to verify that shipping

1 containers are suitable for shipment to a licensed disposal
2 facility;

3 (5) assess a fee on shippers for shipments to a Texas
4 low-level radioactive waste disposal facility of low-level
5 radioactive waste originating in Texas or out-of-state; and

6 (6) require a carrier [~~transporter~~] to carry liability
7 insurance in an amount the executive commissioner [~~board~~]
8 determines is sufficient to cover damages likely to be caused by a
9 shipping accident in accordance with regulations imposed by the
10 United States Department of Transportation and the federal
11 commission [~~United States Nuclear Regulatory Commission~~].

12 (c) In adopting rules under this section, the executive
13 commissioner [~~board~~] shall consult with the advisory board and the
14 commission.

15 (e) Money expended from the perpetual care account to
16 respond to accidents involving low-level radioactive waste must be
17 reimbursed to the perpetual care account by the responsible shipper
18 or carrier [~~transporter~~] according to rules adopted by the
19 executive commissioner [~~board~~].

20 SECTION 3.0906. Section 401.057(b), Health and Safety Code,
21 is amended to read as follows:

22 (b) The executive commissioner [~~board~~] or commission by
23 rule may provide exemptions to the records requirements under
24 Subsections (a)(1) and (3).

25 SECTION 3.0907. Section 401.064, Health and Safety Code, is
26 amended to read as follows:

27 Sec. 401.064. INSPECTION OF X-RAY EQUIPMENT. (a) The

1 executive commissioner [board] shall adopt rules relating to the
2 frequency of department inspections of electronic products.

3 (b) In adopting the rules, the executive commissioner
4 [board] shall consider the threat to human health and safety that
5 the electronic products may present.

6 (c) The executive commissioner [board] shall adopt an
7 inspection interval of five years for routine inspections of
8 electronic products that present a minimal threat to human health
9 and safety.

10 (d) The executive commissioner [board] by rule shall
11 require a person who inspects medical, podiatric medical, dental,
12 veterinary, or chiropractic electronic products to have special
13 training in the design and uses of the products.

14 (e) The department shall conduct inspections of medical,
15 podiatric medical, dental, veterinary, and chiropractic electronic
16 products in a manner designed to cause as little disruption of a
17 medical, podiatric medical, dental, veterinary, or chiropractic
18 practice as is practicable.

19 (f) In adopting rules under this section relating to the
20 inspection of medical, podiatric medical, dental, veterinary, and
21 chiropractic electronic products, the executive commissioner
22 [board] shall solicit and follow the recommendations of the State
23 Board of Dental Examiners for the inspections of dental electronic
24 products, the Texas State Board of Podiatric Medical Examiners for
25 the inspection of podiatric medical electronic products, the Texas
26 Medical [State] Board [~~of Medical Examiners~~] for the inspection of
27 medical electronic products, the [Texas] State Board of Veterinary

1 Medical Examiners for the inspection of medical electronic products
2 used in the practice of veterinary medicine, and the Texas [State]
3 Board of Chiropractic Examiners for the inspection of chiropractic
4 electronic products, unless in conflict with federal statutes or
5 federal rules.

6 SECTION 3.0908. Section 401.069, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 401.069. MEMORANDUM OF UNDERSTANDING. The executive
9 commissioner [board] or commission must adopt as a rule any
10 memorandum of understanding between the department or commission,
11 as appropriate, and another state agency.

12 SECTION 3.0909. Section 401.103, Health and Safety Code, is
13 amended to read as follows:

14 Sec. 401.103. RULES AND GUIDELINES FOR LICENSING AND
15 REGISTRATION. (a) The executive commissioner [board] shall adopt
16 rules and guidelines that provide for licensing and registration
17 for the transportation of sources of radiation.

18 (b) The executive commissioner [board] and commission each
19 within the [its] jurisdiction of that officer or agency shall adopt
20 rules and guidelines that provide for licensing and registration
21 for the control of sources of radiation.

22 (c) In adopting rules and guidelines, the executive
23 commissioner [board] and commission shall consider the
24 compatibility of those rules and guidelines with federal regulatory
25 programs.

26 SECTION 3.0910. Sections 401.104(a), (c), (d), and (e),
27 Health and Safety Code, are amended to read as follows:

1 (a) Except as provided by Subsections (b) and (e), the
2 executive commissioner [board] by rule shall provide for the
3 general or specific licensing of:

4 (1) radioactive material; or

5 (2) devices or equipment using radioactive material.

6 (c) The executive commissioner [board] or commission shall
7 provide in [~~its~~] rules of the appropriate agency for the issuance,
8 amendment, suspension, and revocation of licenses.

9 (d) The executive commissioner [board] or commission,
10 within the [~~its~~] jurisdiction of that officer or agency, may
11 require the registration or licensing of other sources of
12 radiation.

13 (e) The executive commissioner [board] or commission may
14 not require a license for a person that is a party to an order issued
15 under Section 361.188 or 361.272 for sites subject to Subchapter F,
16 Chapter 361, or an agreement entered into under Section 361.606.
17 This subsection does not exempt the person from complying with
18 technical standards that a holder of a license otherwise required
19 by this chapter for the particular activity is required to meet.
20 The exemption granted by this subsection applies only to the
21 assessment and remediation of the contamination at the site.

22 SECTION 3.0911. Section 401.105, Health and Safety Code, is
23 amended to read as follows:

24 Sec. 401.105. RECOGNITION OF OTHER LICENSES. The executive
25 commissioner [board] or commission, each within the [~~its~~]
26 jurisdiction of that officer or agency, by rule may recognize other
27 federal or state licenses the executive commissioner [board] or

1 commission, as appropriate, considers desirable, subject to
2 registration requirements the executive commissioner [board] or
3 commission, as appropriate, may prescribe.

4 SECTION 3.0912. Sections 401.106(a) and (b), Health and
5 Safety Code, are amended to read as follows:

6 (a) The executive commissioner [board] or commission by
7 rule may exempt a source of radiation or a kind of use or user from
8 the licensing or registration requirements provided by this chapter
9 and under the agency's jurisdiction if the executive commissioner
10 [board] or commission finds that the exemption of that source of
11 radiation or kind of use or user will not constitute a significant
12 risk to the public health and safety and the environment.

13 (b) The department or commission, as applicable, may exempt
14 a source of radiation or a kind of use or user from the application
15 of a rule adopted by the executive commissioner [department] or
16 commission under this chapter if the department or commission,
17 respectively, determines that the exemption:

18 (1) is not prohibited by law; and
19 (2) will not result in a significant risk to public
20 health and safety and the environment.

21 SECTION 3.0913. Section 401.107(a), Health and Safety Code,
22 is amended to read as follows:

23 (a) An application for a specific license issued by the
24 department [board] or commission must be in writing and must state
25 the information that the executive commissioner [board] or
26 commission, as appropriate, by rule determines to be necessary to
27 decide the technical, insurance, and financial qualifications or

1 any other of the applicant's qualifications the issuing agency
2 considers reasonable or necessary to protect the occupational and
3 public health and safety and the environment.

4 SECTION 3.0914. Section 401.108(b), Health and Safety Code,
5 is amended to read as follows:

6 (b) A license holder shall submit to the department or
7 commission, as appropriate, at intervals required by department
8 [~~board~~] or commission rules or the license, proof that the license
9 holder has updated, as appropriate, the security posted under
10 Subsection (a).

11 SECTION 3.0915. Section 401.109(a), Health and Safety Code,
12 is amended to read as follows:

13 (a) The executive commissioner [~~department~~] or commission
14 may require a holder of a license issued by the applicable agency to
15 provide security acceptable to the applicable agency to assure
16 performance of the license holder's obligations under this
17 chapter. The department shall deposit security provided to the
18 department under this section to the credit of the perpetual care
19 account. The executive commissioner [~~department~~] by rule shall
20 provide that any evidence of security must be made payable to the
21 credit of the perpetual care account. The commission shall deposit
22 security provided to the commission under this section to the
23 credit of the environmental radiation and perpetual care
24 account. The commission shall provide that security must be made
25 payable to the credit of the environmental radiation and perpetual
26 care account.

27 SECTION 3.0916. Section 401.116(d), Health and Safety Code,

1 is amended to read as follows:

2 (d) The agency shall give notice and provide for [hold] a
3 hearing to be conducted to consider the license amendment if a
4 person affected files a written complaint with the agency before
5 the 31st day after the date on which notice is published under
6 Subsection (b). The agency shall give notice of the hearing as
7 provided by Section 401.114.

8 SECTION 3.0917. Section 401.118(a), Health and Safety Code,
9 is amended to read as follows:

10 (a) The department [board] or commission shall prescribe
11 the form and the terms for each license it issues.

12 SECTION 3.0918. Section 401.224, Health and Safety Code, is
13 amended to read as follows:

14 Sec. 401.224. PACKAGING OF RADIOACTIVE WASTE. The
15 executive commissioner [department] shall adopt rules relating to
16 the packaging of radioactive waste.

17 SECTION 3.0919. Sections 401.301(b) and (d), Health and
18 Safety Code, are amended to read as follows:

19 (b) The commission and the executive commissioner [board]
20 each by rule shall set the fee in an amount that may not exceed the
21 actual expenses annually incurred to:

22 (1) process applications for licenses or
23 registrations;

24 (2) amend or renew licenses or registrations;

25 (3) make inspections of license holders and
26 registrants; and

27 (4) enforce this chapter and rules, orders, licenses,

1 and registrations under this chapter.

2 (d) The commission and executive commissioner [department]
3 shall require that each person who holds a specific license issued
4 by the commission or department [agency] pay to the applicable
5 agency an additional five percent of the appropriate fee set under
6 Subsection (b). Fees collected by the department under this
7 subsection shall be deposited to the credit of the perpetual care
8 account. Fees collected by the commission under this subsection
9 shall be deposited to the environmental radiation and perpetual
10 care account. The fees are not refundable. The holder of a
11 specific license authorizing the extraction, processing, or
12 concentration of uranium or thorium from ore is not required to pay
13 the additional fee described by this subsection before the
14 beginning of operations under the license.

15 SECTION 3.0920. Section 401.302(a), Health and Safety Code,
16 is amended to read as follows:

17 (a) The executive commissioner [department], in
18 coordination with the commission, by rule may set [~~and collect~~] an
19 annual fee to be collected by the department from the operator of
20 each nuclear reactor or other fixed nuclear facility in the state
21 that uses special nuclear material.

22 SECTION 3.0921. Section 401.303(a), Health and Safety Code,
23 is amended to read as follows:

24 (a) The executive commissioner [department] or commission
25 may require the holder of a license issued by the agency to pay
26 annually to the issuing agency an amount determined by the issuing
27 agency if continuing or perpetual maintenance, surveillance, or

1 other care is required after termination of a licensed activity.

2 SECTION 3.0922. Section 401.342(a), Health and Safety Code,
3 is amended to read as follows:

4 (a) The attorney general, at the request of the department
5 regarding an activity under its jurisdiction, shall institute an
6 action in a district court in Travis County or in any county in
7 which a violation occurs or is about to occur if in the department's
8 judgment a person has engaged in or is about to engage in an act or
9 practice that violates or will violate this chapter, ~~[or]~~ a rule
10 adopted by the executive commissioner under this chapter, or a
11 license, registration, or order ~~[adopted or]~~ issued by the
12 department under this chapter. The attorney general may determine
13 the court in which suit will be instituted.

14 SECTION 3.0923. Section 401.343(a), Health and Safety Code,
15 is amended to read as follows:

16 (a) The department or commission shall seek reimbursement,
17 either by an order of the department or commission or a suit filed
18 by the attorney general at the request of the department or
19 commission, of security from the perpetual care account used by the
20 department or commission to pay for actions, including corrective
21 measures, to remedy spills or contamination by radioactive
22 substances resulting from a violation of this chapter relating to
23 an activity under the jurisdiction of the department or commission,
24 ~~[or]~~ a violation of a rule adopted under this chapter, or a
25 violation of a license, registration, or order [adopted or] issued
26 by the department or commission under this chapter.

27 SECTION 3.0924. Section 401.384(a), Health and Safety Code,

1 is amended to read as follows:

2 (a) The department may assess an administrative penalty as
3 provided by this section and Sections 401.385-401.390 against a
4 person who causes, suffers, allows, or permits a violation of a
5 provision of this chapter relating to an activity under the
6 department's jurisdiction, a rule adopted by the executive
7 commissioner under this chapter, an [or] order issued [adopted] by
8 the department under this chapter, or a condition of a license or
9 registration issued by the department under this chapter.

10 SECTION 3.0925. Section 401.387, Health and Safety Code, is
11 amended to read as follows:

12 Sec. 401.387. CONSENT TO PENALTY. (a) If the person
13 charged with the violation consents to the penalty recommended by
14 the department or does not respond to the notice on time, the
15 department [~~commissioner or the commissioner's designee,~~] by order
16 shall assess that penalty or order a hearing to be held on the
17 findings and recommendations in the report.

18 (b) If the department [~~commissioner or the commissioner's~~
19 ~~designee~~] assesses the recommended penalty, the department shall
20 give written notice to the person charged of the decision and that
21 person must pay the penalty.

22 SECTION 3.0926. Section 401.388, Health and Safety Code, is
23 amended to read as follows:

24 Sec. 401.388. HEARING AND DECISION. (a) If the person
25 charged requests a hearing, the department [~~commissioner~~] shall
26 refer the matter to the State Office of Administrative Hearings
27 [~~order a hearing~~] and shall give notice of a [~~that~~] hearing to be

1 held by that office.

2 (b) The hearing shall be held by an administrative law judge
3 of the State Office of Administrative Hearings [~~a hearing examiner~~
4 ~~designated by the commissioner~~].

5 (c) The administrative law judge [~~hearing examiner~~] shall
6 make findings of fact and promptly issue to the department
7 [~~commissioner~~] a written proposal for decision as to the occurrence
8 of the violation and a recommendation of the amount of the proposed
9 penalty if a penalty is warranted.

10 (d) Based on the findings of fact and the recommendations of
11 the administrative law judge [~~hearing examiner~~], the department
12 [~~commissioner~~] by order may find that a violation has occurred and
13 assess an administrative penalty or may find that no violation
14 occurred.

15 (e) All proceedings under Subsections (a)-(d) are subject
16 to Chapter 2001, Government Code.

17 (f) The department [~~commissioner~~] shall give notice to the
18 person charged of the department's [~~commissioner's~~] decision, and
19 if the department [~~commissioner~~] finds that a violation has
20 occurred and an administrative penalty has been assessed, the
21 department [~~commissioner~~] shall give to the person charged written
22 notice of:

23 (1) the department's [~~commissioner's~~] findings;
24 (2) the amount of the penalty; and
25 (3) the person's right to judicial review of the
26 department's [~~commissioner's~~] order.

27 SECTION 3.0927. Section 401.389, Health and Safety Code, is

1 amended to read as follows:

2 Sec. 401.389. DISPOSITION OF PENALTY; JUDICIAL REVIEW.

3 (a) Not later than the 30th day after the date on which the
4 department's [~~commissioner's~~] order is final, the person charged
5 with the penalty shall pay the full amount of the penalty or file a
6 petition for judicial review.

7 (b) If the person seeks judicial review of the violation,
8 the amount of the penalty, or both, the person, within the time
9 provided by Subsection (a), shall:

10 (1) stay enforcement of the penalty by:

11 (A) paying [~~send the amount of~~] the penalty to
12 the court [~~commissioner~~] for placement in an escrow account; or
13 (B) posting [~~(2) post~~] with the court
14 [~~commissioner~~] a supersedeas bond in a form approved by the court
15 [~~commissioner~~] for the amount of the penalty; or

16 (2) request that the department stay enforcement of
17 the penalty by:

18 (A) filing with the court a sworn affidavit of
19 the person stating that the person is financially unable to pay the
20 penalty and is financially unable to give the supersedeas bond; and
21 (B) sending a copy of the affidavit to the
22 department.

23 (b-1) If the department receives a copy of an affidavit
24 under Subsection (b)(2), the department may file with the court,
25 within five days after the date the copy is received, a contest to
26 the affidavit. The court shall hold a hearing on the facts alleged
27 in the affidavit as soon as practicable and shall stay the

1 enforcement of the penalty on finding that the alleged facts are
2 true. The person who files an affidavit has the burden of proving
3 that the person is financially unable to pay the penalty or to give
4 a supersedeas bond [the bond to be effective until judicial review
5 of the order or decision is final].

6 (c) The department [~~commissioner~~] may request enforcement
7 by the attorney general if the person charged fails to comply with
8 this section.

9 (d) Judicial review of the order or decision of the
10 department [~~commissioner~~] assessing the penalty shall be under
11 Subchapter G, Chapter 2001, Government Code.

12 SECTION 3.0928. Section 401.390, Health and Safety Code, is
13 amended to read as follows:

14 Sec. 401.390. REMITTING PENALTY PAYMENTS; RELEASING BONDS.

15 (a) On the date the court's judgment that an administrative penalty
16 against a person should be [If a penalty is] reduced or not assessed
17 becomes final, the court [~~commissioner~~] shall order that:

18 (1) [Remit to the person charged] the appropriate
19 amount of any penalty payment plus accrued interest be remitted to
20 the person not later than the 30th day after that date; or

21 (2) [Execute a release of] the bond be released, if a
22 supersedeas bond has been posted.

23 (b) Accrued interest on amounts remitted by the department
24 [~~commissioner~~] shall be paid:

25 (1) at a rate equal to the rate charged on loans to
26 depository institutions by the New York Federal Reserve Bank; and

27 (2) for the period beginning on the date the penalty is

1 paid to the department [commissioner] under Section 401.389(a) and
2 ending on the date the penalty is remitted.

3 SECTION 3.0929. Section 401.412(c), Health and Safety Code,
4 is amended to read as follows:

5 (c) The commission may adopt any rules and guidelines
6 reasonably necessary to exercise its authority under this section.
7 In adopting rules and guidelines, the commission shall consider the
8 compatibility of those rules and guidelines with federal regulatory
9 programs and the rules and guidelines of the executive commissioner
10 [~~board~~].

11 SECTION 3.0930. Section 401.414, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 401.414. MEMORANDA OF UNDERSTANDING. The Texas
14 Commission on Environmental Quality, the executive commissioner
15 for the Health and Human Services Commission, and the Railroad
16 Commission of Texas by rule shall adopt memoranda of understanding
17 defining their respective duties under this chapter.

18 SECTION 3.0931. Section 401.415(e), Health and Safety Code,
19 is amended to read as follows:

20 (e) To ensure that the State of Texas retains its Agreement
21 Status with the federal commission [U.S. Nuclear Regulatory
22 Commission], and to ensure that radioactive materials are managed
23 consistently to protect the public health and safety and the
24 environment, the Railroad Commission of Texas shall issue rules on
25 the management of oil and gas NORM waste and in so doing shall
26 consult with the commission [Texas Natural Resource Conservation
27 Commission] and the department [Department of Health] regarding

1 protection of the public health and the environment. The rules of
2 the railroad commission shall provide protection for public health,
3 safety, and the environment equivalent to the protection provided
4 by rules applicable to disposal of other NORM wastes having similar
5 properties, quantities, and distribution, although the approved
6 methods and sites for disposing of oil and gas NORM wastes may be
7 different from those approved for other NORM wastes.

8 SECTION 3.0932. Section [401.421](#)(3), Health and Safety Code,
9 is amended to read as follows:

10 (3) "Mammography system" includes the following:
11 (A) an x-ray unit used as a source of radiation in
12 producing images of breast tissue;
13 (B) an imaging system used for the formation of a
14 latent image of breast tissue;
15 (C) an imaging processing device for changing a
16 latent image of breast tissue to a visual image that can be used for
17 diagnostic purposes;
18 (D) a viewing device used for the visual
19 evaluation of an image of breast tissue if the image is produced in
20 interpreting visual data captured on an image receptor;
21 (E) a medical radiological technologist who
22 performs a mammography; and
23 (F) a physician who engages in, and who meets the
24 requirements provided [~~adopted~~] by department [~~board~~] rule
25 relating to, the reading, evaluation, and interpretation of
26 mammograms.

27 SECTION 3.0933. The heading to Section [401.423](#), Health and

1 Safety Code, is amended to read as follows:

2 Sec. 401.423. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER
3 AND DEPARTMENT [~~BOARD~~].

4 SECTION 3.0934. Section 401.423, Health and Safety Code, is
5 amended by amending Subsection (a) and adding Subsection (a-1) to
6 read as follows:

7 (a) The department [~~board~~] shall:

8 (1) prescribe application forms for original and
9 renewal certifications; and

10 (2) ~~[adopt rules for the administration of this~~
11 ~~subchapter; and~~

12 [~~(3)~~] take other action necessary to enforce this
13 subchapter.

14 (a-1) The executive commissioner shall adopt rules for the
15 administration of this subchapter.

16 SECTION 3.0935. Sections 401.424(b), (c), and (d), Health
17 and Safety Code, are amended to read as follows:

18 (b) To protect the public health, the executive
19 commissioner [~~board~~] by rule may adopt more stringent or additional
20 requirements for:

21 (1) the certification of mammography systems; and
22 (2) the retention of original mammograms.

23 (c) To protect the public health, the executive
24 commissioner [~~board~~] by rule shall adopt qualifications for a
25 physician who reads, evaluates, and interprets a mammogram that are
26 no less stringent than the standards of the American College of
27 Radiology.

1 (d) The department [board] shall make available to the
2 public copies of the criteria of the American College of Radiology
3 mammography accreditation program or the modified criteria
4 provided [adopted] by department [board] rule.

5 SECTION 3.0936. Section 401.426(a), Health and Safety Code,
6 is amended to read as follows:

7 (a) A person who owns, leases, or uses or the agent of a
8 person who owns, leases, or uses a mammography system must file a
9 written application for certification under Section 401.424 on a
10 form prescribed by the department [board].

11 SECTION 3.0937. Section 401.427, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 401.427. CERTIFICATION RENEWAL; FEES. (a) A
14 certification is valid for three years.

15 (b) The executive commissioner [board] by rule may adopt a
16 system under which certifications under this subchapter expire on
17 various dates during the year.

18 (c) The executive commissioner by rule [board] shall set and
19 the department shall collect an annual fee for certification
20 holders in an amount reasonable and necessary to administer this
21 subchapter. A certification holder who fails to pay the annual fee
22 before the date set by the executive commissioner [board] shall pay
23 the annual fee and a late fee set by the executive commissioner
24 [board]. The department [board] may revoke the certification of a
25 certification holder who does not pay the annual fee and late fee
26 before the required date.

27 (d) A certification holder may renew the certification by

1 filing an application for renewal and paying the annual fee before
2 the date the certification expires. If a certification holder
3 fails to renew the certification by the required date, the
4 certification holder may renew the certification on payment of the
5 annual fee and a late fee set by the executive commissioner [board].
6 If the certification is not renewed before the 181st day after the
7 date on which the certification expired, the certification holder
8 must apply for an original certification under this subchapter.

9 (e) A mammography system may not be used after the
10 expiration date of the certification unless the holder of the
11 expired certification has made a timely and sufficient application
12 for renewal of the certification as provided under Section
13 2001.054, Government Code, and a final determination of the
14 application by the department [board] has not been made.

15 SECTION 3.0938. Section 401.428(b), Health and Safety Code,
16 is amended to read as follows:

17 (b) The executive commissioner [board] shall adopt rules
18 establishing the grounds for denial, suspension, revocation, or
19 reinstatement of a certification and establishing procedures for
20 disciplinary actions.

21 SECTION 3.0939. Sections 401.430(b) and (h), Health and
22 Safety Code, are amended to read as follows:

23 (b) The executive commissioner [board] by rule shall
24 establish the routine inspection frequency for mammography systems
25 that receive certification under this subchapter.

26 (h) To protect the public health, the executive
27 commissioner [board] may adopt rules concerning the grounds for

1 posting a failure notice and the placement and size of the failure
2 notice, and for patient notification under Subsections (f) and (g),
3 as appropriate.

4 SECTION 3.0940. Subtitle A, Title 6, Health and Safety
5 Code, is amended by adding Chapter 430 to read as follows:

6 CHAPTER 430. GENERAL PROVISIONS

7 Sec. 430.001. DEFINITIONS. In this subtitle:

8 (1) "Commissioner" means the commissioner of state
9 health services.

10 (2) "Department" means the Department of State Health
11 Services.

12 (3) "Executive commissioner" means the executive
13 commissioner of the Health and Human Services Commission.

14 SECTION 3.0941. Section 431.002(8), Health and Safety Code,
15 is reenacted to read as follows:

16 (8) "Consumer commodity," except as otherwise
17 provided by this subdivision, means any food, drug, device, or
18 cosmetic, as those terms are defined by this chapter or by the
19 federal Act, and any other article, product, or commodity of any
20 kind or class that is customarily produced or distributed for sale
21 through retail sales agencies or instrumentalities for consumption
22 by individuals, or for use by individuals for purposes of personal
23 care or in the performance of services ordinarily rendered within
24 the household, and that usually is consumed or expended in the
25 course of the consumption or use. The term does not include:

26 (A) a meat or meat product, poultry or poultry
27 product, or tobacco or tobacco product;

5 (C) a drug subject to the provisions of Section
6 431.113(c)(1) or Section 503(b)(1) of the federal Act;

10 (E) a commodity subject to the provisions of
11 Chapter 61, Agriculture Code, relating to the inspection, labeling,
12 and sale of agricultural and vegetable seed.

13 SECTION 3.0942. Section [431.002](#)(17), Health and Safety
14 Code, is amended to read as follows:

1 except that such term does not include:

2 (A) a pesticide chemical in or on a raw
3 agricultural commodity;

4 (B) a pesticide chemical to the extent that it is
5 intended for use or is used in the production, storage, or
6 transportation of any raw agricultural commodity;

7 (C) a color additive;

8 (D) any substance used in accordance with a
9 sanction or approval granted prior to the enactment of the Food
10 Additives Amendment of 1958, Pub. L. No. 85-929, 52 Stat. 1041
11 (codified as amended in various sections of 21 U.S.C.), pursuant to
12 the federal Act, the Poultry Products Inspection Act (21 U.S.C. 451
13 et seq.) or the Meat Inspection Act of 1906 [~~1907~~] (21 U.S.C. 601 et
14 seq. [603]); or

15 (E) a new animal drug.

16 SECTION 3.0943. Section 431.021, Health and Safety Code, is
17 amended to read as follows:

18 Sec. 431.021. PROHIBITED ACTS. The following acts and the
19 causing of the following acts within this state are unlawful and
20 prohibited:

21 (a) the introduction or delivery for introduction into
22 commerce of any food, drug, device, or cosmetic that is adulterated
23 or misbranded;

24 (b) the adulteration or misbranding of any food, drug,
25 device, or cosmetic in commerce;

26 (c) the receipt in commerce of any food, drug, device, or
27 cosmetic that is adulterated or misbranded, and the delivery or

1 proffered delivery thereof for pay or otherwise;

2 (d) the distribution in commerce of a consumer commodity, if
3 such commodity is contained in a package, or if there is affixed to
4 that commodity a label that does not conform to the provisions of
5 this chapter and of rules adopted under the authority of this
6 chapter; provided, however, that this prohibition shall not apply
7 to persons engaged in business as wholesale or retail distributors
8 of consumer commodities except to the extent that such persons:

9 (1) are engaged in the packaging or labeling of such
10 commodities; or

11 (2) prescribe or specify by any means the manner in
12 which such commodities are packaged or labeled;

13 (e) the introduction or delivery for introduction into
14 commerce of any article in violation of Section 431.084, 431.114,
15 or 431.115;

16 (f) the dissemination of any false advertisement;

17 (g) the refusal to permit entry or inspection, or to permit
18 the taking of a sample or to permit access to or copying of any
19 record as authorized by Sections 431.042-431.044; or the failure to
20 establish or maintain any record or make any report required under
21 Section 512(j), (l), or (m) of the federal Act, or the refusal to
22 permit access to or verification or copying of any such required
23 record;

24 (h) the manufacture within this state of any food, drug,
25 device, or cosmetic that is adulterated or misbranded;

26 (i) the giving of a guaranty or undertaking referred to in
27 Section 431.059, which guaranty or undertaking is false, except by

1 a person who relied on a guaranty or undertaking to the same effect
2 signed by, and containing the name and address of the person
3 residing in this state from whom the person received in good faith
4 the food, drug, device, or cosmetic; or the giving of a guaranty or
5 undertaking referred to in Section [431.059](#), which guaranty or
6 undertaking is false;

7 (j) the use, removal, or disposal of a detained or embargoed
8 article in violation of Section [431.048](#);

9 (k) the alteration, mutilation, destruction, obliteration,
10 or removal of the whole or any part of the labeling of, or the doing
11 of any other act with respect to a food, drug, device, or cosmetic,
12 if such act is done while such article is held for sale after
13 shipment in commerce and results in such article being adulterated
14 or misbranded;

15 (l)(1) forging, counterfeiting, simulating, or falsely
16 representing, or without proper authority using any mark, stamp,
17 tag, label, or other identification device authorized or required
18 by rules adopted under this chapter or the regulations promulgated
19 under the provisions of the federal Act;

20 (2) making, selling, disposing of, or keeping in
21 possession, control, or custody, or concealing any punch, die,
22 plate, stone, or other thing designed to print, imprint, or
23 reproduce the trademark, trade name, or other identifying mark,
24 imprint, or device of another or any likeness of any of the
25 foregoing on any drug or container or labeling thereof so as to
26 render such drug a counterfeit drug;

27 (3) the doing of any act that causes a drug to be a

1 counterfeit drug, or the sale or dispensing, or the holding for sale
2 or dispensing, of a counterfeit drug;

3 (m) the using by any person to the person's own advantage,
4 or revealing, other than to the department [~~commissioner, an~~
5 ~~authorized agent~~], to a health authority, or to the courts when
6 relevant in any judicial proceeding under this chapter, of any
7 information acquired under the authority of this chapter concerning
8 any method or process that as a trade secret is entitled to
9 protection;

10 (n) the using, on the labeling of any drug or device or in
11 any advertising relating to such drug or device, of any
12 representation or suggestion that approval of an application with
13 respect to such drug or device is in effect under Section 431.114 or
14 Section 505, 515, or 520(g) of the federal Act, as the case may be,
15 or that such drug or device complies with the provisions of such
16 sections;

17 (o) the using, in labeling, advertising or other sales
18 promotion of any reference to any report or analysis furnished in
19 compliance with Sections 431.042-431.044 or Section 704 of the
20 federal Act;

21 (p) in the case of a prescription drug distributed or
22 offered for sale in this state, the failure of the manufacturer,
23 packer, or distributor of the drug to maintain for transmittal, or
24 to transmit, to any practitioner licensed by applicable law to
25 administer such drug who makes written request for information as
26 to such drug, true and correct copies of all printed matter that is
27 required to be included in any package in which that drug is

1 distributed or sold, or such other printed matter as is approved
2 under the federal Act. Nothing in this subsection shall be
3 construed to exempt any person from any labeling requirement
4 imposed by or under other provisions of this chapter;

5 (q)(1) placing or causing to be placed on any drug or device
6 or container of any drug or device, with intent to defraud, the
7 trade name or other identifying mark, or imprint of another or any
8 likeness of any of the foregoing;

9 (2) selling, dispensing, disposing of or causing to be
10 sold, dispensed, or disposed of, or concealing or keeping in
11 possession, control, or custody, with intent to sell, dispense, or
12 dispose of, any drug, device, or any container of any drug or
13 device, with knowledge that the trade name or other identifying
14 mark or imprint of another or any likeness of any of the foregoing
15 has been placed thereon in a manner prohibited by Subdivision (1)
16 [~~of this subsection~~]; or

17 (3) making, selling, disposing of, causing to be made,
18 sold, or disposed of, keeping in possession, control, or custody,
19 or concealing with intent to defraud any punch, die, plate, stone,
20 or other thing designed to print, imprint, or reproduce the
21 trademark, trade name, or other identifying mark, imprint, or
22 device of another or any likeness of any of the foregoing on any
23 drug or container or labeling of any drug or container so as to
24 render such drug a counterfeit drug;

25 (r) dispensing or causing to be dispensed a different drug
26 in place of the drug ordered or prescribed without the express
27 permission in each case of the person ordering or prescribing;

1 (s) the failure to register in accordance with Section 510
2 of the federal Act, the failure to provide any information required
3 by Section 510(j) or (k) of the federal Act, or the failure to
4 provide a notice required by Section 510(j)(2) of the federal Act;

5 (t)(1) the failure or refusal to:

6 (A) comply with any requirement prescribed under
7 Section 518 or 520(g) of the federal Act; or

8 (B) furnish any notification or other material or
9 information required by or under Section 519 or 520(g) of the
10 federal Act;

11 (2) with respect to any device, the submission of any
12 report that is required by or under this chapter that is false or
13 misleading in any material respect;

14 (u) the movement of a device in violation of an order under
15 Section 304(g) of the federal Act or the removal or alteration of
16 any mark or label required by the order to identify the device as
17 detained;

18 (v) the failure to provide the notice required by Section
19 412(b) or 412(c), the failure to make the reports required by
20 Section 412(d)(1)(B), or the failure to meet the requirements
21 prescribed under Section 412(d)(2) of the federal Act;

22 (w) except as provided under Subchapter M of this chapter
23 and Section 562.1085, Occupations Code, the acceptance by a person
24 of an unused prescription or drug, in whole or in part, for the
25 purpose of resale, after the prescription or drug has been
26 originally dispensed, or sold;

27 (x) engaging in the wholesale distribution of drugs or

1 operating as a distributor or manufacturer of devices in this state
2 without obtaining a license issued by the department under
3 Subchapter I, L, or N, as applicable;

4 (y) engaging in the manufacture of food in this state or
5 operating as a warehouse operator in this state without having a
6 license as required by Section [431.222](#) or operating as a food
7 wholesaler in this state without having a license under Section
8 [431.222](#) or being registered under Section [431.2211](#), as appropriate;

9 (z) unless approved by the United States Food and Drug
10 Administration pursuant to the federal Act, the sale, delivery,
11 holding, or offering for sale of a self-testing kit designed to
12 indicate whether a person has a human immunodeficiency virus
13 infection, acquired immune deficiency syndrome, or a related
14 disorder or condition;

15 (aa) making a false statement or false representation in an
16 application for a license or in a statement, report, or other
17 instrument to be filed with or requested by the department under
18 this chapter;

19 (bb) failing to comply with a requirement or request to
20 provide information or failing to submit an application, statement,
21 report, or other instrument required by the department;

22 (cc) performing, causing the performance of, or aiding and
23 abetting the performance of an act described by Subsection
24 [~~Subdivision~~] (x);

25 (dd) purchasing or otherwise receiving a prescription drug
26 from a pharmacy in violation of Section [431.411\(a\)](#);

27 (ee) selling, distributing, or transferring a prescription

1 drug to a person who is not authorized under state or federal law to
2 receive the prescription drug in violation of Section 431.411(b);
3 (ff) failing to deliver prescription drugs to specified
4 premises as required by Section 431.411(c);
5 (gg) failing to maintain or provide pedigrees as required by
6 Section 431.412 or 431.413;
7 (hh) failing to obtain, pass, or authenticate a pedigree as
8 required by Section 431.412 or 431.413;
9 (ii) the introduction or delivery for introduction into
10 commerce of a drug or prescription device at a flea market;
11 (jj) the receipt of a prescription drug that is adulterated,
12 misbranded, stolen, obtained by fraud or deceit, counterfeit, or
13 suspected of being counterfeit, and the delivery or proffered
14 delivery of such a drug for payment or otherwise; or
15 (kk) the alteration, mutilation, destruction,
16 obliteration, or removal of all or any part of the labeling of a
17 prescription drug or the commission of any other act with respect to
18 a prescription drug that results in the prescription drug being
19 misbranded.

20 SECTION 3.0944. Section 431.022(c), Health and Safety Code,
21 is amended to read as follows:

22 (c) A product containing ephedrine that is not described in
23 Subsection (a)(3) must be labeled in accordance with department
24 rules [~~adopted by the Texas Department of Health~~] to indicate that
25 sale to persons 17 years of age or younger is prohibited.

26 SECTION 3.0945. Sections 431.042(a), (f), (g), and (h),
27 Health and Safety Code, are amended to read as follows:

1 (a) To enforce this chapter, the department [~~commissioner~~,
2 ~~an authorized agent,~~] or a health authority may, on presenting
3 appropriate credentials to the owner, operator, or agent in charge:

4 (1) enter at reasonable times an establishment,
5 including a factory or warehouse, in which a food, drug, device, or
6 cosmetic is manufactured, processed, packed, or held for
7 introduction into commerce or held after the introduction;

8 (2) enter a vehicle being used to transport or hold the
9 food, drug, device, or cosmetic in commerce; or

10 (3) inspect at reasonable times, within reasonable
11 limits, and in a reasonable manner, the establishment or vehicle
12 and all equipment, finished and unfinished materials, containers,
13 and labeling of any item and obtain samples necessary for the
14 enforcement of this chapter.

15 (f) The executive commissioner [~~board~~] may exempt a class of
16 persons from inspection under this section if the executive
17 commissioner [~~board~~] finds that inspection as applied to the class
18 is not necessary for the protection of the public health.

19 (g) The department [~~An authorized agent~~] or a health
20 authority who makes an inspection under this section to enforce the
21 provisions of this chapter applicable to infant formula shall be
22 permitted, at all reasonable times, to have access to and to copy
23 and verify records:

24 (1) in order to determine whether the infant formula
25 manufactured or held in the inspected facility meets the
26 requirements of this chapter; or

27 (2) that are required by this chapter.

1 (h) If the department [~~An authorized agent~~] or a health
2 authority while inspecting [~~who makes an inspection of~~] an
3 establishment, including a factory or warehouse, [~~and~~] obtains a
4 sample, the department or health authority [~~during or on completion~~
5 ~~of the inspection and~~] before leaving the establishment[~~r~~] shall
6 give to the owner, operator, or the owner's or operator's agent a
7 receipt describing the sample.

8 SECTION 3.0946. Section 431.043, Health and Safety Code, is
9 amended to read as follows:

10 Sec. 431.043. ACCESS TO RECORDS. A person who is required
11 to maintain records under this chapter or Section 519 or 520(g) of
12 the federal Act or a person who is in charge or custody of those
13 records shall, at the request of the department [~~an authorized~~
14 ~~agent~~] or a health authority, permit the department [~~authorized~~
15 ~~agent~~] or health authority at all reasonable times access to and to
16 copy and verify the records.

17 SECTION 3.0947. Section 431.044(a), Health and Safety Code,
18 is amended to read as follows:

19 (a) To enforce this chapter, a carrier engaged in commerce
20 or other person receiving a food, drug, device, or cosmetic in
21 commerce or holding a food, drug, device, or cosmetic received in
22 commerce shall, at the request of the department [~~an authorized~~
23 ~~agent~~] or a health authority, permit the department [~~authorized~~
24 ~~agent~~] or health authority at all reasonable times to have access to
25 and to copy all records showing:

26 (1) the movement in commerce of the food, drug,
27 device, or cosmetic;

1 (2) the holding of the food, drug, device, or cosmetic
2 after movement in commerce; and

3 (3) the quantity, shipper, and consignee of the food,
4 drug, device, or cosmetic.

5 SECTION 3.0948. Section 431.045(c), Health and Safety Code,
6 is amended to read as follows:

7 (c) If an emergency order is issued without a hearing, the
8 department shall propose [~~determine~~] a time and place for a hearing
9 and refer the matter to the State Office of Administrative
10 Hearings. An administrative law judge of that office shall set the
11 time and place for the hearing at which the emergency order is
12 affirmed, modified, or set aside. The hearing shall be held under
13 the contested case provisions of Chapter 2001, Government Code, and
14 the department's [~~board's~~] formal hearing rules.

15 SECTION 3.0949. Sections 431.047(a), (b), and (d), Health
16 and Safety Code, are amended to read as follows:

17 (a) The department [~~commissioner, an authorized agent,~~] or
18 a health authority may petition the district court for a temporary
19 restraining order to restrain a continuing violation of Subchapter
20 B or a threat of a continuing violation of Subchapter B if the
21 department [~~commissioner, authorized agent,~~] or health authority
22 finds that:

23 (1) a person has violated, is violating, or is
24 threatening to violate Subchapter B; and

25 (2) the violation or threatened violation creates an
26 immediate threat to the health and safety of the public.

27 (b) A district court, on petition of the department

1 [commissioner, an authorized agent] or a health authority, and on
2 a finding by the court that a person is violating or threatening to
3 violate Subchapter B shall grant any injunctive relief warranted by
4 the facts.

5 (d) The department [~~commissioner~~] and the attorney general
6 may each recover reasonable expenses incurred in obtaining
7 injunctive relief under this section, including investigative
8 costs, court costs, reasonable attorney fees, witness fees, and
9 deposition expenses. The expenses recovered by the department may
10 be used by [~~commissioner are hereby appropriated to~~] the department
11 for the administration and enforcement of this chapter. The
12 expenses recovered by the attorney general may be used by [~~are~~
13 ~~hereby appropriated to~~] the attorney general.

14 SECTION 3.0950. Section 431.048, Health and Safety Code, is
15 amended to read as follows:

16 Sec. 431.048. DETAINED OR EMBARGOED ARTICLE. (a) The
17 department [~~commissioner or an authorized agent~~] shall affix to an
18 article that is a food, drug, device, cosmetic, or consumer
19 commodity a tag or other appropriate marking that gives notice that
20 the article is, or is suspected of being, adulterated or misbranded
21 and that the article has been detained or embargoed if the
22 department [~~commissioner or the authorized agent~~] finds or has
23 probable cause to believe that the article:

24 (1) is adulterated;
25 (2) is misbranded so that the article is dangerous or
26 fraudulent under this chapter; or
27 (3) violates Section 431.084, 431.114, or 431.115.

1 (b) The tag or marking on a detained or embargoed article
2 must warn all persons not to use the article, remove the article
3 from the premises, or dispose of the article by sale or otherwise
4 until permission for use, removal, or disposal is given by the
5 department [~~commissioner, the authorized agent,~~] or a court.

6 (c) A person may not use a detained or embargoed article,
7 remove a detained or embargoed article from the premises, or
8 dispose of a detained or embargoed article by sale or otherwise
9 without permission of the department [~~commissioner, the authorized~~
10 ~~agent,~~] or a court. The department [~~commissioner or the authorized~~
11 ~~agent~~] may permit perishable goods to be moved to a place suitable
12 for proper storage.

13 (d) The department [~~commissioner or an authorized agent~~]
14 shall remove the tag or other marking from an embargoed or detained
15 article if the department [~~commissioner or an authorized agent~~]
16 finds that the article is not adulterated or misbranded.

17 (e) The department [~~commissioner or an authorized agent~~]
18 may not detain or embargo an article, including an article that is
19 distressed merchandise, that is in the possession of a person
20 licensed under Chapter 432 and that is being held for the purpose of
21 reconditioning in accordance with Chapter 432, unless the
22 department [~~commissioner or an authorized agent~~] finds or has
23 probable cause to believe that the article cannot be adequately
24 reconditioned in accordance with that chapter and applicable rules.

25 SECTION 3.0951. Sections 431.049(a), (b), and (d), Health
26 and Safety Code, are amended to read as follows:

27 (a) If the claimant of the detained or embargoed articles or

1 the claimant's agent fails or refuses to transfer the articles to a
2 secure place after the tag or other appropriate marking has been
3 affixed as provided by Section [431.048](#), the department
4 [~~commissioner or an authorized agent~~] may order the transfer of the
5 articles to one or more secure storage areas to prevent their
6 unauthorized use, removal, or disposal.

7 (b) The department [~~commissioner or an authorized agent~~]
8 may provide for the transfer of the article if the claimant of the
9 article or the claimant's agent does not carry out the transfer
10 order in a timely manner. The costs of the transfer shall be
11 assessed against the claimant of the article or the claimant's
12 agent.

13 (d) The department [~~commissioner~~] may request the attorney
14 general to bring an action in the district court in Travis County to
15 recover the costs of the transfer. In a judgment in favor of the
16 state, the court may award costs, attorney fees, court costs, and
17 interest from the time the expense was incurred through the date the
18 department is reimbursed.

19 SECTION 3.0952. Section [431.0495](#)(b), Health and Safety
20 Code, is amended to read as follows:

21 (b) The commissioner's recall order may require the
22 articles to be removed to one or more secure areas approved by the
23 department [~~commissioner or an authorized agent~~].

24 SECTION 3.0953. Sections [431.052](#)(a) and (c), Health and
25 Safety Code, are amended to read as follows:

26 (a) A court may order the delivery of a sampled article or a
27 detained or embargoed article that is adulterated or misbranded to

1 the claimant of the article for labeling or processing under the
2 supervision of [an agent of] the department [~~commissioner or an~~
3 ~~authorized agent~~] if:

4 (1) the decree has been entered in the suit;
5 (2) the costs, fees, and expenses of the suit have been
6 paid;

7 (3) the adulteration or misbranding can be corrected
8 by proper labeling or processing; and

9 (4) a good and sufficient bond, conditioned on the
10 correction of the adulteration or misbranding by proper labeling or
11 processing, has been executed.

12 (c) The court shall order that the article be returned to
13 the claimant and the bond discharged on the representation to the
14 court by the department [~~commissioner or an authorized agent~~] that
15 the article no longer violates this chapter and that the expenses of
16 the supervision are paid.

17 SECTION 3.0954. Section 431.053(a), Health and Safety Code,
18 is amended to read as follows:

19 (a) The department [~~commissioner or an authorized agent~~]
20 shall immediately condemn or render by any means unsalable as human
21 food an article that is a nuisance under Subsection (b) and that the
22 department [~~commissioner or authorized agent~~] finds in any room,
23 building, or other structure or in a vehicle.

24 SECTION 3.0955. Sections 431.054(a) and (b), Health and
25 Safety Code, are amended to read as follows:

26 (a) The department [~~commissioner~~] may assess an
27 administrative penalty against a person who violates Subchapter B

1 or an order adopted or registration issued under this chapter.

2 (b) In determining the amount of the penalty, the department
3 [commissioner] shall consider:

- 4 (1) the person's previous violations;
5 (2) the seriousness of the violation;
6 (3) any hazard to the health and safety of the public;
7 (4) the person's demonstrated good faith; and
8 (5) such other matters as justice may require.

9 SECTION 3.0956. Sections 431.055(b), (c), and (d), Health
10 and Safety Code, are amended to read as follows:

11 (b) If a hearing is held, an administrative law judge of the
12 State Office of Administrative Hearings [the commissioner] shall
13 make findings of fact and shall issue to the department a written
14 proposal for decision regarding the occurrence of the violation and
15 the amount of the penalty that may be warranted.

16 (c) If the person charged with the violation does not
17 request a hearing, the department [commissioner] may assess a
18 penalty after determining that a violation has occurred and the
19 amount of the penalty that may be warranted.

20 (d) After making a determination under this section that a
21 penalty is to be assessed against a person, the department
22 [commissioner] shall issue an order requiring that the person pay
23 the penalty.

24 SECTION 3.0957. Section 431.056, Health and Safety Code, is
25 amended to read as follows:

26 Sec. 431.056. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not
27 later than the 30th day after the date an order finding that a

1 violation has occurred is issued, the department [~~commissioner~~]
2 shall inform the person against whom the order is issued of the
3 amount of the penalty for the violation.

4 (b) Not later than the 30th day after the date on which a
5 decision or order charging a person with a penalty is final, the
6 person shall:

7 (1) pay the penalty in full; or
8 (2) file a petition for [~~if the person seeks~~] judicial
9 review of the department's order contesting the amount of the
10 penalty, the fact of the violation, or both.

11 (b-1) If the person seeks judicial review within the period
12 prescribed by Subsection (b), the person may:

13 (1) stay enforcement of the penalty by:
14 (A) paying [~~send~~] the amount of the penalty to
15 the court [~~commissioner~~] for placement in an escrow account; or
16 (B) posting [~~post~~] with the court [~~commissioner~~]
17 a supersedeas bond for the amount of the penalty; or
18 (2) request that the department stay enforcement of
19 the penalty by:

20 (A) filling with the court a sworn affidavit of
21 the person stating that the person is financially unable to pay the
22 penalty and is financially unable to give the supersedeas bond; and
23 (B) sending a copy of the affidavit to the
24 department.

25 (b-2) If the department receives a copy of an affidavit
26 under Subsection (b-1)(2), the department may file with the court,
27 within five days after the date the copy is received, a contest to

1 the affidavit. The court shall hold a hearing on the facts alleged
2 in the affidavit as soon as practicable and shall stay the
3 enforcement of the penalty on finding that the alleged facts are
4 true. The person who files an affidavit has the burden of proving
5 that the person is financially unable to pay the penalty or to give
6 a supersedeas bond.

7 (c) A bond posted under this section must be in a form
8 approved by the court [~~commissioner~~] and be effective until all
9 judicial review of the order or decision is final.

10 (d) A person who does not send money to, [~~the commissioner~~
11 ~~or~~] post the bond with, or file the affidavit with the court within
12 the period prescribed by Subsection (b) waives all rights to
13 contest the violation or the amount of the penalty.

14 SECTION 3.0958. Section 431.057, Health and Safety Code, is
15 amended to read as follows:

16 Sec. 431.057. REFUND OF ADMINISTRATIVE PENALTY. On [~~Note~~
17 ~~later than the 30th day after~~] the date the court's judgment [~~of a~~
18 ~~judicial determination~~] that an administrative penalty against a
19 person should be reduced or not assessed becomes final, the court
20 [~~commissioner~~] shall order that:

21 (1) [~~remit to the person~~] the appropriate amount of
22 any penalty payment plus accrued interest be remitted to the person
23 not later than the 30th day after that date; or

24 (2) [~~execute a release of~~] the bond be released, if the
25 person has posted a bond.

26 SECTION 3.0959. Section 431.058, Health and Safety Code, is
27 amended to read as follows:

1 Sec. 431.058. RECOVERY OF ADMINISTRATIVE PENALTY BY
2 ATTORNEY GENERAL. The attorney general at the request of the
3 department [~~commissioner~~] may bring a civil action to recover an
4 administrative penalty under this subchapter.

5 SECTION 3.0960. Section 431.0585(a), Health and Safety
6 Code, is amended to read as follows:

7 (a) At the request of the department [~~commissioner~~], the
8 attorney general or a district, county, or city attorney shall
9 institute an action in district court to collect a civil penalty
10 from a person who has violated Section 431.021.

11 SECTION 3.0961. Sections 431.059(a), (b), and (c), Health
12 and Safety Code, are amended to read as follows:

13 (a) A person commits an offense if the person violates any
14 of the provisions of Section 431.021 relating to unlawful or
15 prohibited acts. A first offense under this subsection is a Class
16 A misdemeanor unless it is shown on the trial of an offense under
17 this subsection that the defendant was previously convicted of an
18 offense under this subsection, in which event the offense is a state
19 jail felony. In a criminal proceeding under this section, it is
20 not necessary to prove intent, knowledge, recklessness, or criminal
21 negligence of the defendant beyond the degree of culpability, if
22 any, stated in [Subsection (a-2) or] Section 431.021[, as
23 applicable,] to establish criminal responsibility for the
24 violation.

25 (b) A person is not subject to the penalties of Subsection
26 (a):

27 (1) for having received an article in commerce and

1 having delivered or offered delivery of the article, if the
2 delivery or offer was made in good faith, unless the person refuses
3 to furnish, on request of the department [~~commissioner, an~~
4 ~~authorized agent,~~] or a health authority, the name and address of
5 the person from whom the article was received and copies of any
6 documents relating to the receipt of the article;

7 (2) for having violated Section 431.021(a) or (e) if
8 the person establishes a guaranty or undertaking signed by, and
9 containing the name and address of, the person residing in this
10 state from whom the person received in good faith the article, to
11 the effect that:

12 (A) in the case of an alleged violation of
13 Section 431.021(a), the article is not adulterated or misbranded
14 within the meaning of this chapter; and

15 (B) in the case of an alleged violation of
16 Section 431.021(e), the article is not an article that may not,
17 under the provisions of Section 404 or 405 of the federal Act or
18 Section 431.084 or 431.114, be introduced into commerce;

19 (3) for having violated Section 431.021, if the
20 violation exists because the article is adulterated by reason of
21 containing a color additive not from a batch certified in
22 accordance with regulations promulgated under the federal Act, if
23 the person establishes a guaranty or undertaking signed by, and
24 containing the name and address of, the manufacturer of the color
25 additive, to the effect that the color additive was from a batch
26 certified in accordance with the applicable regulations
27 promulgated under the federal Act;

16 (c) A publisher, radio-broadcast licensee, or agency or
17 medium for the dissemination of an advertisement, except the
18 manufacturer, packer, distributor, or seller of the article to
19 which a false advertisement relates, is not liable under this
20 section for the dissemination of the false advertisement, unless
21 the person has refused, on the request of the department,
22 [commissioner] to furnish the department [commissioner] the name
23 and post-office address of the manufacturer, packer, distributor,
24 seller, or advertising agency, residing in this state who caused
25 the person to disseminate the advertisement.

26 SECTION 3.0962. Section 431.060, Health and Safety Code, is
27 amended to read as follows:

1 Sec. 431.060. INITIATION OF PROCEEDINGS. (a) The attorney
2 general, or a district, county, or municipal attorney to whom the
3 department [~~commissioner, an authorized agent,~~] or a health
4 authority reports a violation of this chapter, shall initiate and
5 prosecute appropriate proceedings without delay.

6 (b) The department [~~commissioner, the commissioner's~~
7 ~~authorized agent,~~] or [~~the~~] attorney general may, as authorized by
8 Section 307 of the federal Act, bring in the name of this state a
9 suit for civil penalties or to restrain a violation of Section 401
10 or Section 403(b) through (i), (k), (q), or (r) of the federal Act
11 if the food that is the subject of the proceedings is located in
12 this state.

13 (c) The department [~~commissioner, the commissioner's~~
14 ~~authorized agent,~~] or [~~the~~] attorney general may not bring a
15 proceeding under Subsection (b):

16 (1) before the 31st day after the date on which the
17 state has given notice to the secretary of its intent to bring a
18 suit;

19 (2) before the 91st day after the date on which the
20 state has given notice to the secretary of its intent to bring a
21 suit if the secretary has, not later than the 30th day after
22 receiving notice from the state, commenced an informal or formal
23 enforcement action pertaining to the food that would be the subject
24 of the suit brought by the state; or

25 (3) if the secretary is diligently prosecuting a suit
26 in court pertaining to that food, has settled a suit pertaining to
27 that food, or has settled the informal or formal enforcement action

1 pertaining to that food.

2 SECTION 3.0963. Section 431.061, Health and Safety Code, is
3 amended to read as follows:

4 Sec. 431.061. MINOR VIOLATION. This chapter does not
5 require the department [~~commissioner, an authorized agent,~~] or a
6 health authority to report for prosecution or the institution of
7 proceedings under this chapter a minor violation of this chapter if
8 the department [~~commissioner, authorized agent,~~] or health
9 authority believes that the public interest is adequately served by
10 a suitable written notice or warning.

11 SECTION 3.0964. Section 431.081, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 431.081. ADULTERATED FOOD. A food shall be deemed to
14 be adulterated:

15 (a) if:

16 (1) it bears or contains any poisonous or deleterious
17 substance which may render it injurious to health; but in case the
18 substance is not an added substance the food shall not be considered
19 adulterated under this subdivision if the quantity of the substance
20 in the food does not ordinarily render it injurious to health; [~~or~~]

21 (2) it:

22 (A) bears or contains any added poisonous or
23 added deleterious substance, other than one that is a pesticide
24 chemical in or on a raw agricultural commodity, a food additive, a
25 color additive, or a new animal drug which is unsafe within the
26 meaning of Section 431.161; [~~or~~]

27 (B) is a raw agricultural commodity and it bears

1 or contains a pesticide chemical which is unsafe within the meaning
2 of Section 431.161(a); [ex]

3 (C) is, or it bears or contains, any food
4 additive which is unsafe within the meaning of Section 431.161(a);
5 provided, that where a pesticide chemical has been used in or on a
6 raw agricultural commodity in conformity with an exemption granted
7 or a tolerance prescribed under Section 431.161(a), and such raw
8 agricultural commodity has been subjected to processing such as
9 canning, cooking, freezing, dehydrating, or milling, the residue of
10 such pesticide chemical remaining in or on such processed food
11 shall, notwithstanding the provisions of Section 431.161 and
12 Section 409 of the federal Act, not be deemed unsafe if such residue
13 in or on the raw agricultural commodity has been removed to the
14 extent possible in good manufacturing practice, and the
15 concentration of such residue in the processed food, when ready to
16 eat, is not greater than the tolerance prescribed for the raw
17 agricultural commodity; or

18 (D) is, or it bears or contains, a new animal
19 drug, or a conversion product of a new animal drug, that is unsafe
20 under Section 512 of the federal Act; [ex]

21 (3) it consists in whole or in part of a diseased,
22 contaminated, filthy, putrid, or decomposed substance, or if it is
23 otherwise unfit for foods; [ex]

24 (4) it has been produced, prepared, packed or held
25 under unsanitary conditions whereby it may have become contaminated
26 with filth, or whereby it may have been rendered diseased,
27 unwholesome, or injurious to health; [ex]

1 (5) it is, in whole or in part, the product of a
2 diseased animal, an animal which has died otherwise than by
3 slaughter, or an animal that has been fed upon the uncooked offal
4 from a slaughterhouse; [or]

5 (6) its container is composed, in whole or in part, of
6 any poisonous or deleterious substance which may render the
7 contents injurious to health; or

8 (7) it has been intentionally subjected to radiation,
9 unless the use of the radiation was in conformity with a regulation
10 or exemption in effect in accordance with Section 409 of the federal
11 Act;

12 (b) if:

13 (1) any valuable constituent has been in whole or in
14 part omitted or abstracted therefrom; [or]

15 (2) any substance has been substituted wholly or in
16 part therefor; [or]

17 (3) damage or inferiority has been concealed in any
18 manner; [or]

19 (4) any substance has been added thereto or mixed or
20 packed therewith so as to increase its bulk or weight, or reduce its
21 quality or strength or make it appear better or of greater value
22 than it is; [or]

23 (5) it contains saccharin, dulcin, glucin, or other
24 sugar substitutes except in dietary foods, and when so used shall be
25 declared; or

26 (6) it be fresh meat and it contains any chemical
27 substance containing sulphites, sulphur dioxide, or any other

1 chemical preservative which is not approved by the United States
2 Department of Agriculture, the Animal and Plant Health Inspection
3 Service (A.P.H.I.S.) or by department rules [~~of the board~~];

4 (c) if it is, or it bears or contains, a color additive that
5 is unsafe under Section 431.161(a); or

6 (d) if it is confectionery and:

7 (1) has any nonnutritive object partially or
8 completely imbedded in it; provided, that this subdivision does
9 not apply if, in accordance with department rules [~~of the board~~],
10 the object is of practical, functional value to the confectionery
11 product and would not render the product injurious or hazardous to
12 health;

13 (2) bears or contains any alcohol, other than alcohol
14 not in excess of five percent by volume. Any confectionery that
15 bears or contains any alcohol in excess of one-half of one percent
16 by volume derived solely from the use of flavoring extracts and less
17 than five percent by volume:

18 (A) may not be sold to persons under the legal age
19 necessary to consume an alcoholic beverage in this state;

20 (B) must be labeled with a conspicuous, readily
21 legible statement that reads, "Sale of this product to a person
22 under the legal age necessary to consume an alcoholic beverage is
23 prohibited";

24 (C) may not be sold in a form containing liquid
25 alcohol such that it is capable of use for beverage purposes as that
26 term is used in the Alcoholic Beverage Code;

27 (D) may not be sold through a vending machine;

1 (E) must be labeled with a conspicuous, readily
2 legible statement that the product contains not more than five
3 percent alcohol by volume; and

4 (F) may not be sold in a business establishment
5 which derives less than 50 percent of its gross sales from the sale
6 of confectioneries; or

7 (3) bears or contains any nonnutritive substance;
8 provided, that this subdivision does not apply to a nonnutritive
9 substance that is in or on the confectionery by reason of its use
10 for a practical, functional purpose in the manufacture, packaging,
11 or storage of the confectionery if the use of the substance does not
12 promote deception of the consumer or otherwise result in
13 adulteration or misbranding in violation of this chapter; and
14 provided further, that the executive commissioner [board] may, for
15 the purpose of avoiding or resolving uncertainty as to the
16 application of this subdivision, adopt rules allowing or
17 prohibiting the use of particular nonnutritive substances.

18 SECTION 3.0965. Section 431.082, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 431.082. MISBRANDED FOOD. A food shall be deemed to be
21 misbranded:

22 (a) if its labeling is false or misleading in any
23 particular or fails to conform with the requirements of Section
24 431.181;

25 (b) if, in the case of a food to which Section 411 of
26 the federal Act applies, its advertising is false or misleading in a
27 material respect or its labeling is in violation of Section

1 411(b)(2) of the federal Act;

2 (c) if it is offered for sale under the name of another

3 food;

4 (d) if it is an imitation of another food, unless its

5 label bears, in prominent type of uniform size, the word

6 "imitation" and immediately thereafter the name of the food

7 imitated;

8 (e) if its container is so made, formed, or filled as

9 to be misleading;

10 (f) if in package form unless it bears a label

11 containing:

12 (1) the name and place of business of the

13 manufacturer, packer, or distributor; and

14 (2) an accurate statement, in a uniform location

15 on the principal display panel of the label, of the quantity of the

16 contents in terms of weight, measure, or numerical count;

17 provided, that under this subsection reasonable variations shall be

18 permitted, and exemptions as to small packages shall be

19 established, by department rules [~~adopted by the board~~];

20 (g) if any word, statement, or other information

21 required by or under the authority of this chapter to appear on the

22 label or labeling is not prominently placed thereon with such

23 conspicuousness (as compared with other words, statements,

24 designs, or devices in the labeling) and in such terms as to render

25 it likely to be read and understood by the ordinary individual under

26 customary conditions of purchase and use;

27 (h) if it purports to be or is represented as a food

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1 for which a definition and standard of identity has been prescribed
2 by federal regulations or department rules [of the board] as
3 provided by Section 431.245, unless:

4 (1) it conforms to such definition and standard;
5 and

11 (i) if it purports to be or is represented as:

25 (j) unless its label bears:

1 (2) in case it is fabricated from two or more
2 ingredients, the common or usual name of each such ingredient, and
3 if the food purports to be a beverage containing vegetable or fruit
4 juice, a statement with appropriate prominence on the information
5 panel of the total percentage of the fruit or vegetable juice
6 contained in the food; except that spices, flavorings, and colors
7 not required to be certified under Section 721(c) [~~706(c)~~] of the
8 federal Act, other than those sold as such, may be designated as
9 spices, flavorings, and colors, without naming each; provided
10 that, to the extent that compliance with the requirements of this
11 subdivision is impractical or results in deception or unfair
12 competition, exemptions shall be established by department rules
13 [~~of the board~~];

14 (k) if it purports to be or is represented for special
15 dietary uses, unless its label bears such information concerning
16 its vitamin, mineral, and other dietary properties as the executive
17 commissioner [~~board~~] determines to be, and by rule prescribed, as
18 necessary in order to fully inform purchasers as to its value for
19 such uses;

20 (l) if it bears or contains any artificial flavoring,
21 artificial coloring, or chemical preservative, unless it bears
22 labeling stating that fact; provided that, to the extent that
23 compliance with the requirements of this subsection is
24 impracticable, exemptions shall be established by department rules
25 [~~of the board~~]. The provisions of this subsection and Subsections
26 (h) and (j) with respect to artificial coloring do not apply in the
27 case of butter, cheese, and ice cream;

1 (m) if it is a raw agricultural commodity that is the
2 produce of the soil and bears or contains a pesticide chemical
3 applied after harvest, unless the shipping container of the
4 commodity bears labeling that declares the presence of the chemical
5 in or on the commodity and the common or usual name and the function
6 of the chemical, except that the declaration is not required while
7 the commodity, after removal from the shipping container, is being
8 held or displayed for sale at retail out of the container in
9 accordance with the custom of the trade;

10 (n) if it is a product intended as an ingredient of
11 another food and if used according to the directions of the purveyor
12 will result in the final food product being adulterated or
13 misbranded;

14 (o) if it is a color additive, unless its packaging and
15 labeling are in conformity with the packaging and labeling
16 requirements applicable to the color additive as may be contained
17 in regulations issued under Section 721 [706] of the federal Act;

18 (p) if its packaging or labeling is in violation of an
19 applicable regulation issued under Section 3 or 4 of the federal
20 [~~Federal~~] Poison Prevention Packaging Act of 1970 (15 U.S.C. 1472
21 or 1473 [1491 et seq.]);

22 (q)(1) [~~(q)~~ if it contains saccharin, unless its label
23 and labeling and retail display comply with the requirements of
24 Sections 403(o) and 403(p) of the federal Act;

25 [~~(r)~~ if it contains saccharin and is offered for sale,
26 but not for immediate consumption, at a retail establishment,
27 unless the retail establishment displays prominently, where the

1 ~~food is held for sale, notice that is provided by the manufacturer~~
2 ~~of the food under Section 403(o)(2) of the federal Act for consumers~~
3 ~~concerning the information required by Section 403(p) of the~~
4 ~~federal Act to be on food labels and labeling;~~

5 [s](1)] if it is a food intended for human
6 consumption and is offered for sale, unless its label or labeling
7 bears nutrition information that provides:

8 (A)(i) the serving size that is an amount
9 customarily consumed and that is expressed in a common household
10 measure that is appropriate to the food; or

11 (ii) if the use of the food is not
12 typically expressed in a serving size, the common household unit of
13 measure that expresses the serving size of the food;

14 (B) the number of servings or other units of
15 measure per container;

16 (C) the total number of calories in each
17 serving size or other unit of measure that are:

18 (i) derived from any source; and

19 (ii) derived from fat;

20 (D) the amount of total fat, saturated fat,
21 cholesterol, sodium, total carbohydrates, complex carbohydrates,
22 sugar, dietary fiber, and total protein contained in each serving
23 size or other unit of measure; and

24 (E) any vitamin, mineral, or other nutrient
25 required to be placed on the label and labeling of food under the
26 federal Act; or

27 (2)(A) if it is a food distributed at retail in

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- 1 bulk display cases, or a food received in bulk containers, unless it
- 2 has nutrition labeling prescribed by the secretary; and

3 (B) if the secretary determines it is
4 necessary, nutrition labeling will be mandatory for raw fruits,
5 vegetables, and fish, including freshwater or marine finfish,
6 crustaceans, mollusks including shellfish, amphibians, and other
7 forms of aquatic animal life, except that:

(3)(A) Subdivisions (1) and (2) do not apply to food:

10 (i) that is served in restaurants or
11 other establishments in which food is served for immediate human
12 consumption or that is sold for sale or use in those establishments;

13 (ii) that is processed and prepared
14 primarily in a retail establishment, that is ready for human
15 consumption, that is of the type described in Subparagraph (i),
16 that is offered for sale to consumers but not for immediate human
17 consumption in the establishment, and that is not offered for sale
18 outside the establishment;

19 (iii) that is an infant formula
20 subject to Section 412 of the federal Act;

24 (v) that is described in Section 405,
25 clause (2), of the federal Act;

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1 compliance with that subdivision is impracticable because the
2 package of the food is too small to comply with the requirements of
3 that subdivision and if the label of that food does not contain any
4 nutrition information;

5 (C) if the secretary determines that a food
6 contains insignificant amounts of all the nutrients required by
7 Subdivision (1) to be listed in the label or labeling of food, the
8 requirements of Subdivision (1) do not apply to the food if the
9 label, labeling, or advertising of the food does not make any claim
10 with respect to the nutritional value of the food, provided that if
11 the secretary determines that a food contains insignificant amounts
12 of more than half the nutrients required by Subdivision (1) to be in
13 the label or labeling of the food, the amounts of those nutrients
14 shall be stated in a simplified form prescribed by the secretary;

15 (D) if a person offers food for sale and has
16 annual gross sales made or business done in sales to consumers that
17 is not more than \$500,000 or has annual gross sales made or business
18 done in sales of food to consumers that is not more than \$50,000,
19 the requirements of this subsection do not apply to food sold by
20 that person to consumers unless the label or labeling of food
21 offered by that person provides nutrition information or makes a
22 nutrition claim:

26 (F) if food is sold by a food distributor,
27 Subdivisions (1) and (2) do not apply if the food distributor

1 principally sells food to restaurants or other establishments in
2 which food is served for immediate human consumption and the food
3 distributor does not manufacture, process, or repack the food it
4 sells;

5 (r) [←] if it is a food intended for human
6 consumption and is offered for sale, and a claim is made on the
7 label, labeling, or retail display relating to the nutrient content
8 or a nutritional quality of the food to a specific disease or
9 condition of the human body, except as permitted by Section 403(r)
10 of the federal Act; or

11 (s) [←] if it is a food intended for human
12 consumption and its label, labeling, and retail display do not
13 comply with the requirements of Section 403(r) of the federal Act
14 pertaining to nutrient content and health claims.

15 SECTION 3.0966. Section [431.083](#), Health and Safety Code, is
16 amended to read as follows:

17 Sec. 431.083. FOOD LABELING EXEMPTIONS. (a) Except as
18 provided by Subsection (c), the executive commissioner [board]
19 shall adopt rules exempting from any labeling requirement of this
20 chapter:

21 (1) small open containers of fresh fruits and fresh
22 vegetables; and

23 (2) food that is in accordance with the practice of the
24 trade, to be processed, labeled, or repacked in substantial
25 quantities at establishments other than those where originally
26 processed or packed, on conditions that the food is not adulterated
27 or misbranded under the provisions of this chapter when removed

1 from the processing, labeling, or repacking establishment.

2 (b) Food labeling exemptions adopted under the federal Act
3 apply to food in this state except as modified or rejected by
4 department rules [~~adopted by the board~~].

5 (c) The executive commissioner [~~board~~] may not adopt rules
6 under Subsection (a) to exempt foods from the labeling requirements
7 of Sections 403(q) and (r) of the federal Act.

8 SECTION 3.0967. Section 431.084, Health and Safety Code, is
9 amended to read as follows:

10 Sec. 431.084. EMERGENCY PERMITS FOR FOODS CONTAMINATED WITH
11 MICROORGANISMS. (a) The department [~~commissioner~~] shall provide
12 for the issuance of temporary permits to a manufacturer, processor,
13 or packer of a class of food in any locality that provides
14 conditions for the manufacture, processing, or packing for the
15 class of food as necessary to protect the public health only if the
16 department [~~commissioner~~] finds after investigation that:

17 (1) the distribution in this state of a class of food
18 may, because the food is contaminated with microorganisms during
19 the manufacture, processing, or packing of the food in any
20 locality, be injurious to health; and

21 (2) the injurious nature of the food cannot be
22 adequately determined after the food has entered commerce.

23 (b) The executive commissioner [~~board~~] by rule shall
24 establish standards and procedures for the enforcement of this
25 section.

26 (c) During the period for which permits are issued for a
27 class of food determined by the department [~~commissioner~~] to be

1 injurious under Subsection (a), a person may not introduce or
2 deliver for introduction into commerce the food unless the person
3 is a manufacturer, processor, or packer who has a permit issued by
4 the department [~~commissioner~~] as authorized by rules adopted under
5 this section.

6 (d) The department [~~commissioner~~] may immediately suspend a
7 permit issued under this section if a condition of the permit is
8 violated. An immediate suspension is effective on notice to the
9 permit holder.

10 (e) A holder of a permit that has been suspended may at any
11 time apply for the reinstatement of the permit. Immediately after a
12 hearing and an inspection of the permit holder's establishment, the
13 department [~~commissioner~~] shall reinstate the permit if adequate
14 measures have been taken to comply with and maintain the conditions
15 of the permit as originally issued or as amended.

16 (f) A permit holder shall provide access to the permit
17 holder's factory or establishment to the department [~~an authorized~~
18 ~~agent~~] to allow the department [~~agent~~] to determine whether the
19 permit holder complies with the conditions of the permit. Denial of
20 access is grounds for suspension of the permit until the permit
21 holder freely provides the access.

22 SECTION 3.0968. Section 431.111, Health and Safety Code, is
23 amended to read as follows:

24 Sec. 431.111. ADULTERATED DRUG OR DEVICE. A drug or device
25 shall be deemed to be adulterated:

26 (a)(1) if it consists in whole or in part of any filthy,
27 putrid, or decomposed substance; or

1 (2)(A) if it has been prepared, packed, or held under
2 insanitary conditions whereby it may have been contaminated with
3 filth, or whereby it may have been rendered injurious to health; or
4 (B) if it is a drug and the methods used in, or
5 the facilities or controls used for, its manufacture, processing,
6 packing, or holding do not conform to or are not operated or
7 administered in conformity with current good manufacturing
8 practice to assure that such drug meets the requirements of this
9 chapter as to safety and has the identity and strength, and meets
10 the quality and purity characteristics, which it purports or is
11 represented to possess; or
12 (3) if its container is composed, in whole or in part,
13 of any poisonous or deleterious substance which may render the
14 contents injurious to health; or
15 (4) if it:
16 (A) bears or contains, for purposes of coloring
17 only, a color additive that is unsafe under Section [431.161\(a\)](#); or
18 (B) is a color additive, the intended use of
19 which in or on drugs or devices is for purposes of coloring only,
20 and is unsafe under Section [431.161\(a\)](#); or
21 (5) if it is a new animal drug that is unsafe under
22 Section 512 of the federal Act;
23 (b) if it purports to be or is represented as a drug, the
24 name of which is recognized in an official compendium, and its
25 strength differs from, or its quality or purity falls below, the
26 standards set forth in such compendium. Such determination as to
27 strength, quality or purity shall be made in accordance with the

1 tests or methods of assay set forth in such compendium, or in the
2 absence of or inadequacy of such tests or methods of assay, those
3 prescribed under the authority of the federal Act. No drug defined
4 in an official compendium shall be deemed to be adulterated under
5 this subsection [paragraph] because it differs from the standards
6 of strength, quality, or purity therefor set forth in such
7 compendium, if its difference in strength, quality, or purity from
8 such standards is plainly stated on its label. Whenever a drug is
9 recognized in The [~~the~~] United States Pharmacopeia and The
10 [~~Pharmacopeia~~] National Formulary (USP-NF), it shall be subject to
11 the requirements of the USP-NF [~~United States Pharmacopeia~~
12 ~~National Formulary~~];

13 (c) if it is not subject to Subsection [~~the provision of~~
14 ~~Paragraph~~] (b) and its strength differs from, or its purity or
15 quality falls below, that which it purports or is represented to
16 possess;

17 (d) if it is a drug and any substance has been:

18 (1) mixed or packed therewith so as to reduce its
19 quality or strength; or

20 (2) substituted wholly or in part therefor;

21 (e) if it is, or purports to be or is represented as, a
22 device that is subject to a performance standard established under
23 Section 514 of the federal Act, unless the device is in all respects
24 in conformity with the standard;

25 (f)(1) if it is a class III device:

26 (A)(i) that is required by a regulation adopted
27 under Section 515(b) of the federal Act to have an approval under

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1 that section of an application for premarket approval and that is
2 not exempt from Section 515 as provided by Section 520(g) of the
3 federal Act; and

9 (II) for which that application was
10 filed and approval was denied or withdrawn, for which that notice
11 was filed and was declared incomplete, or for which approval of the
12 device under the protocol was withdrawn;

19 (C) that was classified under Section 520(1) of
20 the federal Act into class III, which under that section is required
21 to have in effect an approved application under Section 515 of the
22 federal Act, and that does not have the application in effect,
23 except that:

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1 adoption of the regulations prescribing the procedures and
2 conditions required by Section 520(g)(2) of the federal Act; and

13 (g) if it is a banned device;

14 (h) if it is a device and the methods used in, or the
15 facilities or controls used for its manufacture, packing, storage,
16 or installations are not in conformity with applicable requirements
17 under Section 520(f)(1) of the federal Act or an applicable
18 condition as prescribed by an order under Section 520(f)(2) of the
19 federal Act; or

20 (i) if it is a device for which an exemption has been granted
21 under Section 520(g) of the federal Act for investigational use and
22 the person who was granted the exemption or any investigator who
23 uses the device under the exemption fails to comply with a
24 requirement prescribed by or under that section.

25 SECTION 3.0969. Sections 431.113(a) and (b), Health and
26 Safety Code, are amended to read as follows:

27 (a) The executive commissioner shall [board is directed to]

1 adopt rules exempting from any labeling or packaging requirement of
2 this chapter drugs and devices that are, in accordance with the
3 practice of the trade, to be processed, labeled, or repacked in
4 substantial quantities at establishments other than those where
5 originally processed or packaged on condition that such drugs and
6 devices are not adulterated or misbranded under the provisions of
7 this chapter on removal from such processing, labeling, or
8 repacking establishment.

9 (b) Drugs and device labeling or packaging exemptions
10 adopted under the federal Act shall apply to drugs and devices in
11 this state except insofar as modified or rejected by department
12 rules [~~of the board~~].

13 SECTION 3.0970. Section 431.114, Health and Safety Code, is
14 amended to read as follows:

15 Sec. 431.114. NEW DRUGS. (a) A person shall not sell,
16 deliver, offer for sale, hold for sale or give away any new drug
17 unless:

18 (1) an application with respect thereto has been
19 approved and the approval has not been withdrawn under Section 505
20 of the federal Act; and

21 (2) a copy of the letter of approval or approvability
22 issued by the United States [~~Federal~~] Food and Drug Administration
23 is on file with the department [~~commissioner~~] if the product is
24 manufactured in this state.

25 (b) A person shall not use in or on human beings or animals a
26 new drug or new animal drug limited to investigational use unless
27 the person has filed with the United States [~~Federal~~] Food and Drug

1 Administration a completed and signed investigational new drug
2 (IND) application [~~"Notice of claimed investigational exemption~~
3 ~~for a new drug" form~~] in accordance with 21 C.F.R. 312.20-312.38
4 [~~312.1 (1980)~~] and the exemption has not been terminated. The drug
5 shall be plainly labeled in compliance with Section 505(i) of the
6 federal Act.

7 (c) This section shall not apply:

8 (1) to any drug that is not a new drug as defined in the
9 federal Act;

10 (2) to any drug that is licensed under the Public
11 Health Service [~~Services~~] Act [~~of July 1, 1944~~] (42 U.S.C. 201 et
12 seq.); or

13 (3) to any drug approved by the department
14 [~~commissioner~~] by the authority of any prior law.

15 SECTION 3.0971. Section [431.115\(c\)](#), Health and Safety Code,
16 is amended to read as follows:

17 (c) This section does not apply to any drug:

18 (1) licensed under the virus-serum-toxin law of March
19 4, 1913 (21 U.S.C. 151-159);

20 (2) approved by the United States Department of
21 Agriculture; or

22 (3) approved by the department [~~commissioner~~] by the
23 authority of any prior law.

24 SECTION 3.0972. Section [431.116\(f\)](#), Health and Safety Code,
25 is amended to read as follows:

26 (f) Notwithstanding any other state law, pricing
27 information disclosed by manufacturers or labelers under this

1 section may be provided by the department only to the Medicaid
2 vendor drug [purchase] program for its sole use. The Medicaid
3 vendor drug [purchase] program may use the information only as
4 necessary to administer its drug programs, including Medicaid drug
5 programs.

6 SECTION 3.0973. Section [431.117](#), Health and Safety Code, is
7 amended to read as follows:

8 Sec. 431.117. PRIORITY FOR HEALTH CARE PROVIDERS IN
9 DISTRIBUTION OF INFLUENZA VACCINE. The executive commissioner [~~of~~
10 ~~the Health and Human Services Commission~~] shall study the wholesale
11 distribution of influenza vaccine in this state to determine the
12 feasibility of implementing a system that requires giving a
13 priority in filling orders for influenza vaccine to physicians and
14 other licensed health care providers authorized to administer
15 influenza vaccine over retail establishments. The executive
16 commissioner may implement such a system if it is determined to be
17 feasible.

18 SECTION 3.0974. Section [431.142](#), Health and Safety Code, is
19 amended to read as follows:

20 Sec. 431.142. MISBRANDED COSMETIC. (1) A cosmetic shall be
21 deemed to be misbranded:

22 (a) if:

23 (1) its labeling is false or misleading in any
24 particular; and

25 (2) its labeling or packaging fails to conform
26 with the requirements of Section [431.181](#);

27 (b) if in package form unless it bears a label

1 containing (1) the name and place of business of the manufacturer,
2 packer, or distributor; and (2) an accurate statement of the
3 quantity of the contents in terms of weight, measure or numerical
4 count, which statement shall be separately and accurately stated in
5 a uniform location on the principal display panel of the label;
6 provided, that under Subdivision (2) reasonable variations shall be
7 permitted, and exemptions as to small packages shall be established
8 by regulations prescribed by department rules [~~adopted by the~~
9 ~~board~~];

10 (c) if any word, statement, or other information
11 required by or under authority of this chapter to appear on the
12 label or labeling is not prominently placed thereon with such
13 conspicuousness (as compared with other words, statements,
14 designs, or devices, in the labeling) and in such terms as to render
15 it likely to be read and understood by the ordinary individual under
16 customary conditions of purchase and use;

17 (d) if its container is so made, formed, or filled as
18 to be misleading;

19 (e) if it is a color additive, unless its packaging and
20 labeling are in conformity with the packaging and labeling
21 requirements, applicable to the color additive, prescribed under
22 Section 721 [706] of the federal Act. This subsection shall not
23 apply to packages of color additives which, with respect to their
24 use for cosmetics, are marketed and intended for use only in or on
25 hair dyes, as defined by Section 431.141(a); or

26 (f) if its packaging or labeling is in violation of an
27 applicable regulation issued pursuant to Section 3 or 4 of the

1 federal [Federal] Poison Prevention Packaging Act of 1970 (15
2 U.S.C. 1472 or 1473).

3 (2) The executive commissioner [~~board~~] shall adopt rules
4 exempting from any labeling requirement of this chapter cosmetics
5 that are in accordance with the practice of the trade, to be
6 processed, labeled, or repacked in substantial quantities at an
7 establishment other than the establishment where it was originally
8 processed or packed, on condition that the cosmetics are not
9 adulterated or misbranded under the provisions of this chapter on
10 removal from the processing, labeling, or repacking establishment.
11 Cosmetic labeling exemptions adopted under the federal Act shall
12 apply to cosmetics in this state except insofar as modified or
13 rejected by department rules [~~adopted by the board~~].

14 SECTION 3.0975. Sections [431.161](#)(b) and (c), Health and
15 Safety Code, are amended to read as follows:

16 (b) The executive commissioner [~~board~~], whenever public
17 health or other considerations in the state so require or on the
18 petition of an interested party, may adopt rules prescribing
19 tolerances for any added, poisonous, or deleterious substances,
20 food additives, pesticide chemicals in or on raw agricultural
21 commodities, or color additives, including zero tolerances and
22 exemptions from tolerances in the case of pesticide chemicals in or
23 on raw agricultural commodities. The rules [~~rule~~] may prescribe
24 the conditions under which a food additive or a color additive may
25 be safely used and may prescribe exemptions if the food additive or
26 color additive is to be used solely for investigational or
27 experimental purposes. Rules adopted under this section limiting

1 the quantity of poisonous or deleterious substances in food must
2 provide equal or stricter standards than those adopted by the
3 federal Food and Drug Administration or its successor. A person
4 petitioning for the adoption of a rule shall establish by data
5 submitted to the executive commissioner [board] that a necessity
6 exists for the rule and that its effect will not be detrimental to
7 the public health. If the data furnished by the petitioner are not
8 sufficient to allow the executive commissioner [board] to determine
9 whether the rules should be adopted, the executive commissioner
10 [board] may require additional data to be submitted. The
11 petitioner's failure to comply with the request is sufficient
12 grounds to deny the request. In adopting rules relating to those
13 substances, the executive commissioner [board] shall consider,
14 among other relevant factors, the following information furnished
15 by the petitioner, if any:

16 (1) the name and all pertinent information concerning
17 the substance, including, if available, its chemical identity and
18 composition, a statement of the conditions of the proposed use,
19 directions, recommendations, and suggestions, specimens of
20 proposed labeling, all relevant data bearing on the physical or
21 other technical effect, and the quantity required to produce that
22 effect;

23 (2) the probable composition of any substance formed
24 in or on a food, drug, or cosmetic resulting from the use of that
25 substance;

26 (3) the probable consumption of that substance in the
27 diet of man and animals, taking into account any chemically or

1 pharmacologically related substance in the diet;

2 (4) safety factors that, in the opinion of experts
3 qualified by scientific training and experience to evaluate the
4 safety of those substances for the use or uses for which they are
5 proposed to be used, are generally recognized as appropriate for
6 the use of animal experimentation data;

7 (5) the availability of any needed practicable methods
8 of analysis for determining the identity and quantity of:

9 (A) that substance in or on an article;

10 (B) any substance formed in or on an article
11 because of the use of that substance; and

12 (C) the pure substance and all intermediates and
13 impurities; and

14 (6) facts supporting a contention that the proposed
15 use of that substance will serve a useful purpose.

16 (c) The executive [Notwithstanding Sections 11.013 and
17 12.001, the] commissioner may adopt emergency rules under Chapter
18 2001, Government Code, to establish tolerance levels of poisonous
19 or deleterious substances in food.

20 SECTION 3.0976. Section 431.181(d), Health and Safety Code,
21 is amended to read as follows:

22 (d) Whenever the executive commissioner [board] determines
23 that rules containing prohibitions or requirements other than those
24 prescribed by Subsection (a) are necessary to prevent the deception
25 of consumers or to facilitate value comparisons as to any consumer
26 commodity, the executive commissioner [board] shall adopt with
27 respect to that commodity rules effective to:

1 (1) establish and define standards for the
2 characterization of the size of a package enclosing any consumer
3 commodity, which may be used to supplement the label statement of
4 net quantity of contents of packages containing such commodity, but
5 this subdivision [paragraph] shall not be construed as authorizing
6 any limitation on the size, shape, weight, dimensions, or number of
7 packages that may be used to enclose any commodity;

8 (2) regulate the placement on any package containing
9 any commodity, or on any label affixed to the commodity, of any
10 printed matter stating or representing by implication that such
11 commodity is offered for retail sale at a price lower than the
12 ordinary and customary retail sale price or that a retail sale price
13 advantage is accorded to purchasers thereof by reason of the size of
14 that package or the quantity of its contents;

15 (3) require that the label on each package of a
16 consumer commodity (other than one which is a food within the
17 meaning of Section 431.002 [~~431.002(15)~~]) bear:

18 (A) the common or usual name of the consumer
19 commodity, if any; and

20 (B) in case the consumer commodity consists of
21 two or more ingredients, the common or usual name of each ingredient
22 listed in order of decreasing predominance, but nothing in this
23 paragraph shall be deemed to require that any trade secret be
24 divulged; or

25 (4) prevent the nonfunctional slack-fill of packages
26 containing consumer commodities. For the purpose of this
27 subdivision, a package shall be deemed to be nonfunctionally

1 slack-filled if it is filled of substantially less than its
2 capacity for reasons other than:

- 3 (A) protection of the contents of the package; or
4 (B) the requirements of the machine used for
5 enclosing the contents in the package.

6 SECTION 3.0977. Section 431.183(c), Health and Safety Code,
7 is amended to read as follows:

8 (c) The executive commissioner [board] by rule shall
9 authorize the advertisement of a drug having a curative or
10 therapeutic effect for a disease listed under Subsection (a) if the
11 executive commissioner [board] determines that an advance in
12 medical science has made any type of self-medication safe for the
13 disease. The executive commissioner [board] may impose conditions
14 and restrictions on the advertisement of the drug necessary in the
15 interest of public health.

16 SECTION 3.0978. Section 431.2031(c), Health and Safety
17 Code, is amended to read as follows:

18 (c) The department may issue a license to a person who
19 engages in the wholesale distribution of drugs outside this state
20 to engage in the wholesale distribution of drugs in this state, if
21 after an examination of the reports of the person's compliance
22 history and current compliance record, the department determines
23 that the person is in compliance with this subchapter and
24 department [~~the board's~~] rules.

25 SECTION 3.0979. Section 431.204(b), Health and Safety Code,
26 is amended to read as follows:

27 (b) The executive commissioner [~~of the Health and Human~~

1 Services Commission] by rule shall set the fees in amounts that
2 allow the department to recover the biennial expenditures of state
3 funds by the department in:

- 4 (1) reviewing and acting on a license;
- 5 (2) amending and renewing a license;
- 6 (3) inspecting a licensed facility; and
- 7 (4) implementing and enforcing this subchapter,
8 including a rule or order adopted or a license issued under this
9 subchapter.

10 SECTION 3.0980. Sections 431.207(a) and (b), Health and
11 Safety Code, are amended to read as follows:

12 (a) The department [~~commissioner of state health services~~]
13 may refuse an application for a license or may suspend or revoke a
14 license if the applicant or licensee:

15 (1) has been convicted of a felony or misdemeanor that
16 involves moral turpitude;

17 (2) is an association, partnership, or corporation and
18 the managing officer has been convicted of a felony or misdemeanor
19 that involves moral turpitude;

20 (3) has been convicted in a state or federal court of
21 the illegal use, sale, or transportation of intoxicating liquors,
22 narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their
23 compounds or derivatives, or any other dangerous or habit-forming
24 drugs;

25 (4) is an association, partnership, or corporation and
26 the managing officer has been convicted in a state or federal court
27 of the illegal use, sale, or transportation of intoxicating

1 liquors, narcotic drugs, barbiturates, amphetamines,
2 desoxyephedrine, their compounds or derivatives, or any other
3 dangerous or habit-forming drugs;

4 (5) has not complied with this chapter or the rules
5 implementing this chapter;

6 (6) has violated Section 431.021(1)(3), relating to
7 the counterfeiting of a drug or the sale or holding for sale of a
8 counterfeit drug;

9 (7) has violated Chapter 481 or 483;

10 (8) has violated the rules of the public safety
11 director of the Department of Public Safety, including being
12 responsible for a significant discrepancy in the records that state
13 law requires the applicant or licensee to maintain; or

14 (9) fails to complete a license application or submits
15 an application that contains false, misleading, or incorrect
16 information or contains information that cannot be verified by the
17 department.

18 (b) The executive commissioner [~~of the Health and Human~~
19 ~~Services Commission~~] by rule shall establish minimum standards
20 required for the issuance or renewal of a license under this
21 subchapter.

22 SECTION 3.0981. Section 431.208(b), Health and Safety Code,
23 is amended to read as follows:

24 (b) The executive commissioner [~~department~~] shall adopt
25 rules to implement this section.

26 SECTION 3.0982. Sections 431.2211(b) and (e), Health and
27 Safety Code, are amended to read as follows:

1 (b) An exemption from the licensing requirements prescribed
2 by this subchapter does not exempt the person from other provisions
3 prescribed by this subchapter or from rules adopted by the
4 executive commissioner [~~board~~] to administer and enforce those
5 provisions.

6 (e) A food wholesaler that is not required to obtain a
7 license for a place of business under Subsection (d) shall register
8 that place of business with the department. The executive
9 commissioner [~~department~~] shall adopt rules for the registration of
10 food wholesalers under this section.

11 SECTION 3.0983. Section [431.222](#)(a), Health and Safety Code,
12 is amended to read as follows:

13 (a) Except as provided by Section [431.2211](#), a food
14 manufacturer, food wholesaler, or warehouse operator in this state
15 must apply for and obtain from the department every two years [~~each~~
16 ~~year~~] a license for each place of business that the food
17 manufacturer, food wholesaler, or warehouse operator operates in
18 this state. The food manufacturer, food wholesaler, or warehouse
19 operator must pay a licensing fee for each establishment.

20 SECTION 3.0984. Section [431.223](#)(b), Health and Safety Code,
21 is amended to read as follows:

22 (b) The license application must be signed, verified, and
23 filed on a form furnished by the department according to department
24 [~~the~~] rules [~~adopted by the board~~].

25 SECTION 3.0985. Sections [431.224](#)(a), (b), (c), and (e),
26 Health and Safety Code, are amended to read as follows:

27 (a) The department [~~board~~] shall collect fees for:

1 (1) a license that is filed or renewed;
2 (2) a license that is amended, including a
3 notification of a change in the location of a licensed place of
4 business required under Section [431.2251](#); and
5 (3) an inspection performed to enforce this subchapter
6 and rules adopted under this subchapter.

7 (b) The department [board] may charge [annual] fees every
8 two years.

9 (c) The executive commissioner [board] by rule shall set the
10 fees in amounts that allow the department to recover the biennial
11 [~~at least 50 percent of the annual~~] expenditures of state funds by
12 the department in:

13 (1) reviewing and acting on a license;
14 (2) amending and renewing a license;
15 (3) inspecting a licensed facility; and
16 (4) implementing and enforcing this subchapter,
17 including a rule or order adopted or a license issued under this
18 subchapter.

19 (e) All license fees received by the department under this
20 subchapter shall be deposited in the state treasury to the credit of
21 the food and drug registration account [~~license fee fund~~].

22 SECTION 3.0986. Sections [431.2245](#)(a) and (c), Health and
23 Safety Code, are amended to read as follows:

24 (a) The department [~~commissioner~~] shall establish a system
25 for processing licensing fees under this chapter, including vended
26 water facility licensing fees.

27 (c) The comptroller shall cooperate with the department

1 [commissioner] in developing the fee processing system.

2 SECTION 3.0987. Section 431.225, Health and Safety Code, is
3 amended to read as follows:

4 Sec. 431.225. EXPIRATION DATE. (a) The executive
5 commissioner [board] by rule may provide that licenses expire on
6 different dates [~~during the year~~].

7 (b) If [~~For the year in which~~] the license expiration date
8 is changed, license fees [~~payable on or before September 1~~] shall be
9 prorated so that each license holder pays only that portion of the
10 license fee allocable to the number of months during which the
11 license is valid. On renewal of the license on the new expiration
12 date, the total license renewal fee is payable.

13 SECTION 3.0988. Section 431.2251, Health and Safety Code,
14 is amended to read as follows:

15 Sec. 431.2251. CHANGE IN LOCATION OF PLACE OF BUSINESS. Not
16 later than the 31st day before the date of the change, the license
17 holder shall notify in writing the department [~~commissioner or the~~
18 ~~commissioner's designee~~] of the license holder's intent to change
19 the location of a licensed place of business. The notice shall
20 include the address of the new location and the name and residence
21 address of the individual in charge of the place of business. Not
22 later than the 10th day after the completion of the change of
23 location, the license holder shall forward to the department
24 [~~commissioner or the commissioner's designee~~] the name and
25 residence address of the individual in charge of the new place of
26 business. Notice is considered adequate if the license holder
27 provides the intent and verification notices to the department

1 [commissioner or the commissioner's designee] by certified mail,
2 return receipt requested, mailed to the central office of the
3 department.

4 SECTION 3.0989. Section 431.226, Health and Safety Code, is
5 amended to read as follows:

6 Sec. 431.226. REFUSAL TO GRANT LICENSE; SUSPENSION OR
7 REVOCATION OF LICENSE. (a) The department [~~commissioner~~] may
8 refuse an application for a license or may suspend or revoke a
9 license.

10 (b) The executive commissioner [~~board~~] by rule shall
11 establish minimum standards for granting and maintaining a license.
12 In adopting rules under this section, the executive commissioner
13 [~~board~~] shall:

14 (1) ensure that the minimum standards prioritize safe
15 handling of fruits and vegetables based on known safety risks,
16 including any history of outbreaks of food-borne communicable
17 diseases; and

18 (2) consider acceptable produce safety standards
19 developed by a federal agency, state agency, or university.

20 (c) The refusal or the suspension or revocation of a license
21 by the department [~~commissioner~~] and the appeal from that action
22 are governed by the procedures for a contested case hearing under
23 Chapter 2001, Government Code.

24 SECTION 3.0990. Section 431.227(d), Health and Safety Code,
25 is amended to read as follows:

26 (d) The executive commissioner [~~of the Health and Human~~
27 ~~Services Commission~~] shall adopt rules to implement this section.

1 SECTION 3.0991. Sections 431.241(a), (b), (c), (d), (e),
2 and (g), Health and Safety Code, are amended to read as follows:

3 (a) The executive commissioner [board] may adopt rules for
4 the efficient enforcement of this chapter.

5 (b) The executive commissioner [board] may conform [~~its~~] rules
6 adopted under this chapter, if practicable, with regulations
7 adopted under the federal Act.

8 (c) The enumeration of specific federal laws and
9 regulations in Sections 431.244 and 431.245 does not limit the
10 general authority granted to the executive commissioner [board] in
11 Subsection (b) to conform [~~its~~] rules adopted under this chapter to
12 those adopted under the federal Act.

13 (d) The executive commissioner [board] may adopt the
14 federal regulations issued by the secretary pursuant to the
15 Prescription Drug Marketing Act of 1987 (21 U.S.C. Sections 331,
16 333, 353, and 381), as necessary or desirable so that the state
17 wholesale drug distributor licensing program in Subchapter N [~~I-~~of
18 ~~this chapter~~] may achieve compliance with that Act.

19 (e) The executive commissioner [board and the Texas
20 ~~Department of Human Services~~] shall not establish a drug formulary
21 that restricts by any prior or retroactive approval process a
22 physician's ability to treat a patient with a prescription drug
23 that has been approved and designated as safe and effective by the
24 United States Food and Drug Administration, in compliance with
25 federal law and subject to review by the executive commissioner
26 [~~Texas Department of Human Services, Vendor Drug Advisory~~
27 ~~Subcommittee~~].

1 (g) The department may assess a fee for the issuance of a
2 certificate of free sale and another certification issued under
3 this chapter. The executive commissioner [board] by rule shall set
4 each fee in an amount sufficient to recover the cost to the
5 department of issuing the particular certificate.

6 SECTION 3.0992. Section 431.244, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 431.244. FEDERAL REGULATIONS ADOPTED AS STATE RULES.
9 (a) A regulation adopted by the secretary under the federal Act
10 concerning pesticide chemicals, food additives, color additives,
11 special dietary use, processed low acid food, acidified food,
12 infant formula, bottled water, or vended bottled water is a rule for
13 the purposes of this chapter, unless the executive commissioner
14 [board] modifies or rejects the rule.

15 (b) A regulation adopted under the Fair Packaging and
16 Labeling Act (15 U.S.C. 1451 et seq.) is a rule for the purposes of
17 this chapter, unless the executive commissioner [board] modifies or
18 rejects the rule. The executive commissioner [board] may not adopt
19 a rule that conflicts with the labeling requirements for the net
20 quantity of contents required under Section 4 of the Fair Packaging
21 and Labeling Act (15 U.S.C. 1453) and the regulations adopted under
22 that Act.

23 (c) A regulation adopted by the secretary under Sections
24 403(b) through (i) of the federal Act is a rule for the purposes of
25 this chapter unless the executive commissioner [board] modifies or
26 rejects the rule. The executive commissioner [board] may not adopt
27 a rule that conflicts with the limitations provided by Sections

1 403(q) and (r) of the federal Act.

2 (d) A federal regulation that this section provides as a
3 rule for the purposes of this chapter is effective:

4 (1) on the date that the regulation becomes effective
5 as a federal regulation; and

6 (2) whether or not the executive commissioner or
7 department has fulfilled the rulemaking provisions of Chapter 2001,
8 Government Code.

9 (e) If the executive commissioner [board] modifies or
10 rejects a federal regulation, the executive commissioner [board]
11 shall comply with the rulemaking provisions of Chapter 2001,
12 Government Code.

13 (f) For any federal regulation adopted as a state rule under
14 this chapter, including a regulation considered to be a rule for
15 purposes of this chapter under Subsection (a), (b), or (c), the
16 department [~~Department of State Health Services~~] shall provide on
17 its Internet website:

18 (1) a link to the text of the federal regulation;

19 (2) a clear explanation of the substance of and
20 purpose for the regulation; and

21 (3) information on providing comments in response to
22 any proposed or pending federal regulation, including an address to
23 which and the manner in which comments may be submitted.

24 SECTION 3.0993. Sections 431.245(a), (b), (d), and (e),
25 Health and Safety Code, are amended to read as follows:

26 (a) A definition or standard of identity, quality, or fill
27 of container of the federal Act is a definition or standard of

1 identity, quality, or fill of container in this chapter, except as
2 modified by department [board] rules.

3 (b) The executive commissioner [board] by rule may
4 establish definitions and standards of identity, quality, and fill
5 of container for a food if:

6 (1) a federal regulation does not apply to the food;
7 and

8 (2) the executive commissioner [board] determines
9 that adopting the rules will promote honest and fair dealing in the
10 interest of consumers.

11 (d) The department [~~commissioner~~] may issue additional
12 permits if the department [~~commissioner~~] determines that:

13 (1) it is necessary for the completion of an otherwise
14 adequate investigation; and

15 (2) the interests of consumers are safeguarded.

16 (e) A permit issued under Subsection (d) is subject to the
17 terms and conditions of department [board] rules.

18 SECTION 3.0994. Section 431.246, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 431.246. REMOVAL OF ADULTERATED ITEM FROM STORES. The
21 executive commissioner [board] shall adopt rules that provide a
22 system for removing adulterated items from the shelves of a grocery
23 store or other retail establishment selling those items.

24 SECTION 3.0995. Section 431.248(b), Health and Safety Code,
25 is amended to read as follows:

26 (b) The executive commissioner [~~department~~] and the
27 Department of Agriculture shall adopt the memorandum of

1 understanding as a rule.

2 SECTION 3.0996. Section 431.249, Health and Safety Code, is
3 amended to read as follows:

4 Sec. 431.249. DISSEMINATION OF INFORMATION. (a) The
5 department [~~commissioner~~] may publish reports summarizing the
6 judgments, decrees, and court orders rendered under this chapter,
7 including the nature and disposition of the charge.

8 (b) The department [~~commissioner~~] may disseminate
9 information regarding a food, drug, device, or cosmetic in a
10 situation that the department [~~commissioner~~] determines to involve
11 imminent danger to health or gross deception of consumers.

12 (c) This section does not prohibit the department
13 [~~commissioner~~] from collecting, reporting, and illustrating the
14 results of an investigation by the department [~~commissioner~~].

15 SECTION 3.0997. Section 431.272(a), Health and Safety Code,
16 is amended to read as follows:

17 (a) Except as provided by Section 431.273, a person may not
18 operate as a distributor or manufacturer of devices in this state
19 unless the person has a license from the department [~~commissioner~~]
20 for each place of business.

21 SECTION 3.0998. Section 431.273(b), Health and Safety Code,
22 is amended to read as follows:

23 (b) An exemption from the licensing requirements under this
24 section does not constitute an exemption from the other provisions
25 of this chapter or the rules adopted by the executive commissioner
26 [~~board~~] to administer and enforce this chapter.

27 SECTION 3.0999. Sections 431.274(a) and (b), Health and

1 Safety Code, are amended to read as follows:

2 (a) A person applying for a license under this subchapter
3 shall provide, at a minimum, the following information on a license
4 application form furnished by the department [commissioner]:

5 (1) the name under which the business is conducted;

6 (2) the address of each place of business that is
7 licensed;

8 (3) the name and residence address of:

9 (A) the proprietor, if the business is a
10 proprietorship;

11 (B) all partners, if the business is a
12 partnership; or

13 (C) all principals, if the business is an
14 association;

15 (4) the date and place of incorporation if the
16 business is a corporation;

17 (5) the names and residence addresses of the
18 individuals in an administrative capacity showing:

19 (A) the managing proprietor, if the business is a
20 proprietorship;

21 (B) the managing partner, if the business is a
22 partnership;

23 (C) the officers and directors, if the business
24 is a corporation; or

25 (D) the persons in a managerial capacity, if the
26 business is an association; and

27 (6) the residence address of an individual in charge

1 of each place of business.

2 (b) The license application must be signed, verified, and
3 completed in a manner described in department [~~the~~] rules [~~adopted~~
4 ~~by the board~~].

5 SECTION 3.1000. Sections [431.276](#)(b) and (c), Health and
6 Safety Code, are amended to read as follows:

7 (b) The department [~~board~~] may charge [~~annual~~] fees every
8 two years.

9 (c) The executive commissioner [~~board~~] by rule shall set the
10 fees in amounts that allow the department to recover the biennial
11 [~~at least 50 percent of the annual~~] expenditures of state funds by
12 the department in:

13 (1) reviewing and acting on a license or renewal
14 license;

15 (2) amending a license;

16 (3) inspecting a licensed facility; and

17 (4) implementing and enforcing this subchapter,
18 including a rule or order adopted or a license issued under this
19 subchapter.

20 SECTION 3.1001. Section [431.278](#), Health and Safety Code, is
21 amended to read as follows:

22 Sec. 431.278. CHANGE OF LOCATION OF PLACE OF BUSINESS. (a)
23 Not fewer than 30 days in advance of the change, the licensee shall
24 notify the department [~~commissioner or the commissioner's~~
25 ~~designee~~] in writing of the licensee's intent to change the
26 location of a licensed place of business. The notice shall include
27 the address of the new location and the name and residence address

1 of the individual in charge of the business at the new location.

2 (b) Not later than the 10th day after the date of completion
3 of the change of location, the licensee shall notify the department
4 [~~commissioner or the commissioner's designee~~] in writing to verify
5 the change of location, the address of the new location, and the
6 name and residence address of the individual in charge of the
7 business at the new address.

8 (c) Notice is adequate if the licensee provides the intent
9 and verification notices to the department [~~commissioner or the~~
10 ~~commissioner's designee~~] by certified mail, return receipt
11 requested, mailed to the central office of the department.

12 SECTION 3.1002. Section [431.279](#), Health and Safety Code, is
13 amended to read as follows:

14 Sec. 431.279. REFUSAL TO LICENSE; SUSPENSION OR REVOCATION
15 OF LICENSE. (a) The department [~~commissioner~~] may refuse an
16 application or may suspend or revoke a license if the applicant or
17 licensee:

18 (1) has been convicted of a felony or misdemeanor that
19 involves moral turpitude;

20 (2) is an association, partnership, or corporation and
21 the managing officer has been convicted of a felony or misdemeanor
22 that involves moral turpitude;

23 (3) has been convicted in a state or federal court of
24 the illegal use, sale, or transportation of intoxicating liquors,
25 narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their
26 compounds or derivatives, or any other dangerous or habit-forming
27 drugs;

1 (4) is an association, partnership, or corporation and
2 the managing officer has been convicted in a state or federal court
3 of the illegal use, sale, or transportation of intoxicating
4 liquors, narcotic drugs, barbiturates, amphetamines,
5 desoxyephedrine, their compounds or derivatives, or any other
6 dangerous or habit-forming drugs; or

7 (5) has not complied with this chapter or the ~~board's~~
8 rules implementing this chapter.

9 (b) The department ~~commissioner~~ may refuse an application
10 for a license or may suspend or revoke a license if the department
11 ~~commissioner~~ determines from evidence presented during a hearing
12 that the applicant or licensee:

13 (1) has violated Section 431.021(1)(3), relating to
14 the counterfeiting of a drug or the sale or holding for sale of a
15 counterfeit drug;

16 (2) has violated Chapter 481 (Texas Controlled
17 Substances Act) or 483 (Dangerous Drugs); or

18 (3) has violated the rules of the public safety
19 director of the Department of Public Safety, including being
20 responsible for a significant discrepancy in the records that state
21 law requires the applicant or licensee to maintain.

22 (c) The refusal to license an applicant or the suspension or
23 revocation of a license by the department ~~commissioner~~ and the
24 appeal from that action are governed by the department's ~~board's~~
25 formal hearing procedures and the procedures for a contested case
26 hearing under Chapter 2001, Government Code.

27 SECTION 3.1003. Section 431.322(c), Health and Safety Code,

1 is amended to read as follows:

2 (c) The charitable drug donor shall use appropriate
3 safeguards established by department rule [~~the board~~] to ensure
4 that the drugs are not compromised or illegally diverted while
5 being stored or transported to the charitable medical clinic.

6 SECTION 3.1004. Section 431.323(e), Health and Safety Code,
7 is amended to read as follows:

8 (e) The donated drugs may be accepted and dispensed or
9 administered by the charitable medical clinic only in accordance
10 with department rules [~~adopted by the department~~].

11 SECTION 3.1005. Section 431.324, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 431.324. RULES. The executive commissioner
14 [~~department~~] shall adopt rules to implement this subchapter that
15 are designed to protect the public health and safety.

16 SECTION 3.1006. Section 431.4031(c), Health and Safety
17 Code, is amended to read as follows:

18 (c) The executive commissioner [~~of the Health and Human~~
19 ~~Services Commission~~] by rule may exempt specific purchases of
20 prescription drugs by state agencies and political subdivisions of
21 this state if the executive commissioner determines that the
22 requirements of this subchapter would result in a substantial cost
23 to the state or a political subdivision of the state.

24 SECTION 3.1007. Section 431.404(d), Health and Safety Code,
25 is amended to read as follows:

26 (d) An applicant or license holder shall submit to the
27 department any change in or correction to the information required

1 under this section in the form and manner prescribed by [the]
2 department rule.

3 SECTION 3.1008. Section 431.409(b), Health and Safety Code,
4 is amended to read as follows:

5 (b) The executive commissioner [~~of the Health and Human~~
6 ~~Services Commission~~] by rule shall set the fees in amounts that are
7 reasonable and necessary and allow the department to recover the
8 biennial expenditures of state funds by the department in:

- 9 (1) reviewing and acting on a license;
- 10 (2) amending and renewing a license;
- 11 (3) inspecting a licensed facility; and
- 12 (4) implementing and enforcing this subchapter,
13 including a rule or order adopted or a license issued under this
14 subchapter.

15 SECTION 3.1009. Section 431.411(a), Health and Safety Code,
16 is amended to read as follows:

17 (a) A wholesale distributor shall receive prescription drug
18 returns or exchanges from a pharmacy or pharmacy warehouse in
19 accordance with the terms and conditions of the agreement between
20 the wholesale distributor and the pharmacy or pharmacy warehouse.
21 An expired, damaged, recalled, or otherwise nonsalable
22 prescription drug that is returned to the wholesale distributor may
23 be distributed by the wholesale distributor only to either the
24 original manufacturer or a third-party returns processor. The
25 returns or exchanges, salable or otherwise, received by the
26 wholesale distributor as provided by this subsection, including any
27 redistribution of returns or exchanges by the wholesale

1 distributor, are not subject to the pedigree requirement under
2 Section 431.412 if the returns or exchanges are exempt from
3 pedigree under:

4 (1) Section 4 [~~503~~], Prescription Drug Marketing Act
5 of 1987 (21 U.S.C. Section 353(c)(3)(B));

6 (2) the regulations adopted by the secretary to
7 administer and enforce that Act; or

8 (3) the interpretations of that Act set out in the
9 compliance policy guide of the United States Food and Drug
10 Administration.

11 SECTION 3.1010. Section 431.413(d), Health and Safety Code,
12 is amended to read as follows:

13 (d) The executive commissioner [~~of the Health and Human~~
14 ~~Services Commission~~] shall adopt rules to implement this section.

15 SECTION 3.1011. Sections 431.414(a), (a-1), and (b), Health
16 and Safety Code, are amended to read as follows:

17 (a) The department [~~commissioner of state health services~~]
18 may refuse an application for a license or may suspend or revoke a
19 license if the applicant or license holder:

20 (1) has been convicted of a felony or misdemeanor that
21 involves moral turpitude;

22 (2) is an association, partnership, or corporation and
23 the managing officer has been convicted of a felony or misdemeanor
24 that involves moral turpitude;

25 (3) has been convicted in a state or federal court of
26 the illegal use, sale, or transportation of intoxicating liquors,
27 narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their

1 compounds or derivatives, or any other dangerous or habit-forming
2 drugs;

3 (4) is an association, partnership, or corporation and
4 the managing officer has been convicted in a state or federal court
5 of the illegal use, sale, or transportation of intoxicating
6 liquors, narcotic drugs, barbiturates, amphetamines,
7 desoxyephedrine, their compounds or derivatives, or any other
8 dangerous or habit-forming drugs;

9 (5) has not complied with this subchapter or the rules
10 implementing this subchapter;

11 (6) has violated Section 431.021(1)(3), relating to
12 the counterfeiting of a drug or the sale or holding for sale of a
13 counterfeit drug;

14 (7) has violated Chapter 481 or 483; or

15 (8) has violated the rules of the public safety
16 director of the Department of Public Safety, including being
17 responsible for a significant discrepancy in the records that state
18 law requires the applicant or license holder to maintain.

19 (a-1) The department [~~commissioner of state health~~
20 ~~services~~] may suspend or revoke a license if the license holder no
21 longer meets the qualifications for obtaining a license under
22 Section 431.405.

23 (b) The executive commissioner [~~of the Health and Human~~
24 ~~Services Commission~~] by rule shall establish minimum standards
25 required for the issuance or renewal of a license under this
26 subchapter.

27 SECTION 3.1012. Sections 431.415(a) and (c), Health and

1 Safety Code, are amended to read as follows:

2 (a) The department [~~commissioner of state health services~~]
3 shall issue an order requiring a person, including a manufacturer,
4 distributor, or retailer of a prescription drug, to immediately
5 cease distribution of the drug if the department [~~commissioner~~]
6 determines there is a reasonable probability that:

7 (1) a wholesale distributor has:

8 (A) violated this subchapter;

9 (B) falsified a pedigree; or

10 (C) sold, distributed, transferred,
11 manufactured, repackaged, handled, or held a counterfeit
12 prescription drug intended for human use that could cause serious
13 adverse health consequences or death; and

14 (2) other procedures would result in unreasonable
15 delay.

16 (c) If, after providing an opportunity for a hearing, the
17 department [~~commissioner of state health services~~] determines that
18 inadequate grounds exist to support the actions required by the
19 order, the commissioner shall vacate the order.

20 SECTION 3.1013. Sections [432.003](#)(6) and (7), Health and
21 Safety Code, are amended to read as follows:

22 (6) "Distressed merchandise" means any food, drug,
23 device, or cosmetic that is adulterated or misbranded for purposes
24 of Section [431.081](#) (Adulterated Food), [431.082](#) (Misbranded Food),
25 [431.111](#) (Adulterated Drug or Device), [431.112](#) (Misbranded Drug or
26 Device), [431.141](#) (Adulterated Cosmetic), or [431.142](#) (Misbranded
27 Cosmetic), as interpreted by department [~~board~~] rule and judicial

1 decision. The term includes a food, drug, device, or cosmetic that:

(A) has lost its label or is otherwise unidentified;

4 (B) has been subjected to prolonged or improper
5 storage;

(C) has been subjected for any reason to abnormal environmental conditions, including temperature extremes, humidity, smoke, water, fumes, pressure, or radiation;

12 (E) may have been rendered unsafe or unsuitable
13 for human consumption or use for any reason other than those
14 specified by this subdivision.

15 (7) "Drug" means an article or substance, other than a
16 device, that is:

25 (C) intended to affect the structure or any
26 function of the body of a human or other animal, excluding food; or

27 (D) intended for use as a component of an article

1 or substance specified by this subdivision.

2 SECTION 3.1014. Sections [432.007](#)(a), (b), and (e), Health
3 and Safety Code, are amended to read as follows:

4 (a) The department shall issue a license to an applicant who
5 complies with Section [432.006](#) and who meets the minimum
6 qualifications established by department rule [~~the board~~].

7 (b) A license issued under this chapter expires two years
8 [~~one year~~] after the date of issuance.

9 (e) A salvage operator or salvage broker shall display the
10 license in accordance with department [~~board~~] rules.

11 SECTION 3.1015. Section [432.008](#)(b), Health and Safety Code,
12 is amended to read as follows:

13 (b) After an inspection to determine the license holder's
14 compliance with department [~~the~~] rules [~~adopted by the board~~], the
15 department shall renew the license of a license holder who submits a
16 renewal application and pays the renewal fee.

17 SECTION 3.1016. Sections [432.009](#)(a) and (b), Health and
18 Safety Code, are amended to read as follows:

19 (a) The executive commissioner by rule [~~board~~] shall adopt,
20 and the department shall [~~charge, and~~] collect, fees for each
21 license application or renewal application submitted under this
22 chapter and for inspections performed to enforce this chapter and
23 the department rules adopted under this chapter. [~~The board may~~
24 ~~charge the fees annually.~~]

25 (b) The executive commissioner [~~board~~] by rule shall set the
26 fees in amounts that are reasonable and necessary and allow
27 [~~sufficient for~~] the department to recover the biennial [~~not less~~

1 ~~than half of the actual annual~~] expenditures of state funds by the
2 department to:

- 3 (1) review and act on licenses;
- 4 (2) amend and renew licenses;
- 5 (3) inspect establishments operated by license
6 holders; and
- 7 (4) implement and enforce this chapter and rules and
8 orders adopted and licenses issued under this chapter.

9 SECTION 3.1017. Section [432.010](#), Health and Safety Code, is
10 amended to read as follows:

11 Sec. 432.010. DEPOSIT OF FEES [~~FUND~~]. A fee collected by
12 the department under this chapter shall be deposited in the state
13 treasury to the credit of the general revenue [~~food, drug, device,~~
14 ~~and cosmetic salvage~~] fund. [~~The fund may be used only to implement~~
15 ~~this chapter.~~]

16 SECTION 3.1018. Section [432.011](#)(a), Health and Safety Code,
17 is amended to read as follows:

18 (a) The executive commissioner [~~board~~] shall adopt rules
19 prescribing minimum standards or related requirements for:

- 20 (1) the operation of salvage establishments and
21 salvage warehouses; and
- 22 (2) qualifications for licenses issued under this
23 chapter.

24 SECTION 3.1019. Sections [432.013](#)(b) and (c), Health and
25 Safety Code, are amended to read as follows:

26 (b) When there is an imminent threat to the health or safety
27 of the public, the department may suspend a license without notice

1 in accordance with rules adopted by the executive commissioner
2 [board] for the emergency suspension of licenses.

3 (c) The department's hearing rules and the applicable
4 provisions of Chapter 2001, Government Code, govern a hearing
5 [before the department] for the denial, suspension, emergency
6 suspension, or revocation of a license and any appeal from that
7 hearing.

8 SECTION 3.1020. Sections 432.021(a) and (b), Health and
9 Safety Code, are amended to read as follows:

10 (a) The department [~~commissioner~~] may assess an
11 administrative penalty against a person who violates a rule adopted
12 under Section 432.011 or an order adopted or license issued under
13 this chapter.

14 (b) In determining the amount of the penalty, the department
15 [~~commissioner~~] shall consider:

16 (1) the person's previous violations;
17 (2) the seriousness of the violation;
18 (3) any hazard to the health and safety of the public;
19 (4) the person's demonstrated good faith; and
20 (5) other matters as justice may require.

21 SECTION 3.1021. Sections 432.022(b), (c), and (d), Health
22 and Safety Code, are amended to read as follows:

23 (b) If a hearing is held, an administrative law judge of the
24 State Office of Administrative Hearings [~~the commissioner~~] shall
25 make findings of fact and shall issue a written proposal for
26 decision regarding the occurrence of the violation and the amount
27 of the penalty.

1 (c) If the person charged with the violation does not
2 request a hearing, the department [commissioner] may assess a
3 penalty after determining that a violation has occurred and the
4 amount of the penalty.

5 (d) After making a determination under this section that a
6 penalty is to be assessed, the department [commissioner] shall
7 issue an order requiring that the person pay the penalty.

8 SECTION 3.1022. Section 432.023, Health and Safety Code, is
9 amended to read as follows:

10 Sec. 432.023. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not
11 later than the 30th day after the date of issuance of an order
12 finding that a violation has occurred, the department
13 [commissioner] shall inform the person against whom the order is
14 issued of the amount of the penalty.

15 (b) Not later than the 30th day after the date on which a
16 decision or order charging a person with a penalty is final, the
17 person shall:

18 (1) pay the penalty in full; or
19 (2) file a petition for [~~if the person seeks~~] judicial
20 review of the department's order contesting the amount of the
21 penalty, the fact of the violation, or both.

22 (b-1) Within the period prescribed by Subsection (b), a
23 person who files a petition for judicial review may:

24 (1) stay enforcement of the penalty by:
25 (A) paying [~~send the amount of~~] the penalty to
26 the court [commissioner] for placement in an escrow account; or
27 (B) posting [~~post~~] with the court [commissioner]

1 a supersedeas bond for the amount of the penalty; or
2 (2) request that the department stay enforcement of
3 the penalty by:

4 (A) filing with the court a sworn affidavit of
5 the person stating that the person is financially unable to pay the
6 penalty and is financially unable to give the supersedeas bond; and
7 (B) sending a copy of the affidavit to the
8 department.

9 (b-2) If the department receives a copy of an affidavit
10 under Subsection (b-1)(2), the department may file with the court,
11 within five days after the date the copy is received, a contest to
12 the affidavit. The court shall hold a hearing on the facts alleged
13 in the affidavit as soon as practicable and shall stay the
14 enforcement of the penalty on finding that the alleged facts are
15 true. The person who files an affidavit has the burden of proving
16 that the person is financially unable to pay the penalty or to give
17 a supersedeas bond.

18 (c) A bond posted under this section must be in a form
19 approved by the court [commissioner] and be effective until all
20 judicial review of the order or decision is final.

21 (d) A person who does not send money to, [~~the commissioner~~
22 ~~or~~] post the bond with, or file the affidavit with the court within
23 the period prescribed by Subsection (b) waives all rights to
24 contest the violation or the amount of the penalty.

25 SECTION 3.1023. Section 432.024, Health and Safety Code, is
26 amended to read as follows:

27 Sec. 432.024. REFUND OF ADMINISTRATIVE PENALTY. On [Not

1 ~~later than the 30th day after~~] the date the court's judgment [of a
2 ~~judicial determination]~~ that an administrative penalty against a
3 person should be reduced or not assessed becomes final, the court
4 ~~[commissioner]~~ shall order that:

5 (1) ~~[remit to the person]~~ the appropriate amount of
6 any penalty payment plus accrued interest be remitted to the person
7 not later than the 30th day after that date; or

8 (2) ~~[execute a release of]~~ the bond be released, if the
9 person has posted a bond.

10 SECTION 3.1024. Section 433.002(b), Health and Safety Code,
11 is amended to read as follows:

12 (b) Regulation by the department ~~[commissioner]~~ and
13 cooperation by this state and the United States as provided by this
14 chapter are appropriate to protect the health and welfare of
15 consumers and otherwise accomplish the purposes of this chapter.

16 SECTION 3.1025. Sections 433.003(2), (5), (13), (14), (15),
17 (16), (17), (18), and (21), Health and Safety Code, are amended to
18 read as follows:

19 (2) "Capable of use as human food" means:

20 (A) not naturally inedible by humans; or

21 (B) not denatured or otherwise identified as
22 required by department rule ~~[of the commissioner]~~ to deter its use
23 as human food.

24 (5) "Exotic animal" means a member of a species of game
25 not indigenous to this state, including an axis deer, nilgai
26 ~~[nilga]~~ antelope, red sheep, or other cloven-hooved ruminant
27 animal.

1 (13) "Meat food product" means a product that is
2 capable of use as human food and that is made in whole or part from
3 meat or other portion of the carcass of livestock, except a product
4 that:

5 (A) contains meat or other portions of the
6 carcass only in a relatively small proportion or that historically
7 has not been considered by consumers as a product of the meat food
8 industry; and

9 (B) is exempted from the definition of meat food
10 product by department rule [~~the commissioner~~] under conditions
11 assuring [~~that the commissioner prescribes to assure~~] that the meat
12 or other portions of the carcass contained in the product are
13 unadulterated and that the product is not represented as a meat food
14 product.

15 (14) "Official certificate" means a certificate
16 prescribed by department rule [~~of the commissioner~~] for issuance by
17 an inspector or other person performing official functions under
18 this chapter.

19 (15) "Official marking device" means a device
20 prescribed or authorized by department rule [~~the commissioner~~] for
21 use in applying an official mark.

22 (16) "Official establishment" means an establishment
23 designated by the department [~~commissioner~~] at which inspection of
24 the slaughter of livestock or the preparation of livestock products
25 is maintained under this chapter.

26 (17) "Official inspection legend" means a symbol
27 prescribed by department rule [~~of the commissioner~~] showing that an

1 article was inspected and passed as provided by this chapter.

2 (18) "Official mark" means the official inspection
3 legend or other symbol prescribed by department rule [~~of the~~
4 ~~commissioner~~] to identify the status of an article or animal under
5 this chapter.

6 (21) "Poultry product" means a poultry carcass, part
7 of a poultry carcass, or a product any part of which is made from a
8 poultry carcass or part of a poultry carcass, except a product that:

9 (A) contains poultry ingredients only in a
10 relatively small proportion or that historically has not been
11 considered by consumers as a product of the poultry food industry;
12 and

13 (B) is exempted from the definition of poultry
14 product by department rule [~~the commissioner~~] under conditions
15 assuring [~~that the commissioner prescribes to assure~~] that the
16 poultry ingredients in the product are unadulterated and that the
17 product is not represented as a poultry product.

18 SECTION 3.1026. Section 433.004, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 433.004. ADULTERATION. A carcass, part of a carcass,
21 meat, or a meat food product is adulterated if:

22 (1) it bears or contains a poisonous or deleterious
23 substance that may render it injurious to health unless:

24 (A) the substance is not an added substance; and

25 (B) the quantity of the substance in or on the
26 article does not ordinarily render it injurious to health;

27 (2) it bears or contains, because of administration of

1 a substance to a live animal or otherwise, an added poisonous or
2 deleterious substance that the department has reason to believe
3 [~~commissioner believes~~] makes the article unfit for human food,
4 other than a:

5 (A) pesticide chemical in or on a raw
6 agricultural commodity;

7 (B) food additive; or

8 (C) color additive;

9 (3) any part of it is a raw agricultural commodity that
10 bears or contains a pesticide chemical that is unsafe under Section
11 408, Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 346a);

12 (4) it bears or contains a food additive that is unsafe
13 under Section 409, Federal Food, Drug, and Cosmetic Act (21 U.S.C.
14 Section 348) or a color additive that is unsafe for purposes of
15 Section 721 [~~706~~] of that Act (21 U.S.C. Section 379e [~~376~~]);

16 (5) it is not adulterated under Subdivision (3) or
17 (4), but use of the pesticide chemical, food additive, or color
18 additive that the article bears or contains is prohibited by
19 department rule [~~of the commissioner~~] in establishments at which
20 inspection is maintained under Subchapter B;

21 (6) any part of it consists of a filthy, putrid, or
22 decomposed substance or is for another reason unsound, unhealthy,
23 unwholesome, or otherwise unfit for human food;

24 (7) it is prepared, packed, or held under unsanitary
25 conditions that may have caused it to become contaminated with
26 filth or rendered injurious to health;

27 (8) any part of it is the product of an animal,

1 including an exotic animal, that has died in a manner other than
2 slaughter;

3 (9) any part of its container is composed of a
4 poisonous or deleterious substance that may render the contents
5 injurious to health;

6 (10) it is intentionally subjected to radiation,
7 unless the use of the radiation is in conformity with a regulation
8 or exemption under Section 409, Federal Food, Drug, and Cosmetic
9 Act (21 U.S.C. Section 348);

10 (11) any part of a valuable constituent is omitted or
11 abstracted from it, or a substance is substituted for all or part of
12 it;

13 (12) damage or inferiority is concealed;

14 (13) a substance has been added to or mixed or packed
15 with it in a manner that:

16 (A) increases its bulk or weight;

17 (B) reduces its quality or strength; or

18 (C) makes it appear better or of greater value
19 than it is; or

20 (14) it is margarine containing animal fat and any
21 part of the raw material used in it consists of a filthy, putrid, or
22 decomposed substance.

23 SECTION 3.1027. Section 433.005, Health and Safety Code, is
24 amended to read as follows:

25 Sec. 433.005. MISBRANDING. (a) A livestock or poultry
26 product is misbranded if:

27 (1) any part of its labeling is false or misleading;

1 (2) it is offered for sale under the name of another
2 food;

3 (3) it is an imitation of another food, unless its
4 label bears, in prominent type of uniform size, the word
5 "imitation" immediately followed by the name of the food imitated;

6 (4) its container is made, formed, or filled so as to
7 be misleading;

8 (5) except as provided by Subsection (b), it does not
9 bear a label showing:

10 (A) the manufacturer's, packer's, or
11 distributor's name and place of business; and

12 (B) an accurate statement of the quantity of the
13 product by weight, measure, or numerical count;

14 (6) a word, statement, or other information required
15 by or under the authority of this chapter to appear on the label or
16 labeling is not prominently placed on the label or labeling in
17 sufficient terms and with sufficient conspicousness, compared
18 with other words, statements, designs, or devices in the label or
19 labeling, to make it likely to be read and understood by the
20 ordinary individual under customary conditions of purchase and use;

21 (7) it purports to be or is represented as a food for
22 which a definition and standard of identity or composition has been
23 prescribed by department rule [~~of the commissioner~~] under Section
24 433.043 unless:

25 (A) it conforms to the definition and standard;
26 or

27 (B) its label bears:

1 (i) the name of the food specified in the
2 definition and standard; and

3 (ii) to the extent required by department
4 rule [of the commissioner], the common names of optional
5 ingredients present in the food, other than spices, flavoring, and
6 coloring;

18 (A) any common or usual name of the food; and
19 (B) if it is fabricated from two or more
20 ingredients, the common or usual name of each ingredient;

1 inform purchasers of its value for those uses;

2 (11) it bears or contains artificial flavoring,
3 artificial coloring, or a chemical preservative unless it bears
4 labeling stating that fact, except as otherwise prescribed by
5 department rule [~~of the commissioner~~] for situations in which
6 compliance with this subdivision is impracticable; or

7 (12) it does not bear on itself or its container, as
8 prescribed by department rule [~~of the commissioner~~]:

9 (A) the inspection legend and establishment
10 number of the establishment in which the product was prepared; and

11 (B) notwithstanding any other provision of this
12 section, other information required [~~the commissioner~~] by
13 department rule [~~requires~~] to assure that the product will not have
14 false or misleading labeling and that the public will be informed of
15 the manner of handling required to keep the product in wholesome
16 condition.

17 (b) The executive commissioner may adopt rules:

18 (1) exempting from Subsection (a)(5) livestock
19 products not in containers; and

20 (2) providing reasonable variations from Subsection
21 (a)(5)(B) and exempting from that subsection small packages of
22 livestock products or poultry products.

23 (c) For products subject to Subsection (a)(9), the
24 department [~~commissioner~~] may authorize the designation of spices,
25 flavorings, and colorings without naming them. The executive
26 commissioner may adopt rules establishing exemptions from
27 Subsection (a)(9)(B) to the extent that compliance with that

1 subsection is impracticable or would result in deception or unfair
2 competition.

3 SECTION 3.1028. Section 433.008, Health and Safety Code, is
4 amended to read as follows:

5 Sec. 433.008. RULES. (a) The executive commissioner shall
6 adopt rules necessary for the efficient execution of this chapter.

7 (b) The executive commissioner shall adopt and use federal
8 rules, regulations, and procedures for meat and poultry inspection,
9 as applicable.

10 (c) The executive commissioner [department] may adopt rules
11 requiring a processing establishment that processes livestock
12 under Section 433.006(a)(2) to obtain a grant of custom exemption
13 for that activity.

14 SECTION 3.1029. Section 433.009, Health and Safety Code, is
15 amended to read as follows:

16 Sec. 433.009. FEES. The department [~~Texas Department of~~
17 ~~Health~~] may collect fees for overtime and special services rendered
18 to establishments, and may collect a fee for services required to be
19 performed under this chapter relating to the inspection of animals,
20 birds, or products that are not regulated under the Federal Meat
21 Inspection Act (21 U.S.C. Section 601 et seq.) or the Federal
22 Poultry Products Inspection Act (21 U.S.C. Section 451 et seq.).
23 The executive commissioner [~~Texas Board of Health~~] by rule shall
24 set the inspection fee in an amount sufficient to recover the
25 department's costs of providing those services.

26 SECTION 3.1030. Section 433.021, Health and Safety Code, is
27 amended to read as follows:

1 Sec. 433.021. INSPECTION BEFORE SLAUGHTER. (a) To prevent
2 the use in intrastate commerce of adulterated meat and meat food
3 products, the department [~~commissioner, through livestock~~
4 ~~inspectors,~~] shall examine and inspect each livestock animal before
5 it is allowed to enter a processing establishment in this state in
6 which slaughtering and preparation of meat and meat food products
7 of livestock are conducted solely for intrastate commerce.

8 (b) Any livestock animal found on inspection to show
9 symptoms of disease shall be set apart and slaughtered separately
10 from other livestock. The carcass of the animal shall be carefully
11 examined and inspected as provided by department rule [~~of the~~
12 ~~commissioner~~].

13 SECTION 3.1031. Sections 433.022(a), (d), and (e), Health
14 and Safety Code, are amended to read as follows:

15 (a) To prevent the use in intrastate commerce of adulterated
16 meat and meat food products, the department [~~commissioner, through~~
17 ~~livestock inspectors,~~] shall inspect each livestock carcass or part
18 of a carcass capable of use as human food that is to be prepared at a
19 processing establishment in this state in which those articles are
20 prepared solely for intrastate commerce. If a carcass or part of a
21 carcass is brought into the processing establishment, the
22 inspection shall be made before a carcass or part of a carcass is
23 allowed to enter a department in which it is to be treated and
24 prepared for meat food products. The department [~~commissioner~~]
25 shall also inspect products that have left a processing
26 establishment and are returned to a processing establishment in
27 which inspection is maintained.

1 (d) The processing establishment, in the presence of an
2 inspector, shall destroy for food purposes each condemned carcass
3 or part of a carcass. If the establishment fails to destroy a
4 condemned carcass or part of a carcass, the department
5 [~~commissioner~~] may remove the inspectors from the establishment.

6 (e) The executive commissioner may adopt rules that limit
7 the entry of carcasses, parts of carcasses, meat, or meat food
8 products into an establishment in which inspection under this
9 chapter is maintained[, ~~under conditions the commissioner~~
10 ~~prescribes~~] to assure that entry of the article into the
11 establishment is consistent with the purposes of this chapter.

12 SECTION 3.1032. Section 433.023(a), Health and Safety Code,
13 is amended to read as follows:

14 (a) The department [~~commissioner~~] may investigate a disease
15 finding by a livestock inspector if the department [~~commissioner~~]
16 determines that the investigation is in the best interest of public
17 health.

18 SECTION 3.1033. Section 433.024, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 433.024. INSPECTION OF PROCESSING AND SLAUGHTERING
21 ESTABLISHMENTS. (a) The department [~~commissioner, through~~
22 ~~sanitation experts and other competent inspectors,~~] shall inspect
23 each processing establishment in which livestock is slaughtered and
24 meat and meat food products of the livestock are prepared solely for
25 intrastate commerce as necessary to obtain information about the
26 establishment's sanitary conditions.

27 (b) The department [~~commissioner, through~~ sanitation

1 ~~experts and other competent inspectors]~~ shall inspect each
2 slaughtering establishment whose primary business is the selling of
3 livestock to be slaughtered by the purchaser on premises owned or
4 operated by the seller. This subsection does not nullify the
5 provisions in Section 433.006 [~~of the Health and Safety Code~~]
6 relating to personal use exemption.

7 (c) The executive commissioner shall adopt rules governing
8 sanitation maintenance in processing and slaughtering
9 establishments as defined by this section.

10 (d) If sanitary conditions of a processing establishment
11 render meat or meat food products adulterated, the department
12 [~~commissioner~~] shall prohibit the meat or meat food products from
13 being labeled, marked, stamped, or tagged as "Texas inspected and
14 passed."

15 SECTION 3.1034. Sections 433.0245(b) and (d), Health and
16 Safety Code, are amended to read as follows:

17 (b) A low-volume livestock processing establishment that is
18 exempt from federal inspection shall register with the department
19 [~~Texas Department of Health~~] in accordance with rules adopted by
20 the executive commissioner for registration.

21 (d) If contaminated livestock can be reasonably traced to a
22 low-volume livestock processing establishment that is exempt from
23 federal inspection, the department [~~commissioner~~] may request the
24 attorney general or the district or county attorney in the
25 jurisdiction where the facility is located to institute a civil
26 suit to enjoin the operation of the establishment until the
27 department [~~commissioner~~] determines that the establishment has

1 been sanitized and is operating safely.

2 SECTION 3.1035. Sections 433.025(a) and (c), Health and
3 Safety Code, are amended to read as follows:

4 (a) To prevent the use in intrastate commerce of adulterated
5 meat food products, the department [~~commissioner, through~~
6 ~~inspectors,~~] shall examine and inspect all meat food products
7 prepared in a processing establishment solely for intrastate
8 commerce. To make the examination and inspection, an inspector
9 shall be given access at all times to each part of the
10 establishment, regardless of whether the establishment is being
11 operated.

12 (c) The establishment shall, in the manner provided for
13 condemned livestock or carcasses, destroy for food purposes each
14 condemned meat food product. If the establishment does not destroy
15 a condemned meat food product, the department [~~commissioner~~] may
16 remove inspectors from the establishment.

17 SECTION 3.1036. Section 433.026, Health and Safety Code, is
18 amended to read as follows:

19 Sec. 433.026. NIGHT INSPECTION; HOURS OF OPERATION. (a)
20 The department [~~commissioner~~] shall provide for inspection at night
21 of livestock slaughtered at night and food products prepared at
22 night for the purposes of intrastate commerce.

23 (b) If the department [~~commissioner~~] determines that a
24 person's operating hours are capricious or unnecessarily
25 difficult, the department [~~commissioner~~] may set the person's time
26 and duration of operation.

27 SECTION 3.1037. Sections 433.027(a), (b), (c), and (d),

1 Health and Safety Code, are amended to read as follows:

2 (a) The department [~~commissioner~~] shall hire [~~appoint the~~]
3 inspectors of livestock that is subject to inspection under this
4 chapter, and of carcasses, parts of carcasses, meat, meat food
5 products, and sanitary conditions of establishments in which meat
6 and meat food products are prepared. An inspector is an employee of
7 the department [~~Texas Department of Health~~] and is under
8 supervision of the chief officer in charge of inspection.

9 (b) The department [~~commissioner~~] shall designate at least
10 one state inspector for each state representative district.

11 (c) The chief officer in charge of inspection is [~~a person~~
12 ~~designated by the commissioner as~~] responsible for animal health as
13 it relates to public health. The chief officer in charge of
14 inspection must be licensed to practice veterinary medicine in this
15 state or must be eligible for such a license when employed and must
16 obtain the license not later than two years after the date of
17 employment. [~~The chief officer in charge of inspection is directly~~
18 ~~responsible to the commissioner.~~]

19 (d) An inspector shall perform the duties provided by this
20 chapter and department rules [~~of the commissioner~~]. An inspection
21 or examination must be performed as provided by department rules
22 [~~of the commissioner~~].

23 SECTION 3.1038. Sections 433.028(a) and (b), Health and
24 Safety Code, are amended to read as follows:

25 (a) The department [~~commissioner~~] may withdraw or refuse to
26 provide inspection service under this subchapter from an
27 establishment for the period the department [~~commissioner~~]

1 determines necessary to carry out the purposes of this chapter if
2 the department [commissioner] determines after opportunity for
3 hearing that the applicant for or recipient of the service is unfit
4 to engage in a business requiring inspection under this subchapter
5 because the applicant or recipient, or a person responsibly
6 connected with the applicant or recipient, has been convicted in a
7 federal or state court of a felony or more than one violation of
8 another law based on:

9 (1) acquiring, handling, or distributing unwholesome,
10 mislabeled, or deceptively packaged food; or

11 (2) fraud in connection with a transaction in food.

12 (b) The department's [commissioner's] determination and
13 order under this section is final unless, not later than the 30th
14 day after the effective date of the order, the affected applicant or
15 recipient files an application for judicial review in the
16 appropriate court as provided by Section 433.082. Judicial review
17 of the order is on the record from which the determination and order
18 was made.

19 SECTION 3.1039. Section 433.029, Health and Safety Code, is
20 amended to read as follows:

21 Sec. 433.029. ARTICLES NOT INTENDED FOR HUMAN CONSUMPTION.

22 (a) Under this subchapter, the department [commissioner] may not
23 inspect an establishment for the slaughter of livestock or the
24 preparation of carcasses, parts of carcasses, or products of
25 livestock if the articles are not intended for use as human food.
26 Before offered for sale or transportation in intrastate commerce,
27 those articles, unless naturally inedible by humans, shall be

1 denatured or identified as provided by department rule [~~of the~~
2 ~~commissioner~~] to deter their use for human food.

3 (b) A person may not buy, sell, transport, offer for sale or
4 transportation, or receive for transportation in intrastate
5 commerce a carcass, part of a carcass, meat, or a meat food product
6 that is not intended for use as human food unless the article is
7 naturally inedible by humans, denatured, or identified as required
8 by department rule [~~of the commissioner~~].

9 SECTION 3.1040. Sections 433.030(a), (c), and (d), Health
10 and Safety Code, are amended to read as follows:

11 (a) The department [~~A representative of the commissioner~~]
12 may detain a carcass, part of a carcass, meat, a meat food product
13 of livestock, a product exempted from the definition of meat food
14 product, or a dead, dying, disabled, or diseased livestock animal
15 if the department [~~representative~~] finds the article on premises
16 where it is held for purposes of intrastate commerce, or during or
17 after distribution in intrastate commerce, and there is reason to
18 believe that the article:

19 (1) is adulterated or misbranded and is capable of use
20 as human food; or

21 (2) has not been inspected as required by, or has been
22 or is intended to be distributed in violation of:

23 (A) this subchapter;

24 (B) the Federal Meat Inspection Act (21 U.S.C.
25 Section 601 et seq.);

26 (C) the Federal Poultry Products Inspection Act
27 (21 U.S.C. Section 451 et seq.); or

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3 (c) A person may not move a detained article from the place
4 where it is detained until the article is released by the department
5 [commissioner's representative].

6 (d) The department [~~commissioner's representative~~] may
7 require that each official mark be removed from the article before
8 it is released, unless the department [~~commissioner~~] determines
9 that the article is eligible to bear the official mark.

10 SECTION 3.1041. Section 433.031(c), Health and Safety Code,
11 is amended to read as follows:

26 SECTION 3.1042. Section 433.032(a), Health and Safety Code,
27 is amended to read as follows:

1 (a) The executive commissioner may adopt rules prescribing
2 conditions under which carcasses, parts of carcasses, meat, and
3 meat food products of livestock must be stored and handled by a
4 person in the business of buying, selling, freezing, storing, or
5 transporting those articles in or for intrastate commerce if the
6 executive commissioner considers the rules necessary to prevent
7 adulterated or misbranded articles from being delivered to a
8 consumer.

9 SECTION 3.1043. Section 433.033, Health and Safety Code, is
10 amended to read as follows:

11 Sec. 433.033. EQUINE PRODUCTS. A person may not sell,
12 transport, offer for sale or transportation, or receive for
13 transportation, in intrastate commerce, a carcass, part of a
14 carcass, meat, or a meat food product of a horse, mule, or other
15 equine unless the article is plainly and conspicuously marked or
16 labeled or otherwise identified, as required by department rule [~~or~~
17 ~~the commissioner~~], to show the kind of animal from which the article
18 was derived. The department [~~commissioner~~] may require an
19 establishment at which inspection is maintained under this chapter
20 to prepare those articles in an establishment separate from one in
21 which livestock other than equines is slaughtered or carcasses,
22 parts of carcasses, meat, or meat food products of livestock other
23 than equines are prepared.

24 SECTION 3.1044. Sections 433.034(b) and (c), Health and
25 Safety Code, are amended to read as follows:

26 (b) On notice by the department [~~commissioner's~~
27 ~~representative~~], a person required to keep records shall at all

1 reasonable times give the department [~~commissioner's~~
2 ~~representative~~] and any representative of the United States
3 Secretary of Agriculture accompanying the department staff
4 [~~commissioner's representative~~]:

5 (1) access to the person's place of business; and

6 (2) an opportunity to:

7 (A) examine the facilities, inventory, and
8 records;

9 (B) copy the records required by this section;
10 and

11 (C) take a reasonable sample of the inventory, on
12 payment of the fair market value of the sample.

13 (c) The person shall maintain a record required by this
14 section for the period prescribed [~~the commissioner~~] by department
15 rule [~~prescribes~~].

16 SECTION 3.1045. Sections 433.035(a), (b), and (d), Health
17 and Safety Code, are amended to read as follows:

18 (a) The department [~~commissioner~~] has the same rights of
19 examination, inspection, condemnation, and detention of live
20 exotic animals and carcasses, parts of carcasses, meat, and meat
21 food products of exotic animals slaughtered and prepared for
22 shipment in interstate commerce as the department [~~commissioner~~]
23 has with respect to exotic animals slaughtered and prepared for
24 shipment in intrastate commerce.

25 (b) The department [~~commissioner~~] has the same rights of
26 inspection of establishments handling exotic animals slaughtered
27 and prepared for shipment in interstate commerce as the department

1 [commissioner] has with respect to establishments handling exotic
2 animals slaughtered and prepared for intrastate commerce.

3 (d) A rulemaking power of the executive commissioner
4 relating to animals in intrastate commerce applies to exotic
5 animals in interstate commerce.

6 SECTION 3.1046. Section 433.041(b), Health and Safety Code,
7 is amended to read as follows:

8 (b) When an inspected carcass, part of a carcass, meat, or a
9 meat food product is found to be unadulterated and leaves the
10 establishment, it must bear legible information on itself or its
11 container, as required by department rule, [~~the commissioner~~
12 ~~requires, that is necessary~~] to prevent it from being misbranded.

13 SECTION 3.1047. Section 433.042, Health and Safety Code, is
14 amended to read as follows:

15 Sec. 433.042. SALE OF MISLABLED ARTICLES PROHIBITED. A
16 person may not sell an article subject to this chapter or offer the
17 article for sale, in intrastate commerce, under a false or
18 misleading name or other marking or in a container of a misleading
19 form or size. An established trade name, other marking and
20 labeling, or a container that is not false or misleading and that is
21 approved by the department [~~commissioner~~] is permitted.

22 SECTION 3.1048. Section 433.043, Health and Safety Code, is
23 amended to read as follows:

24 Sec. 433.043. STANDARDS OF LABELING, COMPOSITION, AND FILL.
25 (a) If the executive commissioner determines that standards are
26 necessary to protect the public, the executive commissioner may
27 adopt rules prescribing [~~prescribe~~]:

1 (1) the style and type size that must be used for
2 material required to be incorporated in labeling to avoid false or
3 misleading labeling of an article subject to this subchapter or
4 Subchapter B; and

5 (2) subject to Subsection (b), a definition or
6 standard of identity or composition or a standard of fill of
7 container for an article subject to this subchapter.

8 (b) A standard prescribed under Subsection (a)(2) must be
9 consistent with standards established under the Federal Meat
10 Inspection Act (21 U.S.C. Section 601 et seq.), the Federal Poultry
11 Products Inspection Act (21 U.S.C. Section 451 et seq.), and the
12 Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et
13 seq.). To avoid inconsistency, the department [~~commissioner~~] shall
14 consult with the United States Secretary of Agriculture before
15 [~~prescribing~~] the standard is prescribed.

16 SECTION 3.1049. Section 433.044, Health and Safety Code, is
17 amended to read as follows:

18 Sec. 433.044. ORDER TO CEASE FALSE OR MISLEADING PRACTICE.
19 (a) If the department [~~commissioner~~] has reason to believe that a
20 marking or labeling or the size or form of a container in use or
21 proposed for use in relation to an article subject to this
22 subchapter is false or misleading, the department [~~commissioner~~]
23 may prohibit the use until the marking, labeling, or container is
24 modified in the manner the department [~~commissioner~~] prescribes to
25 prevent it from being false or misleading.

26 (b) The person using or proposing to use the marking,
27 labeling, or container may request a hearing [~~by the commissioner~~].

1 The department [commissioner] may prohibit the use pending a final
2 determination by the department [commissioner].

3 (c) A hearing and any appeal under this section are governed
4 by the department's rules for a contested case hearing and Chapter
5 2001, Government Code.

6 SECTION 3.1050. Section 433.045, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 433.045. PROTECTION OF OFFICIAL DEVICE, MARK, AND
9 CERTIFICATE. A person may not:

10 (1) cast, print, lithograph, or make in any other
11 manner, except as authorized by the department in accordance with
12 department rules [commissioner]:

13 (A) a device containing or label bearing an
14 official mark or a simulation of an official mark; or

15 (B) a form of official certificate or simulation
16 of an official certificate;

17 (2) forge an official device, mark, or certificate;

18 (3) without the department's [commissioner's]
19 authorization, use, alter, detach, deface, or destroy an official
20 device, mark, or certificate or use a simulation of an official
21 device, mark, or certificate;

22 (4) detach, deface, destroy, or fail to use an
23 official device, mark, or certificate, in violation of a department
24 rule [of the commissioner];

25 (5) knowingly possess, without promptly notifying the
26 department [commissioner or the commissioner's representative]:

27 (A) an official device;

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(B) a counterfeit, simulated, forged, or
improperly altered official certificate; or

3 (C) a device, label, animal carcass, or part or
4 product of an animal carcass, bearing a counterfeit, simulated,
5 forged, or improperly altered official mark;

6 (6) knowingly make a false statement in a shipper's
7 certificate or other certificate provided for by department rule
8 [~~or the commissioner~~]; or

12 SECTION 3.1051. Section 433.053, Health and Safety Code, is
13 amended to read as follows:

14 Sec. 433.053. SALE, RECEIPT, OR TRANSPORTATION OF POULTRY.

15 A person may not sell, transport, offer for sale or transportation,

16 or receive for transportation, in intrastate commerce or from an

17 official establishment, slaughtered poultry from which blood,

18 feathers, feet, head, or viscera have not been removed as provided

19 by department rule [~~of the commissioner~~], except as authorized by

20 department rule [~~of the commissioner~~].

21 SECTION 3.1052. Sections 433.054(a) and (c), Health and
22 Safety Code, are amended to read as follows:

23 (a) If registration is required by department rule [~~of the~~
24 ~~commissioner~~], a person may not engage in any of the following
25 businesses, in or for intrastate commerce, unless the person has
26 registered with the department [~~commissioner~~]:

27 (1) meat brokering or rendering;

1 (2) manufacturing animal food;
2 (3) wholesaling or warehousing for the public
3 livestock or any part of a carcass of livestock, regardless of
4 whether it is intended for human food; or

5 (4) buying, selling, or transporting dead, dying,
6 disabled, or diseased livestock or part of a carcass of livestock.

7 (c) A person may not engage in the business of selling,
8 buying, or transporting in intrastate commerce dead, dying,
9 disabled, or diseased livestock or part of the carcass of livestock
10 that died otherwise than by slaughter unless the transaction or
11 transportation complies with department rules adopted [~~by the~~
12 ~~commissioner~~] to assure that the animals or unwholesome parts or
13 products of the animals are not used for human food.

14 SECTION 3.1053. Section 433.071, Health and Safety Code, is
15 amended to read as follows:

16 Sec. 433.071. RESPONSIBLE AGENCY. (a) The department
17 [~~Texas Department of Health~~] is the state agency responsible for
18 cooperating with the United States Secretary of Agriculture under
19 Section 301, Federal Meat Inspection Act (21 U.S.C. Section 661),
20 and Section 5, Federal Poultry Products Inspection Act (21 U.S.C.
21 Section 454).

22 (b) The department shall cooperate with the secretary of
23 agriculture in developing and administering the meat and poultry
24 inspection program of this state under this chapter in a manner that
25 will achieve the purposes of this chapter and federal law and that
26 will ensure that the requirements will be at least equal to those
27 imposed under Titles I and IV, Federal Meat Inspection Act (21

1 U.S.C. Sections 601 et seq. and 671 et seq.), and Sections 1-4,
2 6-10, and 12-22, Federal Poultry Products Inspection Act (21 U.S.C.
3 Sections 451-453, 455-459, and 461-467d [~~461-467b~~]), not later than
4 the dates prescribed by federal law.

5 SECTION 3.1054. Section [433.073](#), Health and Safety Code, is
6 amended to read as follows:

7 Sec. 433.073. TECHNICAL AND LABORATORY ASSISTANCE AND
8 TRAINING PROGRAM. The department [~~commissioner~~] may accept from
9 the United States Secretary of Agriculture:

10 (1) advisory assistance in planning and otherwise
11 developing the state program;

12 (2) technical and laboratory assistance;

13 (3) training, including necessary curricular and
14 instructional materials and equipment; and

15 (4) financial and other aid for administration of the
16 program.

17 SECTION 3.1055. Section [433.074](#), Health and Safety Code, is
18 amended to read as follows:

19 Sec. 433.074. FINANCING. The department [~~commissioner~~] may
20 spend state funds appropriated for administration of this chapter
21 to pay 50 percent of the estimated total cost of cooperation with
22 the federal government under this subchapter, and all of the costs
23 of performing services in relation to the inspection of animals or
24 products not regulated under the Federal Meat Inspection Act (21
25 U.S.C. Section 601 et seq.) or the Federal Poultry Products
26 Inspection Act (21 U.S.C. Section 451 et seq.).

27 SECTION 3.1056. Sections [433.081\(d\)](#) and [\(e\)](#), Health and

1 Safety Code, are amended to read as follows:

2 (d) A person does not commit an offense under this section
3 by receiving for transportation an article in violation of this
4 chapter if the receipt is in good faith and if the person furnishes,
5 on request of [a representative of] the department [commissioner]:

6 (1) the name and address of the person from whom the
7 article is received; and

8 (2) any document pertaining to the delivery of the
9 article.

10 (e) This chapter does not require the department
11 [commissioner] to report for prosecution, or for institution of
12 complaint or injunction proceedings, a minor violation of this
13 chapter if the department [commissioner] believes that the public
14 interest will be adequately served by a suitable written warning
15 notice.

16 SECTION 3.1057. Section 433.083, Health and Safety Code, is
17 amended to read as follows:

18 Sec. 433.083. INVESTIGATION BY DEPARTMENT [COMMISSIONER].
19 The department [commissioner] may investigate and gather and
20 compile information concerning the organization, business,
21 conduct, practices, and management of a person engaged in
22 intrastate commerce and the person's relation to other persons.

23 SECTION 3.1058. Section 433.084, Health and Safety Code, is
24 amended to read as follows:

25 Sec. 433.084. EVIDENCE AND TESTIMONY. (a) For the purposes
26 of this chapter, the department [commissioner] at all reasonable
27 times shall be given access to documentary evidence of a person

1 being investigated or proceeded against to examine or copy the
2 evidence. The department [~~commissioner~~] by subpoena may require
3 the attendance and testimony of a witness and the production of
4 documentary evidence relating to a matter under investigation, at a
5 designated place of hearing in a county in which the witness
6 resides, is employed, or has a place of business.

7 (b) The commissioner or the commissioner's designee may
8 sign subpoenas, administer oaths and affirmations, examine
9 witnesses, and receive evidence. On disobedience of a subpoena,
10 the department [~~commissioner~~] may request the district court to
11 require attendance and testimony of a witness and the production of
12 documentary evidence, and the district court having jurisdiction
13 over the inquiry may order the compliance. Failure to obey the
14 court's order is punishable as contempt.

15 SECTION 3.1059. Section 433.085, Health and Safety Code, is
16 amended to read as follows:

17 Sec. 433.085. REPORT TO DEPARTMENT [~~COMMISSIONER~~]. The
18 department [~~commissioner~~], by general or special order, may require
19 a person engaged in intrastate commerce to file with the department
20 [~~commissioner~~] an annual report, special report, or both, or
21 answers in writing to specific questions furnishing the department
22 [~~commissioner~~] information that the department [~~commissioner~~]
23 requires concerning the person's organization, business, conduct,
24 practices, management, and relation to other persons filing written
25 answers and reports. The department [~~commissioner~~] may prescribe
26 the form of the report or answers, require the report or answers to
27 be given under oath, and prescribe a reasonable deadline for filing

1 the report or answers, subject to the granting of additional time by
2 the department [commissioner].

3 SECTION 3.1060. Section 433.086, Health and Safety Code, is
4 amended to read as follows:

5 Sec. 433.086. MANDAMUS TO COMPEL COMPLIANCE. On
6 application of the attorney general at the request of the
7 department [commissioner], the district court may issue a writ of
8 mandamus ordering a person to comply with this chapter or an order
9 [of the commissioner] under this chapter.

10 SECTION 3.1061. Section 433.087(a), Health and Safety Code,
11 is amended to read as follows:

12 (a) The department [commissioner] may order testimony to be
13 taken before a person designated by the department [commissioner]
14 and having power to administer oaths at any stage of a proceeding or
15 investigation under this chapter. A person may be compelled to
16 appear and depose or produce documentary evidence at a deposition
17 in the same manner as a witness may be compelled to appear and
18 testify and produce documentary evidence before the department
19 [commissioner] under this chapter.

20 SECTION 3.1062. Section 433.088, Health and Safety Code, is
21 amended to read as follows:

22 Sec. 433.088. COMPENSATION OF WITNESS OR REPORTER. A
23 witness summoned before the department [commissioner] is entitled
24 to the same fees and mileage paid a witness in a state court. A
25 witness whose deposition is taken and the person taking the
26 deposition are each entitled to the same fees paid for similar
27 services in a state court.

1 SECTION 3.1063. Section 433.089(a), Health and Safety Code,
2 is amended to read as follows:

3 (a) A person is not excused from attending and testifying or
4 producing documentary evidence before the department
5 [~~commissioner~~] or in obedience to the department's [~~commissioner's~~]
6 subpoena, whether signed by the commissioner or the commissioner's
7 designee [~~delegate~~], or in a cause or proceeding based on or growing
8 out of an alleged violation of this chapter, on the ground that the
9 required testimony or evidence may tend to incriminate the person
10 or subject the person to penalty or forfeiture.

11 SECTION 3.1064. Section 433.090(a), Health and Safety Code,
12 is amended to read as follows:

13 (a) A person commits an offense if the person neglects or
14 refuses to attend and testify or answer a lawful inquiry or to
15 produce documentary evidence, if the person has the power to do so,
16 in obedience to a subpoena or lawful requirement of the department
17 [~~commissioner~~].

18 SECTION 3.1065. Section 433.091(a), Health and Safety Code,
19 is amended to read as follows:

20 (a) A person commits an offense if the person intentionally:
21 (1) makes or causes to be made a false entry in an
22 account, record, or memorandum kept by a person subject to this
23 chapter;

24 (2) neglects or fails to make or cause to be made full
25 entries in an account, record, or memorandum kept by a person
26 subject to this chapter of all facts and transactions pertaining to
27 the person's business;

1 (3) removes from the jurisdiction of this state or
2 mutilates, alters, or otherwise falsifies documentary evidence of a
3 person subject to this chapter; or

4 (4) refuses to submit to the department [~~commissioner~~
5 ~~or to the commissioner's authorized agent~~], for inspection and
6 copying, documentary evidence in the person's possession or control
7 of a person subject to this chapter.

8 SECTION 3.1066. Section 433.092(a), Health and Safety Code,
9 is amended to read as follows:

10 (a) If a person required by this chapter to file an annual or
11 special report does not file the report before the deadline for
12 filing set by the department [~~commissioner~~] and the failure
13 continues for 30 days after notice of the default, the person
14 forfeits to the state \$100 for each day the failure continues.

15 SECTION 3.1067. Section 433.093(a), Health and Safety Code,
16 is amended to read as follows:

17 (a) A state officer or employee commits an offense if the
18 officer or employee, without the approval of the commissioner,
19 makes public information obtained by the department [~~commissioner~~
20 ~~without the approval of the commissioner~~].

21 SECTION 3.1068. Sections 433.094(a) and (b), Health and
22 Safety Code, are amended to read as follows:

23 (a) The department [~~commissioner~~] may assess an
24 administrative penalty against a person who violates this chapter,
25 a rule adopted [~~by the board~~] under the authority of this chapter,
26 or an order or license issued under this chapter.

27 (b) In determining the amount of the penalty, the department

1 [commissioner] shall consider:

- 2 (1) the person's previous violations;
3 (2) the seriousness of the violation;
4 (3) any hazard to the health and safety of the public;
5 (4) the person's demonstrated good faith; and
6 (5) such other matters as justice may require.

7 SECTION 3.1069. Sections 433.095(b), (c), and (d), Health
8 and Safety Code, are amended to read as follows:

9 (b) If a hearing is held, the administrative law judge
10 [commissioner] shall make findings of fact and shall issue to the
11 department a written proposal for decision regarding the occurrence
12 of the violation and the amount of the penalty that may be
13 warranted.

14 (c) If the person charged with the violation does not
15 request a hearing, the department [commissioner] may assess a
16 penalty after determining that a violation has occurred and the
17 amount of the penalty that may be warranted.

18 (d) After making a determination under this section that a
19 penalty is to be assessed against a person, the department
20 [commissioner] shall issue an order requiring that the person pay
21 the penalty.

22 SECTION 3.1070. Section 433.096, Health and Safety Code, is
23 amended to read as follows:

24 Sec. 433.096. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not
25 later than the 30th day after the date an order finding that a
26 violation has occurred is issued, the department [commissioner]
27 shall inform the person against whom the order is issued of the

1 amount of the penalty for the violation.

2 (b) Not later than the 30th day after the date on which a
3 decision or order charging a person with a penalty is final, the
4 person shall:

5 (1) pay the penalty in full; or

6 (2) file a petition for [if the person seeks] judicial
7 review of the department's order contesting the amount of the
8 penalty, the fact of the violation, or both._

9 (b-1) Within the period prescribed by Subsection (b), a
10 person who files a petition for judicial review may:

11 (1) stay the enforcement of the penalty by:

12 (A) paying [send the amount of] the penalty to
13 the court [~~commissioner~~] for placement in an escrow account; or

14 (B) posting [post] with the court [commissioner]
15 a supersedeas bond for the amount of the penalty; or

16 (2) request that the department stay enforcement of
17 the penalty by:

18 (A) filing with the court a sworn affidavit of
19 the person stating that the person is financially unable to pay the
20 penalty and is financially unable to give the supersedeas bond; and

21 (B) sending a copy of the affidavit to the
22 department.

23 (b-2) If the department receives a copy of an affidavit
24 under Subsection (b-1)(2), the department may file with the court,
25 within five days after the date the copy is received, a contest to
26 the affidavit. The court shall hold a hearing on the facts alleged
27 in the affidavit as soon as practicable and shall stay the

1 enforcement of the penalty on finding that the alleged facts are
2 true. The person who files an affidavit has the burden of proving
3 that the person is financially unable to pay the penalty or to give
4 a supersedeas bond.

5 (c) A bond posted under this section must be in a form
6 approved by the court [~~commissioner~~] and be effective until all
7 judicial review of the order or decision is final.

8 (d) A person who does not send money to, [~~the commissioner~~
9 ~~or~~] post the bond with, or file the affidavit with the court within
10 the period prescribed by Subsection (b) waives all rights to
11 contest the violation or the amount of the penalty.

12 SECTION 3.1071. Section 433.097, Health and Safety Code, is
13 amended to read as follows:

14 Sec. 433.097. REFUND OF ADMINISTRATIVE PENALTY. On [~~Not~~
15 ~~later than the 30th day after~~] the date the court's judgment [~~of a~~
16 ~~judicial determination~~] that an administrative penalty against a
17 person should be reduced or not assessed becomes final, the court
18 [~~commissioner~~] shall order that:

19 (1) [~~remit to the person~~] the appropriate amount of
20 any penalty payment plus accrued interest be remitted to the person
21 not later than the 30th day after that date; or

22 (2) [~~execute a release of~~] the bond be released if the
23 person has posted a bond.

24 SECTION 3.1072. Section 433.098, Health and Safety Code, is
25 amended to read as follows:

26 Sec. 433.098. RECOVERY OF ADMINISTRATIVE PENALTY BY
27 ATTORNEY GENERAL. The attorney general at the request of the

1 department [~~commissioner~~] may bring a civil action to recover an
2 administrative penalty under this subchapter.

3 SECTION 3.1073. Sections **433.099**(a) and (c), Health and
4 Safety Code, are amended to read as follows:

5 (a) If it appears that a person has violated or is violating
6 this chapter or a rule adopted under this chapter, the department
7 [~~commissioner~~] may request the attorney general or the district
8 attorney or county attorney in the jurisdiction where the violation
9 is alleged to have occurred, is occurring, or may occur to institute
10 a civil suit for:

11 (1) an order enjoining the violation; or
12 (2) a permanent or temporary injunction, a temporary
13 restraining order, or other appropriate remedy, if the department
14 [~~commissioner~~] shows that the person has engaged in or is engaging
15 in a violation.

16 (c) The department [~~commissioner~~] or the attorney general
17 may recover reasonable expenses incurred in obtaining injunctive
18 relief under this section, including investigation and court costs,
19 reasonable attorney's fees, witness fees, and other expenses. The
20 expenses recovered by the department [~~commissioner~~] under this
21 section may be used for the administration and enforcement of this
22 chapter. The expenses recovered by the attorney general may be used
23 by the attorney general for any purpose.

24 SECTION 3.1074. Section **433.100**, Health and Safety Code, is
25 amended to read as follows:

26 Sec. 433.100. EMERGENCY WITHDRAWAL OF MARK OR SUSPENSION OF
27 INSPECTION SERVICES. (a) The department [~~commissioner or the~~

1 ~~commissioner's designee~~] may immediately withhold the mark of
2 inspection or suspend or withdraw inspection services if:

3 (1) the department [~~commissioner or the commissioner's~~
4 ~~designee~~] determines that a violation of this chapter presents an
5 imminent threat to public health and safety; or

6 (2) a person affiliated with the processing
7 establishment impedes an inspection under this chapter.

8 (b) An affected person is entitled to a review of an action
9 of the department [~~commissioner or the commissioner's designee~~]
10 under Subsection (a) in the same manner that a refusal or withdrawal
11 of inspection services may be reviewed under Section [433.028](#).

12 SECTION 3.1075. Sections [435.001](#)(1) and (2), Health and
13 Safety Code, are amended to read as follows:

14 (1) [~~"Board"~~ means the ~~Texas Board of Health~~.

15 [~~(2)~~] "Department" means the [~~Texas~~] Department of
16 State Health Services.

17 (2) "Executive commissioner" means the executive
18 commissioner of the Health and Human Services Commission.

19 SECTION 3.1076. Section [435.002](#), Health and Safety Code, is
20 amended to read as follows:

21 Sec. 435.002. GRADING OF MILK AND MILK PRODUCTS. [~~(a)~~] The
22 executive commissioner [~~board~~] may [~~supervise and~~] regulate the
23 grading and labeling of milk and milk products. The department
24 shall supervise the grading and labeling of milk and milk products
25 according to the standards, specifications, and requirements
26 adopted by the executive commissioner [~~it adopts~~] for each grade
27 and in conformity with this subchapter.

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1 SECTION 3.1077. Section 435.003(a), Health and Safety Code,
2 is amended to read as follows:

3 (a) The executive commissioner [board] by rule may:

4 (1) define what constitutes Grade "A" raw milk, Grade
5 "A" raw milk products, Grade "A" pasteurized milk, Grade "A"
6 pasteurized milk products, milk for manufacturing purposes, and
7 dairy products; and

8 (2) provide specifications for the production and
9 handling of milk and milk products listed in Subdivision (1)
10 according to the safety and food value of the milk or milk products
11 and the sanitary conditions under which they are produced and
12 handled.

13 SECTION 3.1078. The heading to Section 435.004, Health and
14 Safety Code, is amended to read as follows:

15 Sec. 435.004. INSPECTION OF MILK AND MILK PRODUCTS BY
16 DEPARTMENT [BOARD].

17 SECTION 3.1079. Section 435.004(a), Health and Safety Code,
18 is amended to read as follows:

19 (a) The department [board or its representative] shall
20 sample, test, or inspect Grade "A" pasteurized milk and milk
21 products, Grade "A" raw milk and milk products for pasteurization,
22 milk for manufacturing purposes, and dairy products that are
23 offered for sale.

24 SECTION 3.1080. Section 435.005(a), Health and Safety Code,
25 is amended to read as follows:

26 (a) The department [board] may contract with a county or
27 municipality to act as the agent of the department [board] to

1 inspect milk and milk products and to perform other regulatory
2 functions necessary to enforce this subchapter.

3 SECTION 3.1081. Section 435.006, Health and Safety Code, is
4 amended to read as follows:

5 Sec. 435.006. PERMIT TO SELL MILK. (a) A person who offers
6 milk or milk products for sale or to be sold in this state must hold
7 a permit issued by the department [board]. The person must apply to
8 the department [board or the board's representative] for a permit.

9 (b) After receiving the application, the department [board
10 or the board's representative] may determine and award the grade of
11 milk or milk products offered for sale by each applicant according
12 to the specifications for grades established under this chapter.

13 (c) The department [board] shall maintain a list of the
14 names of all applicants to whom the department [board] has awarded
15 permission to use a Grade "A" label and remove from the list the
16 name of a person whose permit is revoked.

17 (d) The department [board] may not issue a permit to a
18 person for a producer dairy located in an area infected with or at a
19 high risk for bovine tuberculosis, as determined epidemiologically
20 and defined by rule of the Texas Animal Health Commission.

21 SECTION 3.1082. Section 435.007(b), Health and Safety Code,
22 is amended to read as follows:

23 (b) A person may not represent, publish, label, or advertise
24 milk or milk products as being Grade "A" unless the milk or milk
25 products are:

26 (1) produced or processed by a person having a permit
27 to use a Grade "A" label as provided by this subchapter; and

1 (2) produced, treated, and handled in accordance with
2 the specifications and requirements adopted by the executive
3 commissioner [board] for Grade "A" milk and milk products.

4 SECTION 3.1083. Section 435.009(c), Health and Safety Code,
5 is amended to read as follows:

6 (c) The executive commissioner [board] shall adopt rules
7 for the department to assess and collect the fees imposed by
8 Subsections (b)(5) and (6) monthly, quarterly, semiannually, or
9 annually according to amounts due by the plant. Monthly fees shall
10 be assessed and collected in accordance with department [board]
11 rules.

12 SECTION 3.1084. Section 435.010, Health and Safety Code, is
13 amended to read as follows:

14 Sec. 435.010. RECORDS. The executive commissioner [board]
15 by rule shall establish minimum standards for recordkeeping by
16 persons required to pay a fee under this subchapter. Those persons
17 shall make the records available to the department on request.

18 SECTION 3.1085. Section 435.011(a), Health and Safety Code,
19 is amended to read as follows:

20 (a) The executive commissioner [board] shall establish a
21 procedure by which a person aggrieved by the application of a
22 department [board] rule may receive a hearing under Chapter 2001,
23 Government Code.

24 SECTION 3.1086. Sections 435.012(b) and (c), Health and
25 Safety Code, are amended to read as follows:

26 (b) The department [board and its representative] may
27 revoke and regrade permits if on inspection the department [board]

1 ~~or its representative~~] finds that the use of the grade label does
2 not conform to the specifications or requirements adopted by the
3 executive commissioner [~~board~~] under this chapter.

4 (c) The executive commissioner [~~board~~] by rule shall:

5 (1) provide for the denial, suspension, or revocation
6 of a permit; and

7 (2) establish reasonable minimum standards for
8 granting and maintaining a permit issued under this chapter.

9 SECTION 3.1087. Sections 436.002(2), (22), (24), and (27),
10 Health and Safety Code, are amended to read as follows:

11 (2) "Approved source" means a source of molluscan
12 shellfish acceptable to the department [~~director~~].

13 (22) "National Shellfish Sanitation Program" means
14 the cooperative program by the states, the United States Food and
15 Drug Administration, and the shellfish industry that classifies
16 molluscan shellfish growing areas and certifies interstate
17 molluscan shellfish shippers according to the National Shellfish
18 Sanitation Program Guide for the Control of Molluscan Shellfish
19 [~~Manual of Operations~~] or its successor program and documents.

20 (24) "Pasteurization plant" means a place where
21 crabmeat is heat-treated in compliance with department rules
22 [~~adopted by the board~~], without complete sterilization, to improve
23 the keeping qualities of the meat.

24 (27) "Prohibited area" means an area where the
25 department [~~director~~] finds, according to a sanitary, chemical, or
26 bacteriological survey, that the area contains aquatic life that is
27 unfit for human consumption. A prohibited area for molluscan

1 shellfish means a molluscan shellfish growing area determined to be
2 unacceptable for transplanting, gathering for depuration, or
3 harvesting of molluscan shellfish. The only molluscan shellfish
4 removal permitted from a prohibited area is for the purpose of
5 depletion.

6 SECTION 3.1088. Section 436.003, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 436.003. HEALTH AUTHORITY POWER TO DELEGATE [POWERS
9 ~~AND DUTIES]~~. [(a) ~~The board by rule may delegate a power or duty~~
10 ~~imposed on the director in this chapter, including the power or duty~~
11 ~~to issue emergency rules or orders or to render a final~~
12 ~~administrative decision.~~

13 [(b)] A health authority may delegate any power or duty
14 imposed on the health authority in this chapter to an employee of
15 the local health department, the local health unit, or the public
16 health district in which the health authority serves, unless
17 otherwise restricted by law.

18 SECTION 3.1089. Section 436.011, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 436.011. PROHIBITED ACTS. The following acts and the
21 causing of the following acts within this state are unlawful and
22 prohibited:

23 (1) taking, selling, offering for sale, or holding for
24 sale molluscan shellfish from a closed area;

25 (2) taking, selling, offering for sale, or holding for
26 sale molluscan shellfish from a restricted or conditionally
27 restricted area without complying with a department rule [adopted

1 by the board] to ensure that the molluscan shellfish have been
2 purified, unless:

3 (A) permission is first obtained from the Parks
4 and Wildlife Department and the transplanting is supervised by that
5 department; and

6 (B) the Parks and Wildlife Department furnishes a
7 copy of the transplant permit to the department [director] before
8 transplanting activities begin;

9 (3) possessing a species of aquatic life taken from a
10 prohibited area while the area was prohibited for that species;

11 (4) operating as a molluscan shellfish processor
12 without a shellfish certificate for each plant or place of
13 business;

14 (5) operating as a crabmeat processor without a
15 crabmeat processing license for each plant;

16 (6) selling, offering for sale, or holding for sale
17 molluscan shellfish or crabmeat that has not been picked, handled,
18 packaged, or pasteurized in accordance with department [the] rules
19 [adopted by the board];

20 (7) selling, offering for sale, or holding for sale
21 molluscan shellfish or crabmeat from facilities for the handling
22 and packaging of molluscan shellfish or crabmeat that do not comply
23 with department [the] rules [adopted by the board];

24 (8) selling, offering for sale, or holding for sale
25 molluscan shellfish or crabmeat that is not labeled in accordance
26 with department [the] rules [adopted by the board];

27 (9) selling, offering for sale, or holding for sale

1 molluscan shellfish that is not in a container bearing a valid
2 certificate number from a state or nation whose molluscan shellfish
3 certification program conforms to the current National Shellfish
4 Sanitation Program Guide for the Control of Molluscan Shellfish
5 [~~Manual of Operations for Sanitary Control of the Shellfish~~
6 ~~Industry~~] issued by the Food and Drug Administration or its
7 successor, except selling molluscan shellfish removed from a
8 container bearing a valid certificate number for on-premises
9 consumption; in the event the Texas Molluscan Shellfish Program is
10 found to be out of conformity with the current guide [~~Manual of~~
11 ~~Operations~~], selling, offering for sale, or holding for sale
12 molluscan shellfish in a container bearing a valid Texas
13 certificate number shall not be considered a violation of this
14 chapter provided all other requirements of this chapter are
15 complied with and the shellfish have come from an approved source;

16 (10) processing, transporting, storing for sale,
17 possessing with intent to sell, offering for sale, or selling
18 molluscan shellfish or crabmeat for human consumption that is
19 adulterated or misbranded;

20 (11) removing or disposing of a detained or embargoed
21 article in violation of Section **436.028**;

22 (12) altering, mutilating, destroying, obliterating,
23 or removing all or part of the labeling of a container;

24 (13) adulterating or misbranding molluscan shellfish
25 or crabmeat in commerce;

26 (14) refusing to permit entry or inspection, to permit
27 the taking of a sample, or to permit access to or copying by the

1 department as [~~an authorized agent of a record~~] required by this
2 chapter;

3 (15) failing to establish or maintain a record or
4 report required by this chapter or by a department rule [~~adopted by~~
5 ~~the board~~]; or

6 (16) violating a department rule [~~adopted by the~~
7 ~~board~~] or [~~an emergency rule or~~] order [~~adopted by the director~~].

8 SECTION 3.1090. Section 436.022, Health and Safety Code, is
9 amended to read as follows:

10 Sec. 436.022. INSPECTION. (a) The department [~~director~~,
11 ~~an authorized agent,~~] or a health authority may, on presenting
12 appropriate credentials to the owner, operator, or agent in charge:

13 (1) enter at reasonable times, including when
14 processing is conducted, an establishment or location in which
15 molluscan shellfish or crabmeat is processed, packed, pasteurized,
16 or held for introduction into commerce or held after introduction
17 into commerce;

18 (2) enter a vehicle being used to transport or hold the
19 molluscan shellfish or crabmeat in commerce; or

20 (3) inspect the establishment, location, or vehicle,
21 including equipment, records, files, papers, materials,
22 containers, labels, or other items, and obtain samples necessary
23 for enforcement of this chapter.

24 (b) The inspection of an establishment or location is to
25 determine whether the molluscan shellfish or crabmeat:

26 (1) is adulterated or misbranded;

27 (2) may not be processed, introduced into commerce,

1 sold, or offered for sale under this chapter or department [~~the~~
2 rules [~~adopted by the board~~]; or

3 (3) is otherwise in violation of this chapter.

4 (c) The department [~~director, an authorized agent,~~] or a
5 health authority may not inspect:

6 (1) financial data;

7 (2) sales data, other than shipment data;

8 (3) pricing data;

9 (4) personnel data, other than personnel data relating
10 to the qualifications of technical and professional personnel; or

11 (5) research data.

12 SECTION 3.1091. Section 436.023, Health and Safety Code, is
13 amended to read as follows:

14 Sec. 436.023. ACCESS TO RECORDS. A person who is required
15 to maintain records under this chapter or a department rule
16 [~~adopted by the board~~] or a person who is in charge or custody of
17 those records on request shall permit the department [~~director,~~
18 ~~authorized agent,~~] or health authority at all reasonable times to
19 have access to and to copy the records.

20 SECTION 3.1092. Section 436.024(a), Health and Safety Code,
21 is amended to read as follows:

22 (a) A commercial carrier or other person receiving or
23 holding molluscan shellfish or crabmeat in commerce on request
24 shall permit the department [~~director, authorized agent,~~] or health
25 authority at all reasonable times to have access to and to copy all
26 records showing:

27 (1) the movement in commerce of the molluscan

1 shellfish or crabmeat;

2 (2) the holding after movement in commerce of the
3 molluscan shellfish or crabmeat; or

4 (3) the quantity, shipper, and consignee of the
5 molluscan shellfish or crabmeat.

6 SECTION 3.1093. Section [436.025](#), Health and Safety Code, is
7 amended to read as follows:

8 Sec. 436.025. EMERGENCY ORDER. (a) The department
9 ~~[director]~~ may issue an emergency order that mandates or prohibits
10 the taking, processing, or sale of molluscan shellfish or crabmeat
11 in the department's jurisdiction if:

12 (1) the processing or sale of the molluscan shellfish
13 or crabmeat creates or poses an immediate threat to human life or
14 health; and

15 (2) other procedures available to the department to
16 remedy or prevent the threat will result in unreasonable delay.

17 (b) The department ~~[director]~~ may issue the emergency order
18 without notice and hearing if the department ~~[director]~~ or a person
19 designated by the department ~~[director]~~ determines that issuing the
20 emergency order without notice and hearing is necessary under the
21 circumstances.

22 (c) If an emergency order is issued without a hearing, the
23 department shall determine the earliest time and place for a
24 hearing at which the emergency order shall be affirmed, modified,
25 or set aside. The hearing shall be held under department ~~[board]~~
26 rules.

27 (d) This section prevails over Section ~~[Sections 11.013]~~

1 and] 12.001.

2 SECTION 3.1094. Section 436.026(a), Health and Safety Code,
3 is amended to read as follows:

4 (a) The department [~~director, an authorized agent,~~] or a
5 health authority may petition the district court for a temporary
6 restraining order to restrain a continuing violation or a threat of
7 a continuing violation of Section 436.011 if the department
8 [~~director, authorized agent,~~] or health authority believes that:

9 (1) a person has violated, is violating, or is
10 threatening to violate a provision of Section 436.011; and

11 (2) the violation or threatened violation creates an
12 immediate threat to the health and safety of the public.

13 SECTION 3.1095. Section 436.027(a), Health and Safety Code,
14 is amended to read as follows:

15 (a) At the request of the department [~~director~~], the
16 attorney general or a district, county, or municipal attorney shall
17 institute an action in district or county court to collect a civil
18 penalty from a person who has violated Section 436.011.

19 SECTION 3.1096. Section 436.028, Health and Safety Code, is
20 amended to read as follows:

21 Sec. 436.028. DETAINED OR EMBARGOED ARTICLE. (a) The
22 department [~~director or an authorized agent~~] may detain or embargo
23 molluscan shellfish or crabmeat if the department [~~director or~~
24 ~~authorized agent~~] believes or has probable cause to believe that
25 the molluscan shellfish or crabmeat:

26 (1) is adulterated; or

27 (2) is misbranded so that the molluscan shellfish or

1 crabmeat is dangerous or fraudulent under this chapter.

2 (b) The department [~~director or an authorized agent~~] shall
3 affix to any molluscan shellfish or crabmeat a tag or other
4 appropriate marking that gives notice that the molluscan shellfish
5 or crabmeat is, or is suspected of being, adulterated or misbranded
6 and that the molluscan shellfish or crabmeat has been detained or
7 embargoed.

8 (c) The tag or marking on a detained or embargoed article
9 must prohibit the removal or disposal of the article unless
10 permission is given by the department [~~director, the authorized~~
11 ~~agent,~~] or a court.

12 (d) A person may not remove a detained or embargoed article
13 from the premises or dispose of it without permission of the
14 department [~~director, the authorized agent,~~] or a court. The
15 department [~~director or the authorized agent~~] may permit perishable
16 goods to be moved to a place suitable for proper storage.

17 (e) The department [~~director or an authorized agent~~] shall
18 remove the tag or other marking from a detained or embargoed article
19 if the department [~~director or an authorized agent~~] believes that
20 the article is not adulterated or misbranded.

21 (f) The claimant of a detained or embargoed article may move
22 the article to a secure storage area with the permission of the
23 department [~~director or an authorized agent~~].

24 SECTION 3.1097. Section 436.029, Health and Safety Code, is
25 amended to read as follows:

26 Sec. 436.029. REMOVAL ORDER FOR DETAINED OR EMBARGOED
27 ARTICLE. (a) The department [~~director or authorized agent~~] may

1 order the claimant or the claimant's agent to move a detained or
2 embargoed article to a secure place to prevent the unauthorized
3 disposal or removal of the article.

4 (b) If the claimant fails to carry out the order, the
5 department [director or the authorized agent] may move the article.

6 (c) If the department [director or the authorized agent]
7 moves the article, the department [director] shall assess the cost
8 of removal against the claimant.

9 (d) The department [director] may request the attorney
10 general to bring an action in the district court in Travis County to
11 recover the costs of removal. In a judgment in favor of the state,
12 the court may award costs, attorney fees, and interest from the date
13 the expense was incurred until the date the department is
14 reimbursed.

15 SECTION 3.1098. Section 436.030, Health and Safety Code, is
16 amended to read as follows:

17 Sec. 436.030. RECALL FROM COMMERCE. (a) The department
18 [director] may order a recall of molluscan shellfish or crabmeat
19 with:

20 (1) the detention or embargo of molluscan shellfish or
21 crabmeat;

22 (2) the issuance of an emergency order under Section
23 436.025; or

24 (3) both.

25 (b) The [director's] recall order may require that the
26 molluscan shellfish or crabmeat be removed to one or more secure
27 areas approved by the department [director or authorized agent].

1 (c) The recall order must be in writing and be signed by the
2 commissioner [~~director~~] and may be issued:

3 (1) before or in conjunction with a tag or other
4 marking as provided by Section **436.028**;

5 (2) with an emergency order authorized by Section
6 **436.025**; or

7 (3) both.

8 (d) The recall order is effective until it expires by its
9 own terms, is withdrawn by the department [~~director~~], is reversed
10 by a court in an order denying condemnation, or is set aside at a
11 hearing authorized by Section **436.025**.

12 (e) The claimant shall pay the costs of the removal and
13 storage of a recalled product. If the claimant or the claimant's
14 agent fails to carry out the recall order, the department
15 [~~director~~] may recall the product. The department [~~director~~] shall
16 assess the costs of the recall against the claimant.

17 (f) The department [~~director~~] may request the attorney
18 general to bring an action in a district court in Travis County to
19 recover the costs of recall. In a judgment in favor of the state,
20 the court may award costs, attorney fees, and interest from the date
21 the expense was incurred until the date the department is
22 reimbursed.

23 SECTION 3.1099. Section **436.032**(b), Health and Safety Code,
24 is amended to read as follows:

25 (b) After entry of the court's order, the department [~~an~~
26 ~~authorized agent~~] shall supervise the destruction of the article.

27 SECTION 3.1100. Sections **436.033**(a) and (c), Health and

1 Safety Code, are amended to read as follows:

2 (a) A court may order the delivery of sampled, detained, or
3 embargoed molluscan shellfish or crabmeat that is misbranded to the
4 claimant for relabeling under the supervision of the department
5 [~~director or an authorized agent~~] if:

6 (1) the court costs and other expenses have been paid;
7 (2) proper labeling can correct the misbranding; and
8 (3) the claimant executes a bond, conditioned on the
9 correction of the misbranding by proper labeling.

10 (c) The court shall order the return of the molluscan
11 shellfish or crabmeat to the claimant if the department [~~director~~
12 ~~or an authorized agent~~] represents to the court that the molluscan
13 shellfish or crabmeat no longer violates this chapter and that the
14 expenses of supervision are paid.

15 SECTION 3.1101. Sections [436.034](#)(a) and (b), Health and
16 Safety Code, are amended to read as follows:

17 (a) The department [~~director~~] may assess an administrative
18 penalty against a person who violates Section [436.011](#) or an order
19 issued under this chapter.

20 (b) In determining the amount of the penalty, the department
21 [~~director~~] shall consider:

22 (1) the person's previous violations;
23 (2) the seriousness of the violation;
24 (3) the hazard to the health and safety of the public;
25 (4) the person's demonstrated good faith; and
26 (5) other matters as justice may require.

27 SECTION 3.1102. Section [436.035](#), Health and Safety Code, is

1 amended to read as follows:

2 Sec. 436.035. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE.

3 (a) The department [~~director~~] may assess an administrative penalty
4 only after a person charged with a violation is given an opportunity
5 for a hearing.

6 (b) If a hearing is to be held, the department shall refer
7 the matter to the State Office of Administrative Hearings, and an
8 administrative law judge of that office [~~director~~] shall make
9 findings of fact and shall issue a written proposal for decision
10 regarding the violation and the amount of the penalty.

11 (c) If the person charged with the violation does not
12 request a hearing, the department [~~director~~] may assess a penalty
13 after determining that a violation has occurred and the amount of
14 the penalty.

15 (d) The department [~~director~~] shall issue an order
16 requiring a person to pay a penalty assessed under this section.

17 [(e) ~~The director may consolidate a hearing held under this~~
18 ~~section with another proceeding.]~~

19 SECTION 3.1103. Section 436.036, Health and Safety Code, is
20 amended to read as follows:

21 Sec. 436.036. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not
22 later than the 30th day after the date an order is issued under
23 Section 436.035(d), the department [~~director~~] shall notify the
24 person against whom the penalty is assessed of the order and the
25 amount of the penalty.

26 (b) Not later than the 30th day after the date notice of the
27 order is given to the person, the person shall:

1 (1) pay the penalty in full; or
2 (2) file a petition for [seek] judicial review of the
3 department's order contesting the amount of the penalty, the
4 findings of the department [director], or both.

5 (c) If the person seeks judicial review within the period
6 prescribed by Subsection (b), the person may [shall]:

7 (1) stay enforcement of the penalty by:
8 (A) paying [send the amount of] the penalty to
9 the court [director] for placement in an escrow account; or
10 (B) posting [(2) post] with the court [director]
11 a supersedeas bond for the amount of the penalty; or
12 (2) request that the department stay enforcement of
13 the penalty by:

14 (A) filing with the court a sworn affidavit of
15 the person stating that the person is financially unable to pay the
16 penalty and is financially unable to give the supersedeas bond; and
17 (B) sending a copy of the affidavit to the
18 department.

19 (c-1) If the department receives a copy of an affidavit
20 under Subsection (c)(2), the department may file with the court,
21 within five days after the date the copy is received, a contest to
22 the affidavit. The court shall hold a hearing on the facts alleged
23 in the affidavit as soon as practicable and shall stay the
24 enforcement of the penalty on finding that the alleged facts are
25 true. The person who files an affidavit has the burden of proving
26 that the person is financially unable to pay the penalty or to give
27 a supersedeas bond.

1 (d) A bond posted under this section must be in a form
2 approved by the court [~~director~~] and must be effective until
3 judicial review of the order or decision is final.

4 (e) A person who does not send the money to, [~~the director~~
5 ~~or~~] post the bond with, or file the affidavit with the court within
6 the period described by Subsection (b) waives all rights to contest
7 the violation or the amount of the penalty.

8 (f) The attorney general, at the request of the department
9 [~~director~~], may bring a civil action to recover an administrative
10 penalty assessed under this subchapter.

11 SECTION 3.1104. Section 436.037, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 436.037. REFUND OF ADMINISTRATIVE PENALTY. On [~~Not~~
14 ~~later than the 30th day after~~] the date the court's judgment [~~of a~~
15 ~~judicial determination~~] that an administrative penalty against a
16 person should be reduced or not assessed becomes final, the court
17 [~~director~~] shall order that:

18 (1) [~~remit to the person~~] the appropriate amount of
19 any penalty payment plus accrued interest be remitted to the person
20 not later than the 30th day after that date; or

21 (2) [~~execute a release of~~] the bond be released, if the
22 person has posted a bond.

23 SECTION 3.1105. Sections 436.038(f) and (g), Health and
24 Safety Code, are amended to read as follows:

25 (f) A person is not subject to the penalties of Subsection
26 (e) if the person received molluscan shellfish or crabmeat in
27 commerce and delivered or offered to deliver the molluscan

1 shellfish or crabmeat in good faith, unless the person refuses to
2 furnish on request of the department [director, an authorized
3 agent,] or a health authority the name and address of the person
4 from whom the product was received and copies of any documents
5 relating to the receipt of the product.

6 (g) A publisher, radiobroadcast licensee, or agency or
7 medium for the publication or broadcast of an advertisement, except
8 the harvester, processor, distributor, or seller of molluscan
9 shellfish or crabmeat to which a false advertisement relates, is
10 not liable under this section for the publication or broadcast of
11 the false advertisement unless the person has refused to furnish,
12 on the request of the department [director], the name and address of
13 the harvester, processor, distributor, seller, or advertising
14 agency residing in this state who caused the person to publish or
15 broadcast the advertisement.

16 SECTION 3.1106. Section 436.039, Health and Safety Code, is
17 amended to read as follows:

18 Sec. 436.039. INITIATION OF PROCEEDINGS. The attorney
19 general or a district, county, or municipal attorney to whom the
20 department [director, an authorized agent,] or a health authority
21 reports a violation of this chapter shall prosecute without delay.

22 SECTION 3.1107. Section 436.040, Health and Safety Code, is
23 amended to read as follows:

24 Sec. 436.040. MINOR VIOLATION. This chapter does not
25 require the department [director, an authorized agent,] or a health
26 authority to report for prosecution a minor violation of this
27 chapter if the department [director, authorized agent,] or health

1 authority believes that the public interest is adequately served by
2 a written warning.

3 SECTION 3.1108. Section 436.061, Health and Safety Code, is
4 amended to read as follows:

5 Sec. 436.061. ADULTERATED AQUATIC LIFE. (a) A species of
6 aquatic life is adulterated if it has been taken from an area
7 declared prohibited for that species by the department [director].

8 (b) Molluscan shellfish or crabmeat is adulterated if:

9 (1) it bears or contains a poisonous or deleterious
10 substance that may render it injurious to health unless the
11 substance is a naturally occurring substance and the quantity of
12 the substance in the molluscan shellfish or crabmeat does not
13 ordinarily render the substance injurious to health;

14 (2) it consists in whole or in part of a diseased,
15 contaminated, filthy, or putrid substance or if it is otherwise
16 unfit for human consumption;

17 (3) it has been produced, prepared, packed, or held
18 under unsanitary conditions whereby it may have become contaminated
19 with filth or may have been rendered diseased, unwholesome, or
20 injurious to health;

21 (4) it is in whole or in part the product of diseased
22 aquatic life or has died otherwise than by taking;

23 (5) its container is made in whole or in part of a
24 poisonous or deleterious substance that may render the contents
25 injurious to health;

26 (6) it has been intentionally exposed to radiation,
27 unless the use of the radiation complied with a regulation or an

1 exemption under Section 409, Federal Food, Drug, and Cosmetic Act
2 (21 U.S.C. Section 348);

3 (7) a substance has been substituted in whole or in
4 part for it;

5 (8) damage to or inferiority of the product has been
6 concealed;

7 (9) a substance has been added, mixed, or packed to
8 increase its bulk or weight, to reduce its quality or strength, or
9 to make it appear better or of greater value than it is;

10 (10) it contains a chemical substance containing
11 sulphites, sulphur dioxide, or any other chemical preservative that
12 is not approved by the Animal and Plant Health Inspection Service or
13 by department rules [~~of the board~~];

14 (11) the molluscan shellfish have been taken from a
15 closed area;

16 (12) the molluscan shellfish have been taken from a
17 restricted or conditionally restricted area and have not been
18 purified under department [~~the~~] rules [~~adopted by the board~~];

19 (13) the molluscan shellfish have been processed by a
20 person without a shellfish certificate;

21 (14) the molluscan shellfish have not been handled and
22 packaged in accordance with department [~~the~~] rules [~~adopted by the~~
23 ~~board~~];

24 (15) the crabmeat has been processed by a person
25 without a crabmeat processing license; or

26 (16) the crabmeat was not picked, packed, or
27 pasteurized in accordance with department [~~the~~] rules [~~adopted by~~

1 ~~the board~~].

2 SECTION 3.1109. Section [436.071](#), Health and Safety Code, is
3 amended to read as follows:

4 Sec. 436.071. MISBRANDED MOLLUSCAN SHELLFISH AND CRABMEAT.

5 Molluscan shellfish or crabmeat is misbranded if:

6 (1) its labeling is false, misleading, or fails to
7 conform with the requirements of Section [436.081](#);

8 (2) it is offered for sale under the name of another
9 food;

10 (3) its container is made, formed, or filled so as to
11 be misleading;

12 (4) a word, statement, or other information required
13 by this chapter or a rule adopted under this chapter to appear on a
14 label is not prominently and conspicuously placed on the label and
15 is not likely to be read and understood by the ordinary individual
16 under customary conditions of purchase and use; or

17 (5) it does not have a label containing:

18 (A) the name, address, and certification or
19 license number of the processor;

20 (B) an accurate statement in a uniform location
21 on the principal display panel of the quantity of the contents in
22 terms of weight, measure, or numerical count; and

23 (C) a date as provided by department rules

24 [~~adopted by the board~~].

25 SECTION 3.1110. Section [436.091](#), Health and Safety Code, is
26 amended to read as follows:

27 Sec. 436.091. DECLARATION OF PROHIBITED AREAS. (a) The

1 department [~~director~~] by order shall declare a body of public water
2 to be a prohibited area if:

3 (1) the department [~~director~~] finds, according to a
4 sanitary, chemical, or bacteriological survey, that the area
5 contains aquatic life that is unfit for human consumption; or

6 (2) aquatic life from a prohibited area may have been
7 transferred to that body of public water.

8 (b) The department [~~director~~] shall modify or revoke an
9 order according to the results of a sanitary, chemical, or
10 bacteriological survey conducted by the department. The department
11 [~~director~~] shall file the order in the department's office and
12 shall furnish without charge a copy of the order describing
13 prohibited areas on request.

14 (c) The department [~~director~~] shall conspicuously outline
15 prohibited areas on maps and shall furnish the maps without charge
16 on request. The failure of a person to obtain that information does
17 not relieve that person from liability under this chapter.

18 SECTION 3.1111. Section 436.101, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 436.101. CLASSIFICATION OF GROWING AREAS. (a) The
21 department [~~director~~] by order shall designate an area that is
22 coastal water according to the rules of the Parks and Wildlife
23 Commission as an approved area, a conditionally approved area, a
24 restricted area, a conditionally restricted area, or a prohibited
25 area, according to the classification categories in the current
26 National Shellfish Sanitation Program Guide for the Control of
27 Molluscan Shellfish [~~Manual of Operations~~] or its successor.

1 Coastal water is a prohibited area for the taking of molluscan
2 shellfish unless designated otherwise by the department
3 [director].

4 (b) The department [director] shall prohibit the taking of
5 molluscan shellfish for a specified period from water to which
6 molluscan shellfish may have been transferred from a restricted or
7 conditionally restricted area.

8 (c) The department [director] by order shall designate
9 growing areas as closed areas or open areas. The department
10 [director] shall modify or revoke an order according to the results
11 of sanitary and bacteriological surveys conducted by the
12 department. The department [director] shall file the order in the
13 department's office and shall furnish without charge a copy of the
14 order describing the open or closed area on request.

15 (d) The department [director] shall conspicuously outline
16 the classifications of areas for the taking of molluscan shellfish
17 on maps and shall furnish the maps without charge on request. The
18 failure of a person to obtain that information does not relieve that
19 person from liability under this chapter.

20 SECTION 3.1112. Section 436.102, Health and Safety Code, is
21 amended to read as follows:

22 Sec. 436.102. DEPURATION. (a) The department [director]
23 may allow depuration by artificial means of molluscan shellfish
24 taken from a restricted or conditionally restricted area, subject
25 to department [the] rules [~~adopted by the board~~] and under the
26 supervision the department [director] considers necessary to
27 protect public health.

1 (b) A molluscan shellfish plant operator may employ an
2 off-duty peace officer to monitor the gathering of shellfish for
3 depuration from a restricted or conditionally restricted area as
4 provided by the rules adopted [by the board] under Subsection (a).
5 In this subsection, "peace officer" includes those persons listed
6 in Article 2.12, Code of Criminal Procedure.

7 SECTION 3.1113. Section 436.107(b), Health and Safety Code,
8 is amended to read as follows:

9 (b) The council is composed of:

10 (1) two members appointed by the executive
11 commissioner [board] as nominated by the Texas Oyster Growers and
12 Dealers Association or a successor organization;

13 (2) one member appointed by the executive commissioner
14 [board] as nominated by the Coastal Oyster Leaseholder's
15 Association;

16 (3) two members appointed by the executive
17 commissioner [board] from a list of oyster dealers who have held a
18 shellfish certificate in this state for not less than six months of
19 each of the three years preceding the nomination and who are
20 certified at the time of appointment;

21 (4) one representative appointed by the chairman of
22 the Interstate Shellfish Sanitation Conference; and

23 (5) three consumer members, including one person
24 professionally licensed or with work experience in the field of
25 environmental survey, environmental sanitation, environmental
26 engineering, or a similar field related to environmental or
27 pollution conditions and their effect on molluscan shellfish

1 harvest areas, appointed by the speaker of the house of
2 representatives.

3 SECTION 3.1114. Section 436.108(a), Health and Safety Code,
4 is amended to read as follows:

5 (a) The Texas Oyster Council shall:

6 (1) advise the department [board] on the criteria used
7 by the department [~~director~~] under Section 436.101 to designate
8 growing areas as open or closed areas;

9 (2) advise the department [board] on the development
10 of standards and procedures relating to the licensing of molluscan
11 shellfish processors under this chapter;

12 (3) advise the department [board] on the content of
13 the rules adopted by the executive commissioner to implement the
14 provisions of this chapter relating to molluscan shellfish;

15 (4) perform any other functions requested by the
16 department [board] in implementing and administering the
17 provisions of this chapter relating to molluscan shellfish; and

18 (5) review information brought before the council
19 relating to molluscan shellfish.

20 SECTION 3.1115. Section 436.112, Health and Safety Code, is
21 amended to read as follows:

22 Sec. 436.112. RULEMAKING AUTHORITY. The executive
23 commissioner [board] may adopt rules for the enforcement of this
24 chapter. The executive commissioner [board] shall adopt rules
25 establishing specifications for molluscan shellfish processing and
26 crabmeat processing, and the department shall furnish without
27 charge printed copies of the rules on request.

1 SECTION 3.1116. Sections [436.113\(a\)](#), (b), (c), (d), and
2 (e), Health and Safety Code, are amended to read as follows:

3 (a) A person may not operate as a molluscan shellfish or
4 crabmeat processor unless the person submits an application for a
5 certificate or a license to the department according to department
6 rules [~~adopted by the board~~] and receives a certificate or license
7 for each plant or place of business.

8 (b) When an application has been properly filed with the
9 department, the department [~~director or an authorized agent~~] shall
10 inspect the property identified in the application, including
11 buildings and equipment, and the operating procedures under which
12 the product is processed.

13 (c) The department [~~director~~] shall issue a certificate or
14 license to a person who operates a plant or place of business that
15 conforms to the requirements of this chapter and department rules
16 [~~adopted by the board~~].

17 (d) A certificate is nontransferrable and expires at 11:59
18 p.m. on August 31 of the second [~~each~~] year of issuance.

19 (e) A license is nontransferrable and expires at 11:59 p.m.
20 on the last day of February of the second [~~each~~] year of issuance.

21 SECTION 3.1117. Section [436.114\(b\)](#), Health and Safety Code,
22 is amended to read as follows:

23 (b) The executive commissioner [~~board~~] by rule shall
24 establish minimum standards for a certificate or license and
25 criteria for the refusal to issue a certificate or license and the
26 suspension or revocation of a certificate or license.

27 SECTION 3.1118. Section [436.115\(a\)](#), Health and Safety Code,

1 is amended to read as follows:

2 (a) A hearing under this chapter is governed by the
3 procedures for a contested case hearing under Chapter 2001,
4 Government Code, and the department's [board's] formal hearing
5 rules.

6 SECTION 3.1119. Section 437.001(4), Health and Safety Code,
7 is amended to read as follows:

8 (4) "Food," "food service establishment," "retail
9 food store," "mobile food unit," "roadside food vendor," ["roadside
~~food vendor"~~,] and "temporary food service establishment" have the
11 meanings assigned to those terms by rules adopted [by the board]
12 under this chapter.

13 SECTION 3.1120. Section 437.0055(b), Health and Safety
14 Code, is amended to read as follows:

15 (b) A person required to obtain a permit under Subsection
16 (a) must apply every two years [~~annually~~] for the permit and must
17 pay any fees required by the department.

18 SECTION 3.1121. Section 437.0056, Health and Safety Code,
19 is amended to read as follows:

20 Sec. 437.0056. RULEMAKING AUTHORITY. The executive
21 commissioner [board] may adopt rules for the efficient enforcement
22 of this chapter by the department in an area not regulated under
23 this chapter by a county or public health district. The executive
24 commissioner [board] by rule shall establish minimum standards for
25 granting and maintaining a permit in an area not regulated under
26 this chapter by a county or public health district. The
27 commissioner may refuse an application for a permit or suspend or

1 revoke a permit in an area not regulated under this chapter by a
2 county or public health district.

3 SECTION 3.1122. Section 437.0057(e), Health and Safety
4 Code, is amended to read as follows:

5 (e) A county, a public health district, or the department
6 may require a food service establishment to:

7 (1) post a sign in a place conspicuous to employees, in
8 a form adopted by the executive commissioner [of the Health and
9 Human Services Commission], describing a food service employee's
10 responsibilities to report certain health conditions to the permit
11 holder under rules adopted by the executive commissioner; or

12 (2) require that each food service employee sign a
13 written agreement in a form adopted by the executive commissioner
14 to report those health conditions.

15 SECTION 3.1123. Sections 437.0076(b) and (d), Health and
16 Safety Code, are amended to read as follows:

17 (b) The executive commissioner [board] may require each
18 fixed or mobile location retail establishment in which food is
19 prepared on-site for sale to the public that is required to be
20 operated under a permit under Section 437.0055 to employ a food
21 manager certified under Subchapter G, Chapter 438.

22 (d) The executive commissioner [board] by rule may exempt
23 establishments other than the establishments described by
24 Subsection (c) from the requirement imposed under this section if
25 the executive commissioner [board] determines that the application
26 of the requirement to those establishments is not necessary to
27 protect public health and safety.

1 SECTION 3.1124. Section 437.0123(a), Health and Safety
2 Code, is amended to read as follows:

3 (a) A county that has a population of at least 2.8 million or
4 a public health district at least part of which is in a county that
5 has a population of at least 2.8 million may require the payment of
6 a fee for issuing or renewing a permit or for performing an
7 inspection to enforce this chapter or a rule adopted under this
8 chapter. A county with a population of at least 2.8 million may
9 require a trained food manager to be on duty during each day of
10 operation of a food service establishment. The training required
11 of food managers can be no more extensive than the training offered
12 by an education or training program accredited [that specified]
13 under Subchapter D, Chapter 438. A food service establishment that
14 handles only prepackaged food and does not prepare or package food
15 may not be required to have a certified food manager under this
16 section.

17 SECTION 3.1125. Sections 437.0125(b), (c), and (e), Health
18 and Safety Code, are amended to read as follows:

19 (b) The department may charge [annual] fees every two years.
20 (c) The executive commissioner [board] by rule shall set the
21 fees for issuing and renewing permits in amounts as prescribed by
22 Section 12.0111 and other fees in amounts that allow the department
23 to recover at least 50 percent of the [annual] expenditures by the
24 department for:

25 (1) reviewing and acting on a permit;
26 (2) amending [and renewing] a permit;
27 (3) inspecting a facility as provided by this chapter

1 and rules adopted under this chapter; and

(4) implementing and enforcing this chapter,
including a department rule or an order adopted or a license issued
by the department.

5 (e) All permit fees collected by the department under this
6 chapter shall be deposited in the state treasury to the credit of
7 the food and drug retail fee account [fund].

8 SECTION 3.1126. Section 437.013(a), Health and Safety Code,
9 is amended to read as follows:

10 (a) A county or public health district shall file an audited
11 statement with the department [Texas Department of Health] on or
12 before January 15 of each year.

13 SECTION 3.1127. Section 437.017, Health and Safety Code, is
14 amended to read as follows:

15 Sec. 437.017. CONFLICT WITH ALCOHOLIC BEVERAGE CODE. The
16 Alcoholic Beverage Code and rules adopted by the Texas Alcoholic
17 Beverage Commission control to the extent of a conflict between
18 this chapter or an order adopted under this chapter.

19 SECTION 3.1128. Sections 437.018(a), (d), (e), (f), (g),
20 (h), (i), (j), (k), (l), (m), and (n), Health and Safety Code, are
21 amended to read as follows:

22 (a) The department [commissioner] may impose an
23 administrative penalty against a person who holds a permit or who is
24 regulated under this chapter and who violates this chapter or a rule
25 or order adopted under this chapter.

26 (d) If the department [commissioner] determines that a
27 violation has occurred, the department [commissioner] shall issue

1 an order that states the facts on which the determination is based,
2 including an assessment of the penalty.

3 (e) Within 14 days after the date the order is issued, the
4 department [~~commissioner~~] shall give written notice of the order to
5 the person. The notice may be given by certified mail. The notice
6 must include a brief summary of the alleged violation and a
7 statement of the amount of the recommended penalty and must inform
8 the person that the person has a right to a hearing on the
9 occurrence of the violation, the amount of the penalty, or both the
10 occurrence of the violation and the amount of the penalty.

11 (f) Within 20 days after the date the person receives the
12 notice, the person in writing may accept the determination and
13 recommended penalty of the department [~~commissioner~~] or may make a
14 written request for a hearing on the occurrence of the violation,
15 the amount of the penalty, or both the occurrence of the violation
16 and the amount of the penalty.

17 (g) If the person accepts the determination and recommended
18 penalty [~~of the commissioner~~], the department [~~commissioner~~] by
19 order shall [~~approve the determination and~~] impose the recommended
20 penalty.

21 (h) If the person requests a hearing or fails to respond
22 timely to the notice, the department [~~commissioner~~] shall refer the
23 matter to the State Office of Administrative Hearings and an
24 administrative law judge of that office shall hold the hearing. The
25 department shall [~~set a hearing and~~] give written notice of the
26 hearing to the person. The [~~An~~] administrative law judge shall make
27 findings of fact and conclusions of law and promptly issue to the

1 department [~~commissioner~~] a written proposal for a decision about
2 the occurrence of the violation and the amount of a proposed
3 penalty. Based on the findings of fact, conclusions of law, and
4 proposal for a decision, the department [~~commissioner~~] by order may
5 find that a violation has occurred and impose a penalty or may find
6 that no violation occurred.

7 (i) The notice of the department's [~~commissioner's~~] order
8 given to the person under Chapter 2001, Government Code, must
9 include a statement of the right of the person to judicial review of
10 the order.

11 (j) Within 30 days after the date the department's [~~board's~~]
12 order is final as provided by Subchapter F, Chapter 2001,
13 Government Code, the person shall:

14 (1) pay the amount of the penalty;

15 (2) pay the amount of the penalty and file a petition
16 for judicial review contesting the occurrence of the violation, the
17 amount of the penalty, or both the occurrence of the violation and
18 the amount of the penalty; or

19 (3) without paying the amount of the penalty, file a
20 petition for judicial review contesting the occurrence of the
21 violation, the amount of the penalty, or both the occurrence of the
22 violation and the amount of the penalty.

23 (k) Within the 30-day period, a person who acts under
24 Subsection (j)(3) of this section may:

25 (1) stay enforcement of the penalty by:

26 (A) paying the amount of the penalty to the court
27 for placement in an escrow account; or

1 (B) giving to the court a supersedeas bond that
2 is approved by the court for the amount of the penalty and that is
3 effective until all judicial review of the department's [~~board's~~]
4 order is final; or

5 (2) request the court to stay enforcement of the
6 penalty by:

7 (A) filing with the court a sworn affidavit of
8 the person stating that the person is financially unable to pay the
9 amount of the penalty and is financially unable to give the
10 supersedeas bond; and

11 (B) giving a copy of the affidavit to the
12 department [~~commissioner~~] by certified mail.

13 (1) The department [~~commissioner~~] on receipt of a copy of an
14 affidavit under Subsection (k)(2) [~~of this section~~] may file with
15 the court, within five days after the date the copy is received, a
16 contest to the affidavit. The court shall hold a hearing on the
17 facts alleged in the affidavit as soon as practicable and shall stay
18 the enforcement of the penalty on finding that the alleged facts are
19 true. The person who files an affidavit has the burden of proving
20 that the person is financially unable to pay the amount of the
21 penalty and to give a supersedeas bond.

22 (m) If the person does not pay the amount of the penalty and
23 the enforcement of the penalty is not stayed, the department
24 [~~commissioner~~] may refer the matter to the attorney general for
25 collection of the amount of the penalty.

26 (n) Judicial review of the order of the department
27 [~~commissioner~~]:

1 (1) is instituted by filing a petition as provided by
2 Subchapter G, Chapter 2001, Government Code; and

3 (2) is under the substantial evidence rule.

4 SECTION 3.1129. Section 437.019(b), Health and Safety Code,
5 is amended to read as follows:

6 (b) Except as provided by Subsection (c), a bed and
7 breakfast establishment that has more than seven rooms for rent, or
8 that provides food service other than breakfast to its overnight
9 guests, is a food service establishment for purposes of this
10 chapter but may not be required to meet all criteria applicable to a
11 larger food service establishment such as a restaurant. The
12 executive commissioner [board], commissioners court, governing
13 body, or administrative board, as applicable, shall adopt minimum
14 standards for a bed and breakfast establishment covered by this
15 subsection.

16 SECTION 3.1130. Section 438.004(a), Health and Safety Code,
17 is amended to read as follows:

18 (a) The executive commissioner [~~Texas Board of Health~~] by
19 rule may establish requirements stricter than the requirements
20 prescribed by Section 438.003 for the display and sale of
21 unpackaged foods if the transmission of a disease infestation or
22 contamination is directly related to a method of displaying and
23 selling unpackaged food authorized by this subchapter.

24 SECTION 3.1131. Section 438.014(a), Health and Safety Code,
25 is amended to read as follows:

26 (a) After cleaning dishes, receptacles, utensils,
27 food-grinding machines, and implements as required by Section

1 438.012 or 438.013, the items shall be:

2 (1) placed in a wire cage and immersed in a still bath

3 of clear water for at least:

4 (A) three minutes in water heated to a minimum
5 temperature of 170 degrees Fahrenheit; or

6 (B) two minutes in water heated to a minimum
7 temperature of 180 degrees Fahrenheit;

8 (2) immersed for at least two minutes in a lukewarm
9 chlorine bath made up at a strength of 100 parts per milliliter or
10 more of hypochlorites and not reduced to less than 50 parts per
11 milliliter available chlorine, or a concentration of equal
12 bacteriacidal strength if chloramines are used; or

13 (3) sterilized by any other chemical method approved
14 by the department [Texas Board of Health].

15 SECTION 3.1132. Section 438.033(a), Health and Safety Code,
16 is amended to read as follows:

17 (a) On the request of an employer, the department [Texas
18 Board of Health] or the department's [board's] representative, or
19 the local health authority or the local health authority's
20 representative, a person employed or seeking employment in an
21 activity regulated under Section 438.032:

22 (1) shall be examined by a licensed physician; and

23 (2) must receive a certificate signed by the physician
24 stating that the examination has been performed and that to the best
25 of the physician's knowledge the person examined did not have on the
26 date of the examination a transmissible condition of a communicable
27 disease or a local infection commonly transmitted through the

1 handling of food.

2 SECTION 3.1133. The heading to Section [438.042](#), Health and
3 Safety Code, is amended to read as follows:

4 Sec. 438.042. DUTIES OF EXECUTIVE COMMISSIONER [~~BOARD~~].

5 SECTION 3.1134. Section [438.042](#)(a), Health and Safety Code,
6 is amended to read as follows:

7 (a) The executive commissioner [~~Texas Board of Health~~]
8 shall adopt standards and procedures for the accreditation of
9 education and training programs for persons employed in the food
10 service industry.

11 SECTION 3.1135. Section [438.042](#)(b), Health and Safety Code,
12 as added by Chapter 539 (S.B. 873), Acts of the 72nd Legislature,
13 Regular Session, 1991, is amended to read as follows:

14 (b) The executive commissioner [~~Texas Board of Health~~]
15 shall adopt standards and procedures for the accreditation of
16 education and training programs for recertification of persons
17 employed in the food service industry who have previously completed
18 a program accredited in accordance with this subchapter or have
19 been certified by a local health jurisdiction and have completed
20 training and testing requirements substantially similar to those
21 required by this subchapter for program accreditation. The
22 requirements for accreditation in Section [438.043](#) need not be met
23 by an education or training program for recertification.

24 SECTION 3.1136. Section [438.0431](#)(b), Health and Safety
25 Code, is amended to read as follows:

26 (b) The executive commissioner [~~of the Health and Human~~
27 ~~Services Commission~~] shall by rule define the basic food safety

1 training or education required to be included in a course
2 curriculum. The course length may not exceed two hours.

3 SECTION 3.1137. Section 438.047, Health and Safety Code, is
4 amended to read as follows:

5 Sec. 438.047. FEES. The department in accordance with
6 department rules shall charge an application fee and an audit fee
7 sufficient to cover the entire cost of accreditation, audit, and
8 maintenance of the registry.

9 SECTION 3.1138. Section 438.102, Health and Safety Code, is
10 amended to read as follows:

11 Sec. 438.102. CERTIFICATION PROGRAM. (a) The executive
12 commissioner [board] shall establish a certification program for
13 food managers in accordance with this subchapter.

14 (b) The executive commissioner [board] by rule shall
15 prescribe the requirements for issuance and renewal of a food
16 manager certificate under this subchapter.

17 SECTION 3.1139. Section 438.104, Health and Safety Code, is
18 amended to read as follows:

19 Sec. 438.104. APPROVAL OF EXAMINATIONS; SELECTION OF
20 EXAMINATION SITES. (a) The executive commissioner [board] shall
21 adopt criteria to approve examinations.

22 (b) In administering this subchapter, the department
23 [board] shall consider the impact of the traveling distance and
24 time required for a food manager to obtain certification. The
25 department [board] shall give particular consideration to
26 mitigating the impact of this subchapter on food managers in rural
27 areas. The department [board] shall use the Internet to implement

1 the certification and may develop a system to permit administration
2 of the examination using the Internet.

3 SECTION 3.1140. Section [438.106](#), Health and Safety Code, is
4 amended to read as follows:

5 Sec. 438.106. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER
6 [~~BOARD~~]; FEES. (a) The executive commissioner [~~board~~] by rule may
7 adopt a fee for issuance or renewal of a food manager certificate
8 under this subchapter in amounts reasonable and necessary to
9 administer this subchapter, but not to exceed \$35.

10 (b) The executive commissioner [~~board~~] by rule may adopt a
11 fee, in an amount not to exceed \$10, for an examination administered
12 by the department under this subchapter.

13 (c) The executive commissioner [~~board~~] may adopt rules for
14 the denial, suspension, and revocation of a food manager
15 certificate issued under this subchapter.

16 (d) The executive commissioner [~~board~~] by rule may
17 prescribe standards for:

18 (1) examination sites;

19 (2) expenses of administration of examinations under
20 this subchapter; and

21 (3) site audits for administration of this subchapter.

22 SECTION 3.1141. Section [439.002](#), Health and Safety Code, is
23 amended to read as follows:

24 Sec. 439.002. MANUFACTURE AND SALE. Unless prohibited by
25 federal law, laetrile [~~Laetrile~~] may be manufactured in this state
26 in accordance with Chapter 431 (Texas Food, Drug, and Cosmetic Act)
27 and may be sold in this state for distribution by licensed

1 physicians.

2 SECTION 3.1142. Sections [439.003](#)(a) and (b), Health and
3 Safety Code, are amended to read as follows:

4 (a) Unless prohibited by federal law, a [A] licensed
5 physician may prescribe or administer laetrile in the treatment of
6 cancer.

7 (b) A physician acting in accordance with federal and state
8 law is not subject to disciplinary action by the Texas ~~[State Board~~
9 ~~of]~~ Medical Board ~~[Examiners]~~ for prescribing or administering
10 laetrile to a patient under the physician's care who has requested
11 the substance unless that board makes a formal finding that the
12 substance is harmful.

13 SECTION 3.1143. Sections [439.005](#)(b) and (c), Health and
14 Safety Code, are amended to read as follows:

15 (b) The Texas ~~[State Board of]~~ Medical Board ~~[Examiners]~~ may
16 suspend, cancel, or revoke the license of any physician who:

17 (1) fails to keep complete and accurate records of
18 purchases and disposals of laetrile;

19 (2) prescribes or dispenses laetrile to a person known
20 to be a habitual user of narcotic or dangerous drugs or to a person
21 who the physician should have known was a habitual user of narcotic
22 or dangerous drugs;

23 (3) uses any advertising that tends to mislead or
24 deceive the public; or

25 (4) is unable to practice medicine with reasonable
26 skill and safety to patients because of any mental or physical
27 condition, including age, illness, or drunkenness, or because of

1 excessive use of drugs, narcotics, chemicals, or any other type of
2 material.

3 (c) Subsection (b)(2) does not apply to a person being
4 treated by the physician for narcotic use after the physician
5 notifies the Texas ~~State Board of~~ Medical Board ~~Examiners~~ in
6 writing of the name and address of the patient being treated.

7 SECTION 3.1144. Sections [439.015](#)(b) and (c), Health and
8 Safety Code, are amended to read as follows:

9 (b) The Texas ~~State Board of~~ Medical Board ~~Examiners~~ may
10 suspend, cancel, or revoke the license of any physician who:

11 (1) fails to keep complete and accurate records of
12 purchases and disposals of DMSO in a formulation not approved for
13 human use; or

14 (2) prescribes or administers DMSO in a manner that
15 has been proven, in a formal hearing held by the board, to be
16 harmful to the patient.

17 (c) The Texas ~~State Board of~~ Medical Board ~~Examiners~~ may
18 temporarily suspend the license of a physician who prescribes or
19 administers DMSO in a manner that, in the board's opinion, creates
20 an immediate danger to the public. The board must conduct a hearing
21 on the temporary suspension as soon as practicable after the
22 suspension.

23 SECTION 3.1145. Section [439.021](#)(d), Health and Safety Code,
24 is amended to read as follows:

25 (d) The consulting pharmacist shall account to the
26 department ~~Texas Department of Health~~ for all drugs selected for
27 shipment under this subchapter.

1 SECTION 3.1146. Section 439.022, Health and Safety Code, is
2 amended to read as follows:

3 Sec. 439.022. ADMINISTRATION. (a) The executive
4 commissioner [~~Texas Board of Health~~] shall adopt rules consistent
5 with federal and state law to implement this subchapter, including
6 rules relating to:

7 (1) the packaging and inventory of drugs for shipment;
8 (2) the manner of shipment of the drugs from original
9 shipment under this subchapter until the final destination; and
10 (3) safeguards to ensure the proper handling of and
11 accounting for all drugs shipped.

12 (b) The executive commissioner [~~Texas Board of Health~~] by
13 rule shall determine, in consultation with the United States
14 Department of State and other appropriate federal agencies, the
15 foreign countries to receive the drugs.

16 (c) The salvaging of drugs under this subchapter is not
17 subject to Chapter 431 (Texas Food, Drug, and Cosmetic Act).

18 SECTION 3.1147. Section 439.023(a), Health and Safety Code,
19 is amended to read as follows:

20 (a) The department [~~Texas Department of Health~~] may
21 contract with other entities, including local governments and civic
22 organizations, to implement this subchapter.

23 SECTION 3.1148. Section 440.003(9), Health and Safety Code,
24 is amended to read as follows:

25 (9) "Health authority" means the department, the
26 municipal or county[~~, or state~~] health officer or the officer's
27 representative, or any other agency having jurisdiction or control

1 over the matters embraced within the specifications and
2 requirements of this chapter.

3 SECTION 3.1149. Section 440.005, Health and Safety Code, is
4 amended to read as follows:

5 Sec. 440.005. HEARINGS. [(a)] A hearing conducted [~~by the~~
6 ~~board~~] in the administration of this chapter is governed by Chapter
7 2001, Government Code.

8 ~~[(b)] Based on the record of a hearing conducted under this~~
9 ~~chapter, the department shall make a finding and shall sustain,~~
10 ~~change, or rescind an official notice or order considered in the~~
11 ~~hearing.]~~

12 SECTION 3.1150. Section 440.006, Health and Safety Code, is
13 amended to read as follows:

14 Sec. 440.006. POWERS [~~AND DUTIES~~] OF EXECUTIVE COMMISSIONER
15 [~~BOARD~~]. The executive commissioner [~~board~~] may:

16 (1) adopt rules prescribing standards or related
17 requirements for the operation of establishments for the
18 manufacture of frozen desserts, imitation frozen desserts,
19 products sold in semblance of frozen desserts, or mixes for those
20 products, including standards or requirements for the:

21 (A) health, cleanliness, education, and training
22 of personnel who are employed in the establishments;

23 (B) protection of raw materials, manufactured
24 merchandise, and merchandise held for sale;

25 (C) design, construction, installation, and
26 cleanliness of equipment and utensils;

27 (D) sanitary facilities and controls of the

1 establishments;

2 (E) establishment construction and maintenance,

3 including vehicles;

4 (F) production processes and controls; and

5 (G) institution and content of a system of

6 records to be maintained by the establishment; and

7 (2) adopt rules prescribing procedures for the

8 enforcement of the standards or related requirements prescribed

9 under Subdivision (1), including procedures for the:

10 (A) requirement of a valid license to operate an

11 establishment;

12 (B) issuance, suspension, revocation, and

13 reinstatement of licenses;

14 (C) administrative hearings held under this

15 chapter [before the board or its designee];

16 (D) institution of certain court proceedings by

17 the department [board] or its designee;

18 (E) inspection of establishments and securing of

19 samples of frozen desserts, imitation frozen desserts, products

20 sold in semblance of frozen desserts, or mixes for those products;

21 (F) access to the establishments and to the

22 vehicles used in operations;

23 (G) compliance by manufacturers outside the

24 jurisdiction of the state; and

25 (H) review of plans for future construction.

26 SECTION 3.1151. Sections **440.012(a), (c), and (d)**, Health

27 and Safety Code, are amended to read as follows:

1 (a) A person desiring to operate an establishment for the
2 manufacture of a frozen dessert, imitation frozen dessert, product
3 sold in semblance of a frozen dessert, or a mix for one of those
4 products may apply to the department for a license. A license shall
5 be granted under the department's procedural rules [~~adopted by the~~
6 ~~board~~] and shall be issued only for the purpose and use as stated on
7 the application for a license.

8 (c) A license may not be issued to a person who does not
9 comply with the standards prescribed by department rule [~~the board~~]
10 under this chapter.

11 (d) A license issued under this chapter must be renewed
12 every two years [~~on or before September 1 of each year~~] in
13 accordance with department rules [~~adopted by the board~~].

14 SECTION 3.1152. Sections 440.013(a), (b), and (c), Health
15 and Safety Code, are amended to read as follows:

16 (a) A [~~\$200~~] nonrefundable fee for each establishment in an
17 amount set by the executive commissioner by rule as prescribed by
18 Section 12.0111 must accompany each application for a license.

19 (b) The department also shall assess the following fees in
20 the amounts set by the executive commissioner by rule as prescribed
21 by Section 12.0111:

22 (1) a fee for a frozen dessert manufacturer located in
23 this state in an [~~the~~] amount [~~of one cent~~] per 100 pounds of
24 manufactured or processed frozen dessert manufactured or processed
25 and distributed in this state by that manufacturer;

26 (2) a fee for a frozen dessert manufacturer not
27 located in this state in an [~~the~~] amount [~~of one cent~~] per 100

1 pounds of frozen desserts manufactured or processed by the
2 manufacturer in another state and imported for sale in this state;
3 and

4 (3) a fee for the actual cost of analyzing samples of
5 frozen desserts for a frozen dessert manufacturer not located in
6 this state.

7 (c) The executive commissioner [board] shall adopt rules to
8 collect fees imposed under this section monthly[~~, quarterly,~~
~~semiannually, or annually~~] based on amounts due by the frozen
10 dessert manufacturer.

11 SECTION 3.1153. Section 440.014, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 440.014. RECORDKEEPING [RECORD KEEPING]. The
14 executive commissioner [board] shall adopt rules establishing
15 minimum standards for recordkeeping [~~record keeping~~] by persons
16 required to pay fees under this chapter and the records shall be
17 made available to the department on request.

18 SECTION 3.1154. Section 440.017, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 440.017. REFUSAL TO GRANT LICENSE; SUSPENSION OR
21 REVOCATION OF LICENSE. In accordance with rules adopted under
22 Section 440.006, the department [~~commissioner~~] may refuse an
23 application for a license under this chapter or may suspend or
24 revoke a license issued under this chapter.

25 SECTION 3.1155. Section 440.031(a), Health and Safety Code,
26 is amended to read as follows:

27 (a) Under rules adopted by the executive commissioner

1 [board], the department's authorized representatives have free
2 access at all reasonable hours to any establishment for the
3 manufacture of a frozen dessert, imitation frozen dessert, product
4 sold in semblance of a frozen dessert, or a mix for one of those
5 products or to any vehicle being used to transport in commerce a
6 frozen dessert, imitation frozen dessert, product sold in semblance
7 of a frozen dessert, or a mix for one of those products for the
8 purpose of:

9 (1) inspecting the establishment or vehicle to
10 determine compliance with the standards or related requirements
11 prescribed [by the board] under this chapter; or

12 (2) securing samples of frozen desserts, imitation
13 frozen desserts, products sold in semblance of frozen desserts, or
14 a mix for one of those products for the purpose of making or causing
15 to be made an examination of the samples to determine compliance
16 with the standards or related requirements prescribed [by the
17 board] under this chapter.

18 SECTION 3.1156. Section 440.032(a), Health and Safety Code,
19 is amended to read as follows:

20 (a) A person commits an offense if the person knowingly or
21 intentionally violates Section 440.011 or a rule adopted [by the
22 board] under this chapter.

23 SECTION 3.1157. Section 441.003, Health and Safety Code, is
24 amended to read as follows:

25 Sec. 441.003. RULES. The executive commissioner
26 [department] may adopt rules that are necessary to implement this
27 chapter that promote the public health and safety. The rules may

1 include rules relating to certificate suspension, revocation, or
2 other disciplinary action and relating to certificate renewal.

3 SECTION 3.1158. Subtitle B, Title 6, Health and Safety
4 Code, is amended to conform to Chapter 461, Health and Safety Code,
5 as it existed on August 31, 2009, and to Section 1.19(a)(3), Chapter
6 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session,
7 2003, by adding Chapter 461A to read as follows:

8 CHAPTER 461A. DEPARTMENT OF STATE HEALTH SERVICES: CHEMICAL

9 DEPENDENCY SERVICES AND RELATED PROGRAMS

10 SUBCHAPTER A. GENERAL PROVISIONS

11 Sec. 461A.001. POLICY. Chemical dependency is a
12 preventable and treatable illness and public health problem
13 affecting the general welfare and the economy of this state. The
14 legislature recognizes the need for proper and sufficient
15 facilities, programs, and procedures for prevention, intervention,
16 treatment, and rehabilitation. It is the policy of this state that
17 a person with a chemical dependency shall be offered a continuum of
18 services that will enable the person to lead a normal life as a
19 productive member of society.

20 Sec. 461A.002. DEFINITIONS. In this chapter:

21 (1) "Chemical dependency" means:

22 (A) abuse of alcohol or a controlled substance;

23 (B) psychological or physical dependence on
24 alcohol or a controlled substance; or

25 (C) addiction to alcohol or a controlled
26 substance.

27 (2) "Commission" means the Health and Human Services

1 Commission.

2 (3) "Commissioner" means the commissioner of state
3 health services.

4 (4) "Controlled substance" means a:

5 (A) toxic inhalant; or
6 (B) substance designated as a controlled
7 substance by Chapter 481.

8 (5) "Department" means the Department of State Health
9 Services.

10 (6) "Executive commissioner" means the executive
11 commissioner of the Health and Human Services Commission.

12 (7) "Intervention" means the interruption of the onset
13 or progression of chemical dependency in the early stages.

14 (8) "Prevention" means the reduction of a person's
15 risk of abusing alcohol or a controlled substance or becoming
16 chemically dependent.

17 (9) "Rehabilitation" means the reestablishment of the
18 social and vocational life of a person after treatment.

19 (10) "Toxic inhalant" means a gaseous substance that
20 is inhaled by a person to produce a desired physical or
21 psychological effect and that may cause personal injury or illness
22 to the person.

23 (11) "Treatment" means the initiation and promotion,
24 in a planned, structured, and organized manner, of a person's
25 chemical-free status or the maintenance of a person free of illegal
26 drugs.

27 (12) "Treatment facility" means a public or private

1 hospital, a detoxification facility, a primary care facility, an
2 intensive care facility, a long-term care facility, an outpatient
3 care facility, a community mental health center, a health
4 maintenance organization, a recovery center, a halfway house, an
5 ambulatory care facility, another facility that is required to be
6 licensed and approved by the department under Chapter 464, or a
7 facility licensed or operated under Title 7 that provides treatment
8 services. The term does not include an educational program for
9 intoxicated drivers or the individual office of a private, licensed
10 health care practitioner who personally renders private individual
11 or group services within the scope of the practitioner's license
12 and in the practitioner's office.

13 Sec. 461A.003. IMPLEMENTATION BY DEPARTMENT. The
14 department shall implement this chapter for the purpose of
15 preventing broken homes and the loss of lives.

16 Sec. 461A.004. COOPERATION WITH DEPARTMENT. (a) Each
17 department, agency, officer, and employee of the state, when
18 requested by the department, shall cooperate with the department in
19 appropriate activities to implement this chapter.

20 (b) This section does not give the department control over
21 existing facilities, institutions, or agencies or require the
22 facilities, institutions, or agencies to serve the department in a
23 manner that is inconsistent with the functions, the authority, or
24 the laws and rules governing the activities of the facilities,
25 institutions, or agencies.

26 (c) This section does not authorize the department to use a
27 private institution or agency without its consent or to pay a

1 private institution or agency for services that a public
2 institution or agency is willing and able to provide.

3 Sec. 461A.005. CONFLICT WITH OTHER LAW. To the extent a
4 power or duty given to the department or commissioner by this
5 chapter conflicts with Section 531.0055, Government Code, Section
6 531.0055 controls.

7 SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT, COMMISSIONER, AND
8 EXECUTIVE COMMISSIONER

9 Sec. 461A.051. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER.

10 The executive commissioner shall:

11 (1) adopt rules governing the functions of the
12 department in relation to chemical dependency services and related
13 programs, including rules that prescribe the policies and
14 procedures followed by the department in administering chemical
15 dependency services and related programs; and

16 (2) by rule and based on criteria proposed by the
17 department, establish minimum criteria that peer assistance
18 programs must meet to be governed by and entitled to the benefits of
19 a law that authorizes licensing and disciplinary authorities to
20 establish or approve peer assistance programs for impaired
21 professionals.

22 Sec. 461A.052. POWERS AND DUTIES OF DEPARTMENT. (a) The
23 department shall:

24 (1) provide for research and study of the problems of
25 chemical dependency in this state and seek to focus public
26 attention on those problems through public information and
27 education programs;

1 (2) plan, develop, coordinate, evaluate, and
2 implement constructive methods and programs for the prevention,
3 intervention, treatment, and rehabilitation of chemical dependency
4 in cooperation with federal and state agencies, local governments,
5 organizations, and persons, and provide technical assistance,
6 funds, and consultation services for statewide and community-based
7 services;

8 (3) cooperate with and enlist the assistance of:
9 (A) other state, federal, and local agencies;
10 (B) hospitals and clinics;
11 (C) public health, welfare, and criminal justice
12 system authorities;

13 (D) educational and medical agencies and
14 organizations; and
15 (E) other related public and private groups and
16 persons;

17 (4) expand chemical dependency services for children
18 when funds are available because of the long-term benefits of those
19 services to this state and its citizens;

20 (5) sponsor, promote, and conduct educational
21 programs on the prevention and treatment of chemical dependency,
22 and maintain a public information clearinghouse to purchase and
23 provide books, literature, audiovisuals, and other educational
24 material for the programs;

25 (6) sponsor, promote, and conduct training programs
26 for persons delivering prevention, intervention, treatment, and
27 rehabilitation services and for persons in the criminal justice

1 system or otherwise in a position to identify the service needs of
2 persons with a chemical dependency and their families;

3 (7) require programs rendering services to persons
4 with a chemical dependency to safeguard those persons' legal rights
5 of citizenship and maintain the confidentiality of client records
6 as required by state and federal law;

7 (8) maximize the use of available funds for direct
8 services rather than administrative services;

9 (9) consistently monitor the expenditure of funds and
10 the provision of services by all grant and contract recipients to
11 assure that the services are effective and properly staffed and
12 meet the standards adopted under this chapter;

13 (10) make the monitoring reports prepared under
14 Subdivision (9) a matter of public record;

15 (11) license treatment facilities under Chapter 464;

16 (12) use funds appropriated to the department for
17 purposes of providing chemical dependency services and related
18 programs to carry out those purposes and maximize the overall state
19 allotment of federal funds;

20 (13) plan, develop, coordinate, evaluate, and
21 implement constructive methods and programs to provide healthy
22 alternatives for youth at risk of selling controlled substances;

23 (14) submit to the federal government reports and
24 strategies necessary to comply with Section 1926 of the federal
25 Alcohol, Drug Abuse, and Mental Health Administration
26 Reorganization Act, Pub. L. No. 102-321 (42 U.S.C. Section
27 300x-26), and coordinate the reports and strategies with

1 appropriate state governmental entities; and

2 (15) regulate, coordinate, and provide training for
3 alcohol awareness courses required under Section 106.115,
4 Alcoholic Beverage Code, and may charge a fee for an activity
5 performed by the department under this subdivision.

6 (b) The department may establish regional alcohol advisory
7 committees consistent with the regions established under Section
8 531.024, Government Code.

9 (c) The department may appoint advisory committees to
10 assist the department in performing its duties under this chapter.
11 A member of an advisory committee appointed under this subsection
12 may receive reimbursement for travel expenses as provided by
13 Section 2110.004, Government Code.

14 (d) The department shall comply with federal and state laws
15 related to program and facility accessibility.

16 (e) The commissioner shall prepare and maintain a written
17 plan that describes how a person who does not speak English can be
18 provided reasonable access to the department's programs and
19 services under this chapter.

20 (f) Subsection (a)(15) does not apply to a 12-step or
21 similar self-help alcohol dependency recovery program:

22 (1) that does not offer or purport to offer an alcohol
23 dependency treatment program;

24 (2) that does not charge program participants; and

25 (3) in which program participants may maintain
26 anonymity.

27 Sec. 461A.053. EMERGENCY TREATMENT RESOURCES. The

1 commissioner may develop emergency treatment resources for persons
2 who appear to be:

3 (1) chemically dependent;
4 (2) under the influence of alcohol or a controlled
5 substance and in need of medical attention; or
6 (3) undergoing withdrawal or experiencing medical
7 complications related to a chemical dependency.

8 Sec. 461A.054. REFERRAL SERVICES FOR PERSONS FROM CRIMINAL
9 JUSTICE SYSTEM. (a) The commissioner may establish programs for
10 the referral, treatment, or rehabilitation of persons from the
11 criminal justice system within the terms of bail, probation,
12 conditional discharge, parole, or other conditional release.

13 (b) A referral may not be inconsistent with medical or
14 clinical judgment or conflict with this chapter or Chapter 462 or
15 applicable federal regulations.

16 Sec. 461A.055. REPORTING OF CHILDREN INVOLVED IN SUBSTANCE
17 ABUSE OR FROM FAMILY INVOLVED IN SUBSTANCE ABUSE. (a) The
18 department in the context of mental health services, the
19 commission, the Department of Aging and Disability Services, and
20 the Texas Juvenile Justice Department shall:

21 (1) attempt to determine whether a child under the
22 agency's jurisdiction is involved in substance abuse or is from a
23 substance-abusing family;

24 (2) record its determination in the case record of the
25 child; and

26 (3) record the information for statistical reporting
27 purposes.

1 (b) The agencies shall revise their assessment forms, as
2 needed, to include a determination under this section.

3 (c) The department shall coordinate the efforts of the
4 agencies described by Subsection (a) in complying with this
5 section.

6 Sec. 461A.056. STATEWIDE SERVICE DELIVERY PLAN. (a) The
7 department shall develop and adopt a statewide service delivery
8 plan. The department shall update the plan not later than February
9 1 of each even-numbered year. The plan must include:

10 (1) a statement of the department's mission, goals,
11 and objectives regarding chemical dependency prevention,
12 intervention, and treatment;

13 (2) a statement of how chemical dependency services
14 and chemical dependency case management services should be
15 organized, managed, and delivered;

16 (3) a comprehensive assessment of:

17 (A) chemical dependency services available in
18 this state at the time the plan is prepared; and

19 (B) future chemical dependency services needs;

20 (4) a service funding process that ensures equity in
21 the availability of chemical dependency services across this state
22 and within each service region established under Section 531.024,
23 Government Code;

24 (5) a provider selection and monitoring process that
25 emphasizes quality in the provision of services;

26 (6) a description of minimum service levels for each
27 region;

1 (7) a mechanism for the department to obtain and
2 consider local public participation in identifying and assessing
3 regional needs for chemical dependency services;

4 (8) a process for coordinating and assisting
5 administration and delivery of services among federal, state, and
6 local public and private chemical dependency programs that provide
7 similar services; and

8 (9) a process for coordinating the department's
9 activities with those of other state health and human services
10 agencies and criminal justice agencies to avoid duplications and
11 inconsistencies in the efforts of the agencies in chemical
12 dependency prevention, intervention, treatment, rehabilitation,
13 research, education, and training.

14 (b) The department shall gather information needed for the
15 development of the plan through systematic methods designed to
16 include local, regional, and statewide perspectives.

17 (c) In developing the plan, the department shall analyze the
18 costs of implementation of proposed features of the plan by both the
19 department and service providers. The department shall use the
20 analysis to maximize the efficiency of service delivery under the
21 final plan.

22 (d) The plan must provide a priority for obtaining treatment
23 services for individuals in need of treatment who are parents of a
24 child in foster care.

25 Sec. 461A.057. STATE AGENCY SERVICES STANDARDS. (a) The
26 executive commissioner by rule shall develop model program
27 standards for substance abuse services for use by each state agency

1 that provides or pays for substance abuse services. The department
2 shall provide the model standards to each agency that provides
3 substance abuse services as identified by the commission.

4 (b) Model standards developed under Subsection (a) must be
5 designed to improve the consistency of substance abuse services
6 provided by or through a state agency.

7 (c) Biennially the department shall review the model
8 standards developed under Subsection (a) and determine whether each
9 standard contributes effectively to the consistency of service
10 delivery by state agencies.

11 SUBCHAPTER C. SERVICES AND PROGRAMS

12 Sec. 461A.101. LOCAL BEHAVIORAL HEALTH AUTHORITIES. The
13 department may designate and provide services through local
14 behavioral health authorities as provided by Section 533.0356 and
15 rules adopted by the executive commissioner.

16 Sec. 461A.102. EDUCATION AND RESEARCH PROGRAMS CONCERNING
17 CONTROLLED SUBSTANCES. (a) In this section, "controlled
18 substances" means those substances designated as controlled
19 substances by Chapter 481.

20 (b) The department, in cooperation with other appropriate
21 state agencies, shall carry out educational programs designed to
22 prevent or deter misuse and abuse of controlled substances. In
23 connection with those programs the department may:

24 (1) promote better recognition of the problems of
25 misuse and abuse of controlled substances within the regulated
26 industry and among interested groups and organizations;

27 (2) assist the regulated industry and interested

1 groups and organizations in contributing to the reduction of misuse
2 and abuse of controlled substances;

3 (3) consult with interested groups and organizations
4 to aid those groups in solving administrative and organizational
5 problems;

6 (4) evaluate procedures, projects, techniques, and
7 controls conducted or proposed as part of educational programs on
8 misuse and abuse of controlled substances;

9 (5) disseminate the results of research on misuse and
10 abuse of controlled substances to promote a better public
11 understanding of problems that exist and ways to combat those
12 problems; and

13 (6) assist in educating and training state and local
14 law enforcement officials in their efforts to control misuse and
15 abuse of controlled substances.

16 (c) The department shall encourage research on misuse and
17 abuse of controlled substances. In connection with research, and
18 in furtherance of the enforcement of Chapter 481, the commissioner
19 may:

20 (1) establish methods to assess accurately the effects
21 of controlled substances and identify and characterize those with
22 potential for abuse;

23 (2) make studies and undertake programs of research
24 to:

25 (A) develop new or improved approaches,
26 techniques, systems, equipment, and devices to strengthen the
27 enforcement of Chapter 481;

1 (B) determine patterns and social effects of
2 misuse and abuse of controlled substances; and

3 (C) improve methods for preventing, predicting,
4 understanding, and dealing with the misuse and abuse of controlled
5 substances; and

6 (3) contract with public agencies, institutions of
7 higher education, and private organizations or individuals to
8 conduct research, demonstrations, or special projects that
9 directly pertain to the misuse and abuse of controlled substances.

10 Sec. 461A.103. OUTREACH PROGRAMS FOR INTRAVENOUS DRUG
11 USERS. (a) In this section, "HIV" means human immunodeficiency
12 virus.

13 (b) The department may fund community outreach programs
14 that have direct contact with intravenous drug users.

15 (c) An outreach program funded by the department must:

16 (1) provide education on HIV infection based on the
17 model education program developed by the department;

18 (2) encourage behavior changes to reduce the
19 possibility of HIV transmission;

20 (3) promote other HIV risk reduction activities; and

21 (4) encourage behavior consistent with state criminal
22 laws.

23 Sec. 461A.104. MINIMUM PROGRAM REQUIREMENTS. (a) In this
24 section, "coping skills training" means instruction in the elements
25 and practice of and reasons for the skills of communication, stress
26 management, problem solving, daily living, and decision making.

27 (b) A chemical dependency intensive intervention,

1 outpatient, residential treatment, or rehabilitation program that
2 is provided by the department or that is funded wholly or partly by
3 funds allocated through the department must include:

4 (1) coping skills training;
5 (2) education regarding the manifestations and
6 dynamics of dysfunctional relationships within the family; and
7 (3) support group opportunities for children and
8 adults.

9 (c) This section does not apply to:

10 (1) a detoxification program or that part of a program
11 that provides detoxification; or
12 (2) a program provided by the Texas Juvenile Justice
13 Department.

14 Sec. 461A.105. RELAPSE RATE REPORTING. (a) A treatment
15 program provided or funded by the department shall report to the
16 department on the effectiveness of the chemical dependency
17 treatment program.

18 (b) The report must show to the extent possible, without
19 violating the confidentiality of information received by the
20 program, the rate of relapse of persons who have received treatment
21 services.

22 (c) The executive commissioner by rule may provide for the
23 content of a report and the procedure for reporting under this
24 section. Reports must be uniform in classifications of persons
25 receiving treatment according to the severity of addiction,
26 substance abused, age of person treated, and modality of treatment.
27 A report may not reveal the name of an individual subject to

1 treatment or of a family member or acquaintance of an individual
2 treated and may not describe circumstances from which any of those
3 individuals may be identified.

4 Sec. 461A.106. COMPULSIVE GAMBLING PROGRAM. (a) The
5 department shall establish a program for:

6 (1) public education, research, and training
7 regarding problem or compulsive gambling; and
8 (2) the treatment and prevention of problem or
9 compulsive gambling.

10 (u) The department's program under Subsection (a) must
11 include:

12 (1) establishing and maintaining a list of Internet
13 sites and toll-free "800" telephone numbers of nonprofit entities
14 that provide crisis counseling and referral services to families
15 experiencing difficulty as a result of problem or compulsive
16 gambling;

17 (2) promoting public awareness regarding the
18 recognition and prevention of problem or compulsive gambling;

19 (3) facilitating, through in-service training and
20 other means, the availability of effective assistance programs for
21 problem or compulsive gamblers; and

22 (4) conducting studies to identify adults and
23 juveniles in this state who are, or who are at risk of becoming,
24 problem or compulsive gamblers.

25 SUBCHAPTER D. SERVICE CONTRACTS

26 Sec. 461A.151. CLIENT SERVICE CONTRACT STANDARDS. (a) In
27 each contract for the purchase of chemical dependency

1 program-related client services, the department shall include:
2 (1) clearly defined contract goals, outputs, and
3 measurable outcomes that relate directly to program objectives;
4 (2) clearly defined sanctions or penalties for failure
5 to comply with or perform contract terms or conditions; and
6 (3) clearly specified accounting, reporting, and
7 auditing requirements applicable to money received under the
8 contract.

9 (b) Contract goals must include a standard developed by the
10 department that is based on a percentage of program clients who
11 Maintain long-term recovery for an extended period as defined by
12 the department.

13 Sec. 461A.152. CONTRACT MONITORING. The department shall
14 establish a formal program to monitor program-related client
15 services contracts made by the department. The department must:

16 (1) monitor compliance with financial and performance
17 requirements using a risk assessment methodology; and
18 (2) obtain and evaluate program cost information to
19 ensure that each cost, including an administrative cost, is
20 reasonable and necessary to achieve program objectives.

21 Sec. 461A.153. TECHNICAL ASSISTANCE PROGRAM. The
22 department shall adopt technical assistance policies and
23 procedures for a technical assistance program that:

24 (1) is clearly separate from the department's contract
25 monitoring activities;
26 (2) has a single office for technical assistance
27 requests; and

1 (3) includes explicit response time frames.

2 SUBCHAPTER E. FUNDING

3 Sec. 461A.201. FINANCES. (a) The department may accept
4 gifts and grants for the purposes of providing chemical dependency
5 services and related programs.

6 (b) The department is the state agency that receives and
7 administers federal funds for alcohol and drug abuse, including
8 applying for, administering, and disbursing funds under the federal
9 Drug Abuse Prevention, Treatment, and Rehabilitation Act (21 U.S.C.
10 Section 1101 et seq.). The executive commissioner prescribes all
11 necessary department policies relating to alcohol and drug abuse.

12 (c) An organization or other entity is not eligible for a
13 grant of state funds from the department under this chapter unless
14 the organization or entity provides matching funds in either cash
15 or in-kind contributions equal to at least five percent of the total
16 grant of state funds from the department. The department may waive
17 that requirement if the department determines that the requirement
18 may jeopardize the provision of needed services.

19 (d) In allocating grant funds, the department shall
20 consider the state facility hospitalization rate of substance
21 abusers who are from the service area of the entity requesting the
22 grant. An organization or other entity is not eligible for a grant
23 of state funds for a treatment or rehabilitation program unless the
24 program will, at a minimum, reduce state facility hospitalization
25 of substance abusers by a percentage established by the department.

26 (e) As a condition to receiving contract or grant funds
27 under this chapter, a public or private organization or entity must

1 provide to the department information relating to:

2 (1) the number of persons with a chemical dependency
3 the organization or entity served, if any, during the preceding
4 year, the municipalities and counties of residence of those
5 persons, and the number of persons served from each municipality
6 and county; and

7 (2) the number of persons with a chemical dependency
8 the organization or entity expects to serve during the term of the
9 requested grant or contract, the expected municipalities and
10 counties of residence for those persons, and the expected number of
11 persons served from each municipality and county.

12 Sec. 461A.202. SERVICES FUNDING. (a) The executive
13 commissioner by rule shall adopt a system of funding the provision
14 of chemical dependency services that includes competitive and
15 noncompetitive procedures to:

16 (1) maximize the range of treatment services available
17 in each service region;

18 (2) provide reasonable access in each region to
19 available services; and

20 (3) include local public participation in making
21 regional funding decisions and formal funding recommendations.

22 (b) The system must require that the department award each
23 proposed chemical dependency services contract to the applicant
24 that the department determines has made the bid that provides the
25 best value.

26 (c) In determining the best value bid for a contract under
27 this section, the department shall consider:

- 1 (1) the quality of the proposed service;
 - 2 (2) cost;
 - 3 (3) the applicant's ability to:
 - 4 (A) perform the contract;
 - 5 (B) provide the required services; and
 - 6 (C) provide continuity of service;
 - 7 (4) whether the applicant can perform the contract or
 - 8 provide the services within the period required, without delay or
 - 9 interference;
 - 10 (5) the applicant's history of:
 - 11 (A) contract performance; and
 - 12 (B) compliance with the laws relating to the
 - 13 applicant's business operations and the affected services;
 - 14 (6) whether the applicant's financial resources are
 - 15 sufficient to perform the contract and to provide the services;
 - 16 (7) whether necessary or desirable support and
 - 17 ancillary services are available to the applicant;
 - 18 (8) the degree of community support for the applicant;
 - 19 (9) the quality of the facilities and equipment
 - 20 available to or proposed by the applicant;
 - 21 (10) the ability of the applicant to meet all
 - 22 applicable written department policies, principles, and rules;
 - 23 (11) state investment in the applicant; and
 - 24 (12) other factors the department determines
 - 25 relevant.
- 26 (d) Rules adopted under this section must set out the
- 27 department's provider selection processes, including:

- 1 (1) service purchase methods;
- 2 (2) eligibility criteria;
- 3 (3) provider selection criteria; and
- 4 (4) selection determination procedures.

5 Sec. 461A.203. FUNDING POLICY MANUAL. (a) The department
6 shall publish a funding policy manual that explains:

7 (1) the department's funding priorities and provider
8 selection criteria; and
9 (2) the methods the department used to develop funding
10 policies.

11 (b) The department shall update the manual annually.

12 Sec. 461A.204. UNIT RATE REIMBURSEMENT. (a) In this
13 section, "unit rate reimbursement" means reimbursement for a
14 service paid at a specified rate for a unit of the service provided
15 to a client multiplied by the number of units provided.

16 (b) The department shall study the procurement of and
17 payment for chemical dependency treatment services on a unit rate
18 reimbursement basis.

19 (c) If the department determines, after consideration of
20 the study, that procurement of and payment for chemical dependency
21 treatment services on a unit rate reimbursement basis in
22 appropriate areas of the state would result in obtaining the
23 highest quality treatment services at the best price and the lowest
24 administrative cost to the department, the department shall adopt a
25 unit rate reimbursement system for those services. The system
26 must:

- 27 (1) include competitive procurement;

1 (2) monitor provider performance;
2 (3) monitor the reasonableness of provider costs and
3 expenditures;
4 (4) verify provider costs before and after a contract
5 term to ensure rates are set appropriately;
6 (5) ensure accountability of providers; and
7 (6) contain costs.
8 (d) The department may procure and pay for chemical
9 dependency prevention and intervention services under a unit rate
10 reimbursement system when the department determines it is
11 appropriate.

12 SUBCHAPTER F. ADVISORY COMMITTEE ON REDUCING DRUG DEMAND

13 Sec. 461A.251. ADVISORY COMMITTEE. (a) The Drug Demand
14 Reduction Advisory Committee is composed of the following members:
15 (1) five representatives of the public from different
16 geographic regions of the state who have knowledge and expertise in
17 issues relating to reducing drug demand and who are appointed by the
18 commissioner; and
19 (2) one representative of each of the following
20 agencies or offices who is appointed by the commissioner, executive
21 commissioner, or executive director of the agency or office and who
22 is directly involved in the agency's or office's policies,
23 programs, or funding activities relating to reducing drug demand:
24 (A) the department;
25 (B) the commission;
26 (C) the criminal justice division of the
27 governor's office;

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19 (b) The representative of the department shall serve as the
20 presiding officer of the Drug Demand Reduction Advisory Committee.
21 The department may provide administrative support to the committee.

22 Sec. 461A.252. MEETINGS. The Drug Demand Reduction
23 Advisory Committee shall meet at least once in each quarter of each
24 calendar year on dates determined by the committee

25 Sec. 461A.253. DUTIES OF ADVISORY COMMITTEE. (a) The Drug
26 Demand Reduction Advisory Committee shall serve as a single source
27 of information for the governor, the legislature, and the public.

1 about issues relating to reducing drug demand, including available
2 prevention programs and services.

3 (b) The Drug Demand Reduction Advisory Committee shall
4 develop a statewide strategy to reduce drug demand. The strategy
5 must:

6 (1) incorporate multidisciplinary approaches using
7 current empirical research;

8 (2) include performance-based measurement and
9 accountability standards, short-term objectives, and 10-year
10 targets for reducing drug demand;

11 (3) coordinate, to the extent possible, the efforts of
12 private sector entities and local, state, and federal agencies,
13 including the Office of National Drug Control Policy and the United
14 States Drug Enforcement Administration, to reduce drug demand; and

15 (4) provide opportunities for representatives from
16 the public and private sectors to comment on the committee's
17 activities and make recommendations related to the strategy.

18 (c) The Drug Demand Reduction Advisory Committee shall
19 identify lead or contributing agencies or offices that shall
20 implement the strategy described in Subsection (b). The committee
21 shall coordinate the implementation of the strategy by those
22 agencies or offices.

23 Sec. 461A.254. ADDITIONAL ADVISORY COMMITTEES. The Drug
24 Demand Reduction Advisory Committee may establish additional
25 advisory committees composed of representatives from governmental
26 entities and the private sector to assist the committee in carrying
27 out its duties.

1 Sec. 461A.255. REPORT. Not later than January 15 of each
2 odd-numbered year, the Drug Demand Reduction Advisory Committee
3 shall present to the governor, the lieutenant governor, and the
4 speaker of the house of representatives a report that states:

5 (1) the committee's progress in developing and
6 coordinating the strategy described in Section 461A.253(b);

7 (2) the status and funding of state programs relating
8 to reducing drug demand; and

9 (3) recommendations for legislation to address issues
10 involved in reducing drug demand.

11 SECTION 3.1159. The heading to Chapter 462, Health and
12 Safety Code, is amended to read as follows:

13 CHAPTER 462. TREATMENT OF [~~CHEMICALLY DEPENDENT~~] PERSONS WITH
14 CHEMICAL DEPENDENCIES

15 SECTION 3.1160. Section 462.001, Health and Safety Code, is
16 amended by amending Subdivisions (1) and (10) and adding
17 Subdivisions (5-a) and (5-b) to read as follows:

18 (1) "Applicant" means a person who files an
19 application for emergency detention, protective custody, or
20 commitment of a [~~chemically dependent~~] person with a chemical
21 dependency.

22 (5-a) "Department" means the Department of State
23 Health Services.

24 (5-b) "Executive commissioner" means the executive
25 commissioner of the Health and Human Services Commission.

26 (10) "Treatment facility" means a public or private
27 hospital, a detoxification facility, a primary care facility, an

1 intensive care facility, a long-term care facility, an outpatient
2 care facility, a community mental health center, a health
3 maintenance organization, a recovery center, a halfway house, an
4 ambulatory care facility, another facility that is required to be
5 licensed [~~and approved~~] by the department under Chapter 464
6 [~~commission~~], a facility licensed by the department under Title 7
7 [~~Texas Department of Mental Health and Mental Retardation~~], or a
8 facility operated by the department under Title 7 that [~~Texas~~
9 ~~Department of Mental Health and Mental Retardation which~~] has been
10 designated by the department [~~commission~~] to provide chemical
11 dependency treatment. The term does not include an educational
12 program for intoxicated drivers or the individual office of a
13 private, licensed health care practitioner who personally renders
14 private individual or group services within the scope of the
15 practitioner's license and in the practitioner's office.

16 SECTION 3.1161. Section **462.005**(f), Health and Safety Code,
17 is amended to read as follows:

18 (f) The state or the county may not pay any costs for a
19 patient committed to a private hospital unless no public facilities
20 are available and unless authorized by the department [~~commission~~]
21 or the commissioners court of the county, as appropriate.

22 SECTION 3.1162. Section **462.009**(e), Health and Safety Code,
23 is amended to read as follows:

24 (e) Consent given by a patient or by a person authorized by
25 law to consent to treatment on the patient's behalf for the
26 administration of a medication, therapy, or treatment is valid only
27 if:

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1 the informed consent is evidenced in the patient's clinical record
2 by a signed form prescribed by the department [~~commission~~] for this
3 purpose or by a statement of the treating physician or the
4 psychologist, social worker, professional counselor, or chemical
5 dependency counselor who obtained the consent that documents that
6 consent was given by the appropriate person and the circumstances
7 under which the consent was obtained.

8 SECTION 3.1163. Section 462.021, Health and Safety Code, is
9 amended to read as follows:

10 Sec. 462.021. VOLUNTARY ADMISSION OF ADULT. A facility may
11 admit an adult who requests admission for emergency or nonemergency
12 treatment or rehabilitation if:

13 (1) the facility is:

14 (A) a treatment facility licensed by the
15 department [~~commission~~] to provide the necessary services;

16 (B) a facility licensed by the department under
17 Title 7 [~~Texas Department of Mental Health and Mental Retardation~~];
18 or

19 (C) a facility operated by the department under
20 Title 7 that [~~Texas Department of Mental Health and Mental~~
21 ~~Retardation which~~] has been designated by the department
22 [~~commission~~] to provide chemical dependency treatment; and

23 (2) the admission is appropriate under the facility's
24 admission policies.

25 SECTION 3.1164. Section 462.022(a), Health and Safety Code,
26 is amended to read as follows:

27 (a) A facility may admit a minor for treatment and

1 rehabilitation if:

2 (1) the facility is:

3 (A) a treatment facility licensed by the
4 department [commission] to provide the necessary services to
5 minors;

6 (B) a facility licensed by the department under
7 Title 7 [~~Texas Department of Mental Health and Mental Retardation~~];
8 or

9 (C) a facility operated by the department under
10 Title 7 that [~~Texas Department of Mental Health and Mental~~
11 ~~Retardation which~~] has been designated by the department
12 [commission] to provide chemical dependency treatment;

13 (2) the admission is appropriate under the facility's
14 admission policies; and

15 (3) the admission is requested by:

16 (A) a parent, managing conservator, or guardian
17 of the minor; or

18 (B) the minor, without parental consent, if the
19 minor is 16 years of age or older.

20 SECTION 3.1165. Section 462.0235(c), Health and Safety
21 Code, is amended to read as follows:

22 (c) The certificate of medical examination placed in a
23 minor's medical record under Subsection (b)(2)(B) must include:

24 (1) the name and address of the examining physician;

25 (2) the name and address of the examined minor;

26 (3) the date and place of the examination;

27 (4) a brief diagnosis of the examined minor's physical

1 and mental condition;

2 (5) the period, if any, during which the examined
3 minor has been under the care of the examining physician;

4 (6) an accurate description of the chemical dependency
5 treatment, if any, administered to the examined minor by or under
6 the direction of the examining physician; and

7 (7) the examining physician's opinion that:

8 (A) the examined minor is a person with a
9 chemical dependency [chemically dependent];

10 (B) there is no reasonable alternative to the
11 treatment the physician recommends for the examined minor; and

12 (C) as a result of the examined minor's chemical
13 dependency, the minor, if released, is likely to cause serious harm
14 to the minor or others or:

15 (i) would suffer severe and abnormal
16 mental, emotional, or physical distress;

17 (ii) would experience a substantial mental
18 or physical deterioration of the minor's ability to function
19 independently that would be manifested by the minor's inability,
20 for reasons other than indigence, to provide for the minor's basic
21 needs, including food, clothing, health, and safety; and

22 (iii) would not be able to make a rational
23 and informed decision as to whether to submit to treatment.

24 SECTION 3.1166. Sections 462.025(a), (c), and (e), Health
25 and Safety Code, are amended to read as follows:

26 (a) The executive commissioner [~~commission~~] shall adopt
27 rules governing the voluntary admission of a patient to a treatment

1 facility, including rules governing the intake, screening, and
2 assessment procedures of the admission process.

3 (c) The assessment provided for by the rules may be
4 conducted only by a professional who meets the qualifications
5 prescribed by department [~~commission~~] rules.

6 (e) In accordance with department [~~commission~~] rule, a
7 treatment facility shall provide annually a minimum of two hours of
8 inservice training regarding intake and screening for persons who
9 will be conducting an intake or screening for the facility. A
10 person may not conduct intake or screenings without having
11 completed the initial and applicable annual inservice training.

12 SECTION 3.1167. Section 462.042(b), Health and Safety Code,
13 is amended to read as follows:

14 (b) The application must state:

15 (1) that the applicant has reason to believe and does
16 believe that the person who is the subject of the application is a
17 [~~chemically dependent~~] person with a chemical dependency;

18 (2) that the applicant has reason to believe and does
19 believe that the person evidences a substantial risk of serious
20 harm to the person [~~himself~~] or others;

21 (3) a specific description of the risk of harm;

22 (4) that the applicant has reason to believe and does
23 believe that the risk of harm is imminent unless the person is
24 immediately restrained;

25 (5) that the applicant's beliefs are derived from
26 specific recent behavior, overt acts, attempts, or threats;

27 (6) a detailed description of the specific behavior,

1 acts, attempts, or threatens; and

(7) the relationship, if any, of the applicant to the person.

4 SECTION 3.1168. Section 462.043(b), Health and Safety Code,
5 is amended to read as follows:

6 (b) The judge or magistrate shall deny the application
7 unless the judge or magistrate finds that there is reasonable cause
8 to believe that:

17 SECTION 3.1169. Section 462.062(e), Health and Safety Code,
18 is amended to read as follows:

19 (e) The application must contain the following information
20 according to the applicant's information and belief:

23 (2) a statement that the proposed patient is a
24 [chemically dependent] person with a chemical dependency who:

25 (A) is likely to cause serious harm to the person
26 [himself] or others; or

27 (B) will continue to suffer abnormal mental,

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1 emotional, or physical distress, will continue to deteriorate in
2 ability to function independently if not treated, and is unable to
3 make a rational and informed choice as to whether to submit to
4 treatment; and

8 SECTION 3.1170. Section 462.064(c), Health and Safety Code,
9 is amended to read as follows:

10 (c) A certificate must be dated and signed by the examining
11 physician. The certificate must include:

12 (1) the name and address of the examining physician;

13 (2) the name and address of the proposed patient;

14 (3) the date and place of the examination;

(4) the period, if any, during which the proposed patient has been under the care of the examining physician;

20 (6) the examining physician's opinions whether the
21 proposed patient is a [chemically dependent] person with a chemical
22 dependency and:

23 (A) is likely to cause serious harm to the person
24 [himself];

25 (B) is likely to cause serious harm to others; or

(C) will continue to suffer abnormal mental, emotional, or physical distress and to deteriorate in ability to

1 function independently if not treated and is unable to make a
2 rational and informed choice as to whether or not to submit to
3 treatment.

4 SECTION 3.1171. Section 462.065(e), Health and Safety Code,
5 is amended to read as follows:

6 (e) The judge or designated magistrate may issue a
7 protective custody order if the judge or magistrate determines
8 that:

9 (1) ~~[that]~~ a physician has stated the physician's
10 ~~[his]~~ opinion and the detailed basis for the physician's [his]
11 opinion that the proposed patient is a ~~[chemically dependent]~~
12 person with a chemical dependency; and

13 (2) the proposed patient presents a substantial risk
14 of serious harm to the person ~~[himself]~~ or others if not immediately
15 restrained pending the hearing.

16 SECTION 3.1172. Section 462.066(g), Health and Safety Code,
17 is amended to read as follows:

18 (g) The notification of probable cause hearing shall read as
19 follows:

20 (Style of Case)

21 NOTIFICATION OF PROBABLE CAUSE HEARING

22 On this the _____ day of _____, 20~~[19]~~____, the
23 undersigned hearing officer heard evidence concerning the need for
24 protective custody of _____ (hereinafter referred to as
25 proposed patient). The proposed patient was given the opportunity
26 to challenge the allegations that the proposed patient ~~[s]he~~
27 presents a substantial risk of serious harm to self or others.

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1 The proposed patient and the proposed patient's attorney
2 _____ have been given written notice that the proposed
3 (attorney)
4 patient was placed under an order of protective custody and the
5 reasons for such order on _____.

6 (date of notice)

I have examined the certificate of medical examination for
chemical dependency and _____. Based on
(other evidence considered)

10 this evidence, I find that there is probable cause to believe that
11 the proposed patient presents a substantial risk of serious harm to
12 self (yes ____ or no ____) or others (yes ____ or no ____) such that the
13 proposed patient [~~(s)he~~] cannot be at liberty pending final hearing
14 because

15 _____
16 (reasons for finding; type of risk found)

17 SECTION 3.1173. Section 462.068(a), Health and Safety Code,
18 is amended to read as follows:

19 (a) The court shall enter an order denying an application
20 for court-ordered treatment if after a hearing the court or jury
21 fails to find, from clear and convincing evidence, that the
22 proposed patient is a [chemically dependent] person with a chemical
23 dependency and meets the criteria for court-ordered treatment.

24 SECTION 3.1174. Section 462.069(a), Health and Safety Code,
25 is amended to read as follows:

26 (a) The court shall commit the proposed patient to a
27 treatment facility approved by the department [commission] to

1 accept court commitments for not more than 90 days if:

2 (1) the proposed patient admits the allegations of the
3 application; or

4 (2) at the hearing on the merits, the court or jury
5 finds that the material allegations in the application have been
6 proved by clear and convincing evidence.

7 SECTION 3.1175. Section [462.0731\(b\)](#), Health and Safety
8 Code, is amended to read as follows:

9 (b) The department [~~commission~~] shall arrange and furnish
10 alternative settings for outpatient care, treatment, and
11 supervision in the patient's county of residence. The services
12 must be provided as close as possible to the patient's residence.

13 SECTION 3.1176. Sections [462.075\(e\)](#) and (f), Health and
14 Safety Code, are amended to read as follows:

15 (e) The court shall enter an order denying an application
16 for court-ordered treatment if the court or jury fails to find, from
17 clear and convincing evidence, that the proposed patient is a
18 [~~chemically dependent~~] person with a chemical dependency and meets
19 the criteria for court-ordered treatment. If the court denies the
20 application, the court shall order the discharge of a proposed
21 patient who is not at liberty.

22 (f) The court shall commit the proposed patient to a
23 treatment facility approved by the department [~~commission~~] to
24 accept commitments for not more than 90 days if:

25 (1) the proposed patient admits the allegations of the
26 application; or

27 (2) at the hearing on the merits, the court or jury

1 finds that the material allegations in the application have been
2 proved by clear and convincing evidence.

3 SECTION 3.1177. Section 462.079(a), Health and Safety Code,
4 is amended to read as follows:

5 (a) A furlough may be revoked only after an administrative
6 hearing held in accordance with department [~~commission~~] rules. The
7 hearing must be held within 72 hours after the patient is returned
8 to the facility.

9 SECTION 3.1178. Sections 462.081(a), (b), and (d), Health
10 and Safety Code, are amended to read as follows:

11 (a) The judge of a court with jurisdiction of misdemeanor
12 cases may remand the defendant to a treatment facility approved by
13 the department [~~commission~~] to accept court commitments for care
14 and treatment for not more than 90 days, instead of incarceration or
15 fine, if:

16 (1) the court or a jury has found the defendant guilty
17 of an offense classified as a Class A or B misdemeanor;

18 (2) the court finds that the offense resulted from or
19 was related to the defendant's chemical dependency;

20 (3) a treatment facility approved by the department
21 [~~commission~~] is available to treat the defendant; and

22 (4) the treatment facility agrees in writing to admit
23 the defendant under this section.

24 (b) A defendant who, in the opinion of the court, is a person
25 with mental illness [~~mentally ill~~] is not eligible for sentencing
26 under this section.

27 (d) A juvenile court may remand a child to a treatment

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1 facility for care and treatment for not more than 90 days after the
2 date on which the child is remanded if:

12 SECTION 3.1179. The heading to Chapter 464, Health and
13 Safety Code, is amended to read as follows:

CHAPTER 464. FACILITIES TREATING [ALCOHOLICS AND DRUG-DEPENDENT]

PERSONS WITH A CHEMICAL DEPENDENCY

16 SECTION 3.1180. Section 464.001, Health and Safety Code, is
17 amended by adding Subdivisions (3-a) and (3-b) to read as follows:

22 SECTION 3.1181. Section 464.003, Health and Safety Code, is
23 amended to read as follows:

24 Sec. 464.003. EXEMPTIONS. This subchapter does not apply
25 to:

1 (2) a facility directly operated by the state;

2 (3) a facility licensed by the department under

3 Chapter 241, 243, 248, 466, or 577 [Texas Department of Health];

4 (4) an educational program for intoxicated drivers;

5 (5) the individual office of a private, licensed

6 health care practitioner who personally renders private individual

7 or group services within the scope of the practitioner's license

8 and in the practitioner's office;

9 (6) an individual who personally provides counseling

10 or support services to a [~~chemically dependent~~] person with a

11 chemical dependency but does not offer or purport to offer a

12 chemical dependency treatment program; or

13 (7) a 12-step or similar self-help chemical dependency

14 recovery program:

15 (A) that does not offer or purport to offer a

16 chemical dependency treatment program;

17 (B) that does not charge program participants;

18 and

19 (C) in which program participants may maintain

20 anonymity.

21 SECTION 3.1182. Sections **464.004**(a), (b), and (e), Health

22 and Safety Code, are amended to read as follows:

23 (a) To receive a license to operate a treatment facility to

24 treat [~~chemically dependent~~] persons with a chemical dependency, a

25 person must:

26 (1) file a written application on a form prescribed by

27 the department [~~commission~~];

- 1 (2) cooperate with the review of the facility; and
2 (3) comply with the licensing standards.

3 (b) The department [~~commission~~] shall issue a license to an
4 applicant:

5 (1) whose application meets the content requirements
6 prescribed by [~~or~~] the department and by department rules
7 [~~commission~~]; [~~and~~]

8 (2) who receives approval of the facility after the
9 department's [~~commission's~~] review; and

10 (3) who timely complies with the licensing standards.

11 (e) A license may be issued without prior notice and an
12 opportunity for a hearing. A person other than the applicant or the
13 department [~~and commission~~] may not contest the issuance of a
14 license.

15 SECTION 3.1183. Section 464.005, Health and Safety Code, is
16 amended to read as follows:

17 Sec. 464.005. LICENSE RENEWAL. (a) The department
18 [~~commission~~] shall provide renewal application forms and
19 information relating to renewal procedures to each license holder.

20 (b) The department [~~Department of State Health Services~~]
21 may require an inspection before renewing a license, unless the
22 applicant submits an accreditation review from the Commission on
23 Accreditation of Rehabilitation Facilities, The [~~the~~] Joint
24 Commission, or another national accreditation organization
25 recognized by the department in accordance with Section 464.0055.

26 (c) The executive commissioner [~~commission~~] may establish
27 deadlines for receiving and acting on renewal applications.

1 (d) A license may be renewed without prior notice and an
2 opportunity for a hearing. A person other than the applicant or the
3 department [and commission] may not contest the renewal of a
4 license.

5 SECTION 3.1184. Sections 464.0055(a) and (b), Health and
6 Safety Code, are amended to read as follows:

7 (a) In this section, "accreditation[~~+~~

8 [~~(1)~~ "Accreditation" commission" means the Commission
9 on Accreditation of Rehabilitation Facilities, The [~~the~~] Joint
10 Commission, or another national accreditation organization
11 recognized by the department [~~Department of State Health Services~~].

12 [~~(2)~~ "Department" means the ~~Department of State Health~~
13 ~~Services~~.]

14 (b) The department shall accept an accreditation review
15 from an accreditation commission for a treatment facility instead
16 of an inspection by the department for renewal of a license under
17 Section 464.005, but only if:

18 (1) the treatment facility is accredited by that
19 accreditation commission [~~the Commission on Accreditation of~~
20 ~~Rehabilitation Facilities, the Joint Commission, or another~~
21 ~~national accreditation organization recognized by the department~~];

22 (2) the accreditation commission maintains and
23 updates an inspection or review program that, for each treatment
24 facility, meets the department's applicable minimum standards;

25 (3) the accreditation commission conducts a regular
26 on-site inspection or review of the treatment facility according to
27 the accreditation commission's guidelines; and

1 (4) the treatment facility submits to the department a
2 copy of its most recent accreditation review from the accreditation
3 commission in addition to the application, fee, and any report or
4 other document required for renewal of a license.

5 SECTION 3.1185. Section [464.006](#), Health and Safety Code, is
6 amended to read as follows:

7 Sec. 464.006. INSPECTIONS. The department [~~commission~~] or
8 its representative may without notice enter the premises of a
9 treatment facility at reasonable times, including any time
10 treatment services are provided, to conduct an inspection or
11 investigation the department [~~commission~~] considers necessary.

12 SECTION 3.1186. Section [464.007](#), Health and Safety Code, is
13 amended to read as follows:

14 Sec. 464.007. APPLICATION AND INSPECTION FEES. (a) The
15 department [~~commission~~] shall collect [~~charge~~] nonrefundable
16 application and review fees for a license or renewal license. The
17 department [~~commission~~] may collect [~~charge~~] a fee for approving a
18 facility to treat court committed clients.

19 (b) If the General Appropriations Act does not specify the
20 amount of the fee, the executive commissioner by rule [~~commission~~]
21 shall establish reasonable fees to administer this subchapter in
22 amounts necessary for the fees to cover at least 50 percent of the
23 costs of the licensing program.

24 (c) The department [~~commission~~] may not maintain
25 unnecessary fund balances under this chapter.

26 SECTION 3.1187. Section [464.008](#), Health and Safety Code, is
27 amended to read as follows:

1 Sec. 464.008. APPLICABILITY OF OTHER LAW TO APPLICATION AND
2 INSPECTION FEES [~~ALCOHOL AND DRUG ABUSE TREATMENT LICENSURE FUND~~].
3 All application and inspection fees collected by the department
4 [~~commission~~] under this subchapter are subject to Subchapter F,
5 Chapter 404, Government Code.

6 SECTION 3.1188. Section 464.009, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 464.009. RULES AND STANDARDS. (a) The department
9 [~~commission~~] shall license treatment facilities in a manner
10 consistent with state and federal law and rules, including
11 department [~~commission~~] licensing standards.

12 (b) The executive commissioner [~~commission~~] shall adopt
13 rules for:

14 (1) a treatment facility's organization and structure,
15 policies and procedures, and minimum staffing requirements;

16 (2) the services to be provided by a facility,
17 including:

18 (A) the categories of services the facility may
19 provide;

20 (B) the client living environment the facility
21 requires; and

22 (C) the requirement that a facility provide
23 discharge planning and client follow-up contact;

24 (3) client rights and standards for medication,
25 nutrition, and emergency situations;

26 (4) the client records kept by a facility;

27 (5) the general physical plant requirements for a

1 facility, including environmental considerations, fire protection,
2 safety, and other conditions to ensure the health and comfort of the
3 clients;

4 (6) standards necessary to protect the client,
5 including standards required or authorized by federal or other
6 state law; and

7 (7) the approval of a facility to treat adult or minor
8 clients who are referred by the criminal justice system or by a
9 court order for involuntary civil or criminal commitment or
10 detention.

11 (c) The executive commissioner [commission] shall adopt
12 rules to protect the rights of individuals receiving services from
13 a treatment facility and to maintain the confidentiality of client
14 records as required by state and federal law.

15 (d) The executive commissioner [commission] by rule may not
16 restrict competitive bidding or advertising by a facility regulated
17 by the department under this chapter [commission] except to
18 prohibit false, misleading, or deceptive practices by the facility.
19 However, those rules may not:

20 (1) restrict the facility's use of any medium for
21 advertising;

22 (2) restrict in an advertisement the personal
23 appearance of a person representing the facility or the use of that
24 person's voice;

25 (3) regulate the size or duration of an advertisement
26 by the facility; or

27 (4) restrict the facility's advertisement under a

1 trade name.

2 SECTION 3.1189. Section [464.010](#), Health and Safety Code, is
3 amended to read as follows:

4 Sec. 464.010. REPORTS OF ABUSE OR NEGLECT. (a) A person,
5 including treatment facility personnel, who believes that a
6 client's physical or mental health or welfare has been, is, or will
7 be adversely affected by abuse or neglect caused by any person shall
8 report the facts underlying that belief to the department
9 [~~commission~~]. This requirement is in addition to the requirements
10 prescribed by Chapter 261, Family Code, and Chapter 48, Human
11 Resources Code.

12 (b) The executive commissioner [~~commission~~] shall prescribe
13 procedures for the investigation of reports under Subsection (a)
14 and for coordination with law enforcement agencies or other
15 agencies.

16 (c) An individual who in good faith reports to the
17 department [~~commission~~] under this section is immune from civil or
18 criminal liability based on the report. That immunity extends to
19 participation in a judicial proceeding resulting from the report
20 but does not extend to an individual who caused the abuse or
21 neglect.

22 (d) The department [~~commission~~] may request the attorney
23 general's office to file a petition for temporary care and
24 protection of a client of a residential treatment facility if it
25 appears that immediate removal of the client is necessary to
26 prevent further abuse.

27 (e) All records made by the department [~~commission~~] during

1 its investigation of alleged abuse or neglect are confidential and
2 may not be released except that the release may be made:

- 3 (1) on court order;
4 (2) on written request and consent of the person under
5 investigation or that person's authorized attorney; or
6 (3) as provided by Section [464.011](#).

7 SECTION 3.1190. Section [464.011](#), Health and Safety Code, is
8 amended to read as follows:

9 Sec. 464.011. DISCLOSURE OF DEPARTMENT [~~COMMISSION~~]
10 RECORDS. Unless prohibited or limited by federal or other state
11 law, the department [~~commission~~] may make its licensing and
12 investigatory records that identify a client available to a state
13 or federal agency or law enforcement authority on request and for
14 official purposes.

15 SECTION 3.1191. Sections [464.012](#)(a) and (b), Health and
16 Safety Code, are amended to read as follows:

17 (a) A treatment facility licensed under this chapter shall
18 provide to employees of the facility education regarding methods of
19 transmitting and preventing human immunodeficiency virus infection
20 based on the model education program developed by the department
21 [~~Texas Department of Health~~] and shall make the education available
22 to facility clients.

23 (b) Employees of the facility who counsel clients shall
24 provide counseling in accordance with the model protocol for
25 counseling related to HIV infection developed by the department
26 [~~Texas Department of Health~~].

27 SECTION 3.1192. Section [464.014](#), Health and Safety Code, is

1 amended to read as follows:

2 Sec. 464.014. DENIAL, REVOCATION, SUSPENSION, OR
3 NONRENEWAL OF LICENSE. (a) The department [~~commission~~] shall
4 deny, revoke, suspend, or refuse to renew a license, place on
5 probation a person whose license has been suspended, or reprimand a
6 license holder if the applicant or license holder or the owner,
7 director, administrator, or a clinical staff member of the
8 facility:

9 (1) has a documented history of client abuse or
10 neglect; or

11 (2) violates this subchapter or a department rule [~~or~~
12 ~~the commission~~].

13 (b) If a license suspension is probated, the department
14 [~~commission~~] may establish the conditions for completion or
15 violation of the probation.

16 (c) The denial, revocation, suspension, probation, or
17 nonrenewal takes effect on the 30th day after the date on which the
18 notice was mailed unless:

19 (1) the department [~~commission~~] secures an injunction
20 under Section 464.015; or

21 (2) an administrative appeal is requested.

22 (d) The department [~~commission~~] may restrict attendance at
23 an appeals hearing to the parties and their agents. A license
24 holder whose license is suspended or revoked may not admit new
25 clients until the license is reissued.

26 SECTION 3.1193. Sections 464.0145(a) and (c), Health and
27 Safety Code, are amended to read as follows:

1 (a) If the department [~~commission~~] proposes to suspend,
2 revoke, or refuse to renew a person's license, the person is
3 entitled to a hearing conducted by the State Office of
4 Administrative Hearings.

5 (c) Rules of practice adopted by the executive commissioner
6 [~~commission~~] under Section 2001.004, Government Code, applicable
7 to the proceedings for a disciplinary action may not conflict with
8 rules adopted by the State Office of Administrative Hearings.

9 SECTION 3.1194. Sections 464.015(a), (c), (d), and (e),
10 Health and Safety Code, are amended to read as follows:

11 (a) The department [~~commission~~] may petition a district
12 court to restrain a person or facility that violates the rules,
13 standards, or licensing requirements provided under this
14 subchapter in a manner that causes immediate threat to the health
15 and safety of individual clients.

16 (c) A district court, on petition of the department
17 [~~commission~~], the attorney general, or a district or county
18 attorney, and on a finding by the court that a person or facility is
19 violating or has violated this subchapter or a standard adopted
20 under this subchapter, shall grant any prohibitory or mandatory
21 injunctive relief warranted by the facts, including a temporary
22 restraining order, temporary injunction, or permanent injunction.

23 (d) The court granting injunctive relief shall order the
24 person or facility to reimburse the department [~~commission~~] and the
25 party bringing the suit for all costs of investigation and
26 litigation, including reasonable attorney's fees, reasonable
27 investigative expenses, court costs, witness fees, deposition

1 expenses, and civil administrative costs.

2 (e) At the request of the department [~~commission~~], the
3 attorney general or the appropriate district or county attorney
4 shall institute and conduct a suit authorized by Subsection (a) in
5 the name of this state.

6 SECTION 3.1195. Section [464.016](#)(c), Health and Safety Code,
7 is amended to read as follows:

8 (c) A person commits an offense if the person has reasonable
9 grounds to suspect that abuse or neglect of a client may have
10 occurred and does not report the suspected or possible abuse or
11 neglect to the department as required by Section 464.010.

12 SECTION 3.1196. Sections [464.017](#)(b), (c), (f), and (g),
13 Health and Safety Code, are amended to read as follows:

14 (b) The department [~~commission~~] may:

15 (1) combine a suit to assess and recover civil
16 penalties with a suit for injunctive relief brought under Section
17 [464.015](#); or

18 (2) file a suit to assess and recover civil penalties
19 independently of a suit for injunctive relief.

20 (c) At the request of the department [~~commission~~], the
21 attorney general or the appropriate district or county attorney
22 shall institute and conduct the suit authorized by Subsection (b)
23 in the name of this state. The department [~~commission~~] and the
24 party bringing the suit may recover reasonable expenses incurred in
25 obtaining civil penalties, including investigation costs, court
26 costs, reasonable attorney fees, witness fees, and deposition
27 expenses.

1 (f) Penalties collected under this section by the attorney
2 general shall be deposited to the credit of the general revenue fund
3 ~~[alcohol and drug abuse treatment licensure fund account]~~.
4 Penalties collected under this section by a district or county
5 attorney shall be deposited to the credit of the general fund of the
6 county in which the suit was heard.

7 (g) The department [~~commission~~] and the party bringing the
8 suit may recover reasonable expenses incurred in obtaining civil
9 penalties, including investigation costs, court costs, reasonable
10 attorney fees, witness fees, and deposition expenses.

11 SECTION 3.1197. Section 464.018, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 464.018. NOTICE OF SUIT. Not later than the seventh
14 day before the date on which the attorney general intends to bring
15 suit on the attorney general's [~~his~~] own initiative under Section
16 464.015 or 464.017, the attorney general shall provide to the
17 department [~~commission~~] notice of the suit. The attorney general
18 is not required to provide notice of a suit if the attorney general
19 determines that waiting to bring suit until the notice is provided
20 will create an immediate threat to the health and safety of a
21 client. This section does not create a requirement that the
22 attorney general obtain the permission of or a referral from the
23 department [~~commission~~] before filing suit.

24 SECTION 3.1198. Sections 464.019(a), (d), (e), (f), (g),
25 (h), (i), (j), (k), (l), (m), and (n), Health and Safety Code, are
26 amended to read as follows:

27 (a) The department [~~commission~~] may impose an

1 administrative penalty against a person licensed or regulated under
2 this chapter who violates this chapter or a rule or order adopted
3 under this chapter.

4 (d) If the department [~~executive director~~] determines that
5 a violation has occurred, the department [~~director~~] may issue [~~to~~
6 ~~the commission~~] a report that states the facts on which the
7 determination is based and the department's [~~director's~~]
8 recommendation on the imposition of a penalty, including a
9 recommendation on the amount of the penalty.

10 (e) Within 14 days after the date the report is issued, the
11 department [~~executive director~~] shall give written notice of the
12 report to the person. The notice may be given by certified mail.
13 The notice must include a brief summary of the alleged violation and
14 a statement of the amount of the recommended penalty and must inform
15 the person that the person has a right to a hearing on the
16 occurrence of the violation, the amount of the penalty, or both the
17 occurrence of the violation and the amount of the penalty.

18 (f) Within 20 days after the date the person receives the
19 notice, the person in writing may accept the determination and
20 recommended penalty of the department [~~commissioner~~] or may make a
21 written request for a hearing on the occurrence of the violation,
22 the amount of the penalty, or both the occurrence of the violation
23 and the amount of the penalty.

24 (g) If the person accepts the determination and recommended
25 penalty of the department [~~commissioner~~], the department [~~board~~] by
26 order shall [~~approve the determination and~~] impose the recommended
27 penalty.

1 (h) If the person requests a hearing or fails to respond
2 timely to the notice, an administrative law judge [~~the~~
3 ~~commissioner~~] shall set a hearing and the department shall give
4 notice of the hearing to the person. The administrative law judge
5 shall make findings of fact and conclusions of law and promptly
6 issue to the department [~~board~~] a proposal for a decision about the
7 occurrence of the violation and the amount of a proposed penalty.
8 Based on the findings of fact, conclusions of law, and proposal for
9 a decision, the department [~~board~~] by order may find that a
10 violation has occurred and impose a penalty or may find that no
11 violation occurred.

12 (i) The notice of the department's [~~board's~~] order given to
13 the person under Chapter 2001, Government Code, must include a
14 statement of the right of the person to judicial review of the
15 order.

16 (j) Within 30 days after the date the department's [~~board's~~]
17 order is final as provided by Subchapter F, Chapter 2001,
18 Government Code, the person shall:

19 (1) pay the amount of the penalty;
20 (2) pay the amount of the penalty and file a petition
21 for judicial review contesting the occurrence of the violation, the
22 amount of the penalty, or both the occurrence of the violation and
23 the amount of the penalty; or

24 (3) without paying the amount of the penalty, file a
25 petition for judicial review contesting the occurrence of the
26 violation, the amount of the penalty, or both the occurrence of the
27 violation and the amount of the penalty.

1 (k) Within the 30-day period, a person who acts under
2 Subsection (j)(3) may:

3 (1) stay enforcement of the penalty by:

4 (A) paying the amount of the penalty to the court
5 for placement in an escrow account; or

6 (B) giving to the court a supersedeas bond that
7 is approved by the court for the amount of the penalty and that is
8 effective until all judicial review of the department's [~~board's~~]
9 order is final; or

10 (2) request the court to stay enforcement of the
11 penalty by:

12 (A) filing with the court a sworn affidavit of
13 the person stating that the person is financially unable to pay the
14 amount of the penalty and is financially unable to give the
15 supersedeas bond; and

16 (B) giving a copy of the affidavit to the
17 department [~~commissioner~~] by certified mail.

18 (1) The department [~~commissioner~~] on receipt of a copy of an
19 affidavit under Subsection (k)(2) may file with the court within
20 five days after the date the copy is received a contest to the
21 affidavit. The court shall hold a hearing on the facts alleged in
22 the affidavit as soon as practicable and shall stay the enforcement
23 of the penalty on finding that the alleged facts are true. The
24 person who files an affidavit has the burden of proving that the
25 person is financially unable to pay the amount of the penalty and to
26 give a supersedeas bond.

27 (m) If the person does not pay the amount of the penalty and

1 the enforcement of the penalty is not stayed, the department
2 [~~commissioner~~] may refer the matter to the attorney general for
3 collection of the amount of the penalty.

4 (n) Judicial review of the order of the department [~~board~~]:
5 (1) is instituted by filing a petition as provided by
6 Subchapter G, Chapter 2001, Government Code; and
7 (2) is under the substantial evidence rule.

8 SECTION 3.1199. Section 464.020(c), Health and Safety Code,
9 is amended to read as follows:

10 (c) The department [~~commission~~] may not issue a license that
11 authorizes a disciplinary alternative education program to provide
12 detoxification or residential services.

13 SECTION 3.1200. Section 464.031(2), Health and Safety Code,
14 is amended to read as follows:

15 (2) "Department" means the Department of State Health
16 Services [~~"Commission"~~ means the Texas Commission on Alcohol and
17 Drug Abuse].

18 SECTION 3.1201. Sections 464.033(a) and (b), Health and
19 Safety Code, are amended to read as follows:

20 (a) To be eligible to contract with a county, an alcoholism
21 program or center providing prevention or intervention services
22 must submit an application to the regional alcoholism advisory
23 committee established by the department [~~commission~~] to serve the
24 area in which the program or center is located or in which the
25 program or center will provide services.

26 (b) To be eligible to contract with a county, an alcoholism
27 program or center providing treatment or rehabilitation services

1 must:

- 2 (1) submit an application as provided by Subsection
3 (a); and
4 (2) be licensed by the department [commission].

5 SECTION 3.1202. Section 464.034(a), Health and Safety Code,
6 is amended to read as follows:

- 7 (a) A regional alcoholism advisory committee shall:
8 (1) review each application received; and
9 (2) rank the applications using guidelines for
10 reviewing funding applications established by the department in
11 accordance with department rules [commission for reviewing funding
12 applications].

13 SECTION 3.1203. Section 464.051, Health and Safety Code, is
14 amended by amending Subdivision (2) and adding Subdivision (2-a) to
15 read as follows:

16 (2) "Department" [Commission] has the meaning
17 assigned by Section 464.001.

18 (2-a) "Executive commissioner" has the meaning
19 assigned by Section 464.001.

20 SECTION 3.1204. Section 464.052(b), Health and Safety Code,
21 is amended to read as follows:

22 (b) The department [commission] may not prohibit the use, by
23 a program exempted under this subchapter, of the term "counseling,"
24 "treatment," or "rehabilitation."

25 SECTION 3.1205. Section 464.053, Health and Safety Code, is
26 amended to read as follows:

27 Sec. 464.053. EXEMPT PROGRAM REGISTRATION. The executive

1 commissioner [~~commission~~] by rule shall establish a simple
2 procedure for a faith-based chemical dependency treatment program
3 to register the program's exemption under Section **464.052**.

4 SECTION 3.1206. Section **464.055**, Health and Safety Code, is
5 amended to read as follows:

6 Sec. 464.055. REPRESENTATIONS IN PROGRAM ADVERTISING OR
7 LITERATURE. A program exempted under this subchapter shall
8 conspicuously include in any advertisement or literature that
9 promotes or describes the program or the program's chemical
10 dependency treatment services the following statement:

11 "The treatment and recovery services at (name of program) are
12 exclusively religious in nature and are not subject to licensure or
13 regulation by the Department of State Health Services [~~Texas~~
14 ~~Commission on Alcohol and Drug Abuse~~]. This program offers only
15 nonmedical treatment and recovery methods such as prayer, moral
16 guidance, spiritual counseling, and scriptural study."

17 SECTION 3.1207. Section **464.056(a)**, Health and Safety Code,
18 is amended to read as follows:

19 (a) A program exempted under this subchapter may not admit a
20 person unless the person signs the following statement on
21 admission:

22 "DECLARATION:

23 "I understand that:

24 (1) the treatment and recovery services at (name of
25 program) are exclusively religious in nature and are not subject to
26 licensure or regulation by the Department of State Health Services
27 [~~Texas Commission on Alcohol and Drug Abuse~~]; and

1 (2) (name of program) offers only nonmedical treatment
2 and recovery methods, such as prayer, moral guidance, spiritual
3 counseling, and scriptural study."

4 signed _____ date _____

5 SECTION 3.1208. Section 464.057, Health and Safety Code, is
6 amended to read as follows:

7 Sec. 464.057. REVOCATION OF EXEMPTION. The department
8 [~~commission~~] may revoke the exemption after notice and hearing if:

9 (1) the organization conducting the program fails to
10 timely inform the department [~~commission~~] of any material change in
11 the program's registration information;

12 (2) any program advertisement or literature fails to
13 include the statements required by Section 464.055; or

14 (3) the organization violates this subchapter or a
15 department [~~commission~~] rule adopted under this subchapter.

16 SECTION 3.1209. Section 464.059, Health and Safety Code, is
17 amended to read as follows:

18 Sec. 464.059. RELIGION NOT ENDORSED. This subchapter is
19 not intended to aid religion. This subchapter is intended to aid
20 [~~chemically dependent~~] persons with a chemical dependency by
21 supporting programs that serve the valid public purpose of
22 combating chemical dependency, regardless of whether the programs
23 are religious, spiritual, or ecclesiastical in nature. The
24 exemption of faith-based chemical dependency treatment programs
25 from licensure and regulation is not an endorsement or sponsorship
26 by the state of the religious character, expression, beliefs,
27 doctrines, or practices of the treatment programs.

1 SECTION 3.1210. Sections 466.001(a) and (c), Health and
2 Safety Code, are amended to read as follows:

3 (a) It is the intent of the legislature that the department
4 exercise its administrative powers and regulatory authority to
5 ensure the proper use of approved narcotic drugs in the treatment of
6 persons with a narcotic dependency [~~dependent persons~~].

7 (c) Short-term goals should have an emphasis of personal and
8 public health, crime prevention, reintegration of persons with a
9 narcotic addiction [~~addicted persons~~] into the public work force,
10 and social and medical stabilization. Narcotic treatment programs
11 are an important component of the state's effort to prevent the
12 further proliferation of the AIDS virus. Total drug abstinence is
13 recognized as a long-term goal of treatment, subject to medical
14 determination of the medical appropriateness and prognosis of the
15 person with a narcotic addiction [~~addicted person~~].

16 SECTION 3.1211. Section 466.002, Health and Safety Code, is
17 amended by amending Subdivisions (4) and (5) and adding Subdivision
18 (5-a) to read as follows:

19 (4) "Commissioner" means the commissioner of state
20 [~~public~~] health services.

21 (5) "Department" means the [~~Texas~~] Department of State
22 Health Services.

23 (5-a) "Executive commissioner" means the executive
24 commissioner of the Health and Human Services Commission.

25 SECTION 3.1212. Section 466.004, Health and Safety Code, is
26 amended to read as follows:

27 Sec. 466.004. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER

1 [BOARD] AND DEPARTMENT. (a) The executive commissioner [board]
2 shall adopt and the department shall administer and enforce rules
3 to ensure the proper use of approved narcotic drugs in the treatment
4 of persons with a narcotic drug dependency [~~drug-dependent~~
5 ~~persons~~], including rules that:

6 (1) require an applicant or a permit holder to make
7 annual, periodic, and special reports that the department
8 determines are necessary;

9 (2) require an applicant or permit holder to keep
10 records that the department determines are necessary;

11 (3) provide for investigations that the department
12 determines are necessary; and

13 (4) provide for the coordination of the approval of
14 narcotic drug treatment programs by the United States Food and Drug
15 Administration and the United States Drug Enforcement
16 Administration.

17 (b) The executive commissioner [board] shall adopt rules
18 for the issuance of permits to operate narcotic drug treatment
19 programs including rules:

20 (1) governing the submission and review of
21 applications;

22 (2) establishing the criteria for the issuance and
23 renewal of permits; and

24 (3) establishing the criteria for the suspension and
25 revocation of permits.

26 SECTION 3.1213. Section 466.022, Health and Safety Code, is
27 amended to read as follows:

1 Sec. 466.022. LIMITATION ON PRESCRIPTION, ORDER, OR
2 ADMINISTRATION OF NARCOTIC DRUG. A physician may not prescribe,
3 order, or administer a narcotic drug for the purpose of treating
4 drug dependency unless the physician prescribes, orders, or
5 administers an approved narcotic drug for the maintenance or
6 detoxification of persons with a drug dependency [drug-dependent
7 persons] as part of a program permitted by the department.

8 SECTION 3.1214. Sections 466.023(a), (b), (e), and (f),
9 Health and Safety Code, are amended to read as follows:

10 (a) The department shall issue a permit to an applicant who
11 qualifies under rules and standards adopted by the executive
12 commissioner [~~board~~].

13 (b) A permit issued under this section is valid until
14 suspended or revoked by the department or surrendered by the permit
15 holder in accordance with department [~~board~~] rules.

16 (e) The executive commissioner [~~board~~] by rule shall
17 establish and the department shall collect a nonrefundable
18 application fee to defray the cost to the department of processing
19 each application for a permit. The application fee must be
20 submitted with the application. An application may not be
21 considered unless the application is accompanied by the application
22 fee.

23 (f) The executive commissioner [~~board~~] shall adopt rules
24 that set permit fees in amounts sufficient for the department to
25 recover not less than half of the actual annual expenditures of
26 state funds by the department to:

27 (1) amend permits;

- 1 (2) inspect facilities operated by permit holders; and
2 (3) implement and enforce this chapter.

3 SECTION 3.1215. Section 466.024(b), Health and Safety Code,
4 is amended to read as follows:

5 (b) The department may issue a permit to a person other than
6 a physician only if the person provides health care services under
7 the supervision of one or more physicians licensed by the Texas
8 Medical [~~State~~] Board [~~or Medical Examiners~~].

9 SECTION 3.1216. Sections 466.025(a) and (c), Health and
10 Safety Code, are amended to read as follows:

11 (a) The department [~~An authorized agent~~] may enter the
12 facility of a person who is an applicant for a permit or who is a
13 permit holder during any hours in which the facility is in operation
14 for the purpose of inspecting the facility to determine:

15 (1) if the person meets the standards set in
16 department [~~the~~] rules [~~of the board~~] for the issuance of a permit;
17 or

18 (2) if a person who holds a permit is in compliance
19 with this chapter, the standards set in department [~~the~~] rules [~~of~~
20 ~~the board~~] for the operation of a facility, any special provisions
21 contained in the permit, or an order of the commissioner or the
22 department.

23 (c) The department [~~authorized agent~~] shall provide the
24 applicant or permit holder with a copy of the inspection report. An
25 inspection report shall be made a part of the applicant's
26 submission file or the permit holder's compliance record.

27 SECTION 3.1217. Section 466.026, Health and Safety Code, is

1 amended to read as follows:

2 Sec. 466.026. MULTIPLE ENROLLMENT PREVENTION. The
3 department shall work with representatives from permitted narcotic
4 treatment programs in this state to develop recommendations for a
5 plan to prevent the simultaneous multiple enrollment of persons in
6 narcotic treatment programs. The executive commissioner [board]
7 may adopt rules to implement these recommendations.

8 SECTION 3.1218. Sections 466.027(b) and (c), Health and
9 Safety Code, are amended to read as follows:

10 (b) The executive commissioner [board] may adopt rules that
11 establish the criteria for the denial, suspension, or revocation of
12 a permit.

13 (c) Hearings, appeals from, and judicial review of final
14 administrative decisions under this section shall be conducted
15 according to the contested case provisions of Chapter 2001,
16 Government Code, and the department's [board's] formal hearing
17 rules.

18 SECTION 3.1219. Sections 466.041(a), (b), and (c), Health
19 and Safety Code, are amended to read as follows:

20 (a) The department [commissioner or the commissioner's
21 designee] may issue an emergency order, either mandatory or
22 prohibitory in nature, in relation to the operation of a permitted
23 facility or the treatment of patients by the facility staff, in the
24 department's jurisdiction. The order may be issued if the
25 department [commissioner or the commissioner's designee]
26 determines that the treatment of patients by the staff of the permit
27 holder creates or poses an immediate and serious threat to human

1 life or health and other procedures available to the department to
2 remedy or prevent the occurrence of the situation will result in an
3 unreasonable delay.

4 (b) The department [commissioner or the commissioner's
5 designee] may issue the emergency order, including an emergency
6 order suspending or revoking a permit issued by the department,
7 without notice and hearing, if the department [commissioner or the
8 commissioner's designee] determines that action to be practicable
9 under the circumstances.

10 (c) If an emergency order is issued without a hearing, the
11 department shall determine a time and place for a hearing at which
12 the emergency order is affirmed, modified, or set aside. The
13 hearing shall be held under the contested case provisions of
14 Chapter 2001, Government Code, and the department's [board's]
15 formal hearing rules.

16 SECTION 3.1220. Sections 466.042(a) and (b), Health and
17 Safety Code, are amended to read as follows:

18 (a) The department [commissioner, the commissioner's
19 designee, or an authorized agent] may request the attorney general
20 or a district, county, or municipal attorney to petition the
21 district court for a temporary restraining order to restrain:

22 (1) a continuing violation of this chapter, a rule
23 adopted under this chapter, or an order or permit issued under this
24 chapter; or

25 (2) a threat of a continuing violation of this
26 chapter, a rule, or an order or permit.

27 (b) To request a temporary restraining order, the

1 department [commissioner, commissioner's designee, or an
2 authorized agent] must find that a person has violated, is
3 violating, or is threatening to violate this chapter, a rule
4 adopted under this chapter, or an order or permit issued under this
5 chapter and:

6 (1) the violation or threatened violation creates an
7 immediate threat to the health and safety of the public; or

8 (2) there is reasonable cause to believe that the
9 permit holder or the staff of the permit holder is party to the
10 diversion of a narcotic drug or drugs in violation of Chapter 481
11 (Texas Controlled Substances Act).

12 SECTION 3.1221. Section 466.043, Health and Safety Code, is
13 amended to read as follows:

14 Sec. 466.043. ADMINISTRATIVE PENALTY. If a person violates
15 this chapter, a rule adopted under this chapter, or an order or
16 permit issued under this chapter, the department [commissioner] may
17 assess an administrative penalty against the person as provided by
18 Chapter 431 (Texas Food, Drug, and Cosmetic Act).

19 SECTION 3.1222. Section 466.045(a), Health and Safety Code,
20 is amended to read as follows:

21 (a) If it appears that a person has violated this chapter, a
22 rule adopted under this chapter, or an order or permit issued under
23 this chapter, the department [commissioner] may request the
24 attorney general or the district, county, or municipal attorney of
25 the municipality or county in which the violation occurred to
26 institute a civil suit for the assessment and recovery of a civil
27 penalty.

1 SECTION 3.1223. Section 467.001, Health and Safety Code, is
2 amended by amending Subdivisions (1) and (5) and adding Subdivision
3 (2-a) to read as follows:

4 (1) "Approved peer assistance program" means a program
5 that is designed to help an impaired professional and that is:

6 (A) established by a licensing or disciplinary
7 authority; or

8 (B) approved by a licensing or disciplinary
9 authority as meeting the criteria established by the executive
10 commissioner [department] and any additional criteria established
11 by that licensing or disciplinary authority.

12 (2-a) "Executive commissioner" means the executive
13 commissioner of the Health and Human Services Commission.

14 (5) "Professional" means an individual who:

15 (A) may incorporate under The Texas Professional
16 Corporation Law as described by Section 1.008(m), Business
17 Organizations Code [Act (Article 1528e, Vernon's Texas Civil
18 Statutes)]; or

19 (B) is licensed, registered, certified, or
20 otherwise authorized by the state to practice as a licensed
21 vocational nurse, social worker, chemical dependency counselor,
22 occupational therapist, speech-language pathologist, audiologist,
23 licensed dietitian, or dental or dental hygiene school faculty
24 member.

25 SECTION 3.1224. Section 467.003, Health and Safety Code, is
26 amended to read as follows:

27 Sec. 467.003. PROGRAMS. (a) A professional association or

1 licensing or disciplinary authority may establish a peer assistance
2 program to identify and assist impaired professionals in accordance
3 with the minimum criteria established by the executive commissioner
4 [department] and any additional criteria established by the
5 appropriate licensing or disciplinary authority.

6 (b) A peer assistance program established by a professional
7 association is not governed by or entitled to the benefits of this
8 chapter unless the association submits evidence to the appropriate
9 licensing or disciplinary authority showing that the association's
10 program meets the minimum criteria established by the executive
11 commissioner [department] and any additional criteria established
12 by that authority.

13 (c) If a licensing or disciplinary authority receives
14 evidence showing that a peer assistance program established by a
15 professional association meets the minimum criteria established by
16 the executive commissioner [department] and any additional
17 criteria established by that authority, the authority shall approve
18 the program.

19 (d) A licensing or disciplinary authority may revoke its
20 approval of a program established by a professional association
21 under this chapter if the authority determines that:

22 (1) the program does not comply with the criteria
23 established by the executive commissioner [department] or by that
24 authority; and

25 (2) the professional association does not bring the
26 program into compliance within a reasonable time, as determined by
27 that authority.

1 SECTION 3.1225. The heading to Section [467.0041](#), Health and
2 Safety Code, is amended to read as follows:

3 Sec. 467.0041. FUNDING FOR ~~[TEXAS]~~ STATE BOARD OF DENTAL
4 EXAMINERS.

5 SECTION 3.1226. Sections [467.0041](#)(a), (c), and (d), Health
6 and Safety Code, are amended to read as follows:

7 (a) Except as provided by this section, the ~~[Texas]~~ State
8 Board of Dental Examiners is subject to Section [467.004](#).

9 (c) The board may collect a fee of not more than \$50 each
10 month from a participant in an approved peer assistance program.
11 ~~Fees collected under this subsection shall be remitted to the~~
12 ~~comptroller for deposit to the credit of the dental registration~~
13 ~~account.~~]

14 (d) Subject to the General Appropriations Act, the board may
15 use the fees and surcharges collected under this section and fines
16 collected in the enforcement of Subtitle D, Title 3, Occupations
17 Code [Chapter 9, Title 71, Revised Statutes, and that are deposited
18 in the dental registration account], to fund an approved program
19 and to pay the administrative costs incurred by the board that are
20 related to the program.

21 SECTION 3.1227. Section [481.002](#), Health and Safety Code, is
22 amended by amending Subdivision (3) and adding Subdivision (55) to
23 read as follows:

24 (3) "Commissioner" means the commissioner of state
25 ~~public~~ health services or the commissioner's designee.

26 (55) "Executive commissioner" means the executive
27 commissioner of the Health and Human Services Commission.

1 SECTION 3.1228. Sections [481.034](#)(a), (b), and (e), Health
2 and Safety Code, are amended to read as follows:

3 (a) The commissioner shall annually establish the schedules
4 of controlled substances. These annual schedules shall include the
5 complete list of all controlled substances from the previous
6 schedules and modifications in the federal schedules of controlled
7 substances as required by Subsection (g). Any further additions to
8 and deletions from these schedules, any rescheduling of substances
9 and any other modifications made by the commissioner to these
10 schedules of controlled substances shall be made:

11 (1) in accordance with Section [481.035](#);
12 (2) in a manner consistent with this subchapter; and
13 (3) with approval of the executive commissioner [~~Texas~~
14 ~~Board of Health~~].

15 (b) Except for alterations in schedules required by
16 Subsection (g), the commissioner may not make an alteration in a
17 schedule unless the commissioner holds a public hearing on the
18 matter in Austin and obtains approval from the executive
19 commissioner [~~Texas Board of Health~~].

20 (e) After considering the factors listed in Subsection (d),
21 the commissioner shall make findings with respect to those factors.
22 If [~~and adopt a rule controlling the substance if~~] the commissioner
23 finds the substance has a potential for abuse, the executive
24 commissioner shall adopt a rule controlling the substance.

25 SECTION 3.1229. Section [481.062](#)(a), Health and Safety Code,
26 is amended to read as follows:

27 (a) The following persons are not required to register and

1 may possess a controlled substance under this chapter:

2 (1) an agent or employee of a registered manufacturer,
3 distributor, analyzer, or dispenser of the controlled substance
4 acting in the usual course of business or employment;

5 (2) a common or contract carrier, a warehouseman, or
6 an employee of a carrier or warehouseman whose possession of the
7 controlled substance is in the usual course of business or
8 employment;

9 (3) an ultimate user or a person in possession of the
10 controlled substance under a lawful order of a practitioner or in
11 lawful possession of the controlled substance if it is listed in
12 Schedule V;

13 (4) an officer or employee of this state, another
14 state, a political subdivision of this state or another state, or
15 the United States who is lawfully engaged in the enforcement of a
16 law relating to a controlled substance or drug or to a customs law
17 and authorized to possess the controlled substance in the discharge
18 of the person's official duties; or

19 (5) if the substance is tetrahydrocannabinol or one of
20 its derivatives:

21 (A) a [Texas] Department of State Health Services
22 official, a medical school researcher, or a research program
23 participant possessing the substance as authorized under
24 Subchapter G; or

25 (B) a practitioner or an ultimate user possessing
26 the substance as a participant in a federally approved therapeutic
27 research program that the commissioner has reviewed and found, in

1 writing, to contain a medically responsible research protocol.

2 SECTION 3.1230. Section 481.068(b), Health and Safety Code,
3 is amended to read as follows:

4 (b) Except as provided by Sections 481.074 and 481.075, a
5 practitioner engaged in authorized medical practice or research may
6 not be required to furnish the name or identity of a patient or
7 research subject to the department, the Department of State Health
8 Services [~~director of the Texas Commission on Alcohol and Drug~~
9 ~~Abuse~~], or any other agency, public official, or law enforcement
10 officer. A practitioner may not be compelled in a state or local
11 civil, criminal, administrative, legislative, or other proceeding
12 to furnish the name or identity of an individual that the
13 practitioner is obligated to keep confidential.

14 SECTION 3.1231. Section 481.073(a), Health and Safety Code,
15 is amended to read as follows:

16 (a) Only a practitioner defined by Section 481.002(39)(A)
17 and an agent designated in writing by the practitioner in
18 accordance with rules adopted by the department may communicate a
19 prescription by telephone. A pharmacy that receives a
20 telephonically communicated prescription shall promptly write the
21 prescription and file and retain the prescription in the manner
22 required by this subchapter. A practitioner who designates an
23 agent to communicate prescriptions shall maintain the written
24 designation of the agent in the practitioner's usual place of
25 business and shall make the designation available for inspection by
26 investigators for the Texas Medical [~~State~~] Board [~~of Medical~~
27 ~~Examiners~~], the State Board of Dental Examiners, the State Board of

1 Veterinary Medical Examiners, and the department. A practitioner
2 who designates a different agent shall designate that agent in
3 writing and maintain the designation in the same manner in which the
4 practitioner initially designated an agent under this section.

5 SECTION 3.1232. Sections [481.201](#)(a) and (b), Health and
6 Safety Code, are amended to read as follows:

7 (a) The executive commissioner [~~Texas Board of Health~~] may
8 establish a controlled substance therapeutic research program for
9 the supervised use of tetrahydrocannabinols for medical and
10 research purposes to be conducted in accordance with this chapter.

11 (b) If the executive commissioner [~~Texas Board of Health~~]
12 establishes the program, the executive commissioner [~~board~~] shall
13 create a research program review board. The review board members
14 are appointed by the executive commissioner [~~Texas Board of Health~~]
15 and serve at the will of the executive commissioner [~~board~~].

16 SECTION 3.1233. Sections [481.202](#)(b) and (d), Health and
17 Safety Code, are amended to read as follows:

18 (b) The review board, after approval of the executive
19 commissioner [~~Texas Board of Health~~], may seek authorization to
20 expand the research program to include diseases not covered by this
21 subchapter.

22 (d) The executive commissioner [~~Texas Board of Health~~] may
23 terminate the distribution of tetrahydrocannabinols and their
24 derivatives to a research program as the executive commissioner
25 [~~it~~] determines necessary.

26 SECTION 3.1234. Section [481.203](#)(a), Health and Safety Code,
27 is amended to read as follows:

1 (a) A person may not be considered for participation as a
2 recipient of tetrahydrocannabinols and their derivatives through a
3 research program unless the person is recommended to a person in
4 charge of an approved research program and the review board by a
5 physician who is licensed by the Texas Medical [State] Board [~~or~~
6 Medical Examiners] and is attending the person.

7 SECTION 3.1235. Section 481.204, Health and Safety Code, is
8 amended to read as follows:

9 Sec. 481.204. ACQUISITION AND DISTRIBUTION OF CONTROLLED
10 SUBSTANCES. (a) The executive commissioner [~~Texas Board of~~
11 ~~Health~~] shall acquire the tetrahydrocannabinols and their
12 derivatives for use in the research program by contracting with the
13 National Institute on Drug Abuse to receive tetrahydrocannabinols
14 and their derivatives that are safe for human consumption according
15 to the regulations adopted by the institute, the United States Food
16 and Drug Administration, and the Federal Drug Enforcement
17 Administration.

18 (b) The executive commissioner [~~Texas Board of Health~~]
19 shall supervise the distribution of the tetrahydrocannabinols and
20 their derivatives to program participants. The
21 tetrahydrocannabinols and derivatives of tetrahydrocannabinols may
22 be distributed only by the person in charge of the research program
23 to physicians caring for program participant patients, under rules
24 adopted by the executive commissioner [~~Texas Board of Health~~] in
25 such a manner as to prevent unauthorized diversion of the
26 substances and in compliance with all requirements of the Federal
27 Drug Enforcement Administration. The physician is responsible for

1 dispensing the substances to patients.

2 SECTION 3.1236. Section 481.205, Health and Safety Code, is
3 amended to read as follows:

4 Sec. 481.205. RULES; REPORTS. (a) The executive
5 commissioner [~~Texas Board of Health~~] shall adopt rules necessary
6 for implementing the research program.

7 (b) If the executive commissioner [~~Texas Board of Health~~]
8 establishes a program under this subchapter, the commissioner shall
9 publish a report not later than January 1 of each odd-numbered year
10 on the medical effectiveness of the use of tetrahydrocannabinols
11 and their derivatives and any other medical findings of the
12 research program.

13 SECTION 3.1237. Section 483.003, Health and Safety Code, is
14 amended to read as follows:

15 Sec. 483.003. DEPARTMENT [~~BOARD~~] OF STATE HEALTH SERVICES
16 HEARINGS REGARDING CERTAIN DANGEROUS DRUGS. (a) The Department
17 [~~Texas Board~~] of State Health Services may hold public hearings in
18 accordance with Chapter 2001, Government Code, to determine whether
19 there is compelling evidence that a dangerous drug has been abused,
20 either by being prescribed for nontherapeutic purposes or by the
21 ultimate user.

22 (b) On [~~making that~~] finding that a dangerous drug has been
23 abused, the Department [~~Texas Board~~] of State Health Services may
24 limit the availability of the abused drug by permitting its
25 dispensing only on the prescription of a practitioner described by
26 Section 483.001(12)(A), (B), or (D).

27 SECTION 3.1238. Section 483.004, Health and Safety Code, is

1 amended to read as follows:

2 Sec. 483.004. COMMISSIONER OF STATE HEALTH SERVICES
3 EMERGENCY AUTHORITY RELATING TO DANGEROUS DRUGS. If the
4 commissioner of state health services has compelling evidence that
5 an immediate danger to the public health exists as a result of the
6 prescription of a dangerous drug by practitioners described by
7 Section 483.001(12)(C), the commissioner may use the
8 commissioner's existing emergency authority to limit the
9 availability of the drug by permitting its prescription only by
10 practitioners described by Section 483.001(12)(A), (B), or (D).

11 SECTION 3.1239. Section 483.024, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 483.024. RECORDS OF ACQUISITION OR DISPOSAL. The
14 following persons shall maintain a record of each acquisition and
15 each disposal of a dangerous drug for two years after the date of
16 the acquisition or disposal:

17 (1) a pharmacy;
18 (2) a practitioner;
19 (3) a person who obtains a dangerous drug for lawful
20 research, teaching, or testing purposes, but not for resale;
21 (4) a hospital that obtains a dangerous drug for
22 lawful administration by a practitioner; and
23 (5) a manufacturer or wholesaler licensed by
24 [~~registered with~~] the Department [~~commissioner~~] of State Health
25 Services [~~health~~] under Chapter 431 (Texas Food, Drug, and Cosmetic
26 Act).

27 SECTION 3.1240. Section 483.041(c), Health and Safety Code,

1 is amended to read as follows:

2 (c) Subsection (a) does not apply to the possession of a
3 dangerous drug in the usual course of business or practice or in the
4 performance of official duties by the following persons or an agent
5 or employee of the person:

6 (1) a pharmacy licensed by the board;

7 (2) a practitioner;

8 (3) a person who obtains a dangerous drug for lawful
9 research, teaching, or testing, but not for resale;

10 (4) a hospital that obtains a dangerous drug for
11 lawful administration by a practitioner;

12 (5) an officer or employee of the federal, state, or
13 local government;

14 (6) a manufacturer or wholesaler licensed by the
15 Department of State Health Services under Chapter 431 (Texas Food,
16 Drug, and Cosmetic Act);

17 (7) a carrier or warehouseman;

18 (8) a home and community support services agency
19 licensed under and acting in accordance with Chapter 142;

20 (9) a licensed midwife who obtains oxygen for
21 administration to a mother or newborn or who obtains a dangerous
22 drug for the administration of prophylaxis to a newborn for the
23 prevention of ophthalmia neonatorum in accordance with Section
24 [203.353](#), Occupations Code;

25 (10) a salvage broker or salvage operator licensed
26 under Chapter 432; or

27 (11) a certified laser hair removal professional under

1 Subchapter M, Chapter 401, who possesses and uses a laser or pulsed
2 light device approved by and registered with the Department of
3 State Health Services [department] and in compliance with
4 department rules for the sole purpose of cosmetic nonablative hair
5 removal.

6 SECTION 3.1241. Section 485.001, Health and Safety Code, is
7 amended by amending Subdivisions (4) and (7) and adding Subdivision
8 (7-a) to read as follows:

9 (4) "Commissioner" means the commissioner of state
10 health services.

11 (7) "Department" means the [Texas] Department of State
12 Health Services.

13 (7-a) "Executive commissioner" means the executive
14 commissioner of the Health and Human Services Commission.

15 SECTION 3.1242. Section 485.002, Health and Safety Code, is
16 amended to read as follows:

17 Sec. 485.002. RULES. The executive commissioner [board]
18 may adopt rules necessary to comply with any labeling requirements
19 concerning precautions against inhalation of an abusable volatile
20 chemical established under the Federal Hazardous Substances Act (15
21 U.S.C. Section 1261 et seq.), as amended, or under regulations
22 adopted under that Act.

23 SECTION 3.1243. Sections 485.012(b) and (d), Health and
24 Safety Code, are amended to read as follows:

25 (b) The executive commissioner [board] shall adopt rules as
26 necessary to administer this chapter, including application
27 procedures and procedures by which the department shall give each

1 permit holder reasonable notice of permit expiration and renewal
2 requirements.

3 (d) A permit issued or renewed under this chapter is valid
4 for two years [~~one year~~] from the date of issuance or renewal.

5 SECTION 3.1244. Section 485.013, Health and Safety Code, is
6 amended to read as follows:

7 Sec. 485.013. FEE. The executive commissioner [~~board~~] by
8 rule may establish fees in amounts as prescribed by Section 12.0111
9 [~~not to exceed \$25 for the issuance of a permit under this chapter~~].

10 SECTION 3.1245. Section 485.104(b), Health and Safety Code,
11 is amended to read as follows:

12 (b) If the person accepts the determination and recommended
13 penalty or if the person fails to respond to the notice, the
14 department [~~commissioner~~] by order shall [~~approve the~~
15 ~~determination and~~] impose the recommended penalty.

16 SECTION 3.1246. Section 485.105, Health and Safety Code, is
17 amended to read as follows:

18 Sec. 485.105. HEARING. (a) If the person requests a
19 hearing, the department [~~commissioner~~] shall refer the matter to
20 the State Office of Administrative Hearings, which shall promptly
21 set a hearing date. The department shall [~~and~~] give written notice
22 of the time and place of the hearing to the person. An
23 administrative law judge of the State Office of Administrative
24 Hearings shall conduct the hearing.

25 (b) The administrative law judge shall make findings of fact
26 and conclusions of law and promptly issue to the department
27 [~~commissioner~~] a written proposal for a decision about the

1 occurrence of the violation and the amount of a proposed penalty.

2 SECTION 3.1247. Section 485.106, Health and Safety Code, is
3 amended to read as follows:

4 Sec. 485.106. DECISION BY DEPARTMENT [~~COMMISSIONER~~]. (a)
5 Based on the findings of fact, conclusions of law, and proposal for
6 a decision, the department [~~commissioner~~] by order may:

7 (1) find that a violation occurred and impose a
8 penalty; or

9 (2) find that a violation did not occur.

10 (b) The notice of the department's [~~commissioner's~~] order
11 under Subsection (a) that is sent to the person in accordance with
12 Chapter 2001, Government Code, must include a statement of the
13 right of the person to judicial review of the order.

14 SECTION 3.1248. Section 485.107, Health and Safety Code, is
15 amended to read as follows:

16 Sec. 485.107. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.
17 Within 30 days after the date the order of the department
18 [~~commissioner~~] under Section 485.106 that imposes an
19 administrative penalty becomes final, the person shall:

20 (1) pay the penalty; or

21 (2) file a petition for judicial review of the
22 department's [~~commissioner's~~] order contesting the occurrence of
23 the violation, the amount of the penalty, or both.

24 SECTION 3.1249. Section 485.108, Health and Safety Code, is
25 amended to read as follows:

26 Sec. 485.108. STAY OF ENFORCEMENT OF PENALTY. (a) Within
27 the 30-day period prescribed by Section 485.107, a person who files

1 a petition for judicial review may:

2 (1) stay enforcement of the penalty by:

3 (A) paying the penalty to the court for placement
4 in an escrow account; or

5 (B) giving the court a supersedeas bond approved
6 by the court that:

7 (i) is for the amount of the penalty; and

8 (ii) is effective until all judicial review
9 of the department's [~~commissioner's~~] order is final; or

10 (2) request the court to stay enforcement of the
11 penalty by:

12 (A) filing with the court a sworn affidavit of
13 the person stating that the person is financially unable to pay the
14 penalty and is financially unable to give the supersedeas bond; and

15 (B) sending a copy of the affidavit to the
16 department [~~commissioner~~] by certified mail.

17 (b) If the department [~~commissioner~~] receives a copy of an
18 affidavit under Subsection (a)(2), the department [~~commissioner~~]
19 may file with the court, within five days after the date the copy is
20 received, a contest to the affidavit. The court shall hold a
21 hearing on the facts alleged in the affidavit as soon as practicable
22 and shall stay the enforcement of the penalty on finding that the
23 alleged facts are true. The person who files an affidavit has the
24 burden of proving that the person is financially unable to pay the
25 penalty or to give a supersedeas bond.

26 SECTION 3.1250. Section 486.001(a), Health and Safety Code,
27 is amended by adding Subdivision (4-a) to read as follows:

1 (4-a) "Executive commissioner" means the executive
2 commissioner of the Health and Human Services Commission.

3 SECTION 3.1251. Section 486.003, Health and Safety Code, is
4 amended to read as follows:

5 Sec. 486.003. RULES. The executive commissioner [council]
6 shall adopt rules necessary to implement and enforce this chapter.

7 SECTION 3.1252. Section 486.004(b), Health and Safety Code,
8 is amended to read as follows:

9 (b) The executive commissioner by rule shall set the fees in
10 amounts that allow the department to recover the biennial
11 expenditures of state funds by the department in:

12 (1) reviewing applications for the issuance of a
13 certificate of authority under this chapter;

14 (2) issuing certificates of authority under this
15 chapter;

16 (3) inspecting and auditing a business establishment
17 that is issued a certificate of authority under this chapter; and

18 (4) otherwise implementing and enforcing this
19 chapter.

20 SECTION 3.1253. Section 486.012(c), Health and Safety Code,
21 is amended to read as follows:

22 (c) The executive commissioner [department] by rule shall
23 establish requirements for the issuance of a certificate of
24 authority under this section. The rules must include a
25 consideration [by the department] of whether the establishment:

26 (1) complies with the requirements of the Texas State
27 Board of Pharmacy for the issuance of a license to operate a

1 pharmacy;

2 (2) sells a wide variety of healthcare products; and
3 (3) employs sales techniques and other measures
4 designed to deter the theft of products containing ephedrine,
5 pseudoephedrine, or norpseudoephedrine and other items used in the
6 manufacture of methamphetamine.

7 SECTION 3.1254. Section 486.0142(a), Health and Safety
8 Code, is amended to read as follows:

9 (a) On application by a business establishment that
10 operates a pharmacy and engages in over-the-counter sales of
11 products containing ephedrine, pseudoephedrine, or
12 norpseudoephedrine as authorized by Section [486.011](#), the Texas
13 State Board of Pharmacy may grant that business establishment a
14 temporary exemption, not to exceed 180 days, from the requirement
15 of using a real-time electronic logging system under this chapter.

16 SECTION 3.1255. Section 486.024(b), Health and Safety Code,
17 is amended to read as follows:

18 (b) If the person accepts the determination and recommended
19 penalty or if the person fails to respond to the notice, the
20 department [commissioner] by order shall impose the penalty
21 [~~approve the determination~~].

22 SECTION 3.1256. Section 486.025, Health and Safety Code, is
23 amended to read as follows:

24 Sec. 486.025. HEARING. (a) If the person requests a
25 hearing, the department [~~commissioner~~] shall refer the matter to
26 the State Office of Administrative Hearings, which shall promptly
27 set a hearing date, and the department shall give written notice of

1 the time and place of the hearing to the person. An administrative
2 law judge of the State Office of Administrative Hearings shall
3 conduct the hearing.

4 (b) The administrative law judge shall make findings of fact
5 and conclusions of law and promptly issue to the department
6 [~~commissioner~~] a written proposal for a decision about the
7 occurrence of the violation and the amount of a proposed penalty.

8 SECTION 3.1257. Section 486.026, Health and Safety Code, is
9 amended to read as follows:

10 Sec. 486.026. DECISION. (a) Based on the findings of fact,
11 conclusions of law, and proposal for a decision, the department
12 [~~commissioner~~] by order may:

13 (1) find that a violation occurred and impose a
14 penalty; or

15 (2) find that a violation did not occur.

16 (b) The notice of the department's [~~commissioner's~~] order
17 under Subsection (a) that is sent to the person in the manner
18 provided by Chapter 2001, Government Code, must include a statement
19 of the right of the person to judicial review of the order.

20 SECTION 3.1258. Section 486.028, Health and Safety Code, is
21 amended to read as follows:

22 Sec. 486.028. STAY OF ENFORCEMENT OF PENALTY. (a) Within
23 the period prescribed by Section 486.027, a person who files a
24 petition for judicial review may:

25 (1) stay enforcement of the penalty by:

26 (A) paying the amount of the penalty to the court
27 for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

13 (b) Following receipt of a copy of an affidavit under
14 Subsection (a)(2), the department [commissioner] may file with the
15 court, before the sixth day after the date of receipt, a contest to
16 the affidavit. The court shall hold a hearing on the facts alleged
17 in the affidavit as soon as practicable and shall stay the
18 enforcement of the penalty on finding that the alleged facts are
19 true. The person who files an affidavit has the burden of proving
20 that the person is financially unable to pay the penalty or to give
21 a supersedeas bond.

22 SECTION 3.1259. Section 501.001, Health and Safety Code, is
23 amended by amending Subdivisions (3) and (4) and adding Subdivision
24 (4-a) to read as follows:

27 (4) "Department" means the [Texas] Department of State

1 Health Services.

2 (4-a) "Executive commissioner" means the executive
3 commissioner of the Health and Human Services Commission.

4 SECTION 3.1260. Sections 501.002(d) and (k), Health and
5 Safety Code, are amended to read as follows:

6 (d) A substance or article is extremely flammable,
7 flammable, or combustible if it is defined as extremely flammable,
8 flammable, or combustible by rule adopted by [eff] the executive
9 commissioner [board]. The executive commissioner [board] shall
10 define the terms as they are defined by the Federal Hazardous
11 Substances Act (15 U.S.C. Section 1261 et seq.), as amended, and by
12 federal regulations adopted under that Act. The terms each have the
13 meaning assigned by the Federal Hazardous Substances Act (15 U.S.C.
14 Section 1261 et seq.) and by federal regulations adopted under that
15 Act, as of September 1, 2001.

16 (k) The following are not hazardous substances:

17 (1) a pesticide subject to Chapter 76, Agriculture
18 Code, or to the Federal Insecticide, Fungicide, and Rodenticide Act
19 (7 U.S.C. Section 136 [~~135~~] et seq.);

20 (2) a food, drug, or cosmetic subject to the Federal
21 Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.) or
22 Chapter 431 (Texas Food, Drug, and Cosmetic Act);

23 (3) a beverage complying with or subject to the
24 Federal Alcohol Administration Act (27 U.S.C. Section 201 et seq.);

25 (4) a substance intended for use as fuel that is stored
26 in a container and used in the heating, cooking, or refrigeration
27 system of a private residence; and

1 (5) source material, special nuclear material, or
2 by-product material as defined in the Atomic Energy Act of 1954 (42
3 U.S.C. Chapter 23) and regulations issued under that Act by the
4 United States Nuclear Regulatory Commission [~~Atomic Energy~~
5 ~~Commission~~].

6 SECTION 3.1261. Section 501.003, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 501.003. DESIGNATION OF RADIOACTIVE SUBSTANCE AS
9 HAZARDOUS. The executive commissioner [~~board~~] by rule shall
10 designate a radioactive substance to be a hazardous substance if,
11 with respect to the substance as used in a particular class of
12 article or as packaged, the executive commissioner [~~board~~] finds
13 that the substance is sufficiently hazardous as to require labeling
14 as a hazardous substance under this chapter in order to protect the
15 public health.

16 SECTION 3.1262. Sections 501.021(a) and (b), Health and
17 Safety Code, are amended to read as follows:

18 (a) The executive commissioner [~~board~~] by rule shall
19 establish the methods for determining the flammability of solids,
20 fabrics, children's clothing, household furnishings, and the
21 contents of self-pressurized containers that the executive
22 commissioner [~~board~~] finds are generally applicable to those
23 materials or containers.

24 (b) The executive commissioner [~~board~~] by rule shall
25 establish flammability standards for articles described by
26 Subsection (a). The standards must conform to standards prescribed
27 by federal regulations adopted under the federal Flammable Fabrics

1 Act (15 U.S.C. Section 1191 et seq.), as amended, the Federal
2 Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as
3 amended, and the federal Consumer Product Safety Act (15 U.S.C.
4 Section 2051 et seq.), as amended. Until the executive
5 commissioner [board] adopts standards, the flammability standards
6 for articles described by Subsection (a) are the standards
7 prescribed by federal regulations adopted under the federal
8 Flammable Fabrics Act (15 U.S.C. Section 1191 et seq.), the Federal
9 Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), and the
10 federal Consumer Product Safety Act (15 U.S.C. Section 2051 et
11 seq.) as of September 1, 2001.

12 SECTION 3.1263. Sections 501.022(a), (b), (c), (d), and
13 (e), Health and Safety Code, are amended to read as follows:

14 (a) The executive commissioner [board] by rule shall
15 designate as a banned hazardous substance any article, including
16 clothing intended for the use of children, that is not properly
17 packaged or that does not comply with applicable flammability
18 standards established by the executive commissioner [board]. The
19 executive commissioner's [board's] determination that articles of
20 clothing of a specified range of sizes are intended for the use of a
21 child 14 years of age or younger is conclusive.

22 (b) The executive commissioner [board] by rule shall
23 designate as a banned hazardous substance any toy or other article,
24 other than clothing, intended for the use of children that is a
25 hazardous substance or bears or contains a hazardous substance in a
26 manner accessible by a child to whom the toy or other article is
27 entrusted.

1 (c) The executive commissioner [board] by rule shall
2 designate as a banned hazardous substance any hazardous substance
3 intended or packaged in a form suitable for use in a household that,
4 notwithstanding cautionary labeling required by this chapter, is
5 potentially so dangerous or hazardous when present or used in a
6 household that the protection of the public health and safety may be
7 adequately served only by keeping the substance out of commerce.

8 (d) The executive commissioner [board] by rule shall
9 designate as a banned hazardous substance any article subject to
10 this chapter that cannot be labeled adequately to protect the
11 public health and safety or that presents an imminent danger to the
12 public health and safety.

13 (e) This section does not apply to a toy or article such as a
14 chemical set that because of its functional purpose requires the
15 inclusion of a hazardous substance or necessarily presents an
16 electrical, mechanical, or thermal hazard if the toy or article:

17 (1) bears labeling that in the judgment of the
18 department [board] gives adequate directions and warnings for safe
19 use; and

20 (2) is intended for use by children who have attained
21 sufficient maturity and may reasonably be expected to read and heed
22 those directions and warnings.

23 SECTION 3.1264. Section 501.0231, Health and Safety Code,
24 is amended to read as follows:

25 Sec. 501.0231. LABELING OF CERTAIN TOYS AND GAMES. (a)
26 Toys or games intended for use by children, including the parts of
27 those toys or games, shall be labeled in the manner required by

1 department rule [~~of the board~~]. The [board's] rules adopted under
2 this subsection shall be consistent with federal guidelines and
3 regulations adopted under the Federal Hazardous Substances Act (15
4 U.S.C. Section 1261 et seq.), as amended. Until the executive
5 commissioner [~~board~~] adopts rules under this subsection, the toys,
6 games, and parts shall be labeled in the manner required by federal
7 guidelines and regulations adopted under the Federal Hazardous
8 Substances Act (15 U.S.C. Section 1261 et seq.) as of September 1,
9 2001.

10 (b) Latex balloons, small balls, marbles, and any toy or
11 game that contains such a balloon, ball, or marble shall be labeled
12 in the manner required by department rule [~~of the board~~]. The
13 [board's] rules adopted under this subsection shall be consistent
14 with federal guidelines and regulations adopted under the Federal
15 Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as
16 amended. Until the executive commissioner [~~board~~] adopts rules
17 under this subsection, latex balloons, small balls, marbles, and
18 any toy or game that contains such a balloon, ball, or marble shall
19 be labeled in the manner required by federal guidelines and
20 regulations adopted under the Federal Hazardous Substances Act (15
21 U.S.C. Section 1261 et seq.) as of September 1, 2001.

22 SECTION 3.1265. Section 501.0232(b), Health and Safety
23 Code, is amended to read as follows:

24 (b) Art materials shall be labeled in the manner required by
25 department rule [~~of the board~~]. The [board's] rules adopted under
26 this subsection shall be consistent with the Federal Hazardous
27 Substances Act (15 U.S.C. Section 1261 et seq.), as amended, and

1 federal regulations adopted under that Act. Until the executive
2 commissioner [board] adopts rules under this subsection, art
3 materials shall be labeled in the manner required by the Federal
4 Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), and
5 federal regulations adopted under that Act, as of September 1,
6 2001.

7 SECTION 3.1266. Section 501.0233, Health and Safety Code,
8 is amended to read as follows:

9 Sec. 501.0233. PACKAGING OF HAZARDOUS SUBSTANCES.
10 Hazardous substances shall be packaged in the manner required by
11 special packaging rules adopted by the executive commissioner
12 [board]. The [board's] rules adopted under this section shall be
13 consistent with federal special packaging regulations adopted
14 under the federal Poison Prevention Packaging Act of 1970 (15
15 U.S.C. Section 1471 et seq.), as amended. Until the executive
16 commissioner [board] adopts rules under this section, hazardous
17 substances shall be packaged in the manner required by federal
18 special packaging regulations adopted under the federal Poison
19 Prevention Packaging Act of 1970 (15 U.S.C. Section 1471 et seq.),
20 as of September 1, 2001.

21 SECTION 3.1267. Sections 501.024(b) and (d), Health and
22 Safety Code, are amended to read as follows:

23 (b) The executive commissioner [board] by rule shall detail
24 the registration requirements and prescribe the contents of the
25 registration statement.

26 (d) The initial registration statement and each annual
27 registration statement must be accompanied by a fee prescribed by

1 the executive commissioner by rule [board].

2 SECTION 3.1268. Section 501.025, Health and Safety Code, is
3 amended to read as follows:

4 Sec. 501.025. RULES. The executive commissioner [board]
5 may adopt reasonable rules necessary for the efficient
6 administration and enforcement of this chapter. The rules must
7 conform with regulations adopted under the Federal Hazardous
8 Substances Act (15 U.S.C. Section 1261 et seq.), as amended, the
9 federal Consumer Product Safety Act (15 U.S.C. Section 2051 et
10 seq.), as amended, the federal Flammable Fabrics Act (15 U.S.C.
11 Section 1191 et seq.), as amended, and the federal Poison
12 Prevention Packaging Act of 1970 (15 U.S.C. Section 1471 et seq.),
13 as amended, as applicable.

14 SECTION 3.1269. Section 501.026, Health and Safety Code, is
15 amended to read as follows:

16 Sec. 501.026. FEES. The executive commissioner [board] by
17 rule shall set reasonable registration fees in an amount as
18 prescribed by Section 12.0111 [~~designed to recover not more than~~
19 ~~the costs to the department of administering, monitoring compliance~~
20 ~~with, enforcing, and conducting tests under this chapter~~].

21 SECTION 3.1270. Section 501.104(b), Health and Safety Code,
22 is amended to read as follows:

23 (b) If the person accepts the determination and recommended
24 penalty or if the person fails to respond to the notice, the
25 department [~~commissioner of public health~~] by order shall [~~approve~~
26 ~~the determination and~~] impose the recommended penalty.

27 SECTION 3.1271. Section 501.105, Health and Safety Code, is

1 amended to read as follows:

2 Sec. 501.105. HEARING. (a) If the person requests a
3 hearing, the department [~~commissioner of public health~~] shall refer
4 the matter to the State Office of Administrative Hearings, which
5 shall promptly set a hearing date. The department shall [~~and~~] give
6 written notice of the time and place of the hearing to the person.
7 An administrative law judge of the State Office of Administrative
8 Hearings shall conduct the hearing.

9 (b) The administrative law judge shall make findings of fact
10 and conclusions of law and promptly issue to the department
11 [~~commissioner of public health~~] a written proposal for a decision
12 about the occurrence of the violation and the amount of a proposed
13 penalty.

14 SECTION 3.1272. Section 501.106, Health and Safety Code, is
15 amended to read as follows:

16 Sec. 501.106. DECISION BY DEPARTMENT [~~COMMISSIONER~~]. (a)
17 Based on the findings of fact, conclusions of law, and proposal for
18 a decision, the department [~~commissioner of public health~~] by order
19 may:

20 (1) find that a violation occurred and impose a
21 penalty; or

22 (2) find that a violation did not occur.

23 (b) The notice of the department's [~~commissioner's~~] order
24 under Subsection (a) that is sent to the person in accordance with
25 Chapter 2001, Government Code, must include a statement of the
26 right of the person to judicial review of the order.

27 SECTION 3.1273. Section 501.107, Health and Safety Code, is

1 amended to read as follows:

2 Sec. 501.107. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.
3 Within 30 days after the date an order of the department
4 [~~commissioner of public health~~] under Section 501.106 that imposes
5 an administrative penalty becomes final, the person shall:

6 (1) pay the penalty; or
7 (2) file a petition for judicial review of the
8 department's [~~commissioner's~~] order contesting the occurrence of
9 the violation, the amount of the penalty, or both.

10 SECTION 3.1274. Section 501.108, Health and Safety Code, is
11 amended to read as follows:

12 Sec. 501.108. STAY OF ENFORCEMENT OF PENALTY. (a) Within
13 the 30-day period prescribed by Section 501.107, a person who files
14 a petition for judicial review may:

15 (1) stay enforcement of the penalty by:
16 (A) paying the penalty to the court for placement
17 in an escrow account; or
18 (B) giving the court a supersedeas bond approved
19 by the court that:

20 (i) is for the amount of the penalty; and
21 (ii) is effective until all judicial review
22 of the department's [~~commissioner's~~] order is final; or

23 (2) request the court to stay enforcement of the
24 penalty by:

25 (A) filing with the court a sworn affidavit of
26 the person stating that the person is financially unable to pay the
27 penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department [commissioner of public health] by certified mail.

3 (b) If the department [~~commissioner of public health~~]
4 receives a copy of an affidavit under Subsection (a)(2), the
5 department [~~commissioner~~] may file with the court, within five days
6 after the date the copy is received, a contest to the affidavit.
7 The court shall hold a hearing on the facts alleged in the affidavit
8 as soon as practicable and shall stay the enforcement of the penalty
9 on finding that the alleged facts are true. The person who files an
10 affidavit has the burden of proving that the person is financially
11 unable to pay the penalty or to give a supersedeas bond.

12 SECTION 3.1275. Section 502.003, Health and Safety Code, is
13 amended by amending Subdivisions (3), (4), (6), (9), (11), (13),
14 (15), (18), and (20) and adding Subdivision (11-a) to read as
15 follows:

(4) "Chemical name" means:

25 (B) a name that clearly identifies the chemical
26 for the purpose of conducting a hazard classification [evaluation].

27 (6) "Department" means the [Texas] Department of State

1 Health Services.

2 (9) "Distributor" means a business in North American
3 Industry Classification System (NAICS) Code 424 or 425 [Standard
4 Industrial Classification Major Industry Group 516 or 517] that
5 supplies hazardous chemicals to an employer who must comply with
6 this chapter [Act].

7 (11) "Employer" means a person engaged in private
8 business who is regulated by the federal Occupational Safety and
9 Health Act of 1970 (29 U.S.C. Section 651 et seq.) [(Pub. L. No.
10 91-596), the Federal Coal Mine Health and Safety Act of 1969 (Pub.
11 L. No. 91-173),] or the Federal Mine Safety and Health [Amendments]
12 Act of 1977 (30 U.S.C. Section 801 et seq.) [(Pub. L. No. 95-164)]
13 on September 1, 1993 [the effective date of this Act], or the state
14 or a political subdivision of the state, including a state, county,
15 or municipal agency, a public school, a college or university, a
16 river authority or publicly owned utility, a volunteer emergency
17 service organization, and other similar employers. The term does
18 not include any person to whom the federal Occupational Safety and
19 Health Act of 1970 (29 U.S.C. Section 651 et seq.) [(Pub. L. No.
20 91-596), the Federal Coal Mine Health and Safety Act of 1969 (Pub.
21 L. No. 91-173),] or the Federal Mine Safety and Health [Amendments]
22 Act of 1977 (30 U.S.C. Section 801 et seq.) [(Pub. L. No. 95-164)]
23 is applicable if that employer is covered by the OSHA standard or
24 the other two federal laws.

25 (11-a) "Executive commissioner" means the executive
26 commissioner of the Health and Human Services Commission.

27 (13) "Hazardous chemical" or "chemical" means an

1 element, compound, or mixture of elements or compounds that is a
2 physical hazard or health hazard as defined by the OSHA standard in
3 29 CFR Section 1910.1200(c), or a hazardous substance as classified
4 under [~~defined by~~] the OSHA standard in 29 CFR Section
5 1910.1200(d)(3), or by OSHA's written interpretations. A hazard
6 determination may be made by employers who choose not to rely on the
7 evaluations made by their suppliers if there are relevant
8 qualitative or quantitative differences. A hazard determination
9 shall involve the best professional judgment.

10 (15) "Identity" means a chemical or common name, or
11 alphabetical or numerical identification, that is indicated on the
12 [~~material~~] safety data sheet (SDS) [~~(MSDS)~~] for the chemical. The
13 identity used must permit cross-references to be made among the
14 workplace chemical list, the label, and the SDS [~~MSDS~~].

15 (18) "MSHA standard" means the Hazard Communication
16 Standard issued by the Mine [~~Mining~~] Safety and Health
17 Administration.

18 (20) "Physical hazard" means a chemical that is
19 classified as posing one of the following hazardous effects:
20 explosive; flammable (gases, aerosols, liquids, or solids);
21 oxidizer (liquid, solid, or gas); self-reactive; pyrophoric
22 (liquid or solid); self-heating; organic peroxide; corrosive to
23 metal; gas under pressure; or in contact with water emits flammable
24 gas [~~for which there is scientifically valid evidence that it is a~~
25 ~~combustible liquid, a compressed gas, explosive, flammable, an~~
26 ~~organic peroxide, an oxidizer, pyrophoric, unstable (reactive), or~~
27 ~~water-reactive in terms defined in the OSHA standard~~].

1 SECTION 3.1276. Section 502.003(17), Health and Safety
2 Code, is redesignated as Section 502.003(20-a), Health and Safety
3 Code, and amended to read as follows:

4 (20-a) "Safety [(17) "Material Safety] Data Sheet"
5 ("SDS") [("MSDS")] means written or printed material concerning a
6 hazardous chemical [a document containing chemical hazard and safe
7 handling information] that is prepared in accordance with the
8 requirements of the OSHA standard for that material [document].

9 SECTION 3.1277. Section 502.004(f), Health and Safety Code,
10 is amended to read as follows:

11 (f) This chapter does not apply to:

12 (1) any hazardous waste, as that term is defined by the
13 federal Solid Waste Disposal Act[, as amended by the Resource
14 Conservation and Recovery Act of 1976, as amended] (42 U.S.C.
15 Section 6901 et seq.), when subject to regulations issued under
16 that Act by the Environmental Protection Agency;

17 (2) a chemical in a laboratory under the direct
18 supervision or guidance of a technically qualified individual if:

19 (A) labels on incoming containers of chemicals
20 are not removed or defaced;

21 (B) the employer complies with Sections 502.006
22 and 502.009 with respect to laboratory employees; and

23 (C) the laboratory is not used primarily to
24 produce hazardous chemicals in bulk for commercial purposes;

25 (3) tobacco or tobacco products;

26 (4) wood or wood products;

27 (5) articles;

1 (6) food, drugs, cosmetics, or alcoholic beverages in
2 a retail food sale establishment that are packaged for sale to
3 consumers;

4 (7) food, drugs, or cosmetics intended for personal
5 consumption by an employee while in the workplace;

6 (8) any consumer product or hazardous substance, as
7 those terms are defined in the Consumer Product Safety Act (15
8 U.S.C. Section 2051 et seq.) and Federal Hazardous Substances Act
9 (15 U.S.C. Section 1261 et seq.), respectively, if the employer can
10 demonstrate it is used in the workplace in the same manner as normal
11 consumer use and if the use results in a duration and frequency of
12 exposure that is not greater than exposures experienced by
13 consumers;

14 (9) any drug, as that term is defined in the Federal
15 Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.); and

16 (10) radioactive waste.

17 SECTION 3.1278. Sections 502.005(a) and (d), Health and
18 Safety Code, are amended to read as follows:

19 (a) For the purpose of worker right-to-know, an employer
20 shall compile and maintain a workplace chemical list that contains
21 the following information for each hazardous chemical normally
22 present in the workplace or temporary workplace in excess of 55
23 gallons or 500 pounds or in excess of an amount that the executive
24 commissioner [board] determines by rule for certain highly toxic or
25 dangerous hazardous chemicals:

26 (1) the identity used on the SDS [MSDS] and container
27 label; and

1 (2) the work area in which the hazardous chemical is
2 normally present.

3 (d) An employer shall maintain a workplace chemical list for
4 at least 30 years. The employer shall send complete records to the
5 department [~~director~~] if the employer ceases to operate.

6 SECTION 3.1279. Section 502.006, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 502.006. [~~MATERIAL~~] SAFETY DATA SHEET. (a) A chemical
9 manufacturer or distributor shall provide appropriate [~~material~~]
10 safety data sheets to employers who acquire hazardous chemicals in
11 this state with each initial shipment and with the first shipment
12 after an SDS [~~MSDS~~] is updated. The SDSs [~~MSDSs~~] must conform to
13 the most current requirements of the OSHA standard.

14 (b) An employer shall maintain a legible copy of a current
15 SDS [~~MSDS~~] for each hazardous chemical purchased. If the employer
16 does not have a current SDS [~~MSDS~~] for a hazardous chemical when the
17 chemical is received at the workplace, the employer shall request
18 an SDS [~~MSDS~~] in writing from the manufacturer or distributor in a
19 timely manner or shall otherwise obtain a current SDS [~~MSDS~~]. The
20 manufacturer or distributor shall respond with an appropriate SDS
21 [~~MSDS~~] in a timely manner.

22 (c) Safety [~~Material safety~~] data sheets shall be readily
23 available, on request, for review by employees or designated
24 representatives at each workplace.

25 (d) A copy of an SDS [~~MSDS~~] maintained by an employer under
26 this section shall be provided to the department [~~director~~] on
27 request.

1 SECTION 3.1280. Section 502.007(a), Health and Safety Code,
2 is amended to read as follows:

3 (a) A label on an existing container of a hazardous chemical
4 may not be removed or defaced unless it is illegible, inaccurate, or
5 does not conform to the OSHA standard or other applicable labeling
6 requirement. Primary containers must be relabeled with at least
7 the identity appearing on the SDS [~~MSDS~~], the pertinent physical
8 and health hazards, including the organs that would be affected,
9 and the manufacturer's name and address. Except as provided by
10 Subsection (b), secondary containers must be relabeled with at
11 least the identity appearing on the SDS [~~MSDS~~] and appropriate
12 hazard warnings.

13 SECTION 3.1281. Section 502.008, Health and Safety Code, is
14 amended to read as follows:

15 Sec. 502.008. OUTREACH PROGRAM. (a) The department
16 [~~director~~] shall develop an outreach program that:

17 (1) consists of an education and training program in
18 the form of instructional materials to assist employers in
19 fulfilling the requirements of Section 502.009; and

20 (2) includes the development and distribution of a
21 supply of informational leaflets concerning employer's duties,
22 employee rights, the outreach program, and the effects of hazardous
23 chemicals.

24 (b) The department [~~director~~] may contract with a public
25 institution of higher education or other public or private
26 organization to develop and implement the outreach program.

27 (c) The department [~~director~~] shall develop and provide to

1 each employer a suitable form of notice providing employees with
2 information relating to employee rights under this chapter.

3 (d) The department [director] shall publicize the
4 availability of information to answer inquiries from employees,
5 employers, or the public in this state concerning the effects of
6 hazardous chemicals.

7 (e) In cooperation with the department [director], an
8 employer may provide an outreach program in the community.

9 SECTION 3.1282. Sections 502.009(c) and (i), Health and
10 Safety Code, are amended to read as follows:

11 (c) An education and training program must include, as
12 appropriate:

13 (1) information on interpreting labels and SDSs
14 [MSDSs] and the relationship between those two methods of hazard
15 communication;

16 (2) the location by work area, acute and chronic
17 effects, and safe handling of hazardous chemicals known to be
18 present in the employees' work area and to which the employees may
19 be exposed;

20 (3) the proper use of protective equipment and first
21 aid treatment to be used with respect to the hazardous chemicals to
22 which the employees may be exposed; and

23 (4) general safety instructions on the handling,
24 cleanup procedures, and disposal of hazardous chemicals.

25 (i) As part of an outreach program created in accordance
26 with Section 502.008, the department [director] shall develop an
27 education and training assistance program to assist employers who

1 are unable to develop the programs because of size or other
2 practical considerations. The program shall be made available to
3 those employers on request.

4 SECTION 3.1283. Sections 502.011(a), (b), and (c), Health
5 and Safety Code, are amended to read as follows:

6 (a) The department [director] or the department's
7 [director's] representative shall investigate in a timely manner a
8 complaint received in writing from an employee or an employee's
9 designated representative relating to an alleged violation of this
10 chapter by an employer.

11 (b) A complaint received from a person relating to an
12 alleged violation shall be referred to the federal Occupational
13 Safety and Health Administration (OSHA) or to the federal Mine
14 Safety and Health Administration (MSHA) if the complaint is related
15 to an applicable OSHA or MSHA requirement and the applicable OSHA or
16 MSHA standard is in effect. The department [director] or the
17 department's [director's] representative shall investigate the
18 complaint if:

19 (1) the applicable OSHA or MSHA standard is not in
20 effect; or

21 (2) the complaint is based on a requirement of this
22 chapter.

23 (c) On presentation of appropriate credentials, a
24 department [an officer or] representative [of the director] may
25 enter a workplace at reasonable times to inspect and investigate
26 complaints.

27 SECTION 3.1284. Sections 502.014(a), (b), (k), and (l),

1 Health and Safety Code, are amended to read as follows:

2 (a) The department [director] may assess an administrative
3 penalty against an employer who violates this chapter, department
4 [board] rules adopted under this chapter, or an order issued under
5 this chapter.

6 (b) If the department finds one or more violations of this
7 chapter, the department [director] may issue a notice of violation
8 to the employer. The notice of violation shall specifically
9 describe the violation, refer to the applicable section or
10 subsection of the chapter, and state the amount of the penalty, if
11 any, to be assessed by the department [director].

12 (k) The department [director] may not assess an
13 administrative penalty for any violation that has been corrected
14 within 15 days after the date of receipt of the notice of violation,
15 the date of receipt of the department's response by the employer, or
16 10 days after the date of receipt by the employer of the
17 department's response to the informal conference provided for in
18 Subsection (g) [~~e~~], whichever is later.

19 (l) In determining the amount of the penalty, the department
20 [director] shall consider:

21 (1) the employer's previous violations;
22 (2) the seriousness of the violation;
23 (3) any hazard to the health and safety of the
24 employee;
25 (4) the employer's demonstrated good faith;
26 (5) the duration of the violation; and
27 (6) other matters as justice may require.

1 SECTION 3.1285. Sections 502.0141(b), (c), and (d), Health
2 and Safety Code, are amended to read as follows:

3 (b) If a hearing is to be held, the department shall refer
4 the matter to the State Office of Administrative Hearings and an
5 administrative law judge of that office [director] shall make
6 findings of fact and shall issue to the department a written
7 proposal for decision regarding the occurrence of the violation and
8 the amount of the penalty that may be warranted.

9 (c) If the employer charged with the violation does not
10 request a hearing in a timely manner, the department [director] may
11 assess a penalty after determining that a violation has occurred
12 and the amount of the penalty that may be warranted.

13 (d) After making a determination under this section that a
14 penalty is to be assessed against an employer, the department
15 [director] shall issue an order requiring that the employer pay the
16 penalty.

17 SECTION 3.1286. Sections 502.0142(a), (b), (c), (e), (f),
18 and (g), Health and Safety Code, are amended to read as follows:

19 (a) Not later than the 30th day after the date an order
20 finding that a violation has occurred is issued, the department
21 [director] shall inform the employer against whom the order is
22 issued of the amount of the penalty for the violation.

23 (b) Within 30 days after the date the department's
24 [director's] order is final as provided by Subchapter F, Chapter
25 2001, Government Code, the employer shall:

26 (1) pay the amount of the penalty;
27 (2) pay the amount of the penalty and file a petition

1 for judicial review contesting the occurrence of the violation, the
2 amount of the penalty, or both the occurrence of the violation and
3 the amount of the penalty; or

4 (3) without paying the amount of the penalty, file a
5 petition for judicial review contesting the occurrence of the
6 violation, the amount of the penalty, or both the occurrence of the
7 violation and the amount of the penalty.

8 (c) Within the 30-day period, an employer who acts under
9 Subsection (b)(3) may:

10 (1) stay enforcement of the penalty by:

11 (A) paying the amount of the penalty to the court
12 for placement in an escrow account; or

13 (B) giving to the court a supersedeas bond that
14 is approved by the court for the amount of the penalty and that is
15 effective until all judicial review of the department's
16 [~~director's~~] order is final; or

17 (2) request the court to stay enforcement of the
18 penalty by:

19 (A) filing with the court a sworn affidavit of
20 the employer stating that the employer is financially unable to pay
21 the amount of the penalty and is financially unable to give the
22 supersedeas bond; and

23 (B) giving a copy of the affidavit to the
24 department [~~director~~] by certified mail.

25 (e) If the department [~~director~~] receives a copy of an
26 affidavit under Subsection (c)(2), the department [~~director~~] may
27 file with the court, within five days after the date the copy is

1 received, a contest to the affidavit. The court shall hold a
2 hearing on the facts alleged in the affidavit as soon as practicable
3 and shall stay the enforcement of the penalty on finding that the
4 alleged facts are true. The employer who files an affidavit has the
5 burden of proving that the employer is financially unable to pay the
6 amount of the penalty and to give a supersedeas bond.

7 (f) If the employer does not pay the amount of the penalty
8 and the enforcement of the penalty is not stayed, the department
9 [~~director~~] may refer the matter to the attorney general for
10 collection of the amount of the penalty.

11 (g) Judicial review of the order of the department
12 [~~director~~]:

13 (1) is instituted by filing a petition as provided by
14 Subchapter G, Chapter 2001, Government Code; and
15 (2) is under the substantial evidence rule.

16 SECTION 3.1287. Section 502.015(a), Health and Safety Code,
17 is amended to read as follows:

18 (a) If it appears that an employer has violated, is
19 violating, or is threatening to violate this chapter or any rule
20 adopted or order issued under this chapter, the department
21 [~~director~~] may request the attorney general or the district,
22 county, or city attorney of the municipality or county in which the
23 violation has occurred, is occurring, or may occur to institute a
24 civil suit for:

25 (1) injunctive relief to restrain the employer from
26 continuing the violation or threat of violation;
27 (2) the assessment and recovery of a civil penalty for

1 a violation; or

2 (3) both the injunctive relief and the civil penalty.

3 SECTION 3.1288. Section 502.017(a), Health and Safety Code,
4 is amended to read as follows:

5 (a) An employer shall post and maintain adequate notice, at
6 locations where notices are normally posted, informing employees of
7 their rights under this chapter. If the department [director] does
8 not prepare the notice under Section 502.008, the employer shall
9 prepare the notice.

10 SECTION 3.1289. Section 502.018, Health and Safety Code, is
11 amended to read as follows:

12 Sec. 502.018. STANDARD FOR PHYSICIAN TREATMENT. For the
13 purposes of this chapter, the requirements in the OSHA standard for
14 physicians treating employees (29 CFR Section 1910.1200(i)
15 [~~1910.1200(1)~~

16 SECTION 3.1290. Section 502.019, Health and Safety Code, is
17 amended to read as follows:

18 Sec. 502.019. RULES. The executive commissioner [board]
19 may adopt rules and administrative procedures reasonably necessary
20 to carry out the purposes of this chapter.

21 SECTION 3.1291. Section 503.001(3), Health and Safety Code,
22 is amended to read as follows:

23 (3) "Department" means the [Texas] Department of State
24 Health Services.

25 SECTION 3.1292. Section 503.002(a), Health and Safety Code,
26 is amended to read as follows:

27 (a) The Toxic Substances Coordinating Committee is composed

1 of one representative from the:

2 (1) department;

3 (2) Department of Agriculture;

4 (3) Texas [Natural Resource Conservation] Commission
5 on Environmental Quality;

6 (4) Parks and Wildlife Department;

7 (5) Department of Public Safety of the State of Texas;

8 and

9 (6) Railroad Commission of Texas.

10 SECTION 3.1293. Section 505.002(b), Health and Safety Code,
11 is amended to read as follows:

12 (b) It is the intent and purpose of this chapter to ensure
13 that accessibility to information regarding hazardous chemicals is
14 provided to:

15 (1) fire departments responsible for dealing with
16 chemical hazards during an emergency;

17 (2) local emergency planning committees and other
18 emergency planning organizations; and

19 (3) the department [~~director~~] to make the information
20 available to the public through specific procedures.

21 SECTION 3.1294. Section 505.003(b), Health and Safety Code,
22 is amended to read as follows:

23 (b) In this chapter, a reference to North American Industry
24 [~~Standard Industrial~~] Classification System (NAICS) [~~(SIC)~~], to
25 nomenclature systems developed by the International Union of Pure
26 and Applied Chemistry (IUPAC) or the Chemical Abstracts Service
27 (CAS), or to other information, including information such as

1 classification codes, performance standards, systematic names,
2 standards, and systems described in publications sponsored by
3 private technical or trade organizations, means a reference to the
4 most current version of the publication.

5 SECTION 3.1295. Section 505.004, Health and Safety Code, is
6 amended by adding Subdivisions (3-a) and (8-a) and amending
7 Subdivisions (5), (10), (13), (15), (20), (22), and (24) to read as
8 follows:

9 (3-a) "Commissioner" means the commissioner of state
10 health services.

11 (5) "Department" means the [Texas] Department of State
12 Health Services.

13 (8-a) "Executive commissioner" means the executive
14 commissioner of the Health and Human Services Commission.

15 (10) "Facility" means all buildings, equipment,
16 structures, and other stationary items that are located on a single
17 site or on contiguous or adjacent sites, that are owned or operated
18 by the same person, or by any person who controls, is controlled by,
19 or is under common control with that person, and that is in North
20 American Industry Classification System (NAICS) [Standard
21 Industrial] Codes 31-33 [(SIC) 20-39].

22 (13) "Hazardous chemical" has the meaning given that
23 term by 29 CFR 1910.1200(c), except that the term does not include:

24 (A) any food, food additive, color additive,
25 drug, or cosmetic regulated by the United States Food and Drug
26 Administration;

27 (B) any substance present as a solid in any

1 manufactured item to the extent exposure to the substance does not
2 occur under normal conditions of use;

3 (C) any substance to the extent it is used for
4 personal, family, or household purposes, or is present in the same
5 form and concentration as a product packaged for distribution and
6 use by the public;

7 (D) any substance to the extent it is used in a
8 research laboratory or a hospital or other medical facility under
9 the direct supervision of a technically qualified individual; and

10 (E) any substance to the extent it is used in
11 routine agricultural operations or is a fertilizer held for sale by
12 a retailer to the ultimate consumer.

13 (15) "Identity" means any chemical or common name, or
14 alphabetical or numerical identification, that is indicated on the
15 [material] safety data sheet (SDS) [~~(MSDS)~~] for the chemical. The
16 identity used must permit cross-references to be made among the
17 facility chemical list, the label, and the SDS [~~MSDS~~].

18 (20) "Physical hazard" means a chemical that is
19 classified as posing one of the following hazardous effects:
20 explosive; flammable (gases, aerosols, liquids, or solids);
21 oxidizer (liquid, solid, or gas); self-reactive; pyrophoric
22 (liquid or solid); self-heating; organic peroxide; corrosive to
23 metal; gas under pressure; or in contact with water emits flammable
24 gas [~~for which there is scientifically valid evidence that it is a~~
25 ~~combustible liquid, a compressed gas, explosive, flammable, an~~
26 ~~organic peroxide, an oxidizer, pyrophoric, unstable (reactive), or~~
27 ~~water-reactive in terms defined in the OSHA standard~~].

1 (22) "Threshold planning quantity" means the minimum
2 quantity of an extremely hazardous substance for which a facility
3 owner or operator must participate in emergency planning, as
4 established [defined] by the EPA pursuant to EPCRA, Section 302.

5 (24) "Workplace chemical list" means a list of
6 hazardous chemicals developed under 29 CFR Section
7 1910.1200(e)(1)(i) [~~1910.1200(e)(i)~~].

8 SECTION 3.1296. Subdivision (18), Section 505.004, Health
9 and Safety Code, is redesignated as Subdivision (20-a), Section
10 505.004, Health and Safety Code, and amended to read as follows:

11 (20-a) "Safety [~~+18~~] ~~"Material safety~~] data sheet" or
12 "SDS" [~~MSDS~~] means a document containing chemical hazard and safe
13 handling information that is prepared in accordance with the
14 requirements of the OSHA standard for that document.

15 SECTION 3.1297. Sections 505.005(a) and (d), Health and
16 Safety Code, are amended to read as follows:

17 (a) Facility operators whose facilities are in NAICS [~~SIC~~]
18 Codes 31-33 [~~20-39~~] shall comply with this chapter.

19 (d) The department [~~director~~] shall develop an outreach
20 program concerning the public's ability to obtain information under
21 this chapter similar to the outreach program under Section 502.008.

22 SECTION 3.1298. Sections 505.006(a), (c), and (f), Health
23 and Safety Code, are amended to read as follows:

24 (a) For the purpose of community right-to-know, a facility
25 operator covered by this chapter shall compile and maintain a tier
26 two form that contains information on hazardous chemicals present
27 in the facility in quantities that meet or exceed thresholds

1 determined by the EPA in 40 CFR Part 370, or at any other reporting
2 thresholds as determined by department [board] rule for certain
3 highly toxic or extremely hazardous substances.

4 (c) Each tier two form shall be filed annually with the
5 appropriate fee according to the procedures specified by department
6 [board] rules. The facility operator shall furnish a copy of each
7 tier two form to the fire chief of the fire department having
8 jurisdiction over the facility and to the appropriate local
9 emergency planning committee.

10 (f) A facility operator shall file a [material] safety data
11 sheet with the department on the department's request.

12 SECTION 3.1299. Sections 505.008(b) and (c), Health and
13 Safety Code, are amended to read as follows:

14 (b) A facility operator, on request, shall give the fire
15 chief or the local emergency planning committee such additional
16 information on types and amounts of hazardous chemicals present at
17 a facility as the requestor may need for emergency planning
18 purposes. A facility operator, on request, shall give the
19 commissioner [director], the fire chief, or the local emergency
20 planning committee a copy of the SDS [MSDS] for any chemical on the
21 tier two form furnished under Section 505.006 or for any chemical
22 present at the facility.

23 (c) The executive commissioner [board] by rule may require
24 certain categories of facility operators under certain
25 circumstances to implement the National Fire Protection
26 Association 704 identification system if an equivalent system is
27 not in use.

1 SECTION 3.1300. Section 505.009, Health and Safety Code, is
2 amended to read as follows:

3 Sec. 505.009. COMPLAINTS AND INVESTIGATIONS. On
4 presentation of appropriate credentials, a department [~~an officer~~
5 ~~or~~] representative [~~of the director~~] may enter a facility at
6 reasonable times to inspect and investigate complaints.

7 SECTION 3.1301. Sections 505.010(a), (b), (k), (l), and
8 (m), Health and Safety Code, are amended to read as follows:

9 (a) The department [~~director~~] may assess an administrative
10 penalty against an operator who violates this chapter, [~~board~~]
11 rules adopted under this chapter, or an order issued under this
12 chapter.

13 (b) If the department finds one or more violations of this
14 chapter, the department [~~director~~] may issue a notice of violation
15 to the operator. The notice of violation shall specifically
16 describe the violation, refer to the applicable section or
17 subsection of this chapter, and state the amount of the penalty, if
18 any, to be assessed by the department [~~director~~].

19 (k) Except as provided in Subsection (l), the department
20 [~~director~~] may not assess an administrative penalty for any
21 violation that has been corrected within 15 days of the date of the
22 notice of violation, the date of receipt of the department's
23 response by the employer, or 10 days after the date of receipt by
24 the operator of the department's response to the informal
25 conference provided for in Subsection (d), whichever is later.

26 (l) If a violation involves a failure to make a good faith
27 effort to comply with this chapter, the department [~~director~~] may

1 assess the administrative penalty at any time.

2 (m) In determining the amount of the penalty, the department
3 [director] shall consider:

- 4 (1) the operator's previous violations;
- 5 (2) the seriousness of the violation;
- 6 (3) any hazard to the health and safety of the public;
- 7 (4) the employer's demonstrated good faith;
- 8 (5) the duration of the violation; and
- 9 (6) other matters as justice may require.

10 SECTION 3.1302. Sections 505.011(b), (c), and (d), Health
11 and Safety Code, are amended to read as follows:

12 (b) If a hearing is held, the department shall refer the
13 matter to the State Office of Administrative Hearings. An
14 administrative law judge of that office [director] shall make
15 findings of fact and shall issue a written proposal for decision
16 regarding the occurrence of the violation and the amount of the
17 penalty that may be warranted.

18 (c) If the facility operator charged with the violation does
19 not request a hearing, the department [director] may assess a
20 penalty after determining that a violation has occurred and the
21 amount of the penalty that may be warranted.

22 (d) After [making] a determination under this section is
23 made that a penalty is to be assessed against a facility operator,
24 the department [director] shall issue an order requiring that the
25 facility operator pay the penalty.

26 SECTION 3.1303. Sections 505.012(a), (b), (c), (d), (e),
27 and (f), Health and Safety Code, are amended to read as follows:

1 (a) Not later than the 30th day after the date an order
2 finding that a violation has occurred is issued, the department
3 [~~director~~] shall inform the facility operator against whom the
4 order is issued of the amount of the penalty for the violation.

5 (b) Except as provided by in Section 505.011(e), within 30
6 days after the date the department's [~~director's~~] order is final as
7 provided by Subchapter F, Chapter 2001, Government Code, the
8 facility operator shall:

9 (1) pay the amount of the penalty;

10 (2) pay the amount of the penalty and file a petition
11 for judicial review contesting the occurrence of the violation, the
12 amount of the penalty, or both the occurrence of the violation and
13 the amount of the penalty; or

14 (3) without paying the amount of the penalty, file a
15 petition for judicial review contesting the occurrence of the
16 violation, the amount of the penalty, or both the occurrence of the
17 violation and the amount of the penalty.

18 (c) Within the 30-day period, a facility operator who acts
19 under Subsection (b)(3) may:

20 (1) stay enforcement of the penalty by:

21 (A) paying the amount of the penalty to the court
22 for placement in an escrow account; or

23 (B) giving to the court a supersedeas bond that
24 is approved by the court for the amount of the penalty and that is
25 effective until all judicial review of the department's
26 [~~director's~~] order is final; or

27 (2) request the court to stay enforcement of the

1 penalty by:

(A) filing with the court a sworn affidavit of the facility operator stating that the facility operator is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

6 (B) giving a copy of the affidavit to the
7 department [director] by certified mail.

8 (d) If the department [director] receives a copy of an
9 affidavit under Subsection (c)(2), the department [director] may
10 file with the court, within five days after the date the copy is
11 received, a contest to the affidavit. The court shall hold a
12 hearing on the facts alleged in the affidavit as soon as practicable
13 and shall stay the enforcement of the penalty on finding that the
14 alleged facts are true. The facility operator who files an
15 affidavit has the burden of proving that the facility operator is
16 financially unable to pay the amount of the penalty and to give a
17 supersedeas bond.

18 (e) If the facility operator does not pay the amount of the
19 penalty and the enforcement of the penalty is not stayed, the
20 department [director] may refer the matter to the attorney general
21 for collection of the amount of the penalty.

22 (f) Judicial review of the order of the department
23 [director]:

27 SECTION 3.1304. Sections 505.016(a), (b), and (c), Health

1 and Safety Code, are amended to read as follows:

2 (a) The executive commissioner [board] may adopt rules and
3 administrative procedures reasonably necessary to carry out the
4 purposes of this chapter.

5 (b) The executive commissioner by rule [board] may
6 authorize the collection of annual fees from facility operators for
7 the filing of tier two forms required by this chapter. Except as
8 provided by Subsection (d), fees may be used only to fund activities
9 under this chapter. The fee for facilities may not exceed:

10 (1) \$100 for each required submission having no more
11 than 25 hazardous chemicals or hazardous chemical categories;

12 (2) \$200 for each required submission having no more
13 than 50 hazardous chemicals or hazardous chemical categories;

14 (3) \$300 for each required submission having no more
15 than 75 hazardous chemicals or hazardous chemical categories;

16 (4) \$400 for each required submission having no more
17 than 100 hazardous chemicals or hazardous chemical categories; or

18 (5) \$500 for each required submission having more than
19 100 hazardous chemicals or chemical categories.

20 (c) To minimize the fees, the executive commissioner
21 [board] by rule shall provide for consolidated filings of multiple
22 tier two forms for facility operators covered by Subsection (b) if
23 each of the tier two forms contains fewer than 25 items.

24 SECTION 3.1305. Section 506.002(b), Health and Safety Code,
25 is amended to read as follows:

26 (b) It is the intent and purpose of this chapter to ensure
27 that accessibility to information regarding hazardous chemical is

1 provided to:

2 (1) fire departments responsible for dealing with
3 chemical hazards during an emergency;

4 (2) local emergency planning committees and other
5 emergency planning organizations; and

6 (3) the department [director] to make the information
7 available to the public through specific procedures.

8 SECTION 3.1306. Section 506.004, Health and Safety Code, is
9 amended by adding Subdivisions (3-a) and (8-a) and amending
10 Subdivisions (5), (13), (15), (20), and (23) to read as follows:

11 (3-a) "Commissioner" means the commissioner of state
12 health services.

13 (5) "Department" means the [Texas] Department of State
14 Health Services.

15 (8-a) "Executive commissioner" means the executive
16 commissioner of the Health and Human Services Commission.

17 (13) "Hazardous chemical" has the meaning given that
18 term by 29 CFR 1910.1200(c), except that the term does not include:

19 (A) any food, food additive, color additive,
20 drug, or cosmetic regulated by the United States Food and Drug
21 Administration;

22 (B) any substance present as a solid in any
23 manufactured item to the extent exposure to the substance does not
24 occur under normal conditions of use;

25 (C) any substance to the extent that it is used
26 for personal, family, or household purposes, or is present in the
27 same form and concentration as a product packaged for distribution

1 and use by the public;

5 (E) any substance to the extent it is used in
6 routine agricultural operations or is a fertilizer held for sale by
7 a retailer to the ultimate consumer.

(20) "Physical hazard" means a chemical that is
classified as posing one of the following hazardous effects:
explosive; flammable (gases, aerosols, liquids, or solids);
oxidizer (liquid, solid, or gas); self-reactive; pyrophoric
(liquid or solid); self-heating; organic peroxide; corrosive to
metal; gas under pressure; or in contact with water emits flammable
gas [for which there is scientifically valid evidence that it is a
combustible liquid, a compressed gas, explosive, flammable, an
organic peroxide, an oxidizer, pyrophoric, unstable (reactive), or
water-reactive in terms defined in the OSHA standard].

27 SECTION 3.1307. Section 506.004(18), Health and Safety

1 Code, is redesignated as Section 506.004(21-a), Health and Safety
2 Code, and amended to read as follows:

3 (21-a) "Safety [~~(+18)~~ "Material safety] data sheet" or
4 "SDS" [MSDS] means a document containing chemical hazard and safe
5 handling information that is prepared in accordance with the
6 requirements of the OSHA standard for that document.

7 SECTION 3.1308. Section 506.005(d), Health and Safety Code,
8 is amended to read as follows:

9 (d) The department [~~director~~] shall develop an outreach
10 program concerning the public's ability to obtain information under
11 this chapter similar to the outreach program under Section 502.008.

12 SECTION 3.1309. Sections 506.006(a), (c), and (e), Health
13 and Safety Code, are amended to read as follows:

14 (a) For the purpose of community right-to-know, a facility
15 operator covered by this chapter shall compile and maintain a tier
16 two form that contains information on hazardous chemicals present
17 in the facility in quantities that meet or exceed thresholds
18 determined by the EPA in 40 CFR Part 370, or at any other reporting
19 thresholds as determined by department [~~board~~] rule for certain
20 highly toxic or extremely hazardous substances.

21 (c) Each tier two form shall be filed annually with the
22 appropriate fee according to the procedures specified by department
23 [~~board~~] rules. The facility operator shall furnish a copy of each
24 tier two form to the fire chief of the fire department having
25 jurisdiction over the facility and to the appropriate local
26 emergency planning committee.

27 (e) A facility operator shall file a [~~material~~] safety data

1 sheet with the department on the department's request.

2 SECTION 3.1310. Sections 506.008(b) and (c), Health and
3 Safety Code, are amended to read as follows:

4 (b) A facility operator, on request, shall give the fire
5 chief or the local emergency planning committee such additional
6 information on types and amounts of hazardous chemicals present at
7 a facility as the requestor may need for emergency planning
8 purposes. A facility operator, on request, shall give the
9 commissioner [~~director~~], the fire chief, or the local emergency
10 planning committee a copy of the SDS [~~MSDS~~] for any chemical on the
11 tier two form furnished under Section 506.006 or for any chemical
12 present at the facility.

13 (c) The executive commissioner [~~board~~] by rule may require
14 certain categories of facility operators under certain
15 circumstances to implement the National Fire Protection
16 Association 704 identification system if an equivalent system is
17 not in use.

18 SECTION 3.1311. Section 506.009, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 506.009. COMPLAINTS AND INVESTIGATIONS. On
21 presentation of appropriate credentials, a department [~~an officer~~
22 ~~or~~] representative [~~of the director~~] may enter a facility at
23 reasonable times to inspect and investigate complaints.

24 SECTION 3.1312. Sections 506.010(a), (b), (k), and (l),
25 Health and Safety Code, are amended to read as follows:

26 (a) The department [~~director~~] may assess an administrative
27 penalty against an operator who violates this chapter, [~~board~~]

1 rules adopted under this chapter, or an order issued under this
2 chapter.

3 (b) If the department finds one or more violations of this
4 chapter, the department [director] may issue a notice of violation
5 to the operator. The notice of violation shall specifically
6 describe the violation, refer to the applicable section or
7 subsection of this chapter, and state the amount of the penalty, if
8 any, to be assessed by the department [director].

9 (k) The department [director] may not assess an
10 administrative penalty for any violation that has been corrected
11 within 15 days of the date of receipt of the notice of violation,
12 the date of receipt of the department's response by the employer, or
13 10 days after the date of receipt by the operator of the
14 department's response to the informal conference provided for in
15 Subsection (d), whichever is later.

16 (l) In determining the amount of the penalty, the department
17 [director] shall consider:

- 18 (1) the operator's previous violations;
- 19 (2) the seriousness of the violation;
- 20 (3) any hazard to the health and safety of the public;
- 21 (4) the employer's demonstrated good faith;
- 22 (5) the duration of the violation; and
- 23 (6) other matters as justice may require.

24 SECTION 3.1313. Sections 506.011(b), (c), and (d), Health
25 and Safety Code, are amended to read as follows:

26 (b) If a hearing is held, the department shall refer the
27 matter to the State Office of Administrative Hearings. An

1 administrative law judge of that office ~~[director]~~ shall make
2 findings of fact and shall issue a written proposal for decision
3 regarding the occurrence of the violation and the amount of the
4 penalty that may be warranted.

5 (c) If the facility operator charged with the violation does
6 not request a hearing, the department ~~[director]~~ may assess a
7 penalty after determining that a violation has occurred and the
8 amount of the penalty that may be warranted.

9 (d) After ~~[making]~~ a determination is made under this
10 section that a penalty is to be assessed against a facility
11 operator, the department ~~[director]~~ shall issue an order requiring
12 that the facility operator pay the penalty.

13 SECTION 3.1314. Section 506.012, Health and Safety Code, is
14 amended to read as follows:

15 Sec. 506.012. PAYMENT OF ADMINISTRATIVE PENALTY; JUDICIAL
16 REVIEW. (a) Not later than the 30th day after the date an order
17 finding that a violation has occurred is issued, the department
18 ~~[director]~~ shall inform the facility operator against whom the
19 order is issued of the amount of the penalty for the violation.

20 (b) Except as provided in Section 506.011(e), not later than
21 the 30th day after the date on which a decision or order charging a
22 facility operator with a penalty is final, the facility operator
23 shall pay the penalty in full, unless the facility operator seeks
24 judicial review of the amount of the penalty, the fact of the
25 violation, or both. The executive commissioner ~~[board]~~ may by rule
26 provide for appeals by the state and political subdivisions of the
27 state.

1 SECTION 3.1315. Section 506.013, Health and Safety Code, is
2 amended to read as follows:

3 Sec. 506.013. REFUND OF ADMINISTRATIVE PENALTY. Not later
4 than the 30th day after the date of a judicial determination that an
5 administrative penalty against a facility operator should be
6 reduced or not assessed, the department [~~director~~] shall remit to
7 the facility operator the appropriate amount of any penalty payment
8 already paid plus accrued interest.

9 SECTION 3.1316. Section 506.014, Health and Safety Code, is
10 amended to read as follows:

11 Sec. 506.014. RECOVERY OF ADMINISTRATIVE PENALTY BY
12 ATTORNEY GENERAL. The attorney general at the request of the
13 department [~~director~~] may bring a civil action to recover an
14 administrative penalty under this chapter.

15 SECTION 3.1317. Sections 506.017(a), (b), and (c), Health
16 and Safety Code, are amended to read as follows:

17 (a) The executive commissioner [~~board~~] may adopt rules and
18 administrative procedures reasonably necessary to carry out the
19 purposes of this chapter.

20 (b) The executive commissioner by rule [~~board~~] may
21 authorize the collection of annual fees from facility operators for
22 the filing of tier two forms required by this chapter. The fee may
23 not exceed:

24 (1) \$50 for each required submission having no more
25 than 75 hazardous chemicals or hazardous chemical categories; or
26 (2) \$100 for each required submission having more than
27 75 hazardous chemicals or chemical categories.

1 (c) To minimize the fees, the executive commissioner
2 [board] by rule shall provide for consolidated filings of multiple
3 tier two forms for facility operators covered by Subsection (b) if
4 each of the tier two forms contains fewer than 25 items.

5 SECTION 3.1318. Section 507.002(b), Health and Safety Code,
6 is amended to read as follows:

7 (b) It is the intent and purpose of this chapter to ensure
8 that accessibility to information regarding hazardous chemicals is
9 provided to:

10 (1) fire departments responsible for dealing with
11 chemical hazards during an emergency;

12 (2) local emergency planning committees and other
13 emergency planning organizations; and

14 (3) the department [director] to make the information
15 available to the public through specific procedures.

16 SECTION 3.1319. Section 507.004, Health and Safety Code, is
17 amended by adding Subdivisions (3-a) and (8-a) and amending
18 Subdivisions (5), (13), (15), (20), and (22) to read as follows:

19 (3-a) "Commissioner" means the commissioner of state
20 health services.

21 (5) "Department" means the [Texas] Department of State
22 Health Services.

23 (8-a) "Executive commissioner" means the executive
24 commissioner of the Health and Human Services Commission.

25 (13) "Hazardous chemical" has the meaning given that
26 term by 29 CFR 1910.1200(c), except that the term does not include:

27 (A) any food, food additive, color additive,

1 drug, or cosmetic regulated by the United States Food and Drug
2 Administration;

3 (B) any substance present as a solid in any
4 manufactured item to the extent exposure to the substance does not
5 occur under normal conditions of use;

6 (C) any substance to the extent that it is used
7 for personal, family, or household purposes, or is present in the
8 same form and concentration as a product packaged for distribution
9 and use by the general public;

10 (D) any substance to the extent it is used in a
11 research laboratory or a hospital or other medical facility under
12 the direct supervision of a technically qualified individual; and

13 (E) any substance to the extent it is used in
14 routine agricultural operations or is a fertilizer held for sale by
15 a retailer to the ultimate consumer.

16 (15) "Identity" means a chemical or common name, or
17 alphabetical or numerical identification, that is indicated on the
18 [material] safety data sheet (SDS) [~~(MSDS)~~] for the chemical. The
19 identity used must permit cross-references to be made among the
20 facility chemical list, the label, and the SDS [~~MSDS~~].

21 (20) "Physical hazard" means a chemical that is
22 classified as posing one of the following hazardous effects:
23 explosive; flammable (gases, aerosols, liquids, or solids);
24 oxidizer (liquid, solid, or gas); self-reactive; pyrophoric
25 (liquid or solid); self-heating; organic peroxide; corrosive to
26 metal; gas under pressure; or in contact with water emits flammable
27 gas [for which there is scientifically valid evidence that it is a

1 ~~combustible liquid, a compressed gas, explosive, flammable, an
2 organic peroxide, an oxidizer, pyrophoric, unstable (reactive), or
3 water-reactive in terms defined in the OSHA standard].~~

4 (22) "Threshold planning quantity" means the minimum
5 quantity of an extremely hazardous substance for which a facility
6 owner or operator must participate in emergency planning, as
7 established [defined] by the EPA pursuant to EPCRA, Section 302.

8 SECTION 3.1320. Subdivision (18), Section 507.004, Health
9 and Safety Code, is redesignated as Subdivision (20-a), Section
10 507.004, Health and Safety Code, and amended to read as follows:

11 (20-a) "Safety [~~+18~~] ~~Material safety12 "SDS" [~~MSDS~~] means a document containing chemical hazard and safe
13 handling information that is prepared in accordance with the
14 requirements of the OSHA standard for that document.~~

15 SECTION 3.1321. Section 507.005(d), Health and Safety Code,
16 is amended to read as follows:

17 (d) The department [~~director~~] shall develop an outreach
18 program concerning the public's ability to obtain information under
19 this chapter similar to the outreach program under Section 502.008.

20 SECTION 3.1322. Sections 507.006(a), (c), and (f), Health
21 and Safety Code, are amended to read as follows:

22 (a) For the purpose of community right-to-know, a facility
23 operator covered by this chapter shall compile and maintain a tier
24 two form that contains information on hazardous chemicals present
25 in the facility in quantities that meet or exceed thresholds
26 determined by the EPA in 40 CFR Part 370, or at any other reporting
27 thresholds as determined by department [~~board~~] rule for certain

1 highly toxic or extremely hazardous substances.

2 (c) Each tier two form shall be filed annually with the
3 appropriate fee according to the procedures specified by department
4 ~~board~~ rules. The facility operator shall furnish a copy of each
5 tier two form to the fire chief of the fire department having
6 jurisdiction over the facility and to the appropriate local
7 emergency planning committee.

8 (f) A facility operator shall file a ~~material~~ safety data
9 sheet with the department on the department's request.

10 SECTION 3.1323. Sections 507.007(b) and (c), Health and
11 Safety Code, are amended to read as follows:

12 (b) A facility operator, on request, shall give the fire
13 chief or the local emergency planning committee such additional
14 information on types and amounts of hazardous chemicals present at
15 a facility as the requestor may need for emergency planning
16 purposes. A facility operator, on request, shall give the
17 commissioner ~~director~~, the fire chief, or the local emergency
18 planning committee a copy of the SDS ~~MSDS~~ for any chemical on the
19 tier two form furnished under Section 507.006 or for any chemical
20 present at the facility.

21 (c) The executive commissioner ~~board~~ by rule may require
22 certain categories of facility operators under certain
23 circumstances to implement the National Fire Protection
24 Association 704 identification system if an equivalent system is
25 not in use.

26 SECTION 3.1324. Section 507.008, Health and Safety Code, is
27 amended to read as follows:

1 Sec. 507.008. COMPLAINTS AND INVESTIGATIONS. On
2 presentation of appropriate credentials, a department [~~an officer~~
3 ~~or~~] representative [~~of the director~~] may enter a facility at
4 reasonable times to inspect and investigate complaints.

5 SECTION 3.1325. Sections 507.009(a), (b), (k), (l), and
6 (m), Health and Safety Code, are amended to read as follows:

7 (a) The department [~~director~~] may assess an administrative
8 penalty against a facility operator who violates this chapter,
9 [~~board~~] rules adopted under this chapter, or an order issued under
10 this chapter.

11 (b) If the department finds one or more violations of this
12 chapter, the department [~~director~~] may issue a notice of violation
13 to the operator. The notice of violation shall specifically
14 describe the violation, refer to the applicable section or
15 subsection of this chapter, and state the amount of the penalty, if
16 any, to be assessed by the department [~~director~~].

17 (k) Except as provided in Subsection (l), the department
18 [~~director~~] may not assess an administrative penalty for any
19 violation that has been corrected within 15 days of the date of
20 receipt of the notice of violation, the date of receipt of the
21 department's response by the employer, or 10 days after the date of
22 receipt by the operator of the department's response to the
23 informal conference provided for in Subsection (d), whichever is
24 later.

25 (l) If a violation involves a failure to make a good-faith
26 effort to comply with this chapter, the department [~~director~~] may
27 assess the administrative penalty at any time.

1 (m) In determining the amount of the penalty, the department
2 [director] shall consider:

- 3 (1) the operator's previous violations;
4 (2) the seriousness of the violation;
5 (3) any hazard to the health and safety of the public;
6 (4) the operator's demonstrated good faith;
7 (5) the duration of the violation; and
8 (6) other matters as justice may require.

9 SECTION 3.1326. Sections 507.010(b), (c), and (d), Health
10 and Safety Code, are amended to read as follows:

11 (b) If a hearing is held, the department shall refer the
12 matter to the State Office of Administrative Hearings. An
13 administrative law judge of that office [director] shall make
14 findings of fact and shall issue a written proposal for decision
15 regarding the occurrence of the violation and the amount of the
16 penalty that may be warranted.

17 (c) If the facility operator charged with the violation does
18 not request a hearing, the department [director] may assess a
19 penalty after determining that a violation has occurred and the
20 amount of the penalty that may be warranted.

21 (d) After [making] a determination is made under this
22 section that a penalty is to be assessed against a facility
23 operator, the department [director] shall issue an order requiring
24 that the facility operator pay the penalty.

25 SECTION 3.1327. Sections 507.011(a), (b), (c), (d), (e),
26 and (f), Health and Safety Code, are amended to read as follows:

27 (a) Not later than the 30th day after the date an order

1 finding that a violation has occurred is issued, the department
2 [~~director~~] shall inform the facility operator against whom the
3 order is issued of the amount of the penalty for the violation.

4 (b) Except as provided by Section 507.010(e), within 30 days
5 after the date the department's [~~director's~~] order is final as
6 provided by Subchapter F, Chapter 2001, Government Code, the
7 facility operator shall:

8 (1) pay the amount of the penalty;
9 (2) pay the amount of the penalty and file a petition
10 for judicial review contesting the occurrence of the violation, the
11 amount of the penalty, or both the occurrence of the violation and
12 the amount of the penalty; or

13 (3) without paying the amount of the penalty, file a
14 petition for judicial review contesting the occurrence of the
15 violation, the amount of the penalty, or both the occurrence of the
16 violation and the amount of the penalty.

17 (c) Within the 30-day period, a facility operator who acts
18 under Subsection (b)(3) may:

19 (1) stay enforcement of the penalty by:
20 (A) paying the amount of the penalty to the court
21 for placement in an escrow account; or
22 (B) giving to the court a supersedeas bond that
23 is approved by the court for the amount of the penalty and that is
24 effective until all judicial review of the department's
25 [~~director's~~] order is final; or

26 (2) request the court to stay enforcement of the
27 penalty by:

5 (B) giving a copy of the affidavit to the
6 department [executive director] by certified mail.

7 (d) If the department [director] receives a copy of an
8 affidavit under Subsection (c)(2), the department [director] may
9 file with the court, within five days after the date the copy is
10 received, a contest to the affidavit. The court shall hold a
11 hearing on the facts alleged in the affidavit as soon as practicable
12 and shall stay the enforcement of the penalty on finding that the
13 alleged facts are true. The facility operator who files an
14 affidavit has the burden of proving that the facility operator is
15 financially unable to pay the amount of the penalty and to give a
16 supersedeas bond.

17 (e) If the facility operator does not pay the amount of the
18 penalty and the enforcement of the penalty is not stayed, the
19 department [director] may refer the matter to the attorney general
20 for collection of the amount of the penalty.

21 (f) Judicial review of the order of the department
22 [director]:

25 (2) is under the substantial evidence rule.

26 SECTION 3.1328. Sections 507.013(a), (b), and (c), Health
27 and Safety Code, are amended to read as follows:

1 (a) The executive commissioner [board] may adopt rules and
2 administrative procedures reasonably necessary to carry out the
3 purposes of this chapter.

4 (b) The executive commissioner by rule [board] may
5 authorize the collection of annual fees from facility operators for
6 the filing of tier two forms required by this chapter. Except as
7 provided by Subsection (d), fees may be used only to fund activities
8 under this chapter. The fee may not exceed:

9 (1) \$50 for each required submission having no more
10 than 75 hazardous chemicals or hazardous chemical categories; or

11 (2) \$100 for each required submission having more than
12 75 hazardous chemicals or chemical categories.

13 (c) To minimize the fees, the executive commissioner
14 [board] by rule shall provide for consolidated filings of multiple
15 tier two forms for facility operators covered by Subsection (b) if
16 each of the tier two forms contains fewer than 25 items.

17 SECTION 3.1329. Section 508.003, Health and Safety Code, is
18 amended to read as follows:

19 Sec. 508.003. AREA QUARANTINE. (a) If the commissioner of
20 state [public] health services or one or more health authorities
21 determine that the introduction of an environmental or toxic agent
22 into the environment has occurred, the commissioner or authorities
23 may impose an area quarantine in the manner and subject to the
24 procedures provided for an area quarantine imposed under Section
25 81.085. The commissioner of state [public] health services or a
26 health authority may, with respect to an area quarantine imposed
27 under this chapter, exercise any power for a response to the

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1 introduction of an environmental or toxic agent into the
2 environment under this section that is authorized by Section 81.085
3 for a response to an outbreak of a communicable disease. The area
4 quarantine must be accomplished by the least restrictive means
5 necessary to protect public health considering the availability of
6 resources.

7 (b) A quarantine imposed by a health authority under this
8 section expires at the earlier of:

15 SECTION 3.1330. Section 508.004, Health and Safety Code, is
16 amended to read as follows:

17 Sec. 508.004. CRIMINAL PENALTY. A person commits an
18 offense if the person knowingly fails or refuses to obey an order or
19 instruction of the commissioner of state [public] health services
20 or a health authority issued under this chapter and published
21 during an area quarantine under this section. An offense under this
22 subsection is a felony of the third degree.

23 SECTION 3.1331. The heading to Title 7, Health and Safety
24 Code, is amended to read as follows:

25 TITLE 7. MENTAL HEALTH AND INTELLECTUAL DISABILITY [MENTAL
26 RETARDATION]

27 SECTION 3.1332. The heading to Subtitle A, Title 7, Health

1 and Safety Code, is amended to read as follows:

2 SUBTITLE A. SERVICES FOR PERSONS WITH MENTAL ILLNESS OR AN
3 INTELLECTUAL DISABILITY

4 [~~TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION~~]

5 SECTION 3.1333. Chapter 531, Health and Safety Code, is
6 amended to read as follows:

7 CHAPTER 531. PROVISIONS GENERALLY APPLICABLE TO MENTAL HEALTH AND
8 INTELLECTUAL DISABILITY SERVICES [~~THE TEXAS DEPARTMENT OF MENTAL~~
9 HEALTH AND MENTAL RETARDATION]

10 Sec. 531.001. PURPOSE; POLICY. (a) It is the purpose of
11 this subtitle to provide for the effective administration and
12 coordination of mental health and intellectual disability [~~mental~~
13 ~~retardation~~] services at the state and local levels.

14 (b) Recognizing that a variety of alternatives for serving
15 persons with mental illness or an intellectual disability [~~the~~
16 ~~mentally disabled~~] exists, it is the purpose of this subtitle to
17 ensure that a continuum of services is provided. The continuum of
18 services includes:

19 (1) mental health facilities operated by the [~~Texas~~
20 Department of State Health Services [~~Mental Health and Mental~~
21 ~~Retardation~~] and community services for persons with mental illness
22 provided by the department and other entities through contracts
23 with the department; or

24 (2) state supported living centers operated by the
25 Department of Aging and Disability Services and community services
26 for persons with an intellectual disability provided by the
27 department and other entities through contracts with the

1 department.

2 (c) It is the goal of this state to provide a comprehensive
3 range of services for persons with mental illness or an
4 intellectual disability [~~mental retardation~~] who need publicly
5 supported care, treatment, or habilitation. In providing those
6 services, efforts will be made to coordinate services and programs
7 with services and programs provided by other governmental entities
8 to minimize duplication and to share with other governmental
9 entities in financing those services and programs.

10 (d) It is the policy of this state that, when appropriate
11 and feasible, persons with mental illness or an intellectual
12 disability [~~mental retardation~~] shall be afforded treatment in
13 their own communities.

14 (e) It is the public policy of this state that mental health
15 and intellectual disability [~~mental retardation~~] services be the
16 responsibility of local agencies and organizations to the greatest
17 extent possible. The Department of State Health Services
18 [~~department~~] shall assist the local agencies and organizations by
19 coordinating the implementation of a statewide system of mental
20 health services. The Department of Aging and Disability Services
21 shall assist the local agencies and organizations by coordinating
22 the implementation of a statewide system of intellectual disability
23 services. Each [~~The~~] department shall ensure that mental health
24 and intellectual disability [~~mental retardation~~] services, as
25 applicable, are provided. Each [~~The~~] department shall provide
26 technical assistance for and regulation of the programs that
27 receive funding through contracts with that [~~the~~] department.

1 (f) It is the public policy of this state to offer services
2 first to those persons who are most in need. Therefore, funds
3 appropriated by the legislature for mental health and intellectual
4 disability [~~mental retardation~~] services may be spent only to
5 provide services to the priority populations identified in the
6 applicable department's long-range plan.

7 (g) It is the goal of this state to establish at least one
8 special officer for mental health assignment in each county. To
9 achieve this goal, the Department of State Health Services
10 [~~department~~] shall assist a local law enforcement agency that
11 desires to have an officer certified under Section [1701.404](#),
12 Occupations Code.

13 (h) It is the policy of this state that the Department of
14 State Health Services [~~board~~] serves as the state's mental health
15 authority and the Department of Aging and Disability Services
16 serves as the state's intellectual disability [~~mental retardation~~]
17 authority. The executive commissioner [~~and~~] is responsible for the
18 planning, policy development, and resource development and
19 allocation for and oversight of mental health and intellectual
20 disability [~~mental retardation~~] services in this state. It is the
21 policy of this state that, when appropriate and feasible, the
22 executive commissioner [~~board~~] may delegate the executive
23 commissioner's [~~board's~~] authority to a single entity in each
24 region of the state that may function as the local mental health or
25 intellectual and developmental disability [~~mental retardation~~]
26 authority for one or more service areas in the region.

27 Sec. 531.002. DEFINITIONS. In this subtitle:

1 (1) ~~"Board"~~ means the Texas Board of Mental Health
2 and Mental Retardation.

3 ~~(2)~~ "Business entity" means a sole proprietorship,
4 partnership, firm, corporation, holding company, joint-stock
5 company, receivership, trust, or any other entity recognized by
6 law.

7 ~~(2)~~ ~~(3)~~ "Chemical dependency" means:

8 (A) abuse of alcohol or a controlled substance;
9 (B) psychological or physical dependence on
10 alcohol or a controlled substance; or

11 (C) addiction to alcohol or a controlled
12 substance ~~[has the meaning assigned by Section 461.002]~~.

13 (3) "Commission" means the Health and Human Services
14 Commission.

15 (4) "Commissioner" means:

16 (A) the commissioner of state health services in
17 relation to mental health services; and

18 (B) the commissioner of aging and disability
19 services in relation to intellectual disability services ~~[mental~~
20 ~~health and mental retardation]~~.

21 (5) "Community center" means a center established
22 under Subchapter A, Chapter 534.

23 (6) "Department" means:

24 (A) the ~~Texas~~ Department of State Health
25 Services in relation to mental health services; and

26 (B) the Department of Aging and Disability
27 Services in relation to intellectual disability services ~~[Mental~~

1 ~~Health and Mental Retardation].~~

2 (7) "Effective administration" includes continuous
3 planning and evaluation within the system that result in more
4 efficient fulfillment of the purposes and policies of this
5 subtitle.

6 (8) "Executive commissioner" means the executive
7 commissioner of the Health and Human Services Commission.

8 (9) "ICF-IID" [~~(8)~~ "ICE-MR"] means the medical
9 assistance program serving individuals with an intellectual or
10 developmental disability [~~persons with mental retardation~~] who
11 receive care in intermediate care facilities.

12 (10) "Intellectual disability services"
13 [~~(13)~~ "Mental retardation services"] includes all services
14 concerned with research, prevention, and detection of intellectual
15 disabilities [~~mental retardation~~], and all services related to the
16 education, training, habilitation, care, treatment, and
17 supervision[~~, and control~~] of persons with an intellectual
18 disability [~~mental retardation~~], but does not include the education
19 of school-age persons that the public educational system is
20 authorized to provide.

21 (11) [~~(9)~~] "Local agency" means:

22 (A) a municipality, county, hospital district,
23 rehabilitation district, school district, state-supported
24 institution of higher education, or state-supported medical
25 school; or

26 (B) any organizational combination of two or more
27 of those entities.

1 (12) [←11] "Local intellectual and developmental
2 disability [~~mental retardation~~] authority" means an entity to which
3 the executive commissioner [~~board~~] delegates the executive
4 commissioner's [~~its~~] authority and responsibility within a
5 specified region for planning, policy development, coordination,
6 including coordination with criminal justice entities, and
7 resource development and allocation and for supervising and
8 ensuring the provision of intellectual disability [~~mental~~
9 ~~retardation~~] services to persons with intellectual and
10 developmental disabilities [~~mental retardation~~] in the most
11 appropriate and available setting to meet individual needs in one
12 or more local service areas.

13 (13) [←10] "Local mental health authority" means an
14 entity to which the executive commissioner [~~board~~] delegates the
15 executive commissioner's [~~its~~] authority and responsibility within
16 a specified region for planning, policy development, coordination,
17 including coordination with criminal justice entities, and
18 resource development and allocation and for supervising and
19 ensuring the provision of mental health services to persons with
20 mental illness in the most appropriate and available setting to
21 meet individual needs in one or more local service areas.

22 (14) [←12] "Mental health services" includes all
23 services concerned with research, prevention, and detection of
24 mental disorders and disabilities, and all services necessary to
25 treat, care for [~~, control~~], supervise, and rehabilitate persons who
26 have a mental disorder or disability, including persons whose
27 mental disorders or disabilities result from a substance abuse

1 disorder [~~alcoholism or drug addiction~~].

2 (15) [~~(13-a)~~] "Person with a developmental
3 disability" means an individual with a severe, chronic disability
4 attributable to a mental or physical impairment or a combination of
5 mental and physical impairments that:

6 (A) manifests before the person reaches 22 years
7 of age;

8 (B) is likely to continue indefinitely;

9 (C) reflects the individual's need for a
10 combination and sequence of special, interdisciplinary, or generic
11 services, individualized supports, or other forms of assistance
12 that are of a lifelong or extended duration and are individually
13 planned and coordinated; and

14 (D) results in substantial functional
15 limitations in three or more of the following categories of major
16 life activity:

17 (i) self-care;

18 (ii) receptive and expressive language;

19 (iii) learning;

20 (iv) mobility;

21 (v) self-direction;

22 (vi) capacity for independent living; and

23 (vii) economic self-sufficiency.

24 (16) [~~(14)~~] "Person with an intellectual disability"
25 [~~mental retardation~~] means a person, other than a person with a
26 mental disorder, whose mental deficit requires the person to have
27 special training, education, supervision, treatment, or care [~~or~~

1 control] in the person's home or community or in a state supported
2 living center [~~school~~].

3 (17) [~~(15)~~] "Priority population" means those groups
4 of persons with mental illness or an intellectual disability
5 [~~mental retardation~~] identified by the applicable department as
6 being most in need of mental health or intellectual disability
7 [~~mental retardation~~] services.

8 (18) [~~(16)~~] "Region" means the area within the
9 boundaries of the local agencies participating in the operation of
10 community centers established under Subchapter A, Chapter 534.

11 (19) [~~(17)~~] "State supported living center" means a
12 state-supported and structured residential facility operated by
13 the Department of Aging and Disability Services to provide to
14 clients with an intellectual disability [~~mental retardation~~] a
15 variety of services, including medical treatment, specialized
16 therapy, and training in the acquisition of personal, social, and
17 vocational skills.

18 Sec. 531.0021. REFERENCE TO STATE SCHOOL, [OR]
19 SUPERINTENDENT, OR LOCAL MENTAL RETARDATION AUTHORITY. (a) A
20 reference in law to a "state school" means a state supported living
21 center.

22 (b) A reference in law to a "superintendent," to the extent
23 the term is intended to refer to the person in charge of a state
24 supported living center, means the director of a state supported
25 living center.

26 (c) A reference in law to a "local mental retardation
27 authority" means a local intellectual and developmental disability

1 authority.

2 SECTION 3.1334. Subtitle A, Title 7, Health and Safety
3 Code, is amended by amending Chapter 532 and adding Chapter 532A to
4 read as follows:

5 CHAPTER 532. GENERAL PROVISIONS RELATING TO DEPARTMENT OF STATE
6 HEALTH SERVICES [~~ORGANIZATION OF TEXAS DEPARTMENT OF MENTAL HEALTH~~
7 ~~AND MENTAL RETARDATION~~]

8 Sec. 532.001. DEFINITIONS; MENTAL HEALTH COMPONENTS
9 [~~COMPOSITION~~] OF DEPARTMENT. (a) In this chapter:

10 (1) "Commissioner" means the commissioner of state
11 health services.

12 (2) "Department" means the Department of State Health
13 Services [~~The Texas Department of Mental Health and Mental~~
14 ~~Retardation is composed of:~~

15 [~~(1) the Texas Board of Mental Health and Mental~~
16 ~~Retardation;~~

17 [~~(2) the commissioner of mental health and mental~~
18 ~~retardation; and~~

19 [~~(3) a staff under the direction of the commissioner~~].

20 (b) The department includes [~~Department of Aging and~~
21 ~~Disability Services and the Department of State Health Services~~
22 ~~also include~~] community services operated by the department [~~those~~
23 ~~departments~~] and the following facilities[, as appropriate]:

- 24 (1) the central office of the [~~each~~] department;
25 (2) the Austin State Hospital;
26 (3) the Big Spring State Hospital;
27 (4) the Kerrville State Hospital;

- 1 (5) the Rusk State Hospital;
- 2 (6) the San Antonio State Hospital;
- 3 (7) the Terrell State Hospital;
- 4 (8) the North Texas State Hospital;
- 5 (9) [~~the Abilene State Supported Living Center,~~
- 6 [~~(10) the Austin State Supported Living Center,~~
- 7 [~~(11) the Brenham State Supported Living Center,~~
- 8 [~~(12) the Corpus Christi State Supported Living~~
- 9 Center,
- 10 [~~(13) the Denton State Supported Living Center,~~
- 11 [~~(14) the Lubbock State Supported Living Center,~~
- 12 [~~(15) the Lufkin State Supported Living Center,~~
- 13 [~~(16) the Mexia State Supported Living Center,~~
- 14 [~~(17) the Richmond State Supported Living Center,~~
- 15 [~~(18) the San Angelo State Supported Living Center,~~
- 16 [~~(19) the San Antonio State Supported Living Center,~~
- 17 [~~(20) the El Paso State Supported Living Center,~~
- 18 [~~(21)~~] the Rio Grande State Center;
- 19 (10) [~~(22)~~] the Waco Center for Youth; and
- 20 (11) [~~(23)~~] the El Paso Psychiatric Center.

21 Sec. 532.002. [SUNSET PROVISION. The Texas Department of
22 Mental Health and Mental Retardation was abolished by Section 1.26,
23 Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular
24 Session, 2003, and the powers and duties of that agency under this
25 chapter were transferred to other agencies, which are subject to
26 Chapter 325, Government Code (Texas Sunset Act). Unless the
27 agencies to which those powers and duties are transferred are

1 continued in existence as provided by that Act, this chapter
2 expires September 1, 2015.

3 [Sec. 532.003. COMPOSITION OF BOARD. (a) The board is
4 composed of nine members appointed by the governor with the advice
5 and consent of the senate.

6 [(b) The members must be representatives of the public who
7 have demonstrated interest in mental health, mental retardation,
8 developmental disabilities, or the health and human services
9 system. At least one member must be a consumer of services for
10 persons with mental illness or mental retardation or a family
11 member of a consumer of those services.]

12 [(c) Appointments to the board shall be made without regard
13 to the race, color, handicap, sex, religion, age, or national
14 origin of the appointees.]

15 [Sec. 532.0035. BOARD TRAINING. (a) A person who is
16 appointed to and qualifies for office as a member of the board may
17 not vote, deliberate, or be counted as a member in attendance at a
18 meeting of the board until the person completes a training session
19 that complies with this section.]

20 [(b) The training program must provide the person with
21 information regarding:

22 [(1) the legislation that created the department and
23 board;]

24 [(2) the programs operated by the department;]

25 [(3) the roles and functions of the department;]

26 [(4) the rules of the department with an emphasis on
27 the rules that relate to disciplinary and investigatory authority;]

1 [(5) the current budget for the department;]
2 [(6) the results of the most recent formal audit of the
3 department;]
4 [(7) the requirements of:
5 [(A) the open meetings law, Chapter 551,
6 Government Code;]
7 [(B) the public information law, Chapter 552,
8 Government Code;]
9 [(C) the administrative procedure law, Chapter
10 2001, Government Code; and
11 [(D) other laws relating to public officials,
12 including conflict-of-interest laws; and
13 [(8) any applicable ethics policies adopted by the
14 department or the Texas Ethics Commission.
15 [(c) A person appointed to the board is entitled to
16 reimbursement, as provided by the General Appropriations Act, for
17 the travel expenses incurred in attending the training program
18 regardless of whether the attendance at the program occurs before
19 or after the person qualifies for office.

20 [Sec. 532.004. RESTRICTIONS ON BOARD APPOINTMENT AND
21 MEMBERSHIP AND ON DEPARTMENT EMPLOYMENT. (a) A person is not
22 eligible for appointment as a board member if the person or the
23 person's spouse:
24 [(1) owns or controls, directly or indirectly, more
25 than a 10 percent interest in a business entity or other
26 organization regulated by the department or receiving funds from
27 the department; or

1 [¶(2) uses or receives a substantial amount of tangible
2 goods, services, or funds from the department, other than:

3 [(A) compensation or reimbursement authorized by
4 law for board membership, attendance, or expenses; or
5 [(B) as a parent or guardian of a client or
6 patient receiving services from the department.

7 [(b) An officer, employee, or paid consultant of a trade
8 association in the field of mental health or mental retardation may
9 not be a member of the board or an employee of the department.

10 [(c) A person who is the spouse of an officer, employee, or
11 paid consultant of a trade association in the field of mental health
12 or mental retardation may not be a board member or a department
13 employee grade 17 or over, including exempt employees, according to
14 the position classification schedule under the General
15 Appropriations Act.

16 [(d) A person may not serve as a member of the board or act
17 as the general counsel to the department if the person is required
18 to register as a lobbyist under Chapter 305, Government Code,
19 because of the person's activities for compensation on behalf of a
20 profession related to the operation of the department.

21 [(e) For purposes of this section, a trade association is a
22 nonprofit, cooperative, voluntarily joined association of business
23 or professional competitors designed to assist its members and its
24 industry or profession in dealing with mutual business or
25 professional problems and in promoting their common interest.

26 [Sec. 532.005. TERMS. Board members serve six-year terms.

27 [Sec. 532.006. CHAIRMAN. The governor shall designate a

1 ~~board member as chairman.~~

2 [Sec. 532.007. REMOVAL OF BOARD MEMBERS.] (a) It is a
3 ~~ground for removal from the board if a member:~~

4 [(1) ~~is not eligible for appointment to the board at~~
5 ~~the time of appointment as provided by Section 532.004(a);~~

6 [(2) ~~does not maintain during service on the board the~~
7 ~~qualifications required by Section 532.004(a);~~

8 [(3) ~~violates a prohibition established by Section~~
9 ~~532.004(b), (c), or (d);~~

10 [(4) ~~cannot discharge the member's duties for a~~
11 ~~substantial part of the term for which the member is appointed~~
12 ~~because of illness or disability; or~~

13 [(5) ~~is absent from more than half of the regularly~~
14 ~~scheduled board meetings that the member is eligible to attend~~
15 ~~during a calendar year unless the absence is excused by majority~~
16 ~~vote of the board.~~

17 [(b) ~~The validity of an action of the board is not affected~~
18 ~~by the fact that it is taken when a ground for removal of a board~~
19 ~~member exists.~~

20 [(c) ~~If the commissioner has knowledge that a potential~~
21 ~~ground for removal exists, the commissioner shall notify the~~
22 ~~chairman of the board of the ground. The chairman shall then notify~~
23 ~~the governor that a potential ground for removal exists.~~

24 [Sec. 532.009. REIMBURSEMENT FOR EXPENSES; PER DIEM.] A
25 ~~board member is entitled to receive:~~

26 [(1) ~~reimbursement for actual and necessary expenses~~
27 ~~incurred in discharging the member's duties; and~~

1 [+2) the per diem compensation as provided by
2 appropriation for each day the member actually performs official
3 duties.

4 [Sec. 532.010. BOARD MEETINGS. (a) The board shall hold at
5 least four regular meetings each year in the city of Austin on dates
6 set by board rule. The board shall adopt rules that provide for
7 holding special meetings.

8 [(b) A board meeting, other than a meeting to deliberate the
9 appointment of the commissioner, is open to the public.

10 [(c) The board shall adopt policies that provide the public
11 with a reasonable opportunity to appear before the board and to
12 speak on any issue under the board's jurisdiction.

13 [Sec. 532.011. COMMISSIONER. (a) The commissioner of
14 health and human services shall employ a commissioner in accordance
15 with Section 531.0056, Government Code.

16 [(b) To be qualified for employment as commissioner, a
17 person must have:

18 [(1) professional training and experience in the
19 administration or management of comprehensive health care or human
20 service operations; and

21 [(2) proven administrative and management ability,
22 preferably in the health care area.

23 [(d) The commissioner:

24 [(1) has the administrative and decisional powers
25 granted under this subtitle; and

26 [(2) shall administer the department and this subtitle
27 and ensure the effective administration of the department and its

1 ~~programs and services.~~

2 [(e) ~~The commissioner shall:~~

3 [(1) ~~establish qualifications for department~~
4 ~~personnel that balance clinical and programmatic knowledge and~~
5 ~~management experience; and~~

6 [(2) ~~standardize qualifications for personnel~~
7 ~~positions throughout the department.~~

8 [(f) ~~The commissioner shall:~~

9 [(1) ~~establish an organizational structure within the~~
10 ~~department that will promote the effective administration of this~~
11 ~~subtitle; and~~

12 [(2) ~~establish the duties and functions of the~~
13 ~~department's staff.~~

14 [(g) ~~The commissioner is responsible for implementation of~~
15 ~~the board's planning, policy, resource development and allocation,~~
16 ~~and oversight related to mental health and mental retardation~~
17 ~~services.~~

18 [See. 532.012.] MEDICAL DIRECTOR. (a) The commissioner
19 shall appoint a medical director.

20 (b) To be qualified for appointment as the medical director
21 under this section, a person must:

22 (1) be a physician licensed to practice in this state;
23 and

24 (2) have proven administrative experience and ability
25 in comprehensive health care or human service operations.

26 (c) The medical director reports to the commissioner and is
27 responsible for the following duties under this title:

1 (1) oversight of the quality and appropriateness of
2 clinical services delivered in department mental health facilities
3 or under contract to the department in relation to mental health
4 services; and

5 (2) leadership in physician recruitment and retention
6 and peer review.

7 Sec. 532.003 [532.014]. HEADS OF DEPARTMENTAL MENTAL HEALTH
8 FACILITIES. (a) The commissioner shall appoint the head of each
9 mental health facility the department administers.

10 (b) The head of a facility serves at the will of the
11 commissioner.

12 [Sec. 532.015. RULES AND POLICIES. (a) The board shall
13 adopt rules and develop basic and general policies to guide the
14 department in administering this subtitle. The rules and policies
15 must be consistent with the purposes, policies, principles, and
16 standards stated in this subtitle.

17 [(b) The board shall adopt policies that clearly define the
18 respective responsibilities of the board and the staff of the
19 department.]

20 [Sec. 532.016. PERSONNEL. (a) The commissioner shall
21 develop an intra-agency career ladder program. The program shall
22 require intra-agency posting of all nonentry level positions
23 concurrently with any public posting.

24 [(b) The commissioner shall develop a system of annual job
25 performance evaluations. All merit pay for department employees
26 must be based on the system established under this subsection.]

27 [(c) The department shall provide to its members and

1 employees, as often as necessary, information regarding their
2 qualifications under this subtitle and their responsibilities
3 under applicable laws relating to standards of conduct for state
4 officers or employees.

5 [(d) The commissioner or the commissioner's designee shall
6 prepare and maintain a written policy statement that implements a
7 program of equal employment opportunity to ensure that all
8 personnel decisions are made without regard to race, color,
9 disability, sex, religion, age, or national origin. The policy
10 statement must include:

11 [(1) personnel policies, including policies relating
12 to recruitment, evaluation, selection, training, and promotion of
13 personnel, that show the intent of the department to avoid the
14 unlawful employment practices described by Chapter 21, Labor Code;

15 [(2) an analysis of the extent to which the
16 composition of the department's personnel is in accordance with
17 state and federal law and a description of reasonable methods to
18 achieve compliance with state and federal law; and

19 [(3) procedures by which a determination can be made
20 of significant underutilization in the department work force of all
21 persons for whom federal or state guidelines encourage a more
22 equitable balance and reasonable methods to appropriately address
23 those areas of significant underutilization.

24 [(e) The policy statement must:

25 [(1) be updated annually;

26 [(2) be reviewed by the Commission on Human Rights for
27 compliance with Subsection (d)(1); and

1 [¶(3) be filed with the governor's office.]

2 [(f) The governor shall deliver a biennial report to the
3 legislature based on the information received under Subsection
4 (e)(3). The report may be made separately or as a part of other
5 biennial reports made to the legislature.]

6 [Sec. 532.018. AUDITS. (a) The financial transactions of
7 the department are subject to audit by the state auditor in
8 accordance with Chapter 321, Government Code.]

9 [(b) The director of the internal audit unit shall report
10 directly to the commissioner.]

11 [(c) Each audit report shall be submitted directly to the
12 board.]

13 [Sec. 532.019. PUBLIC INTEREST INFORMATION AND COMPLAINTS.
14 (a) The department shall prepare information of public interest
15 describing the functions of the department and the procedures by
16 which complaints are filed with and resolved by the department. The
17 department shall make the information available to the public and
18 appropriate state agencies.]

19 [(b) The board by rule shall establish methods by which
20 consumers and service recipients are notified of the name, mailing
21 address, and telephone number of the department for the purpose of
22 directing complaints to the department. The board may provide for
23 that notification:]

24 [(1) on each registration form, application, or
25 written contract for services of an entity regulated under this
26 subtitle or of an entity the creation of which is authorized by this
27 subtitle,

1 [~~(2)~~ on a sign that is prominently displayed in the
2 place of business of each entity regulated under this subtitle or of
3 each entity the creation of which is authorized by this subtitle; or
4 [~~(3)~~ in a bill for service provided by an entity
5 regulated under this subtitle or by an entity the creation of which
6 is authorized by this subtitle.]

7 [(c) If a written complaint is filed with the department
8 relating to an entity regulated by the department, the department,
9 at least quarterly and until final disposition of the complaint,
10 shall notify the complainant and the entity regulated by the
11 department of the status of the complaint unless notice would
12 jeopardize an undercover investigation.]

13 [(d) The department shall keep an information file about
14 each complaint filed with the department relating to an entity
15 regulated by the department.]

16 Sec. 532.004 [~~532.020~~]. ADVISORY COMMITTEES. (a) The
17 executive commissioner [~~board~~] shall appoint [~~a medical advisory~~
18 ~~committee and~~] any [~~other~~] advisory committees the executive
19 commissioner [~~board~~] considers necessary to assist in the effective
20 administration of the department's mental health [~~and mental~~
21 ~~retardation~~] programs.

22 (b) The department may reimburse committee members for
23 travel costs incurred in performing their duties as provided by
24 Section 2110.004, Government Code [~~at the rates authorized for~~
25 ~~state officers and employees under the General Appropriations Act~~].

26 [Sec. 532.021. CITIZENS' PLANNING ADVISORY COMMITTEE. (a)
27 The board shall appoint a citizens' planning advisory committee

1 that is composed of:

- 2 [(1) three persons who have demonstrated an interest
3 in and knowledge of the department system and the legal, political,
4 and economic environment in which the department operates;
5 [(2) three persons who have expertise in the
6 development and implementation of long-range plans; and
7 [(3) three members of the public.

8 [(b) In addition to the requirements of Subsection (a), at
9 least one member must be a consumer of services for persons with
10 mental illness or a family member of a consumer of those services,
11 and at least one member must be a consumer of services for persons
12 with mental retardation or a family member of a consumer of those
13 services.

14 [(c) The committee shall:

15 [(1) advise the department on all stages of the
16 development and implementation of the long-range plan required by
17 Section 533.032;

18 [(2) review the development, implementation, and any
19 necessary revisions of the long-range plan;

20 [(3) review the department's biennial budget request
21 and assess the degree to which the request allows for
22 implementation of the long-range plan; and

23 [(4) advise the board on:

24 [(A) the appropriateness of the long-range plan;

25 [(B) any identified problems related to the
26 implementation of the plan;

27 [(C) any necessary revisions to the plan; and

1 [(D) the adequacy of the department's budget
2 request.]

3 [(d) The board shall review the committee's reports in
4 conjunction with information provided by the department on the
5 long-range plan or the biennial budget request.]

6 [(e) The board shall allow the committee opportunities to
7 appear before the board as needed.]

8 [(f) Before a board meeting relating to the development,
9 implementation, or revision of the department's long-range plan,
10 the department shall, in a timely manner, provide the committee
11 with any information that will be presented to the board.]

12 [(g) Before submitting the department's biennial budget
13 request to the board for discussion or approval, the department
14 shall, in a timely manner, provide the committee with a copy of the
15 budget request.]

16 [(h) The department shall provide the committee with the
17 staff support necessary to allow the committee to fulfill its
18 duties.]

19 CHAPTER 532A. GENERAL PROVISIONS RELATING TO DEPARTMENT OF AGING

20 AND DISABILITY SERVICES

21 Sec. 532A.001. DEFINITIONS; INTELLECTUAL DISABILITY
22 COMPONENTS OF DEPARTMENT. (a) In this chapter:

23 (1) "Commissioner" means the commissioner of aging and
24 disability services.

25 (2) "Department" means the Department of Aging and
26 Disability Services.

27 (b) The department includes community services operated by

1 the department and the following facilities:

2 (1) the central office of the department;

3 (2) the Abilene State Supported Living Center;

4 (3) the Austin State Supported Living Center;

5 (4) the Brenham State Supported Living Center;

6 (5) the Corpus Christi State Supported Living Center;

7 (6) the Denton State Supported Living Center;

8 (7) the Lubbock State Supported Living Center;

9 (8) the Lufkin State Supported Living Center;

10 (9) the Mexia State Supported Living Center;

11 (10) the Richmond State Supported Living Center;

12 (11) the San Angelo State Supported Living Center;

13 (12) the San Antonio State Supported Living Center;

14 and

15 (13) the El Paso State Supported Living Center.

16 Sec. 532A.002. MEDICAL DIRECTOR. (a) The commissioner
17 shall appoint a medical director.

18 (b) To be qualified for appointment as the medical director
19 under this section, a person must:

20 (1) be a physician licensed to practice in this state;

21 and

22 (2) have proven administrative experience and ability
23 in comprehensive health care or human service operations.

24 (c) The medical director reports to the commissioner and is
25 responsible for the following duties under this title:

26 (1) oversight of the quality and appropriateness of
27 clinical services delivered in state supported living centers or

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1 under contract to the department in relation to intellectual
2 disability services; and

3 (2) leadership in physician recruitment and retention
4 and peer review.

5 Sec. 532A.003. HEADS OF STATE SUPPORTED LIVING CENTERS.

6 (a) The commissioner shall appoint the head of each state supported
7 living center the department administers.

8 (b) The head of a state supported living center serves at
9 the will of the commissioner.

10 Sec. 532A.004. ADVISORY COMMITTEES. (a) The executive
11 commissioner shall appoint any advisory committees the executive
12 commissioner considers necessary to assist in the effective
13 administration of the department's intellectual disability
14 programs.

15 (b) The department may reimburse committee members for
16 travel costs incurred in performing their duties as provided by
17 Section 2110.004, Government Code.

18 SECTION 3.1335. Subtitle A, Title 7, Health and Safety
19 Code, is amended by amending Chapter 533 and adding Chapter 533A to
20 read as follows:

21 CHAPTER 533. POWERS AND DUTIES OF DEPARTMENT OF STATE HEALTH
22 SERVICES

23 SUBCHAPTER A. GENERAL POWERS AND DUTIES

24 Sec. 533.0001. DEFINITIONS. In this chapter:

25 (1) "Commissioner" means the commissioner of state
26 health services.

27 (2) "Department" means the Department of State Health

1 Services.

2 (3) "Department facility" means a facility listed in
3 Section 532.001(b).

4 Sec. 533.0002. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF
5 CONFLICT WITH OTHER LAW [POWERS AND DUTIES OF COMMISSIONER OF
6 HEALTH AND HUMAN SERVICES. The commissioner of health and human
7 services has the powers and duties relating to the board and
8 commissioner as provided by Section 531.0055, Government Code]. To
9 the extent a power or duty given to the [board or] commissioner by
10 this title or another law conflicts with Section 531.0055,
11 Government Code, Section 531.0055 controls.

12 Sec. 533.001. GIFTS AND GRANTS. (a) The department may
13 negotiate with a federal agency to obtain grants to assist in
14 expanding and improving mental health [~~and mental retardation~~]
15 services in this state.

16 (b) The department may accept gifts and grants of money,
17 personal property, and real property to expand and improve the
18 mental health [~~and mental retardation~~] services available to the
19 people of this state.

20 (c) The department may accept gifts and grants of money,
21 personal property, and real property on behalf of a department
22 facility to expand and improve the mental health [~~or mental~~
23 ~~retardation~~] services available at the facility.

24 (d) The department shall use a gift or grant made for a
25 specific purpose in accordance with the purpose expressly
26 prescribed by the donor. The department may decline the gift or
27 grant if the department determines that it cannot be economically

1 used for that purpose.

2 (e) The department shall keep a record of each gift or grant
3 in the department's central office in the city of Austin.

4 [Sec. 533.002. COMPETITIVE REVIEW REQUIREMENT.] The
5 ~~department shall establish procedures to:~~

6 [(1) ~~promote more efficient use of public funds;~~

7 [(2) ~~ensure periodic review of department management~~
8 ~~and support activities in order to:~~

9 [(A) ~~improve department operations;~~

10 [(B) ~~improve the determination of costs;~~

11 [(C) ~~increase department productivity; and~~

12 [(D) ~~remain competitive with the private sector,~~

13 and

14 [(3) ~~ensure that the state not provide a service that~~
15 ~~is available through the private sector unless the state can~~
16 ~~provide the service at a lower cost.]~~

17 Sec. 533.003. USE OF FUNDS FOR VOLUNTEER PROGRAMS IN LOCAL
18 AUTHORITIES AND COMMUNITY CENTERS. (a) To develop or expand a
19 volunteer mental health program in a local mental health [or mental
20 retardation] authority or a community center, the department may
21 allocate available funds appropriated for providing volunteer
22 mental health services.

23 (b) The department shall develop formal policies that
24 encourage the growth and development of volunteer mental health
25 services in local mental health [or mental retardation] authorities
26 and community centers.

27 Sec. 533.004. LIENS. (a) The department and each community

1 center has a lien to secure reimbursement for the cost of providing
2 support, maintenance, and treatment to a patient with mental
3 illness [or client with mental retardation] in an amount equal to
4 the amount of reimbursement sought.

5 (b) The amount of the reimbursement sought may not exceed:

6 (1) the amount the department is authorized to charge
7 under Section 552.017 [or under Subchapter D, Chapter 593,] if the
8 patient [or client] received the services in a department facility;
9 or

10 (2) the amount the community center is authorized to
11 charge under Section 534.017 if the patient [or client] received
12 the services in a community center.

13 (c) The lien attaches to:

14 (1) all nonexempt real and personal property owned or
15 later acquired by the patient [or client] or by a person legally
16 responsible for the patient's [or client's] support;

17 (2) a judgment of a court in this state or a decision
18 of a public agency in a proceeding brought by or on behalf of the
19 patient [or client] to recover damages for an injury for which the
20 patient [or client] was admitted to a department facility or
21 community center; and

22 (3) the proceeds of a settlement of a cause of action
23 or a claim by the patient [or client] for an injury for which the
24 patient [or client] was admitted to a department facility or
25 community center.

26 (d) To secure the lien, the department or community center
27 must file written notice of the lien with the county clerk of the

1 county in which:

2 (1) the patient [~~or client~~], or the person legally
3 responsible for the patient's [~~or client's~~] support, owns property;

4 or

5 (2) the patient [~~or client~~] received or is receiving
6 services.

7 (e) The notice must contain:

8 (1) the name and address of the patient [~~or client~~];

9 (2) the name and address of the person legally
10 responsible for the patient's [~~or client's~~] support, if applicable;

11 (3) the period during which the department facility or
12 community center provided services or a statement that services are
13 currently being provided; and

14 (4) the name and location of the department facility
15 or community center.

16 (f) Not later than the 31st day before the date on which the
17 department files the notice of the lien with the county clerk, the
18 department shall notify by certified mail the patient [~~or client~~]
19 and the person legally responsible for the patient's [~~or client's~~]
20 support. The notice must contain a copy of the charges, the
21 statutory procedures relating to filing a lien, and the procedures
22 to contest the charges. The executive commissioner [~~board~~] by rule
23 shall prescribe the procedures to contest the charges.

24 (g) The county clerk shall record on the written notice the
25 name of the patient [~~or client~~], the name and address of the
26 department facility or community center, and, if requested by the
27 person filing the lien, the name of the person legally responsible

1 for the patient's [~~or client's~~] support. The clerk shall index the
2 notice record in the name of the patient [~~or client~~] and, if
3 requested by the person filing the lien, in the name of the person
4 legally responsible for the patient's [~~or client's~~] support.

5 (h) The notice record must include an attachment that
6 contains an account of the charges made by the department facility
7 or community center and the amount due to the facility or center.
8 The superintendent or director of the facility or center must swear
9 to the validity of the account. The account is presumed to be
10 correct, and in a suit to cancel the debt and discharge the lien or
11 to foreclose on the lien, the account is sufficient evidence to
12 authorize a court to render a judgment for the facility or center.

13 (i) To discharge the lien, the superintendent or director of
14 the department facility or community center or a claims
15 representative of the facility or center must execute and file with
16 the county clerk of the county in which the lien notice is filed a
17 certificate stating that the debt covered by the lien has been paid,
18 settled, or released and authorizing the clerk to discharge the
19 lien. The county clerk shall record a memorandum of the certificate
20 and the date on which it is filed. The filing of the certificate and
21 recording of the memorandum discharge the lien.

22 Sec. 533.005. EASEMENTS. The department, in coordination
23 with the executive commissioner, may grant a temporary or permanent
24 easement or right-of-way on land held by the department that
25 relates to services provided under this title. The department, in
26 coordination with the executive commissioner, must grant an
27 easement or right-of-way on terms and conditions the executive

1 commissioner [department] considers to be in the state's best
2 interest.

3 Sec. 533.006. REPORTING OF ALLEGATIONS AGAINST PHYSICIAN.

4 (a) The department shall report to the Texas Medical [~~State~~] Board
5 [~~of Medical Examiners~~] any allegation received by the department
6 that a physician employed by or under contract with the department
7 in relation to services provided under this title has committed an
8 action that constitutes a ground for the denial or revocation of the
9 physician's license under Section [164.051](#), Occupations Code. The
10 report must be made in the manner provided by Section [154.051](#),
11 Occupations Code.

12 (b) The department shall provide to the Texas Medical
13 [~~State~~] Board [~~of Medical Examiners~~] a copy of any report or finding
14 relating to an investigation of an allegation reported to that
15 board.

16 Sec. 533.007. USE OF [~~ACCESS TO~~] CRIMINAL HISTORY RECORD
17 INFORMATION [~~, CRIMINAL PENALTY FOR UNLAWFUL DISCLOSURE~~]. (a)

18 Subject to the requirements of Chapter 250, the [~~The~~] department,
19 in relation to services provided under this title, or a local mental
20 health [~~or mental retardation~~] authority[~~T~~] or [~~a~~] community
21 center, may deny employment or volunteer status to an applicant if:

22 (1) the department, authority, or community center
23 determines that the applicant's criminal history record
24 information indicates that the person is not qualified or suitable;
25 or

26 (2) the applicant fails to provide a complete set of
27 fingerprints if the department establishes that method of obtaining

1 criminal history record information.

2 (b) The executive commissioner [board] shall adopt rules
3 relating to the use of information obtained under this section,
4 including rules that prohibit an adverse personnel action based on
5 arrest warrant or wanted persons information received by the
6 department.

7 Sec. 533.0075. EXCHANGE OF EMPLOYMENT RECORDS. The
8 department, in relation to services provided under this title, or a
9 local mental health [~~or mental retardation~~] authority[~~r~~] or [~~a~~]
10 community center, may exchange with one another the employment
11 records of an employee or former employee who applies for
12 employment at the department, authority, or community center.

13 Sec. 533.008. EMPLOYMENT OPPORTUNITIES FOR INDIVIDUALS
14 WITH MENTAL ILLNESS OR AN INTELLECTUAL DISABILITY [~~AND MENTAL~~
15 ~~RETARDATION~~]. (a) Each department facility and community center
16 shall annually assess the feasibility of converting entry level
17 support positions into employment opportunities for individuals
18 with mental illness or an intellectual disability [~~and mental~~
19 ~~retardation~~] in the facility's or center's service area.

20 (b) In making the assessment, the department facility or
21 community center shall consider the feasibility of using an array
22 of job opportunities that may lead to competitive employment,
23 including sheltered employment and supported employment.

24 (c) Each department facility and community center shall
25 annually submit to the department a report showing that the
26 facility or center has complied with Subsection (a).

27 (d) The department shall compile information from the

1 reports and shall make the information available to each designated
2 provider in a service area.

3 (e) Each department facility and community center shall
4 ensure that designated staff are trained to:

5 (1) assist clients through the Social Security
6 Administration disability determination process;

7 (2) provide clients and their families information
8 related to the Social Security Administration Work Incentive
9 Provisions; and

10 (3) assist clients in accessing and utilizing the
11 Social Security Administration Work Incentive Provisions to
12 finance training, services, and supports needed to obtain career
13 goals.

14 Sec. 533.009. EXCHANGE OF PATIENT [AND CLIENT] RECORDS.

15 (a) Department facilities, local mental health [~~or mental~~
16 ~~retardation~~] authorities, community centers, other designated
17 providers, and subcontractors [~~subcontractees~~] of mental health
18 [~~and mental retardation~~] services are component parts of one
19 service delivery system within which patient [~~or client~~] records
20 may be exchanged without the patient's [~~or client's~~] consent.

21 (b) The executive commissioner [~~board~~] shall adopt rules to
22 carry out the purposes of this section.

23 Sec. 533.0095. COLLECTION AND MAINTENANCE OF INFORMATION
24 REGARDING PERSONS FOUND NOT GUILTY BY REASON OF INSANITY. (a) The
25 executive commissioner [~~of the Health and Human Services~~
26 ~~Commission~~] by rule shall require the department to collect
27 information and maintain current records regarding a person found

1 not guilty of an offense by reason of insanity under Chapter 46C,
2 Code of Criminal Procedure, who is:

3 (1) ordered by a court to receive inpatient mental
4 health services under Chapter 574 or under Chapter 46C, Code of
5 Criminal Procedure; or

6 (2) ~~committed by a court for long-term placement in a~~
7 ~~residential care facility under Chapter 593 or under Chapter 46C,~~
8 ~~Code of Criminal Procedure; or~~

9 [~~(3)~~] ordered by a court to receive outpatient or
10 community-based treatment and supervision.

11 (b) Information maintained by the department under this
12 section must include the name and address of any facility to which
13 the person is committed, the length of the person's commitment to
14 the facility, and any post-release outcome.

15 (c) The department shall file annually with the presiding
16 officer of each house of the legislature a written report
17 containing the name of each person described by Subsection (a), the
18 name and address of any facility to which the person is committed,
19 the length of the person's commitment to the facility, and any
20 post-release outcome.

21 Sec. 533.010. INFORMATION RELATING TO [PATIENT'S]
22 CONDITION. (a) A person, including a hospital, [sanitarium,
23 nursing facility [~~or rest home~~], medical society, or other
24 organization, may provide to the department or a medical
25 organization, hospital, or hospital committee any information,
26 including interviews, reports, statements, or memoranda relating
27 to a person's condition and treatment for use in a study to reduce

1 mental illness [~~disorders~~] and intellectual [~~mental~~] disabilities.

2 (b) The department or a medical organization, hospital, or
3 hospital committee receiving the information may use or publish the
4 information only to advance mental health and intellectual
5 disability [~~mental retardation~~] research and education in order to
6 reduce mental illness [~~disorders~~] and intellectual [~~mental~~]
7 disabilities. A summary of the study may be released for general
8 publication.

9 (c) The identity of a person whose condition or treatment is
10 studied is confidential and may not be revealed under any
11 circumstances. Information provided under this section and any
12 finding or conclusion resulting from the study is privileged
13 information.

14 (d) A person is not liable for damages or other relief if the
15 person:

16 (1) provides information under this section;
17 (2) releases or publishes the findings and conclusions
18 of the person or organization to advance mental health and
19 intellectual disability [~~mental retardation~~] research and
20 education; or
21 (3) releases or publishes generally a summary of a
22 study.

23 Sec. 533.012. COOPERATION OF STATE AGENCIES. [(a)] At the
24 department's request and in coordination with the executive
25 commissioner, all state departments, agencies, officers, and
26 employees shall cooperate with the department in activities that
27 are consistent with their functions and that relate to services

1 provided under this title.

2 [Sec. 533.013. DUPLICATION OF REHABILITATION SERVICES. The
3 department shall enter into an agreement with the Texas
4 Rehabilitation Commission that defines the roles and
5 responsibilities of the department and the commission regarding the
6 agencies' shared client populations. The agreement must establish
7 methods to prevent the duplication and fragmentation of employment
8 services provided by the agencies.]

9 Sec. 533.014. RESPONSIBILITY OF LOCAL MENTAL HEALTH
10 AUTHORITIES IN MAKING TREATMENT RECOMMENDATIONS. (a) The
11 executive commissioner [board] shall adopt rules that:

12 (1) relate to the responsibility of the local mental health
13 authorities to make recommendations relating to the most
14 appropriate and available treatment alternatives for individuals
15 in need of mental health services, including individuals who are in
16 contact with the criminal justice system and individuals detained
17 in local jails and juvenile detention facilities;

18 (2) govern commitments to a local mental health
19 authority;

20 (3) govern transfers of patients that involve a local
21 mental health authority; and

22 (4) provide for emergency admission to a department
23 mental health facility if obtaining approval from the authority
24 could result in a delay that might endanger the patient or others.

25 (b) The executive commissioner's [board's] first
26 consideration in developing rules under this section must be to
27 satisfy individual patient treatment needs in the most appropriate

1 setting. The executive commissioner [board] shall also consider
2 reducing patient inconvenience resulting from admissions and
3 transfers between providers.

4 (c) The department shall notify each judge who has probate
5 jurisdiction in the service area and any other person the local
6 mental health authority considers necessary of the responsibility
7 of the local mental health authority to make recommendations
8 relating to the most appropriate and available treatment
9 alternatives and the procedures required in the area.

10 Sec. 533.015. UNANNOUNCED INSPECTIONS. The department may
11 make any inspection of a department facility or program under the
12 department's jurisdiction under this title without announcing the
13 inspection.

14 Sec. 533.016. CERTAIN PROCUREMENTS OF GOODS AND SERVICES BY
15 SERVICE PROVIDERS. (a) This section does not apply to a "health
and human services agency," as that term is defined by Section
17 531.001, Government Code.

18 (a-1) A state agency, local agency, or local mental health
19 authority[, or local mental retardation authority] that expends
20 public money to acquire goods or services in connection with
21 providing or coordinating the provision of mental health [or mental
22 retardation] services may satisfy the requirements of any state law
23 requiring procurements by competitive bidding or competitive
24 sealed proposals by procuring goods or services with the public
25 money in accordance with Section 533.017 or in accordance with:

26 (1) [Section 2155.144, Government Code, if the entity
27 is a state agency subject to that law,

1 ~~(2)~~ Section 32.043 or 32.044, Human Resources Code,
2 if the entity is a public hospital subject to those laws; or
3 (2) ~~(3)~~ this section, if the entity is not covered
4 by Subdivision (1) ~~or (2)~~.

5 (b) An agency or authority under Subsection (a-1)(2)
6 ~~(a)(3)~~ may acquire goods or services by any procurement method
7 that provides the best value to the agency or authority. The agency
8 or authority shall document that the agency or authority considered
9 all relevant factors under Subsection (c) in making the
10 acquisition.

11 (c) Subject to Subsection (d), the agency or authority may
12 consider all relevant factors in determining the best value,
13 including:

14 (1) any installation costs;
15 (2) the delivery terms;
16 (3) the quality and reliability of the vendor's goods
17 or services;

18 (4) the extent to which the goods or services meet the
19 agency's or authority's needs;

20 (5) indicators of probable vendor performance under
21 the contract such as past vendor performance, the vendor's
22 financial resources and ability to perform, the vendor's experience
23 and responsibility, and the vendor's ability to provide reliable
24 maintenance agreements;

25 (6) the impact on the ability of the agency or
26 authority to comply with laws and rules relating to historically
27 underutilized businesses or relating to the procurement of goods

1 and services from persons with disabilities;

2 (7) the total long-term cost to the agency or
3 authority of acquiring the vendor's goods or services;

4 (8) the cost of any employee training associated with
5 the acquisition;

6 (9) the effect of an acquisition on the agency's or
7 authority's productivity;

8 (10) the acquisition price; and

9 (11) any other factor relevant to determining the best
10 value for the agency or authority in the context of a particular
11 acquisition.

12 (d) If a state agency to which this section applies acquires
13 goods or services with a value that exceeds \$100,000, the state
14 agency shall consult with and receive approval from the commission
15 [~~Health and Human Services Commission~~] before considering factors
16 other than price and meeting specifications.

17 (e) The state auditor or the executive commissioner
18 [~~department~~] may audit the agency's or authority's acquisitions of
19 goods and services under this section to the extent state money or
20 federal money appropriated by the state is used to make the
21 acquisitions.

22 (f) The agency or authority may adopt rules and procedures
23 for the acquisition of goods and services under this section.

24 Sec. 533.017. PARTICIPATION IN [~~DEPARTMENT~~] PURCHASING
25 CONTRACTS OR GROUP PURCHASING PROGRAM. (a) This section does not
26 apply to a "health and human services agency," as that term is
27 defined by Section 531.001, Government Code.

1 (b) The executive commissioner [department] may allow a
2 state agency, local agency, or local mental health authority [~~or~~
3 ~~local mental retardation authority~~] that expends public money to
4 purchase goods or services in connection with providing or
5 coordinating the provision of mental health [~~or mental retardation~~]
6 services to purchase goods or services with the public money by
7 participating in:

14 SUBCHAPTER B. POWERS AND DUTIES RELATING TO PROVISION OF MENTAL
15 HEALTH SERVICES

16 Sec. 533.031. DEFINITIONS. In this subchapter:

1 [+4) "Commission" means the Health and Human Services
2 Commission.

3 [+5) "Executive commissioner" means the executive
4 commissioner of the Health and Human Services Commission.

5 [+6) "ICF-MR and related waiver programs" includes
6 ICF-MR Section 1915(c) waiver programs, home and community-based
7 services, Texas home living waiver services, or another Medicaid
8 program serving persons with mental retardation.

9 [+7) "Section 1915(c) waiver program" means a
10 federally funded Medicaid program of the state that is authorized
11 under Section 1915(c) of the federal Social Security Act (42 U.S.C.
12 Section 1396n(c)).

13 [+8) "Qualified service provider" means an entity that
14 meets requirements for service providers established by the
15 executive commissioner.]

16 Sec. 533.032. LONG-RANGE PLANNING. (a) The department
17 shall have a long-range plan relating to the provision of services
18 under this title covering at least six years that includes at least
19 the provisions required by Sections 531.022 and 531.023, Government
20 Code, and Chapter 2056, Government Code. The plan must cover the
21 provision of services in and policies for state-operated
22 institutions and ensure that the medical needs of the most
23 medically fragile persons with mental illness the department serves
24 are met.

25 (b) In developing the plan, the department shall:

26 (1) solicit input from:

27 (A) local mental health authorities [~~for mental~~

1 ~~health and mental retardation~~;

2 (B) community representatives;

3 (C) consumers of mental health [~~and mental~~

4 ~~retardation~~] services, including consumers of campus-based and

5 community-based services, and family members of consumers of those

6 services; and

7 (D) other interested persons; and

8 (2) consider the report developed under Subsection

9 (c).

10 (c) The department shall develop a report containing

11 information and recommendations regarding the most efficient

12 long-term use and management of the department's campus-based

13 facilities. The report must:

14 (1) project future bed requirements for [~~state schools~~

15 ~~and~~] state hospitals;

16 (2) document the methodology used to develop the

17 projection of future bed requirements;

18 (3) project maintenance costs for institutional

19 facilities;

20 (4) recommend strategies to maximize the use of

21 institutional facilities; and

22 (5) specify how each [~~state school and~~] state hospital

23 will:

24 (A) serve and support the communities and

25 consumers in its service area; and

26 (B) fulfill statewide needs for specialized

27 services.

1 (d) In developing the report under Subsection (c), the
2 department shall:

3 (1) conduct two public meetings, one meeting to be
4 held at the beginning of the process and the second meeting to be
5 held at the end of the process, to receive comments from interested
6 parties; and

7 (2) consider:

8 (A) the medical needs of the most medically
9 fragile of its patients with mental illness [~~clients~~]; and

10 (B) [~~the provision of services to clients with~~
11 ~~severe and profound mental retardation and to persons with mental~~
12 ~~retardation who are medically fragile or have behavioral problems;~~

13 [~~(C) the program and service preference~~
14 ~~information collected under Section 533.038~~; and

15 [~~(D)~~] input solicited from consumers of services
16 of [~~state schools and~~] state hospitals.

17 (g) The department shall:

18 (1) attach the report required by Subsection (c) to
19 the department's legislative appropriations request for each
20 biennium;

21 (2) at the time the department presents its
22 legislative appropriations request, present the report to the:

23 (A) governor;

24 (B) governor's budget office;

25 (C) lieutenant governor;

26 (D) speaker of the house of representatives;

27 (E) Legislative Budget Board; and

1 (F) commission [Health and Human Services
2 ~~Commission~~]; and

3 (3) update the department's long-range plan biennially
4 and include the report in the plan.

5 (h) The department shall, in coordination with the
6 commission [Health and Human Services Commission], evaluate the
7 current and long-term costs associated with serving inpatient
8 psychiatric needs of persons living in counties now served by at
9 least three state hospitals within 120 miles of one another. This
10 evaluation shall take into consideration the condition of the
11 physical plants and other long-term asset management issues
12 associated with the operation of the hospitals, as well as other
13 issues associated with quality psychiatric care. After such
14 determination is made, the commission [Health and Human Services
15 ~~Commission~~] shall begin to take action to influence the utilization
16 of these state hospitals in order to ensure efficient service
17 delivery.

18 Sec. 533.0325. CONTINUUM OF SERVICES IN CAMPUS FACILITIES.

19 The executive commissioner [board] by rule shall establish criteria
20 regarding the uses of the department's campus-based facilities as
21 part of a full continuum of services under this title.

22 Sec. 533.033. DETERMINATION OF REQUIRED RANGE OF MENTAL
23 HEALTH SERVICES. (a) Consistent with the purposes and policies of
24 this subtitle, the commissioner biennially shall determine:

25 (1) the types of mental health services that can be
26 most economically and effectively provided at the community level
27 for persons exhibiting various forms of mental disability; and

1 (2) the types of mental health services that can be
2 most economically and effectively provided by department
3 facilities.

4 (b) In the determination, the commissioner shall assess the
5 limits, if any, that should be placed on the duration of mental
6 health services provided at the community level or at a department
7 facility.

8 (c) The department biennially shall review the types of
9 services the department provides and shall determine if a community
10 provider can provide services of a comparable quality at a lower
11 cost than the department's costs.

12 (d) The commissioner's findings shall guide the department
13 in planning and administering services for persons with mental
14 illness.

15 Sec. 533.034. AUTHORITY TO CONTRACT FOR COMMUNITY-BASED
16 SERVICES. [a] The department may cooperate, negotiate, and
17 contract with local agencies, hospitals, private organizations and
18 foundations, community centers, physicians, and other persons to
19 plan, develop, and provide community-based mental health [and
20 ~~mental retardation~~] services.

21 Sec. 533.0345. STATE AGENCY SERVICES STANDARDS. (a) The
22 executive commissioner [department] by rule shall develop model
23 program standards for mental health [and ~~mental retardation~~]
24 services for use by each state agency that provides or pays for
25 mental health [~~or mental retardation~~] services. The department
26 shall provide the model standards to each agency that provides
27 mental health [~~or mental retardation~~] services as identified by the

1 commission [Health and Human Services Commission].

2 (b) Model standards developed under Subsection (a) must be
3 designed to improve the consistency of mental health [~~and mental~~
4 ~~retardation~~] services provided by or through a state agency.

5 (c) Biennially the department shall review the model
6 standards developed under Subsection (a) and determine whether each
7 standard contributes effectively to the consistency of service
8 delivery by state agencies.

9 [Sec. 533.0346. AUTHORITY TO TRANSFER SERVICES TO COMMUNITY
10 CENTERS. (a) The department may transfer operations of and
11 services provided at the Amarillo State Center, Beaumont State
12 Center, and Laredo State Center to a community center established
13 under Chapter 534, including a newly established center providing
14 mental retardation services or mental health and mental retardation
15 services.]

16 [(b) The transfer may occur only on the department's
17 approval of a plan submitted in accordance with Section 534.001(d)
18 or of an amendment to a previously approved plan. In developing the
19 plan or plan amendment, the center or proposed center proposing to
20 accept the state center operation and service responsibilities
21 shall consider input from consumers of mental health and mental
22 retardation services and family members of and advocates for those
23 consumers, organizations that represent affected employees, and
24 other providers of mental health and mental retardation services.]

25 [(c) The center or proposed center proposing to accept the
26 state center operation and service responsibilities shall publish
27 notice of the initial planning meeting regarding the content of the

1 ~~plan or plan amendment and of the meeting to review the content of~~
2 ~~the proposed plan or plan amendment before it is submitted under~~
3 ~~Section 534.001(d)~~. The notices must include the time and location
4 ~~of the meeting. The notice of the meeting to review the content of~~
5 ~~the plan or amendment must include information regarding how to~~
6 ~~obtain a copy of the proposed plan or amendment. The notices must~~
7 ~~be published not fewer than 30 days and not more than 90 days before~~
8 ~~the date set for the meeting in a newspaper of general circulation~~
9 ~~in each county containing any part of the proposed service area. If~~
10 ~~a county in which notice is required to be published does not have a~~
11 ~~newspaper of general circulation, the notices shall be published in~~
12 ~~a newspaper of general circulation in the nearest county in which a~~
13 ~~newspaper of general circulation is published.~~

14 ~~[(d) At the time the operations and services are transferred~~
15 ~~to the community center, money supporting the cost of providing~~
16 ~~operations and services at a state center shall be transferred to~~
17 ~~the community center to ensure continuity of services.~~

18 ~~[(e) The Amarillo State Center is exempt from the~~
19 ~~requirements listed in Subsections (b) and (c).]~~

20 Sec. 533.035. LOCAL MENTAL HEALTH [AND MENTAL RETARDATION]
21 AUTHORITIES. (a) The executive commissioner shall designate a
22 local mental health authority [and a local mental retardation
23 authority] in one or more local service areas. The executive
24 commissioner may delegate to the local authority [authorities] the
25 authority and responsibility of the executive commissioner, the
26 commission, or a department of the commission related to planning,
27 policy development, coordination, including coordination with

1 criminal justice entities, resource allocation, and resource
2 development for and oversight of mental health [and mental
3 retardation] services in the most appropriate and available setting
4 to meet individual needs in that service area. The executive
5 commissioner may designate a single entity as both the local mental
6 health authority under this chapter and the local intellectual and
7 developmental disability [~~mental retardation~~] authority under
8 Chapter 533A for a service area.

9 (b) The department by contract or other method of
10 allocation, including a case-rate or capitated arrangement, may
11 disburse to a local mental health [and mental retardation]
12 authority department federal and department state funds to be spent
13 in the local service area for:

14 (1) community mental health and intellectual
15 disability [~~mental retardation~~] services; and

16 (2) chemical dependency services for persons who are
17 dually diagnosed as having both chemical dependency and mental
18 illness or an intellectual disability [~~mental retardation~~].

19 (c) A local mental health [and mental retardation]
20 authority, with the approval of the department [~~Department of State~~
21 ~~Health Services~~ or the ~~Department of Aging and Disability Services~~,
22 ~~or both, as applicable~~], shall use the funds received under
23 Subsection (b) to ensure mental health[~~, mental retardation,~~] and
24 chemical dependency services are provided in the local service
25 area. The local authority shall consider public input, ultimate
26 cost-benefit, and client care issues to ensure consumer choice and
27 the best use of public money in:

1 (1) assembling a network of service providers;
2 (2) making recommendations relating to the most
3 appropriate and available treatment alternatives for individuals
4 in need of mental health [~~or mental retardation~~] services; and
5 (3) procuring services for a local service area,
6 including a request for proposal or open-enrollment procurement
7 method.

8 (d) A local mental health [~~and mental retardation~~]
9 authority shall demonstrate to the department that the services
10 that the authority provides directly or through subcontractors and
11 that involve state funds comply with relevant state standards.

12 (e) Subject to Section 533.0358, in assembling a network of
13 service providers, a local mental health authority may serve as a
14 provider of services only as a provider of last resort and only if
15 the local authority demonstrates to the department in the local
16 authority's local network development plan that:

17 (1) the local authority has made every reasonable
18 attempt to solicit the development of an available and appropriate
19 provider base that is sufficient to meet the needs of consumers in
20 its service area; and

21 (2) there is not a willing provider of the relevant
22 services in the local authority's service area or in the county
23 where the provision of the services is needed.

24 [(e-1) A local mental retardation authority may serve as a
25 provider of ICF-MR and related waiver programs only if:

26 [(-1) the local authority complies with the limitations
27 prescribed by Section 533.0355(d); or

1 [¶(2) the ICF-MR and related waiver programs are
2 necessary to ensure the availability of services and the local
3 authority demonstrates to the commission that there is not a
4 willing ICF-MR and related waiver program qualified service
5 provider in the local authority's service area where the service is
6 needed.]

7 Sec. 533.0351. LOCAL AUTHORITY NETWORK ADVISORY COMMITTEE.

8 (a) The executive commissioner shall establish a local authority
9 network advisory committee to advise the executive commissioner and
10 the department [~~Department of State Health Services~~] on technical
11 and administrative issues that directly affect local mental health
12 authority responsibilities.

13 (b) The committee is composed of equal numbers of
14 representatives of local mental health authorities, community
15 mental health service providers, private mental health service
16 providers, local government officials, advocates for individuals
17 with mental health needs, consumers of mental health services,
18 family members of individuals with mental health needs, and other
19 individuals with expertise in the field of mental health appointed
20 by the executive commissioner. In addition, the executive
21 commissioner may appoint facilitators to the committee as
22 necessary. In appointing the members, the executive commissioner
23 shall also ensure a balanced representation of:

- 24 (1) different regions of this state;
25 (2) rural and urban counties; and
26 (3) single-county and multicounty local mental health
27 authorities.

1 (c) Members appointed to the advisory committee must have
2 some knowledge of, familiarity with, or understanding of the
3 day-to-day operations of a local mental health authority.

4 (d) The advisory committee shall:

5 (1) review rules and proposed rules and participate in
6 any negotiated rulemaking process related to local mental health
7 authority operations;

8 (2) advise the executive commissioner and the
9 department [Department of State Health Services] regarding
10 evaluation and coordination of initiatives related to local mental
11 health authority operations;

12 (3) advise the executive commissioner and the
13 department [Department of State Health Services] in developing a
14 method of contracting with local mental health authorities that
15 will result in contracts that are flexible and responsive to:

16 (A) the needs and services of local communities;
17 and

18 (B) the department's performance expectations;

19 (4) coordinate with work groups whose actions may
20 affect local mental health authority operations;

21 (5) report to the executive commissioner and the
22 department [Department of State Health Services] on the committee's
23 activities and recommendations at least once each fiscal quarter;
24 and

25 (6) work with the executive commissioner or the
26 department [Department of State Health Services] as the executive
27 commissioner directs.

1 (e) For any written recommendation the committee makes to
2 the department [~~Department of State Health Services~~], the
3 department shall provide to the committee a written response
4 regarding any action taken on the recommendation or the reasons for
5 the department's inaction on the subject of the recommendation.

6 (f) The committee is subject to Chapter 2110, Government
7 Code, except that the committee is not subject to Section 2110.004
8 or 2110.008, Government Code. The committee is abolished on
9 September 1, 2017, unless the executive commissioner adopts a rule
10 continuing the committee in existence beyond that date.

11 (g) The department [~~Department of State Health Services~~]
12 may reimburse consumers of mental health services and family
13 members of individuals with mental health needs appointed to the
14 committee for travel costs incurred in performing their duties as
15 provided in the General Appropriations Act.

16 Sec. 533.0352. LOCAL AUTHORITY PLANNING FOR LOCAL SERVICE
17 AREA. (a) Each local mental health [~~or mental retardation~~]
18 authority shall develop a local service area plan to maximize the
19 authority's services by using the best and most cost-effective
20 means of using federal, state, and local resources to meet the needs
21 of the local community according to the relative priority of those
22 needs. Each local mental health [~~or mental retardation~~] authority
23 shall undertake to maximize federal funding.

24 (b) A local service area plan must be consistent with the
25 purposes, goals, and policies stated in Section 531.001 and the
26 department's long-range plan developed under Section 533.032.

27 (c) The department and a local mental health [~~or mental~~

1 ~~retardation~~] authority shall use the local authority's local
2 service plan as the basis for contracts between the department and
3 the local authority and for establishing the local authority's
4 responsibility for achieving outcomes related to the needs and
5 characteristics of the authority's local service area.

6 (d) In developing the local service area plan, the local
7 mental health [~~or mental retardation~~] authority shall:

8 (1) solicit information regarding community needs
9 from:

10 (A) representatives of the local community;
11 (B) consumers of community-based mental health
12 [~~and mental retardation~~] services and members of the families of
13 those consumers; and

14 (C) [~~consumers of services of state schools for~~
15 ~~persons with mental retardation, members of families of these~~
16 ~~consumers, and members of state school volunteer services councils,~~
17 ~~if a state school is located in the local service area of the local~~
18 ~~authority; and~~

19 [(D)] other interested persons; and

20 (2) consider:

21 (A) criteria for assuring accountability for,
22 cost-effectiveness of, and relative value of service delivery
23 options;

24 (B) goals to minimize the need for state hospital
25 and community hospital care;

26 (C) [~~goals to ensure a client with mental~~
27 ~~retardation is placed in the least restrictive environment~~

1 appropriate to the person's care;

2 [(D) opportunities for innovation to ensure that
3 the local authority is communicating to all potential and incoming
4 consumers about the availability of services of state schools for
5 persons with mental retardation in the local service area of the
6 local authority;

7 [(E)] goals to divert consumers of services from
8 the criminal justice system;

9 [(D)] goals to ensure that a child with
10 mental illness remains with the child's parent or guardian as
11 appropriate to the child's care; and

12 [(E)] opportunities for innovation in
13 services and service delivery.

14 (e) The department and the local mental health [or mental
15 retardation] authority by contract shall enter into a performance
16 agreement that specifies required standard outcomes for the
17 programs administered by the local authority. Performance related
18 to the specified outcomes must be verifiable by the department. The
19 performance agreement must include measures related to the outputs,
20 costs, and units of service delivered. Information regarding the
21 outputs, costs, and units of service delivered shall be recorded in
22 the local authority's automated data systems, and reports regarding
23 the outputs, costs, and units of service delivered shall be
24 submitted to the department at least annually as provided by
25 department rule.

26 (f) The department and the local mental health [or mental
27 retardation] authority shall provide an opportunity for community

1 centers and advocacy groups to provide information or assistance in
2 developing the specified performance outcomes under Subsection
3 (e).

4 Sec. 533.03521. LOCAL NETWORK DEVELOPMENT PLAN CREATION AND
5 APPROVAL. (a) A local mental health authority shall develop a
6 local network development plan regarding the configuration and
7 development of the local mental health authority's provider
8 network. The plan must reflect local needs and priorities and
9 maximize consumer choice and access to qualified service providers.

10 (b) The local mental health authority shall submit the local
11 network development plan to the department [Department of State
12 ~~Health Services~~] for approval.

13 (c) On receipt of a local network development plan under
14 this section, the department shall review the plan to ensure that
15 the plan:

16 (1) complies with the criteria established by Section
17 533.0358 if the local mental health authority is providing services
18 under that section; and

19 (2) indicates that the local mental health authority
20 is reasonably attempting to solicit the development of a provider
21 base that is:

22 (A) available and appropriate; and

23 (B) sufficient to meet the needs of consumers in
24 the local authority's local service area.

25 (d) If the department determines that the local network
26 development plan complies with Subsection (c), the department shall
27 approve the plan.

1 (e) At least biennially, the department shall review a local
2 mental health authority's local network development plan and
3 determine whether the plan complies with Subsection (c).

4 (f) As part of a local network development plan, a local
5 mental health authority annually shall post on the local
6 authority's website a list of persons with whom the local authority
7 had a contract or agreement in effect during all or part of the
8 previous year, or on the date the list is posted, related to the
9 provision of mental health services.

10 Sec. 533.0354. DISEASE MANAGEMENT PRACTICES AND JAIL
11 DIVERSION MEASURES OF LOCAL MENTAL HEALTH AUTHORITIES. (a) A local
12 mental health authority shall ensure the provision of assessment
13 services, crisis services, and intensive and comprehensive
14 services using disease management practices for adults with bipolar
15 disorder, schizophrenia, or clinically severe depression and for
16 children with serious emotional illnesses. The local mental health
17 authority shall ensure that individuals are engaged with treatment
18 services that are:

19 (1) ongoing and matched to the needs of the individual
20 in type, duration, and intensity;

21 (2) focused on a process of recovery designed to allow
22 the individual to progress through levels of service;

23 (3) guided by evidence-based protocols and a
24 strength-based paradigm of service; and

25 (4) monitored by a system that holds the local
26 authority accountable for specific outcomes, while allowing
27 flexibility to maximize local resources.

1 (a-1) In addition to the services required under Subsection
2 (a) and using money appropriated for that purpose or money received
3 under the Texas Health Care Transformation and Quality Improvement
4 Program waiver issued under Section 1115 of the federal Social
5 Security Act (42 U.S.C. Section 1315), a local mental health
6 authority may ensure, to the extent feasible, the provision of
7 assessment services, crisis services, and intensive and
8 comprehensive services using disease management practices for
9 children with serious emotional, behavioral, or mental disturbance
10 not described by Subsection (a) and adults with severe mental
11 illness who are experiencing significant functional impairment due
12 to a mental health disorder not described by Subsection (a) that is
13 defined by the Diagnostic and Statistical Manual of Mental
14 Disorders, 5th Edition (DSM-5), including:

15 (1) major depressive disorder, including single
16 episode or recurrent major depressive disorder;
17 (2) post-traumatic stress disorder;
18 (3) schizoaffective disorder, including bipolar and
19 depressive types;
20 (4) obsessive-compulsive disorder;
21 (5) anxiety disorder;
22 (6) attention deficit disorder;
23 (7) delusional disorder;
24 (8) bulimia nervosa, anorexia nervosa, or other eating
25 disorders not otherwise specified; or
26 (9) any other diagnosed mental health disorder.

27 (a-2) The local mental health authority shall ensure that

1 individuals described by Subsection (a-1) are engaged with
2 treatment services in a clinically appropriate manner.

3 (b) The department shall require each local mental health
4 authority to incorporate jail diversion strategies into the
5 authority's disease management practices for managing adults with
6 schizophrenia and bipolar disorder to reduce the involvement of
7 those client populations with the criminal justice system.

8 (b-1) The department shall require each local mental health
9 authority to incorporate jail diversion strategies into the
10 authority's disease management practices to reduce the involvement
11 of the criminal justice system in managing adults with the
12 following disorders as defined by the Diagnostic and Statistical
13 Manual of Mental Disorders, 5th Edition (DSM-5), who are not
14 described by Subsection (b):

- 15 (1) post-traumatic stress disorder;
- 16 (2) schizoaffective disorder, including bipolar and
17 depressive types;
- 18 (3) anxiety disorder; or
- 19 (4) delusional disorder.

20 ~~(c) The department shall enter into performance contracts~~
21 ~~between the department and each local mental health authority for~~
22 ~~the fiscal years ending August 31, 2004, and August 31, 2005, that~~
23 ~~specify measurable outcomes related to their success in using~~
24 ~~disease management practices to meet the needs of the target~~
25 ~~populations.~~

26 ~~(e) The department may use the fiscal year ending August~~
27 ~~31, 2004, as a transition period for implementing the requirements~~

1 ~~ef Subsections (a)-(c).]~~

2 Sec. 533.0356. LOCAL BEHAVIORAL HEALTH AUTHORITIES. (a)
3 [In this section, "commission" means the Texas Commission on
4 Alcohol and Drug Abuse.

5 [(b)] The department [~~and the commission jointly~~] may
6 designate a local behavioral health authority in a local service
7 area to provide mental health and chemical dependency services in
8 that area. The department [~~board and the commission~~] may delegate
9 to an authority designated under this section the authority and
10 responsibility for planning, policy development, coordination,
11 resource allocation, and resource development for and oversight of
12 mental health and chemical dependency services in that service
13 area. An authority designated under this section has:

14 (1) all the responsibilities and duties of a local
15 mental health authority provided by Section 533.035 and by
16 Subchapter B, Chapter 534; and

17 (2) the responsibility and duty to ensure that
18 chemical dependency services are provided in the service area as
19 described by the statewide service delivery plan adopted under
20 Section 461A.056 [~~461.0124~~].

21 (c) In the planning and implementation of services, the
22 authority shall give proportionate priority to mental health
23 services and chemical dependency services that ensures that funds
24 purchasing services are used in accordance with specific regulatory
25 and statutory requirements that govern the respective funds.

26 (d) A local mental health authority may apply to the
27 department [~~and commission~~] for designation as a local behavioral

1 health authority.

2 (e) The department [and commission], by contract or by a
3 case-rate or capitated arrangement or another method of allocation,
4 may disburse money, including federal money, to a local behavioral
5 health authority for services.

6 (f) A local behavioral health authority, with the approval
7 of the department [or the commission] as provided by contract,
8 shall use money received under Subsection (e) to ensure that mental
9 health and chemical dependency services are provided in the local
10 service area at the same level as the level of services previously
11 provided through:

- 12 (1) the local mental health authority; and
13 (2) the department [commission].

14 (g) In determining whether to designate a local behavioral
15 health authority for a service area and in determining the
16 functions of the authority if designated, the department [and
17 commission] shall solicit and consider written comments from any
18 interested person including community representatives, persons who
19 are consumers of the proposed services of the authority, and family
20 members of those consumers.

21 (h) An authority designated under this section shall
22 demonstrate to the department [and the commission] that services
23 involving state funds that the authority oversees comply with
24 relevant state standards.

25 (i) The executive commissioner [board and the commission
26 jointly] may adopt rules to govern the operations of local
27 behavioral health authorities. The department [and the commission

1 jointly] may assign the local behavioral health authority the duty
2 of providing a single point of entry for mental health and chemical
3 dependency services.

4 Sec. 533.0357. BEST PRACTICES CLEARINGHOUSE FOR LOCAL
5 MENTAL HEALTH AUTHORITIES. (a) In coordination with local mental
6 health authorities, the department shall establish an online
7 clearinghouse of information relating to best practices of local
8 mental health authorities regarding the provision of mental health
9 services, development of a local provider network, and achievement
10 of the best return on public investment in mental health services.

11 (b) The department shall solicit and collect from local
12 mental health authorities that meet established outcome and
13 performance measures, community centers, consumers and advocates
14 with expertise in mental health or in the provision of mental health
15 services, and other local entities concerned with mental health
16 issues examples of best practices related to:

17 (1) developing and implementing a local network
18 development plan;

19 (2) assembling and expanding a local provider network
20 to increase consumer choice;

21 (3) creating and enforcing performance standards for
22 providers;

23 (4) managing limited resources;

24 (5) maximizing available funding;

25 (6) producing the best client outcomes;

26 (7) ensuring consumers of mental health services have
27 control over decisions regarding their health;

1 (8) developing procurement processes to protect
2 public funds;

5 (10) implementing strategies that effectively
6 incorporate consumer and family involvement to develop and evaluate
7 the provider network.

8 (c) The department may contract for the services of one or
9 more contractors to develop, implement, and maintain a system of
10 collecting and evaluating the best practices of local mental health
11 authorities as provided by this section.

12 (d) The department shall encourage local mental health
13 authorities that successfully implement best practices in
14 accordance with this section to mentor local mental health
15 authorities that have service deficiencies.

16 (e) Before the executive commissioner may remove a local
17 mental health authority's designation under Section [533.035\(a\)](#) as a
18 local mental health authority, the executive commissioner shall:

22 (2) track and document the local mental health
23 authority's improvements in the provision of service or continued
24 service deficiencies.

25 (f) Subsection (e) does not apply to the removal of a local
26 mental health authority's designation initiated at the request of a
27 local government official who has responsibility for the provision

1 of mental health services.

2 (g) The department shall implement this section using only
3 existing resources.

4 (h) The department [Department of State Health Services]
5 shall ensure that a local mental health authority providing best
6 practices information to the department or mentoring another local
7 mental health authority complies with Section 533.03521(f).

8 Sec. 533.0358. LOCAL MENTAL HEALTH AUTHORITY'S PROVISION OF
9 SERVICES AS PROVIDER OF LAST RESORT. (a) A local mental health
10 authority may serve as a provider of services under Section
11 533.035(e) only if, through the local network development plan
12 process, the local authority determines that at least one of the
13 following applies:

14 (1) interested qualified service providers are not
15 available to provide services or no service provider meets the
16 local authority's procurement requirements;

17 (2) the local authority's network of providers does
18 not provide a minimum level of consumer choice by:

19 (A) presenting consumers with two or more
20 qualified service providers in the local authority's network for
21 service packages; and

22 (B) presenting consumers with two or more
23 qualified service providers in the local authority's network for
24 specific services within a service package;

25 (3) the local authority's provider network does not
26 provide consumers in the local service area with access to services
27 at least equal to the level of access provided as of a date the

1 executive commissioner specifies;

2 (4) the combined volume of services delivered by
3 qualified service providers in the local network does not meet all
4 of the local authority's service capacity for each service package
5 identified in the local network development plan;

6 (5) the performance of the services by the local
7 authority is necessary to preserve critical infrastructure and
8 ensure continuous provision of services; or

9 (6) existing contracts or other agreements restrict
10 the local authority from contracting with qualified service
11 providers for services in the local network development plan.

12 (b) If a local mental health authority continues to provide
13 services in accordance with this section, the local authority shall
14 identify in the local authority's local network development plan:

15 (1) the proportion of its local network services that
16 the local authority will provide; and

17 (2) the local authority's basis for its determination
18 that the local authority must continue to provide services.

19 Sec. 533.0359. RULEMAKING FOR LOCAL MENTAL HEALTH
20 AUTHORITIES. (a) In developing rules governing local mental
21 health authorities under Sections [533.035](#), [533.0351](#), [533.03521](#),
22 [533.0357](#), and [533.0358](#), the executive commissioner shall use
23 rulemaking procedures under Subchapter B, Chapter 2001, Government
24 Code.

25 (b) The executive commissioner by rule shall prohibit a
26 trustee or employee of a local mental health authority from
27 soliciting or accepting from another person a benefit, including a

1 security or stock, a gift, or another item of value, that is
2 intended to influence the person's conduct of authority business.

3 Sec. 533.037. SERVICE PROGRAMS AND SHELTERED WORKSHOPS.

4 (a) The department may provide mental health [~~and mental~~
5 ~~retardation~~] services through halfway houses, sheltered workshops,
6 community centers, and other mental health [~~and mental retardation~~]
7 services programs.

8 (b) The department may operate or contract for the provision
9 of part or all of the sheltered workshop services and may contract
10 for the sale of goods produced and services provided by a sheltered
11 workshop program. The goods and services may be sold for cash or on
12 credit.

13 (c) An operating fund may be established for each sheltered
14 workshop the department operates. Each operating fund must be in a
15 national or state bank that is a member of the Federal Deposit
16 Insurance Corporation.

17 (d) Money derived from gifts or grants received for
18 sheltered workshop purposes and the proceeds from the sale of
19 sheltered workshop goods and services shall be deposited to the
20 credit of the operating fund. The money in the fund may be spent
21 only in the operation of the sheltered workshop to:

22 (1) purchase supplies, materials, services, and
23 equipment;

24 (2) pay salaries of and wages to participants and
25 employees;

26 (3) construct, maintain, repair, and renovate
27 facilities and equipment; and

1 (4) establish and maintain a petty cash fund of not
2 more than \$100.

3 (e) Money in an operating fund that is used to pay salaries
4 of and wages to participants in the sheltered workshop program is
5 money the department holds in trust for the participants' benefit.

6 (f) This section does not affect the authority or
7 jurisdiction of a community center as prescribed by Chapter 534.

8 [~~Sec. 533.039. CLIENT SERVICES OMBUDSMAN.~~ (a) The
9 ~~commissioner shall employ an ombudsman responsible for assisting a~~
10 ~~person, or a parent or guardian of a person, who has been denied~~
11 ~~service by the department, a department program or facility, or a~~
12 ~~local mental health or mental retardation authority.~~

13 [~~(b) The ombudsman shall:~~

14 [~~(1) explain and provide information on department and~~
15 ~~local mental health or mental retardation authority services,~~
16 ~~facilities, and programs and the rules, procedures, and guidelines~~
17 ~~applicable to the person denied services; and~~

18 [~~(2) assist the person in gaining access to an~~
19 ~~appropriate program or in placing the person on an appropriate~~
20 ~~waiting list.]~~

21 Sec. 533.040. SERVICES FOR CHILDREN AND YOUTH. (a) The
22 department shall ensure the development of programs and the
23 expansion of services at the community level for children with
24 mental illness, or with a dual diagnosis of mental illness and an
25 intellectual disability [~~mental retardation, or both~~], and for
26 their families. The department shall:

27 (1) prepare and review budgets for services for

1 children;

(2) develop departmental policies relating to children's programs and service delivery; and

6 (b) The department shall designate an employee authorized
7 in the department's schedule of exempt positions to be responsible
8 for planning and coordinating services and programs for children
9 and youth. The employee shall perform budget and policy review and
10 provide interagency coordination of services for children and
11 youth.

12 (c) The department shall designate an employee as a youth
13 suicide prevention officer. The officer shall serve as a liaison to
14 the Texas Education Agency and public schools on matters relating
15 to the prevention of and response to suicide or attempted suicide by
16 public school students.

17 (d) The department and the Department of Assistive and
18 Rehabilitative Services [~~Interagency Council on Early Childhood~~
19 ~~Intervention~~] shall:

(1) jointly develop:

23 (B) a plan to increase the expertise of the
24 department's service providers in mental health issues involving
25 children younger than seven years of age; and

26 (2) coordinate, if practicable, the departments'
27 [department and council] activities and services involving

1 children with mental illness and their families.

2 [Sec. 533.041. SERVICES FOR EMOTIONALLY DISTURBED CHILDREN
3 AND YOUTH. (a) At each department mental health facility, the
4 department shall make short-term evaluation and diagnostic
5 services available for emotionally disturbed children and youth who
6 are referred to the department by the Texas Department of Human
7 Services if evaluation and diagnostic services for the children and
8 youth are not immediately available through a local mental health
9 authority.]

10 [(b) The Texas Department of Human Services may pay for the
11 services according to fees jointly agreed to by both agencies. The
12 department may use payments received under the agreement to
13 contract for community-based residential placements for
14 emotionally disturbed children and youth.]

15 [(c) The department shall maintain computerized information
16 on emotionally disturbed children and youth that contains both
17 individual and aggregate information. The purpose of the
18 information is to allow the department to track services and
19 placements and to conduct research on the treatment of the children
20 and youth. The department may coordinate activities with the Texas
21 Department of Human Services in developing the information. The
22 department shall make the information available to the department's
23 mental health facilities and to community centers.]

24 Sec. 533.0415. MEMORANDUM OF UNDERSTANDING ON INTERAGENCY
25 TRAINING. (a) The executive commissioner [~~department, the Texas~~
26 ~~Department of Human Services~~], the Texas Juvenile Justice
27 Department [~~Youth Commission, the Texas Juvenile Probation~~

1 Commission], and the Texas Education Agency by rule shall adopt a
2 joint memorandum of understanding to develop interagency training
3 for the staffs of the department, the Texas Juvenile Justice
4 Department, the Department of Family and Protective Services, and
5 the Texas Education Agency who are [agencies] involved in the
6 functions of assessment, case planning, case management, and
7 in-home or direct delivery of services to children, youth, and
8 their families under this title. The memorandum must:

9 (1) outline the responsibility of each agency in
10 coordinating and developing a plan for interagency training on
11 individualized assessment and effective intervention and treatment
12 services for children and dysfunctional families; and

13 (2) provide for the establishment of an interagency
14 task force to:

15 (A) develop a training program to include
16 identified competencies, content, and hours for completion of the
17 training with at least 20 hours of training required each year until
18 the program is completed;

19 (B) design a plan for implementing the program,
20 including regional site selection, frequency of training, and
21 selection of experienced clinical public and private professionals
22 or consultants to lead the training; and

23 (C) monitor, evaluate, and revise the training
24 program, including the development of additional curricula based on
25 future training needs identified by staff and professionals.

26 (b) The task force consists of:

27 (1) one clinical professional and one training staff

1 member from each agency, appointed by that agency; and

2 (2) 10 private sector clinical professionals with
3 expertise in dealing with troubled children, youth, and
4 dysfunctional families, two of whom are appointed by each agency.

5 (c) The task force shall meet at the call of the department.

6 (d) The commission [department] shall act as the lead agency
7 in coordinating the development and implementation of the
8 memorandum.

9 (e) The executive commissioner and the agencies shall
10 review and by rule revise the memorandum not later than August each
11 year.

12 Sec. 533.042. EVALUATION OF ELDERLY RESIDENTS. (a) The
13 department shall evaluate each elderly resident at least annually
14 to determine if the resident can be appropriately served in a less
15 restrictive setting.

16 (b) The department shall consider the proximity to the
17 resident of family, friends, and advocates concerned with the
18 resident's well-being in determining whether the resident should be
19 moved from a department facility or to a different department
20 facility. The department shall recognize that a nursing facility
21 [home] may not be able to meet the special needs of an elderly
22 resident.

23 (c) In evaluating an elderly resident under this section and
24 to ensure appropriate placement, the department shall identify the
25 special needs of the resident, the types of services that will best
26 meet those needs, and the type of facility that will best provide
27 those services.

1 (d) The treating physician shall conduct the evaluation of
2 an elderly resident of a department [~~mental health~~] facility. [~~The~~
3 ~~appropriate interdisciplinary team shall conduct the evaluation of~~
4 ~~an elderly resident of a department mental retardation facility.~~]

5 (e) The department shall attempt to place an elderly
6 resident in a less restrictive setting if the department determines
7 that the resident can be appropriately served in that setting. The
8 department shall coordinate the attempt with the local mental
9 health [~~and mental retardation~~] authority.

10 (f) A local mental health [~~or mental retardation~~] authority
11 shall provide continuing care for an elderly resident placed in the
12 authority's service area under this section.

13 (g) The local mental health [~~or mental retardation~~]
14 authority shall have the right of access to all residents and
15 records of residents who request continuing care services.

16 Sec. 533.043. PROPOSALS FOR GERIATRIC, EXTENDED, AND
17 TRANSITIONAL CARE. (a) The department shall solicit proposals
18 from community providers to operate:

19 (1) community residential programs that will provide
20 at least the same services that an extended care unit provides for
21 the population the provider proposes to serve; or

22 (2) transitional living units that will provide at
23 least the same services that the department traditionally provides
24 in facility-based transitional care units.

25 (b) The department shall solicit proposals from community
26 providers to operate community residential programs for elderly
27 residents at least every two years.

1 (c) A proposal for extended care services may be designed to
2 serve all or part of an extended care unit's population.

3 (d) A proposal to operate transitional living units may
4 provide that the community provider operate the transitional living
5 unit in a community setting or on the grounds of a department
6 facility.

7 (e) The department shall require each provider to:

8 (1) offer adequate assurances of ability to:
9 (A) provide the required services;
10 (B) meet department standards; and
11 (C) safeguard the safety and well-being of each
12 resident; and

13 (2) sign a memorandum of agreement with the local
14 mental health [or mental retardation] authority[, as appropriate,]
15 outlining the responsibilities for continuity of care and
16 monitoring, if the provider is not the local authority.

17 (f) The department may fund a proposal through a contract if
18 the provider agrees to meet the requirements prescribed by
19 Subsection (e) and agrees to provide the services at a cost that is
20 equal to or less than the cost to the department to provide the
21 services.

22 (g) The appropriate local mental health [or mental
23 retardation] authority shall monitor the services provided to a
24 resident placed in a program funded under this section. The
25 department may monitor any service for which it contracts.

26 (h) The department is responsible for the care of a patient
27 in an extended care program funded under this section. The

1 department may terminate a contract for extended care services if
2 the program ends or does not provide the required services. The
3 department shall provide the services or find another program to
4 provide the services if the department terminates a contract.

5 [Sec. 533.044. MEMORANDUM OF UNDERSTANDING ON ASSESSMENT
6 TOOLS. (a) The department and Texas Department of Human Services
7 by rule shall adopt a joint memorandum of understanding that
8 requires the use of a uniform assessment tool to assess whether an
9 elderly person, a person with mental retardation, a person with a
10 developmental disability, or a person who is suspected of being a
11 person with mental retardation or a developmental disability and
12 who is receiving services in a facility regulated or operated by the
13 department or Texas Department of Human Services needs a guardian
14 of the person or estate, or both.

15 [(b) The memorandum must prescribe:

16 [(1) the facilities that must use the assessment; and
17 [(2) the circumstances in which the facilities must
18 use the assessment.

19 [(c) Each agency shall review and modify the memorandum as
20 necessary not later than the last month of each state fiscal year.

21 [Sec. 533.045. USE OF CERTAIN DRUGS FOR CERTAIN PATIENTS.
22 (a) The department may place on a clozapine treatment plan each
23 patient in a state hospital for whom the treatment is medically
24 feasible and appropriate. The department may place a patient on a
25 treatment plan using a drug other than clozapine if the drug
26 produces results that are similar to or better than clozapine in
27 treating schizophrenics.

1 [(b) If a patient in a state hospital responds to a
2 treatment plan required or authorized by Subsection (a) to the
3 extent that the patient can be discharged from the hospital, the
4 department may:

5 [(1) assist the patient in applying for disability
6 benefits and for Medicaid if the patient is potentially eligible;

7 [(2) place the patient in a community setting with
8 continuing drug treatments and with medical monitoring;

9 [(3) provide or ensure that the patient is provided
10 supportive housing, rehabilitation services, and job placement, as
11 appropriate; and

12 [(4) provide outpatient care at state hospitals or
13 require a local mental health authority to provide outpatient care,
14 as appropriate.

15 [(c) The department may use facility beds vacated by
16 patients discharged through the use of a treatment plan allowed by
17 Subsection (a) for other appropriate uses.

18 [Sec. 533.046. FEDERAL FUNDING FOR MENTAL HEALTH SERVICES
19 FOR CHILDREN AND FAMILIES. (a) The department shall enter into an
20 interagency agreement with the Texas Department of Human Services
21 to:

22 [(1) amend the eligibility requirements of the state's
23 emergency assistance plan under Title IV-A, Social Security Act (42
24 U.S.C. Section 601 et seq.), to include mental health emergencies,
25 and

26 [(2) prescribe the procedures the agencies will use to
27 delegate to the department and to local mental health and mental

1 retardation authorities the administration of mental health
2 emergency assistance.

3 [(b) The interagency agreement must provide that:

4 [(1) the department certify to the Texas Department of
5 Human Services the nonfederal expenditures for which the state will
6 claim federal matching funds; and

7 [(2) the Texas Department of Human Services retain
8 responsibility for making final eligibility decisions.

9 [(c) The department shall allocate to local mental health
10 and mental retardation authorities 66 percent of the federal funds
11 received under this section.

12 [Sec. 533.047. MANAGED CARE ORGANIZATIONS: MEDICAID
13 PROGRAM. The department shall develop performance, operation,
14 quality of care, marketing, and financial standards for the
15 provision by managed care organizations of mental health and mental
16 retardation services to Medicaid clients.

17 [Sec. 533.048. GUARDIANSHIP ADVISORY COMMITTEE. (a) In
18 this section, "institution" means:

19 [(1) an ICF-MR; or

20 [(2) a state hospital, state school, or state center
21 maintained and managed by the department.

22 [(b) The commissioner shall appoint a guardianship advisory
23 committee composed of nine members, five of whom must be parents of
24 residents of institutions.

25 [(c) The commissioner shall designate a member of the
26 advisory committee to serve as presiding officer. The members of
27 the advisory committee shall elect any other necessary officers.

1 [(d) The advisory committee shall meet at the call of the
2 presiding officer.]

3 [(e) A member of the advisory committee serves at the will
4 of the commissioner.]

5 [(f) A member of the advisory committee may not receive
6 compensation for serving on the advisory committee but is entitled
7 to reimbursement for travel expenses incurred by the member while
8 conducting the business of the advisory committee as provided by
9 the General Appropriations Act.]

10 [(g) The advisory committee shall develop a plan and make
11 specific recommendations to the department regarding methods to
12 facilitate the appointment of relatives of residents of
13 institutions as guardians of those residents to make decisions
14 regarding appropriate care settings for the residents.]

15 [Sec. 533.049. PRIVATIZATION OF STATE SCHOOL.] (a) After
16 August 31, 2004, and before September 1, 2005, the department may
17 contract with a private service provider to operate a state school
18 only if:

19 [(1) the Health and Human Services Commission
20 determines that the private service provider will operate the state
21 school at a cost that is at least 25 percent less than the cost to
22 the department to operate the state school;]

23 [(2) the Health and Human Services Commission approves
24 the contract;]

25 [(3) the private service provider is required under
26 the contract to operate the school at a quality level at least equal
27 to the quality level achieved by the department when the department

1 operated the school, as measured by the school's most recent
2 applicable ICF-MR survey; and

3 [¶(4) the state school, when operated under the
4 contract, treats a population with the same characteristics and
5 need levels as the population treated by the state school when
6 operated by the department.

7 [(c) If the department contracts with a private service
8 provider to operate a state school, the department, the Governor's
9 Office of Budget and Planning, and the Legislative Budget Board
10 shall identify sources of funding that must be transferred to the
11 department to fund the contract.

12 [(d) The department may renew a contract under this section.
13 The conditions listed in Subsections (a)(1)-(3) apply to the
14 renewal of the contract.

15 [Sec. 533.050. PRIVATIZATION OF STATE MENTAL HOSPITAL. (a)
16 After August 31, 2004, and before September 1, 2005, the department
17 may contract with a private service provider to operate a state
18 mental hospital owned by the department only if:

19 [(1) the Health and Human Services Commission
20 determines that the private service provider will operate the
21 hospital at a cost that is at least 25 percent less than the cost to
22 the department to operate the hospital;

23 [(2) the Health and Human Services Commission approves
24 the contract;

25 [(3) the hospital, when operated under the contract,
26 treats a population with the same characteristics and acuity levels
27 as the population treated at the hospital when operated by the

1 department; and

2 [(4) the private service provider is required under
3 the contract to operate the hospital at a quality level at least
4 equal to the quality level achieved by the department when the
5 department operated the hospital, as measured by the hospital's
6 most recent applicable accreditation determination from the Joint
7 Commission on Accreditation of Healthcare Organizations (JCAHO).]

8 [(c) If the department contracts with a private service
9 provider to operate a state mental hospital, the department, the
10 Governor's Office of Budget and Planning, and the Legislative
11 Budget Board shall identify sources of funding that must be
12 transferred to the department to fund the contract.]

13 [(d) The department may renew a contract under this section.
14 The conditions listed in Subsections (a)(1)-(3) apply to the
15 renewal of the contract.]

16 Sec. 533.051. ALLOCATION OF OUTPATIENT MENTAL HEALTH
17 SERVICES AND BEDS IN STATE HOSPITALS. (a) To ensure the
18 appropriate and timely provision of mental health services to
19 patients who voluntarily receive those services or who are ordered
20 by a court to receive those services in civil or criminal
21 proceedings, the department, in conjunction with the commission,
22 shall plan for the proper and separate allocation of outpatient or
23 community-based mental health services provided by secure and
24 nonsecure outpatient facilities that provide residential care
25 alternatives and mental health services and for the proper and
26 separate allocation of beds in the state hospitals for the
27 following two groups of patients:

1 (1) patients who are voluntarily receiving outpatient
2 or community-based mental health services, voluntarily admitted to
3 a state hospital under Chapter 572, admitted to a state hospital for
4 emergency detention under Chapter 573, or ordered by a court under
5 Chapter 574 to receive inpatient mental health services at a state
6 hospital or outpatient mental health services from an outpatient
7 facility that provides residential care alternatives and mental
8 health services; and

9 (2) patients who are ordered to participate in an
10 outpatient treatment program to attain competency to stand trial
11 under Chapter 46B, Code of Criminal Procedure, or committed to a
12 state hospital or other facility to attain competency to stand
13 trial under Chapter 46B, Code of Criminal Procedure, or to receive
14 inpatient mental health services following an acquittal by reason
15 of insanity under Chapter 46C, Code of Criminal Procedure.

16 (b) The plan developed by the department under Subsection
17 (a) must include:

18 (1) a determination of the needs for outpatient mental
19 health services of the two groups of patients described by
20 Subsection (a);

21 (2) a determination of the minimum number of beds that
22 the state hospital system must maintain to adequately serve the two
23 groups of patients;

24 (3) a statewide plan for and the allocation of
25 sufficient funds for meeting the outpatient mental health service
26 needs of and for the maintenance of beds by the state hospitals for
27 the two groups of patients; and

1 (4) a process to address and develop, without adverse
2 impact to local service areas, the accessibility and availability
3 of sufficient outpatient mental health services provided to and
4 beds provided by the state hospitals to the two groups of patients
5 based on the success of contractual outcomes with mental health
6 service providers and facilities under Sections [533.034](#) and
7 [533.052](#).

8 (c) To assist in the development of the plan under
9 Subsection (a), the department shall establish and meet at least
10 monthly with an advisory panel composed of the following persons:

11 (1) one representative designated by the Texas
12 Department of Criminal Justice;

13 (2) one representative designated by the Texas
14 Association of Counties;

15 (3) two representatives designated by the Texas
16 Council of Community Centers, including one representative of an
17 urban local service area and one representative of a rural local
18 service area;

19 (4) two representatives designated by the County
20 Judges and Commissioners Association of Texas, including one
21 representative who is the presiding judge of a court with
22 jurisdiction over mental health matters;

23 (5) one representative designated by the Sheriffs'
24 Association of Texas;

25 (6) two representatives designated by the Texas
26 Municipal League, including one representative who is a municipal
27 law enforcement official;

1 (7) one representative designated by the Texas
2 Conference of Urban Counties;

3 (8) two representatives designated by the Texas
4 Hospital Association, including one representative who is a
5 physician;

6 (9) one representative designated by the Texas
7 Catalyst for Empowerment; and

8 (10) four representatives designated by the
9 department's [~~Department of State Health Services'~~] Council for
10 Advising and Planning for the Prevention and Treatment of Mental
11 and Substance Use Disorders, including:

12 (A) the chair of the council;

13 (B) one representative of the council's members
14 who is a consumer of or advocate for mental health services;

15 (C) one representative of the council's members
16 who is a consumer of or advocate for substance abuse treatment; and

17 (D) one representative of the council's members
18 who is a family member of or advocate for persons with mental health
19 and substance abuse disorders.

20 (d) In developing the plan under Subsection (a), the
21 department and advisory panel shall consider:

22 (1) needs for outpatient mental health services of the
23 two groups of patients described by Subsection (a);

24 (2) the frequency of use of beds and the historical
25 patterns of use of beds in the state hospitals and other facilities
26 by the two groups of patients;

27 (3) local needs and demands for outpatient mental

1 health services by the two groups of patients;

2 (4) local needs and demands for beds in the state
3 hospitals and other facilities for the two groups of patients;

4 (5) the availability of outpatient mental health
5 service providers and inpatient mental health facilities that may
6 be contracted with to provide outpatient mental health services and
7 beds for the two groups of patients;

8 (6) the differences between the two groups of patients
9 with regard to:

10 (A) admission to and discharge from a state
11 hospital or outpatient facility;

12 (B) rapid stabilization and discharge to the
13 community;

14 (C) length of stay in a state hospital or
15 outpatient facility;

16 (D) disputes arising from the determination of a
17 patient's length of stay in a state hospital by a health maintenance
18 organization or a managed care organization;

19 (E) third-party billing; and

20 (F) legal challenges or requirements related to
21 the examination and treatment of the patients; and

22 (7) public input provided to the department or
23 advisory panel in a form and at a time and place that is effective
24 and appropriate and in a manner that complies with any applicable
25 laws, including administrative rules.

26 (e) The department shall update the plan biennially.

27 ~~[(f) Not later than December 31, 2013, the department, in~~

1 conjunction with the advisory panel, shall develop the initial
2 version of the plan required by Subsection (a).

3 [(g) Not later than August 31, 2014, the department shall:

4 [(1) identify standards and methodologies for the
5 implementation of the plan required by Subsection (a); and

6 [(2) begin implementing the plan.

7 [(h) Not later than December 1, 2014, the department shall
8 submit a report to the legislature and governor that includes the
9 initial version of the plan, the status of the plan's
10 implementation, and the impact of the plan on the delivery of
11 services.]

12 (i) While the plan required by Subsection (a) is being
13 developed and implemented, the department may not, pursuant to any
14 rule, contract, or directive, impose a sanction, penalty, or fine
15 on a local mental health authority for the authority's
16 noncompliance with any methodology or standard adopted or applied
17 by the department relating to the allocation of beds by authorities
18 for the two groups of patients described by Subsection (a).

19 Sec. 533.052. CONTRACTING WITH CERTAIN MENTAL HEALTH
20 SERVICE PROVIDERS AND FACILITIES TO PROVIDE SERVICES AND BEDS FOR
21 CERTAIN PERSONS. The department shall make every effort, through
22 collaboration and contractual arrangements with local mental
23 health authorities, to contract with and use a broad base of local
24 community outpatient mental health service providers and inpatient
25 mental health facilities, as appropriate, to make available a
26 sufficient and appropriately located amount of outpatient mental
27 health services and a sufficient and appropriately located number

1 of beds in inpatient mental health facilities, as specified in the
2 plan developed by the department under Section 533.051, to ensure
3 the appropriate and timely provision of mental health services to
4 the two groups of patients described by Section 533.051(a).

5 Sec. 533.053. INFORMING COURTS OF COMMITMENT OPTIONS. The
6 department shall develop and implement a procedure through which a
7 court that has the authority to commit a person who is incompetent
8 to stand trial or who has been acquitted by reason of insanity under
9 Chapters 46B and 46C, Code of Criminal Procedure, is aware of all of
10 the commitment options for the person, including jail diversion and
11 community-based programs.

12 SUBCHAPTER D. POWERS AND DUTIES RELATING TO DEPARTMENT FACILITIES

13 Sec. 533.081. DEVELOPMENT OF FACILITY BUDGETS. The
14 department, in budgeting for a facility, shall use uniform costs
15 for specific types of services a facility provides unless a
16 legitimate reason exists and is documented for the use of other
17 costs.

18 Sec. 533.082. DETERMINATION OF SAVINGS IN FACILITIES. (a)
19 The department shall determine the degree to which the costs of
20 operating department facilities for persons with mental illness [~~or~~
21 ~~mental retardation~~] in compliance with applicable standards are
22 affected as populations in the facilities fluctuate.

23 (b) In making the determination, the department shall:

24 (1) assume that the current level of services and
25 necessary state of repair of the facilities will be maintained; and
26 (2) include sufficient funds to allow the department
27 to comply with the requirements of litigation and applicable

1 standards.

2 (c) The department shall allocate to community-based mental
3 health programs any savings realized in operating department
4 facilities for persons with mental illness.

5 [~~(d) The department shall allocate to community-based
6 mental retardation programs any savings realized in operating
7 department facilities for persons with mental retardation.~~]]

8 Sec. 533.083. CRITERIA FOR EXPANSION, CLOSURE, OR
9 CONSOLIDATION OF FACILITY. The department shall establish
10 objective criteria for determining when a new facility may be
11 needed and when a facility may be expanded, closed, or
12 consolidated.

13 Sec. 533.084. MANAGEMENT OF SURPLUS REAL PROPERTY. (a) To
14 the extent provided by this subtitle, the department, in
15 coordination with the executive commissioner, may lease, transfer,
16 or otherwise dispose of any surplus real property related to the
17 provision of services under this title, including any improvements
18 under its management and control, or authorize the lease, transfer,
19 or disposal of the property. Surplus property is property the
20 executive commissioner [board] designates as having minimal value
21 to the present service delivery system and projects to have minimal
22 value to the service delivery system as described in the
23 department's long-range plan.

24 (b) The proceeds from the lease, transfer, or disposal of
25 surplus real property, including any improvements, shall be
26 deposited to the credit of the department in the Texas capital trust
27 fund established under Chapter 2201, Government Code. The proceeds

1 [and any interest from the proceeds] may be appropriated only for
2 improvements to the department's system of mental health
3 facilities.

4 (c) A lease proposal shall be advertised at least once a
5 week for four consecutive weeks in at least two newspapers. One
6 newspaper must be a newspaper published in the municipality in
7 which the property is located or the daily newspaper published
8 nearest to the property's location. The other newspaper must have
9 statewide circulation. Each lease is subject to the attorney
10 general's approval as to substance and form. The executive
11 commissioner [~~board~~] shall adopt forms, rules, and contracts that,
12 in the executive commissioner's [~~board's~~] best judgment, will
13 protect the state's interests. The executive commissioner [~~board~~]
14 may reject any or all bids.

15 (d) This section does not authorize the executive
16 commissioner or department to close or consolidate a facility used
17 to provide mental health [~~or mental retardation~~] services without
18 first obtaining legislative approval.

19 (e) Notwithstanding Subsection (c), the executive
20 commissioner, in coordination with the department, may enter into a
21 written agreement with the General Land Office to administer lease
22 proposals. If the General Land Office administers a lease proposal
23 under the agreement, notice that the property is offered for lease
24 must be published in accordance with Section 32.107, Natural
25 Resources Code.

26 Sec. 533.0844. MENTAL HEALTH COMMUNITY SERVICES ACCOUNT.

27 (a) The mental health community services account is an account in

1 the general revenue fund that may be appropriated only for the
2 provision of mental health services by or under contract with the
3 department.

4 (b) The department shall deposit to the credit of the mental
5 health community services account any money donated to the state
6 for inclusion in the account, including life insurance proceeds
7 designated for deposit to the account.

8 [(c) Interest earned on the mental health community
9 services account shall be credited to the account. The account is
10 exempt from the application of Section 403.095, Government Code.]

11 Sec. 533.085. FACILITIES FOR INMATE AND PAROLEE CARE. (a)
12 With the written approval of the governor, the department may
13 contract with the Texas Department of Criminal Justice to transfer
14 facilities to the Texas Department of Criminal Justice [~~that~~
15 ~~department~~] or otherwise provide facilities for:

16 (1) inmates with mental illness [~~or mental~~
17 ~~retardation~~] in the custody of the Texas Department of Criminal
18 Justice [~~that department~~]; or

19 (2) persons with mental illness [~~or mental~~
20 ~~retardation~~] paroled or released under the [~~that department's~~
21 supervision of the Texas Department of Criminal Justice.]

22 (b) An agency must report to the governor the agency's
23 reasons for proposing to enter into a contract under this section
24 and request the governor's approval.

25 [~~Sec. 533.086. USE OF DEPARTMENT FACILITIES BY SUBSTANCE~~
26 ~~ABUSERS.~~ (a) ~~The department shall annually provide the Texas~~
27 ~~Commission on Alcohol and Drug Abuse with an analysis by county of~~

1 ~~the hospitalization rates of persons with substance abuse problems.~~
2 ~~The analysis must include information indicating which admissions~~
3 ~~were for persons with only substance abuse problems and which~~
4 ~~admissions were for persons with substance abuse problems but whose~~
5 ~~primary diagnoses were other types of mental health problems.~~

6 ~~[(b) Not later than September 1 of each even-numbered year,~~
7 ~~the department and the Texas Commission on Alcohol and Drug Abuse~~
8 ~~shall jointly estimate the number of facility beds that should be~~
9 ~~maintained for persons with substance abuse problems who cannot be~~
10 ~~treated in the community.]~~

11 Sec. 533.087. LEASE OF REAL PROPERTY. (a) The department,
12 in coordination with the executive commissioner, may lease real
13 property related to the provision of services under this title,
14 including any improvements under the department's management and
15 control, regardless of whether the property is surplus property.
16 Except as provided by Subsection (c), the department, in
17 coordination with the executive commissioner, may award a lease of
18 real property only:

19 (1) at the prevailing market rate; and
20 (2) by competitive bid.

21 (b) The commission [department] shall advertise a proposal
22 for lease at least once a week for four consecutive weeks in:

23 (1) a newspaper published in the municipality in which
24 the property is located or the daily newspaper published nearest to
25 the property's location; and
26 (2) a newspaper of statewide circulation.

27 (c) The department, in coordination with the executive

1 commissioner, may lease real property related to the provision of
2 services under this title or an improvement for less than the
3 prevailing market rate, without advertisement or without
4 competitive bidding, if:

5 (1) the executive commissioner [board] determines
6 that sufficient public benefit will be derived from the lease; and

7 (2) the property is leased to:

8 (A) a federal or state agency;

9 (B) a unit of local government;

10 (C) a not-for-profit organization; or

11 (D) an entity related to the department by a
12 service contract.

13 (d) The executive commissioner [board] shall adopt leasing
14 rules, forms, and contracts that will protect the state's
15 interests.

16 (e) The executive commissioner [board] may reject any bid.

17 (f) This section does not authorize the executive
18 commissioner or department to close or consolidate a facility used
19 to provide mental health [~~or mental retardation~~] services without
20 legislative approval.

21 (g) Notwithstanding Subsections (a) and (b), the executive
22 commissioner, in coordination with the department, may enter into a
23 written agreement with the General Land Office to administer lease
24 proposals. If the General Land Office administers a lease proposal
25 under the agreement, notice that the property is offered for lease
26 must be published in accordance with Section [32.107](#), Natural
27 Resources Code.

SUBCHAPTER E. JAIL DIVERSION PROGRAM

2 Sec. 533.108. PRIORITIZATION OF FUNDING FOR DIVERSION OF
3 PERSONS FROM INCARCERATION IN CERTAIN COUNTIES. (a) A local mental
4 health [or mental retardation] authority may develop and may
5 prioritize its available funding for:

(A) screening and assessment services; and

12 (B) treatment services, including:

13 (i) assertive community treatment
14 services;

15 (ii) inpatient crisis respite services;

16 (iii) medication management services;

17 (iv) short-term residential services;

(v) shelter care services;

19 (vi) crisis respite residential services;

20 (vii) outpatient integrated mental health
21 services;

22 (viii) co-occurring substance abuse
23 treatment services;

24 (ix) psychiatric rehabilitation and
25 service coordination services;

(x) continuity of care services; and

(xi) services consistent with the Texas

S.B. No. 219

1 Correctional Office [Council] on Offenders with Medical or Mental
2 Impairments model;

(3) other model programs for offenders and suspects who may be members of the priority population, including crisis intervention training for law enforcement personnel.

9 (b) A local mental health [~~or mental retardation~~] authority
10 developing a system, training, or a model program under Subsection
11 (a) shall collaborate with other local resources, including local
12 law enforcement and judicial systems and local personnel.

13 (c) A local mental health [~~or mental retardation~~] authority
14 may not implement a system, training, or a model program developed
15 under this section until the system, training, or program is
16 approved by the department.

CHAPTER 533A. POWERS AND DUTIES OF DEPARTMENT OF AGING AND

DISABILITY SERVICES

SUBCHAPTER A. GENERAL POWERS AND DUTIES

Sec. 533A.001. DEFINITIONS. In this chapter:

25 (3) "Department facility" means a facility listed in
26 Section 532A.001(b).

Sec. 533A.002. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF

1 CONFLICT WITH OTHER LAW. To the extent a power or duty given to the
2 commissioner by this title or another law conflicts with Section
3 531.0055, Government Code, Section 531.0055 controls.

4 Sec. 533A.003. USE OF FUNDS FOR VOLUNTEER PROGRAMS IN LOCAL
5 AUTHORITIES AND COMMUNITY CENTERS. (a) To develop or expand a
6 volunteer intellectual disability program in a local intellectual
7 and developmental disability authority or a community center, the
8 department may allocate available funds appropriated for providing
9 volunteer intellectual disability services.

10 (b) The department shall develop formal policies that
11 encourage the growth and development of volunteer intellectual
12 disability services in local intellectual and developmental
13 disability authorities and community centers.

14 Sec. 533A.004. LIENS. (a) In this section, "department
15 facility" includes the ICF-IID component of the Rio Grande State
16 Center.

17 (a-1) The department and each community center has a lien to
18 secure reimbursement for the cost of providing support,
19 maintenance, and treatment to a client with an intellectual
20 disability in an amount equal to the amount of reimbursement
21 sought.

22 (b) The amount of the reimbursement sought may not exceed:
23 (1) the amount the department is authorized to charge
24 under Subchapter D, Chapter 593, if the client received the
25 services in a department facility; or
26 (2) the amount the community center is authorized to
27 charge under Section 534.017 if the client received the services in

1 a community center.

2 (c) The lien attaches to:

3 (1) all nonexempt real and personal property owned or
4 later acquired by the client or by a person legally responsible for
5 the client's support;

6 (2) a judgment of a court in this state or a decision
7 of a public agency in a proceeding brought by or on behalf of the
8 client to recover damages for an injury for which the client was
9 admitted to a department facility or community center; and

10 (3) the proceeds of a settlement of a cause of action
11 or a claim by the client for an injury for which the client was
12 admitted to a department facility or community center.

13 (d) To secure the lien, the department or community center
14 must file written notice of the lien with the county clerk of the
15 county in which:

16 (1) the client, or the person legally responsible for
17 the client's support, owns property; or

18 (2) the client received or is receiving services.

19 (e) The notice must contain:

20 (1) the name and address of the client;

21 (2) the name and address of the person legally
22 responsible for the client's support, if applicable;

23 (3) the period during which the department facility or
24 community center provided services or a statement that services are
25 currently being provided; and

26 (4) the name and location of the department facility
27 or community center.

1 (f) Not later than the 31st day before the date on which the
2 department files the notice of the lien with the county clerk, the
3 department shall notify by certified mail the client and the person
4 legally responsible for the client's support. The notice must
5 contain a copy of the charges, the statutory procedures relating to
6 filing a lien, and the procedures to contest the charges. The
7 executive commissioner by rule shall prescribe the procedures to
8 contest the charges.

9 (g) The county clerk shall record on the written notice the
10 name of the client, the name and address of the department facility
11 or community center, and, if requested by the person filing the
12 lien, the name of the person legally responsible for the client's
13 support. The clerk shall index the notice record in the name of the
14 client and, if requested by the person filing the lien, in the name
15 of the person legally responsible for the client's support.

16 (h) The notice record must include an attachment that
17 contains an account of the charges made by the department facility
18 or community center and the amount due to the facility or center.
19 The director or superintendent of the facility or center must swear
20 to the validity of the account. The account is presumed to be
21 correct, and in a suit to cancel the debt and discharge the lien or
22 to foreclose on the lien, the account is sufficient evidence to
23 authorize a court to render a judgment for the facility or center.

24 (i) To discharge the lien, the director or superintendent of
25 the department facility or community center or a claims
26 representative of the facility or center must execute and file with
27 the county clerk of the county in which the lien notice is filed a

1 certificate stating that the debt covered by the lien has been paid,
2 settled, or released and authorizing the clerk to discharge the
3 lien. The county clerk shall record a memorandum of the certificate
4 and the date on which it is filed. The filing of the certificate and
5 recording of the memorandum discharge the lien.

6 Sec. 533A.005. EASEMENTS. The department, in coordination
7 with the executive commissioner, may grant a temporary or permanent
8 easement or right-of-way on land held by the department that
9 relates to services provided under this title. The department, in
10 coordination with the executive commissioner, must grant an
11 easement or right-of-way on terms and conditions the executive
12 commissioner considers to be in the state's best interest.

13 Sec. 533A.006. REPORTING OF ALLEGATIONS AGAINST PHYSICIAN.
14 (a) The department shall report to the Texas Medical Board any
15 allegation received by the department that a physician employed by
16 or under contract with the department in relation to services
17 provided under this title has committed an action that constitutes
18 a ground for the denial or revocation of the physician's license
19 under Section 164.051, Occupations Code. The report must be made in
20 the manner provided by Section 154.051, Occupations Code.

21 (b) The department shall provide to the Texas Medical Board
22 a copy of any report or finding relating to an investigation of an
23 allegation reported to that board.

24 Sec. 533A.007. USE OF CRIMINAL HISTORY RECORD INFORMATION.
25 (a) Subject to any applicable requirements of Chapter 250, the
26 department, in relation to services provided under this title, or a
27 local intellectual and developmental disability authority or

1 community center, may deny employment or volunteer status to an
2 applicant if:

3 (1) the department, authority, or community center
4 determines that the applicant's criminal history record
5 information indicates that the person is not qualified or suitable;

6 or

7 (2) the applicant fails to provide a complete set of
8 fingerprints if the department establishes that method of obtaining
9 criminal history record information.

10 (b) The executive commissioner shall adopt rules relating
11 to the use of information obtained under this section, including
12 rules that prohibit an adverse personnel action based on arrest
13 warrant or wanted persons information received by the department.

14 Sec. 533A.0075. EXCHANGE OF EMPLOYMENT RECORDS. The
15 department, in relation to services provided under this title, or a
16 local intellectual and developmental disability authority or
17 community center, may exchange with one another the employment
18 records of an employee or former employee who applies for
19 employment at the department, authority, or community center.

20 Sec. 533A.008. EMPLOYMENT OPPORTUNITIES FOR INDIVIDUALS
21 WITH MENTAL ILLNESS OR AN INTELLECTUAL DISABILITY. (a) Each
22 department facility and community center shall annually assess the
23 feasibility of converting entry level support positions into
24 employment opportunities for individuals with mental illness or an
25 intellectual disability in the facility's or center's service area.

26 (b) In making the assessment, the department facility or
27 community center shall consider the feasibility of using an array

1 of job opportunities that may lead to competitive employment,
2 including sheltered employment and supported employment.

3 (c) Each department facility and community center shall
4 annually submit to the department a report showing that the
5 facility or center has complied with Subsection (a).

6 (d) The department shall compile information from the
7 reports and shall make the information available to each designated
8 provider in a service area.

9 (e) Each department facility and community center shall
10 ensure that designated staff are trained to:

11 (1) assist clients through the Social Security
12 Administration disability determination process;
13 (2) provide clients and their families information
14 related to the Social Security Administration Work Incentive
15 Provisions; and

16 (3) assist clients in accessing and utilizing the
17 Social Security Administration Work Incentive Provisions to
18 finance training, services, and supports needed to obtain career
19 goals.

20 Sec. 533A.009. EXCHANGE OF CLIENT RECORDS. (a) Department
21 facilities, local intellectual and developmental disability
22 authorities, community centers, other designated providers, and
23 subcontractors of intellectual disability services are component
24 parts of one service delivery system within which client records
25 may be exchanged without the client's consent.

26 (b) The executive commissioner shall adopt rules to carry
27 out the purposes of this section.

1 Sec. 533A.0095. COLLECTION AND MAINTENANCE OF INFORMATION
2 REGARDING PERSONS FOUND NOT GUILTY BY REASON OF INSANITY. (a) The
3 executive commissioner by rule shall require the department to
4 collect information and maintain current records regarding a person
5 found not guilty of an offense by reason of insanity under Chapter
6 46C, Code of Criminal Procedure, who is:

7 (1) committed by a court for long-term placement in a
8 residential care facility under Chapter 593 or under Chapter 46C,
9 Code of Criminal Procedure; or
10 (2) ordered by a court to receive outpatient or
11 community-based treatment and supervision.

12 (b) Information maintained by the department under this
13 section must include the name and address of any facility to which
14 the person is committed, the length of the person's commitment to
15 the facility, and any post-release outcome.

16 (c) The department shall file annually with the presiding
17 officer of each house of the legislature a written report
18 containing the name of each person described by Subsection (a), the
19 name and address of any facility to which the person is committed,
20 the length of the person's commitment to the facility, and any
21 post-release outcome.

22 Sec. 533A.010. INFORMATION RELATING TO CONDITION. (a) A
23 person, including a hospital, nursing facility, medical society, or
24 other organization, may provide to the department or a medical
25 organization, hospital, or hospital committee any information,
26 including interviews, reports, statements, or memoranda relating
27 to a person's condition and treatment for use in a study to reduce

1 mental illness and intellectual disabilities.

2 (b) The department or a medical organization, hospital, or
3 hospital committee receiving the information may use or publish the
4 information only to advance mental health and intellectual
5 disability research and education in order to reduce mental illness
6 and intellectual disabilities. A summary of the study may be
7 released for general publication.

8 (c) The identity of a person whose condition or treatment is
9 studied is confidential and may not be revealed under any
10 circumstances. Information provided under this section and any
11 finding or conclusion resulting from the study is privileged
12 information.

13 (d) A person is not liable for damages or other relief if the
14 person:

15 (1) provides information under this section;
16 (2) releases or publishes the findings and conclusions
17 of the person or organization to advance mental health and
18 intellectual disability research and education; or
19 (3) releases or publishes generally a summary of a
20 study.

21 Sec. 533A.011 [533.011]. RETURN OF PERSON WITH AN
22 INTELLECTUAL DISABILITY [MENTAL RETARDATION] TO STATE OF
23 RESIDENCE. (a) In this section, "department facility" includes
24 the ICF-IID component of the Rio Grande State Center.

25 (a-1) The department may return a nonresident person with an
26 intellectual disability [mental retardation] who is committed to a
27 department facility [for persons with mental retardation] in this

1 state to the proper agency of the person's state of residence.

2 (b) The department may permit the return of a resident of
3 this state who is committed to a facility for persons with an
4 intellectual disability [~~mental retardation~~] in another state.

5 (c) The department may enter into reciprocal agreements
6 with the proper agencies of other states to facilitate the return of
7 persons committed to department facilities [~~for persons with mental~~
8 ~~retardation~~] in this state, or facilities for persons with an
9 intellectual disability in another state, to the state of their
10 residence.

11 (d) The director [~~superintendent~~] of a department facility
12 [~~for persons with mental retardation~~] may detain for not more than
13 96 hours pending a court order in a commitment proceeding in this
14 state a person with an intellectual disability [~~mental retardation~~]
15 returned to this state.

16 (e) The state returning a person with an intellectual
17 disability [~~mental retardation~~] to another state shall bear the
18 expenses of returning the person.

19 Sec. 533A.012. COOPERATION OF STATE AGENCIES. At the
20 department's request and in coordination with the executive
21 commissioner, all state departments, agencies, officers, and
22 employees shall cooperate with the department in activities that
23 are consistent with their functions and that relate to services
24 provided under this title.

25 Sec. 533A.015. UNANNOUNCED INSPECTIONS. The department may
26 make any inspection of a department facility or program under the
27 department's jurisdiction under this title without announcing the

1 inspection.

2 Sec. 533A.016. CERTAIN PROCUREMENTS OF GOODS AND SERVICES
3 BY SERVICE PROVIDERS. (a) This section does not apply to a "health
4 and human services agency," as that term is defined by Section
5 531.001, Government Code.

6 (a-1) A state agency, local agency, or local intellectual
7 and developmental disability authority that expends public money to
8 acquire goods or services in connection with providing or
9 coordinating the provision of intellectual disability services may
10 satisfy the requirements of any state law requiring procurements by
11 competitive bidding or competitive sealed proposals by procuring
12 goods or services with the public money in accordance with Section
13 533A.017 or in accordance with:

14 (1) Section 32.043 or 32.044, Human Resources Code, if
15 the entity is a public hospital subject to those laws; or
16 (2) this section, if the entity is not covered by
17 Subdivision (1).

18 (b) An agency or authority under Subsection (a-1)(2) may
19 acquire goods or services by any procurement method that provides
20 the best value to the agency or authority. The agency or authority
21 shall document that the agency or authority considered all relevant
22 factors under Subsection (c) in making the acquisition.

23 (c) Subject to Subsection (d), the agency or authority may
24 consider all relevant factors in determining the best value,
25 including:

26 (1) any installation costs;
27 (2) the delivery terms;

1 (3) the quality and reliability of the vendor's goods
2 or services;

3 (4) the extent to which the goods or services meet the
4 agency's or authority's needs;

5 (5) indicators of probable vendor performance under
6 the contract such as past vendor performance, the vendor's
7 financial resources and ability to perform, the vendor's experience
8 and responsibility, and the vendor's ability to provide reliable
9 maintenance agreements;

10 (6) the impact on the ability of the agency or
11 authority to comply with laws and rules relating to historically
12 underutilized businesses or relating to the procurement of goods
13 and services from persons with disabilities;

14 (7) the total long-term cost to the agency or
15 authority of acquiring the vendor's goods or services;

16 (8) the cost of any employee training associated with
17 the acquisition;

18 (9) the effect of an acquisition on the agency's or
19 authority's productivity;

20 (10) the acquisition price; and

21 (11) any other factor relevant to determining the best
22 value for the agency or authority in the context of a particular
23 acquisition.

24 (d) If a state agency to which this section applies acquires
25 goods or services with a value that exceeds \$100,000, the state
26 agency shall consult with and receive approval from the commission
27 before considering factors other than price and meeting

1 specifications.

2 (e) The state auditor or the executive commissioner may
3 audit the agency's or authority's acquisitions of goods and
4 services under this section to the extent state money or federal
5 money appropriated by the state is used to make the acquisitions.

6 (f) The agency or authority may adopt rules and procedures
7 for the acquisition of goods and services under this section.

8 Sec. 533A.017. PARTICIPATION IN PURCHASING CONTRACTS OR
9 GROUP PURCHASING PROGRAM. (a) This section does not apply to a
10 "health and human services agency," as that term is defined by
11 Section 531.001, Government Code.

12 (b) The executive commissioner may allow a state agency,
13 local agency, or local intellectual and developmental disability
14 authority that expends public money to purchase goods or services
15 in connection with providing or coordinating the provision of
16 intellectual disability services to purchase goods or services with
17 the public money by participating in:

18 (1) a contract the executive commissioner has made to
19 purchase goods or services; or

20 (2) a group purchasing program established or
21 designated by the executive commissioner that offers discounts to
22 providers of intellectual disability services.

23 Sec. 533A.018 [533.018]. REVENUE FROM SPECIAL OLYMPICS
24 TEXAS LICENSE PLATES [ACCOUNT]. [(a) The Texas Department of
25 Mental Health and Mental Retardation Special Olympics Texas account
26 is a separate account in the general revenue fund. The account is
27 composed of money deposited to the credit of the account under

1 ~~Section 502.2922, Transportation Code. Money in the account may be~~
2 ~~used only for the purposes of this section.~~

3 ~~[(b) The department administers the account.] Annually,~~
4 the department shall distribute the money deposited under Section
5 504.621, Transportation Code, to the credit of the account created
6 in the trust fund created under Section 504.6012, Transportation
7 Code, to Special Olympics Texas to be used only to pay for costs
8 associated with training and with area and regional competitions of
9 the Special Olympics Texas.

10 SUBCHAPTER B. POWERS AND DUTIES RELATING TO PROVISION OF
11 INTELLECTUAL DISABILITY SERVICES

12 Sec. 533A.031. DEFINITIONS. In this subchapter:

13 (1) "Elderly resident" means a person 65 years of age
14 or older residing in a department facility.

15 (2) "ICF-IID and related waiver programs" includes
16 ICF-IID Section 1915(c) waiver programs, home and community-based
17 services, Texas home living waiver services, or another Medicaid
18 program serving persons with an intellectual disability.

19 (3) "Qualified service provider" means an entity that
20 meets requirements for service providers established by the
21 executive commissioner.

22 (4) "Section 1915(c) waiver program" means a federally
23 funded Medicaid program of the state that is authorized under
24 Section 1915(c) of the federal Social Security Act (42 U.S.C.
25 Section 1396n(c)).

26 Sec. 533A.032. LONG-RANGE PLANNING. (a) The department
27 shall have a long-range plan relating to the provision of services

1 under this title covering at least six years that includes at least
2 the provisions required by Sections 531.022 and 531.023, Government
3 Code, and Chapter 2056, Government Code. The plan must cover the
4 provision of services in and policies for state-operated
5 institutions and ensure that the medical needs of the most
6 medically fragile persons with an intellectual disability the
7 department serves are met.

8 **(b) In developing the plan, the department shall:**

9 **(1) solicit input from:**

10 **(A) local intellectual and developmental**
11 disability authorities;

12 **(B) community representatives;**

13 **(C) consumers of intellectual disability**
14 services, including consumers of campus-based and community-based
15 services, and family members of consumers of those services; and

16 **(D) other interested persons; and**

17 **(2) consider the report developed under Subsection**

18 **(c).**

19 **(c) The department shall develop a report containing**
20 information and recommendations regarding the most efficient
21 long-term use and management of the department's campus-based
22 facilities. The report must:

23 **(1) project future bed requirements for state**
24 supported living centers;

25 **(2) document the methodology used to develop the**
26 projection of future bed requirements;

27 **(3) project maintenance costs for institutional**

1 facilities;

2 (4) recommend strategies to maximize the use of
3 institutional facilities; and

4 (5) specify how each state supported living center
5 will:

6 (A) serve and support the communities and
7 consumers in its service area; and

8 (B) fulfill statewide needs for specialized
9 services.

10 (d) In developing the report under Subsection (c), the
11 department shall:

12 (1) conduct two public meetings, one meeting to be
13 held at the beginning of the process and the second meeting to be
14 held at the end of the process, to receive comments from interested
15 parties; and

16 (2) consider:

17 (A) the medical needs of the most medically
18 fragile of its clients with an intellectual disability;

19 (B) the provision of services to clients with a
20 severe and profound intellectual disability and to persons with an
21 intellectual disability who are medically fragile or have
22 behavioral problems;

23 (C) the program and service preference
24 information collected under Section 533A.038; and

25 (D) input solicited from consumers of services of
26 state supported living centers.

27 (g) The department shall:

1 (1) attach the report required by Subsection (c) to
2 the department's legislative appropriations request for each
3 biennium;
4 (2) at the time the department presents its
5 legislative appropriations request, present the report to the:
6 (A) governor;
7 (B) governor's budget office;
8 (C) lieutenant governor;
9 (D) speaker of the house of representatives;
10 (E) Legislative Budget Board; and
11 (F) commission; and
12 (3) update the department's long-range plan biennially
13 and include the report in the plan.

14 Sec. 533A.0325. CONTINUUM OF SERVICES IN DEPARTMENT
15 FACILITIES. The executive commissioner by rule shall establish
16 criteria regarding the uses of department facilities as part of a
17 full continuum of services under this title.

18 Sec. 533A.0335 [533.0335]. COMPREHENSIVE ASSESSMENT AND
19 RESOURCE ALLOCATION PROCESS. (a) In this section:

20 (1) "Advisory committee" means the Intellectual and
21 Developmental Disability System Redesign Advisory Committee
22 established under Section 534.053, Government Code.

23 (2) [~~"Department"~~ means the Department of Aging and
24 Disability Services.]

25 [~~(3)~~] "Functional need," "ICF-IID program," and
26 "Medicaid waiver program" have the meanings assigned those terms by
27 Section 534.001, Government Code.

1 (b) Subject to the availability of federal funding, the
2 department shall develop and implement a comprehensive assessment
3 instrument and a resource allocation process for individuals with
4 intellectual and developmental disabilities as needed to ensure
5 that each individual with an intellectual or developmental
6 disability receives the type, intensity, and range of services that
7 are both appropriate and available, based on the functional needs
8 of that individual, if the individual receives services through one
9 of the following:

10 (1) a Medicaid waiver program;
11 (2) the ICF-IID program; or
12 (3) an intermediate care facility operated by the
13 state and providing services for individuals with intellectual and
14 developmental disabilities.

15 (b-1) In developing a comprehensive assessment instrument
16 for purposes of Subsection (b), the department shall evaluate any
17 assessment instrument in use by the department. In addition, the
18 department may implement an evidence-based, nationally recognized,
19 comprehensive assessment instrument that assesses the functional
20 needs of an individual with an intellectual or [and] developmental
21 disability [~~disabilities~~] as the comprehensive assessment
22 instrument required by Subsection (b). This subsection expires
23 September 1, 2015.

24 (c) The department, in consultation with the advisory
25 committee, shall establish a prior authorization process for
26 requests for supervised living or residential support services
27 available in the home and community-based services (HCS) Medicaid

1 waiver program. The process must ensure that supervised living or
2 residential support services available in the home and
3 community-based services (HCS) Medicaid waiver program are
4 available only to individuals for whom a more independent setting
5 is not appropriate or available.

6 (d) The department shall cooperate with the advisory
7 committee to establish the prior authorization process required by
8 Subsection (c). This subsection expires January 1, 2024.

9 Sec. 533A.034. AUTHORITY TO CONTRACT FOR COMMUNITY-BASED
10 SERVICES. The department may cooperate, negotiate, and contract
11 with local agencies, hospitals, private organizations and
12 foundations, community centers, physicians, and other persons to
13 plan, develop, and provide community-based intellectual disability
14 services.

15 Sec. 533A.0345. STATE AGENCY SERVICES STANDARDS. (a) The
16 executive commissioner by rule shall develop model program
17 standards for intellectual disability services for use by each
18 state agency that provides or pays for intellectual disability
19 services. The department shall provide the model standards to each
20 agency that provides intellectual disability services as
21 identified by the commission.

22 (b) Model standards developed under Subsection (a) must be
23 designed to improve the consistency of intellectual disability
24 services provided by or through a state agency.

25 (c) Biennially the department shall review the model
26 standards developed under Subsection (a) and determine whether each
27 standard contributes effectively to the consistency of service

1 delivery by state agencies.

2 Sec. 533A.035. LOCAL INTELLECTUAL AND DEVELOPMENTAL
3 DISABILITY AUTHORITIES. (a) The executive commissioner shall
4 designate a local intellectual and developmental disability
5 authority in one or more local service areas. The executive
6 commissioner may delegate to the local authority the authority and
7 responsibility of the executive commissioner, the commission, or a
8 department of the commission related to planning, policy
9 development, coordination, including coordination with criminal
10 justice entities, resource allocation, and resource development
11 for and oversight of intellectual disability services in the most
12 appropriate and available setting to meet individual needs in that
13 service area. The executive commissioner may designate a single
14 entity as both the local mental health authority under Chapter 533
15 and the local intellectual and developmental disability authority
16 under this chapter for a service area.

17 (b) The department by contract or other method of
18 allocation, including a case-rate or capitated arrangement, may
19 disburse to a local intellectual and developmental disability
20 authority department federal and department state funds to be spent
21 in the local service area for community intellectual disability
22 services.

23 (c) A local intellectual and developmental disability
24 authority, with the approval of the department, shall use the funds
25 received under Subsection (b) to ensure intellectual disability
26 services are provided in the local service area. The local
27 authority shall consider public input, ultimate cost-benefit, and

1 client care issues to ensure consumer choice and the best use of
2 public money in:

3 (1) assembling a network of service providers;
4 (2) making recommendations relating to the most
5 appropriate and available treatment alternatives for individuals
6 in need of intellectual disability services; and
7 (3) procuring services for a local service area,
8 including a request for proposal or open-enrollment procurement
9 method.

10 (d) A local intellectual and developmental disability
11 authority shall demonstrate to the department that the services
12 that the authority provides directly or through subcontractors and
13 that involve state funds comply with relevant state standards.

14 (e) A local intellectual and developmental disability
15 authority may serve as a provider of ICF-IID and related waiver
16 programs only if:

17 (1) the local authority complies with the limitations
18 prescribed by Section 533A.0355(d); or
19 (2) the ICF-IID and related waiver programs are
20 necessary to ensure the availability of services and the local
21 authority demonstrates to the commission that there is not a
22 willing ICF-IID and related waiver program qualified service
23 provider in the local authority's service area where the service is
24 needed.

25 Sec. 533A.0352. LOCAL AUTHORITY PLANNING FOR LOCAL SERVICE
26 AREA. (a) Each local intellectual and developmental disability
27 authority shall develop a local service area plan to maximize the

1 authority's services by using the best and most cost-effective
2 means of using federal, state, and local resources to meet the needs
3 of the local community according to the relative priority of those
4 needs. Each local intellectual and developmental disability
5 authority shall undertake to maximize federal funding.

6 (b) A local service area plan must be consistent with the
7 purposes, goals, and policies stated in Section 531.001 and the
8 department's long-range plan developed under Section 533A.032.

9 (c) The department and a local intellectual and
10 developmental disability authority shall use the local authority's
11 local service plan as the basis for contracts between the
12 department and the local authority and for establishing the local
13 authority's responsibility for achieving outcomes related to the
14 needs and characteristics of the authority's local service area.

15 (d) In developing the local service area plan, the local
16 intellectual and developmental disability authority shall:

17 (1) solicit information regarding community needs
18 from:

19 (A) representatives of the local community;
20 (B) consumers of community-based intellectual
21 disability services and members of the families of those consumers;
22 (C) consumers of services of state supported
23 living centers, members of families of those consumers, and members
24 of state supported living center volunteer services councils, if a
25 state supported living center is located in the local service area
26 of the local authority; and

27 (D) other interested persons; and

1 (2) consider:

2 (A) criteria for assuring accountability for,
3 cost-effectiveness of, and relative value of service delivery
4 options;

5 (B) goals to ensure a client with an intellectual
6 disability is placed in the least restrictive environment
7 appropriate to the person's care;

8 (C) opportunities for innovation to ensure that
9 the local authority is communicating to all potential and incoming
10 consumers about the availability of services of state supported
11 living centers for persons with an intellectual disability in the
12 local service area of the local authority;

13 (D) goals to divert consumers of services from
14 the criminal justice system; and

15 (E) opportunities for innovation in services and
16 service delivery.

17 (e) The department and the local intellectual and
18 developmental disability authority by contract shall enter into a
19 performance agreement that specifies required standard outcomes
20 for the programs administered by the local authority. Performance
21 related to the specified outcomes must be verifiable by the
22 department. The performance agreement must include measures
23 related to the outputs, costs, and units of service delivered.
24 Information regarding the outputs, costs, and units of service
25 delivered shall be recorded in the local authority's automated data
26 systems, and reports regarding the outputs, costs, and units of
27 service delivered shall be submitted to the department at least

1 annually as provided by department rule.

2 (f) The department and the local intellectual and
3 developmental disability authority shall provide an opportunity
4 for community centers and advocacy groups to provide information or
5 assistance in developing the specified performance outcomes under
6 Subsection (e).

7 Sec. 533A.0355 [~~533.0355~~]. LOCAL INTELLECTUAL AND
8 DEVELOPMENTAL DISABILITY [~~MENTAL RETARDATION~~] AUTHORITY
9 RESPONSIBILITIES. (a) The executive commissioner shall adopt
10 rules establishing the roles and responsibilities of local
11 intellectual and developmental disability [~~mental retardation~~]
12 authorities.

13 (b) In adopting rules under this section, the executive
14 commissioner must include rules regarding the following local
15 intellectual and developmental disability [~~mental retardation~~]
16 authority responsibilities:

17 (1) access;
18 (2) intake;
19 (3) eligibility functions;
20 (4) enrollment, initial person-centered assessment,
21 and service authorization;
22 (5) utilization management;
23 (6) safety net functions, including crisis management
24 services and assistance in accessing facility-based care;
25 (7) service coordination functions;
26 (8) provision and oversight of state general revenue
27 services;

1 (9) local planning functions, including stakeholder
2 involvement, technical assistance and training, and provider
3 complaint and resolution processes; and

4 (10) processes to assure accountability in
5 performance, compliance, and monitoring.

6 (c) In determining eligibility under Subsection (b)(3), a
7 local intellectual and developmental disability [~~mental~~
8 ~~retardation~~] authority must offer a state supported living center
9 [~~school~~] as an option among the residential services and other
10 community living options available to an individual who is eligible
11 for those services and who meets the department's criteria for
12 state supported living center [~~school~~] admission, regardless of
13 whether other residential services are available to the individual.

14 (d) In establishing a local intellectual and developmental
15 disability [~~mental retardation~~] authority's role as a qualified
16 service provider of ICF-IID [~~ICF-MR~~] and related waiver programs
17 under Section 533A.035(e) [~~533.035(e-1)~~], the executive
18 commissioner shall require the local intellectual and
19 developmental disability [~~mental retardation~~] authority to:

20 (1) base the local authority's provider capacity on
21 the local authority's August 2004 enrollment levels for the waiver
22 programs the local authority operates and, if the local authority's
23 enrollment levels exceed those levels, to reduce the levels by
24 attrition; and

25 (2) base any increase in the local authority's
26 provider capacity on:

27 (A) the local authority's state-mandated

conversion from an ICF-IID [~~ICF-MR~~] program to a Section 1915(c) waiver program allowing for a permanent increase in the local authority's provider capacity in accordance with the number of persons who choose the local authority as their provider;

5 (B) the local authority's voluntary conversion
6 from an ICF-IID [~~ICF-MR~~] program to a Section 1915(c) waiver
7 program allowing for a temporary increase in the local authority's
8 provider capacity, to be reduced by attrition, in accordance with
9 the number of persons who choose the local authority as their
10 provider;

11 (C) the local authority's refinancing from
12 services funded solely by state general revenue to a Medicaid
13 program allowing for a temporary increase in the local authority's
14 provider capacity, to be reduced by attrition, in accordance with
15 the number of persons who choose the local authority as their
16 provider; or

17 (D) other extenuating circumstances that:

20 (ii) do not include increases that
21 unnecessarily promote the local authority's provider role over its
22 role as a local intellectual and developmental disability [~~mental~~
23 ~~retardation~~] authority; and

24 (iii) may include increases necessary to
25 accommodate a family-specific or consumer-specific circumstance
26 and choice.

27 (e) Any increase based on extenuating circumstances under

1 Subsection (d)(2)(D) is considered a temporary increase in the
2 local intellectual and developmental disability [~~mental~~
3 ~~retardation~~] authority's provider capacity, to be reduced by
4 attrition.

5 (f) At least biennially, the department [~~Department of~~
6 ~~Aging and Disability Services~~] shall review and determine the local
7 intellectual and developmental disability [~~mental retardation~~]
8 authority's status as a qualified service provider in accordance
9 with criteria that includes the consideration of the local
10 authority's ability to assure the availability of services in its
11 area, including:

12 (1) program stability and viability;
13 (2) the number of other qualified service providers in
14 the area; and
15 (3) the geographical area in which the local authority
16 is located.

17 (g) The department [~~Department of Aging and Disability~~
18 ~~Services~~] shall ensure that local services delivered further the
19 following goals:

20 (1) to provide individuals with the information,
21 opportunities, and support to make informed decisions regarding the
22 services for which the individual is eligible;
23 (2) to respect the rights, needs, and preferences of
24 an individual receiving services; and
25 (3) to integrate individuals with intellectual
26 [~~mental retardation~~] and developmental disabilities into the
27 community in accordance with relevant independence initiatives and

1 permanency planning laws.

2 (h) The department [Department of Aging and Disability
3 Services] shall ensure that local intellectual and developmental
4 disability [mental retardation] authorities are informing and
5 counseling individuals and their legally authorized
6 representatives, if applicable, about all program and service
7 options for which the individuals are eligible in accordance with
8 Section 533A.038(d) [533.038(d)], including options such as the
9 availability and types of ICF-IID [ICF-MR] placements for which an
10 individual may be eligible while the individual is on a department
11 interest list or other waiting list for other services.

12 Sec. 533A.03551 [533.03551]. FLEXIBLE, LOW-COST HOUSING
13 OPTIONS. (a) To the extent permitted under federal law and
14 regulations, the executive commissioner shall adopt or amend rules
15 as necessary to allow for the development of additional housing
16 supports for individuals with disabilities, including individuals
17 with intellectual and developmental disabilities, in urban and
18 rural areas, including:

19 (1) a selection of community-based housing options
20 that comprise a continuum of integration, varying from most to
21 least restrictive, that permits individuals to select the most
22 integrated and least restrictive setting appropriate to the
23 individual's needs and preferences;

24 (2) provider-owned and non-provider-owned residential
25 settings;

26 (3) assistance with living more independently; and
27 (4) rental properties with on-site supports.

1 (b) The department [Department of Aging and Disability
2 ~~Services~~], in cooperation with the Texas Department of Housing and
3 Community Affairs, the Department of Agriculture, the Texas State
4 Affordable Housing Corporation, and the Intellectual and
5 Developmental Disability System Redesign Advisory Committee
6 established under Section 534.053, Government Code, shall
7 coordinate with federal, state, and local public housing entities
8 as necessary to expand opportunities for accessible, affordable,
9 and integrated housing to meet the complex needs of individuals
10 with disabilities, including individuals with intellectual and
11 developmental disabilities.

12 (c) The department [Department of Aging and Disability
13 ~~Services~~] shall develop a process to receive input from statewide
14 stakeholders to ensure the most comprehensive review of
15 opportunities and options for housing services described by this
16 section.

17 Sec. 533A.03552 [533.03552]. BEHAVIORAL SUPPORTS FOR
18 INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES AT
19 RISK OF INSTITUTIONALIZATION; INTERVENTION TEAMS. (a) [In this
20 section, "department" means the Department of Aging and Disability
21 Services.]

22 [(b)] Subject to the availability of federal funding, the
23 department shall develop and implement specialized training for
24 providers, family members, caregivers, and first responders
25 providing direct services and supports to individuals with
26 intellectual and developmental disabilities and behavioral health
27 needs who are at risk of institutionalization.

1 (b) [←] Subject to the availability of federal funding,
2 the department shall establish one or more behavioral health
3 intervention teams to provide services and supports to individuals
4 with intellectual and developmental disabilities and behavioral
5 health needs who are at risk of institutionalization. An
6 intervention team may include a:

- 7 (1) psychiatrist or psychologist;
8 (2) physician;
9 (3) registered nurse;
10 (4) pharmacist or representative of a pharmacy;
11 (5) behavior analyst;
12 (6) social worker;
13 (7) crisis coordinator;
14 (8) peer specialist; and
15 (9) family partner.

16 (c) [←] In providing services and supports, a behavioral
17 health intervention team established by the department shall:

- 18 (1) use the team's best efforts to ensure that an
19 individual remains in the community and avoids
20 institutionalization;
- 21 (2) focus on stabilizing the individual and assessing
22 the individual for intellectual, medical, psychiatric,
23 psychological, and other needs;
- 24 (3) provide support to the individual's family members
25 and other caregivers;
- 26 (4) provide intensive behavioral assessment and
27 training to assist the individual in establishing positive

1 behaviors and continuing to live in the community; and
2 (5) provide clinical and other referrals.

3 (d) [←] The department shall ensure that members of a
4 behavioral health intervention team established under this section
5 receive training on trauma-informed care, which is an approach to
6 providing care to individuals with behavioral health needs based on
7 awareness that a history of trauma or the presence of trauma
8 symptoms may create the behavioral health needs of the individual.

9 Sec. 533A.037. SERVICE PROGRAMS AND SHELTERED WORKSHOPS.

10 (a) The department may provide intellectual disability services
11 through halfway houses, sheltered workshops, community centers,
12 and other intellectual disability services programs.

13 (b) The department may operate or contract for the provision
14 of part or all of the sheltered workshop services and may contract
15 for the sale of goods produced and services provided by a sheltered
16 workshop program. The goods and services may be sold for cash or on
17 credit.

18 (c) An operating fund may be established for each sheltered
19 workshop the department operates. Each operating fund must be in a
20 national or state bank that is a member of the Federal Deposit
21 Insurance Corporation.

22 (d) Money derived from gifts or grants received for
23 sheltered workshop purposes and the proceeds from the sale of
24 sheltered workshop goods and services shall be deposited to the
25 credit of the operating fund. The money in the fund may be spent
26 only in the operation of the sheltered workshop to:

27 (1) purchase supplies, materials, services, and

1 equipment;

2 (2) pay salaries of and wages to participants and
3 employees;

4 (3) construct, maintain, repair, and renovate
5 facilities and equipment; and

6 (4) establish and maintain a petty cash fund of not
7 more than \$100.

8 (e) Money in an operating fund that is used to pay salaries
9 of and wages to participants in the sheltered workshop program is
10 money the department holds in trust for the participants' benefit.

11 (f) This section does not affect the authority or
12 jurisdiction of a community center as prescribed by Chapter 534.

13 Sec. 533A.038 [~~533.038~~]. FACILITIES AND SERVICES FOR
14 CLIENTS WITH AN INTELLECTUAL DISABILITY [~~MENTAL RETARDATION~~]. (a)
15 In this section, "department facility" includes the ICF-IID
16 component of the Rio Grande State Center.

17 (a-1) The department may designate all or any part of a
18 department facility as a special facility for the diagnosis,
19 special training, education, supervision, treatment, or care[~~or~~
20 control] of clients with an intellectual disability [~~mental~~
21 retardation].

22 (b) The department may specify the facility in which a
23 client with an intellectual disability [~~mental retardation~~] under
24 the department's jurisdiction is placed.

25 (c) The department may maintain day classes at a department
26 facility for the convenience and benefit of clients with an
27 intellectual disability [~~mental retardation~~] of the community in

1 which the facility is located and who are not capable of enrollment
2 in a public school system's regular or special classes.

3 (d) A person with an intellectual disability [~~mental~~
4 ~~retardation~~], or a person's legally authorized representative,
5 seeking residential services shall receive a clear explanation of
6 programs and services for which the person is determined to be
7 eligible, including state supported living centers [~~schools~~],
8 community ICF-IID [~~ICF-MR~~] programs, waiver services under Section
9 1915(c) of the federal Social Security Act (42 U.S.C. Section
10 1396n(c)), or other services. The preferred programs and services
11 chosen by the person or the person's legally authorized
12 representative shall be documented in the person's record. If the
13 preferred programs or services are not available, the person or the
14 person's legally authorized representative shall be given
15 assistance in gaining access to alternative services and the
16 selected waiting list.

17 (e) The department shall ensure that the information
18 regarding program and service preferences collected under
19 Subsection (d) is documented and maintained in a manner that
20 permits the department to access and use the information for
21 planning activities conducted under Section 533A.032 [~~533.032~~].

22 (f) The department may spend money appropriated for the
23 state supported living center [~~school~~] system only in accordance
24 with limitations imposed by the General Appropriations Act.

25 (g) In addition to the explanation required under
26 Subsection (d), the department shall ensure that each person
27 inquiring about residential services receives:

1 (1) a pamphlet or similar informational material
2 explaining that any programs and services for which the person is
3 determined to be eligible, including state supported living
4 centers, community ICF-IID [~~ICF-MR~~] programs, waiver services
5 under Section 1915(c) of the federal Social Security Act (42 U.S.C.
6 Section 1396n(c)), or other services, may be an option available to
7 an individual who is eligible for those services; and

8 (2) information relating to whether appropriate
9 residential services are available in each program and service for
10 which the person is determined to be eligible, including state
11 supported living centers, community ICF-IID [~~ICF-MR~~] programs,
12 waiver services under Section 1915(c) of the federal Social
13 Security Act (42 U.S.C. Section 1396n(c)), or other services
14 located nearest to the residence of the proposed resident.

15 Sec. 533A.040. SERVICES FOR CHILDREN AND YOUTH. The
16 department shall ensure the development of programs and the
17 expansion of services at the community level for children with an
18 intellectual disability, or with a dual diagnosis of an
19 intellectual disability and mental illness, and for their families.

20 The department shall:

21 (1) prepare and review budgets for services for
22 children;

23 (2) develop departmental policies relating to
24 children's programs and service delivery; and

25 (3) increase interagency coordination activities to
26 enhance the provision of services for children.

27 Sec. 533A.0415. MEMORANDUM OF UNDERSTANDING ON INTERAGENCY

1 TRAINING. (a) The executive commissioner, the Texas Juvenile
2 Justice Department, and the Texas Education Agency by rule shall
3 adopt a joint memorandum of understanding to develop interagency
4 training for the staffs of the department, the Texas Juvenile
5 Justice Department, and the Texas Education Agency who are involved
6 in the functions of assessment, case planning, case management, and
7 in-home or direct delivery of services to children, youth, and
8 their families under this title. The memorandum must:

9 (1) outline the responsibility of each agency in
10 coordinating and developing a plan for interagency training on
11 individualized assessment and effective intervention and treatment
12 services for children and dysfunctional families; and
13 (2) provide for the establishment of an interagency
14 task force to:

15 (A) develop a training program to include
16 identified competencies, content, and hours for completion of the
17 training with at least 20 hours of training required each year until
18 the program is completed;

19 (B) design a plan for implementing the program,
20 including regional site selection, frequency of training, and
21 selection of experienced clinical public and private professionals
22 or consultants to lead the training; and

23 (C) monitor, evaluate, and revise the training
24 program, including the development of additional curricula based on
25 future training needs identified by staff and professionals.

26 (b) The task force consists of:

27 (1) one clinical professional and one training staff

1 member from each agency, appointed by that agency; and
2 (2) 10 private sector clinical professionals with
3 expertise in dealing with troubled children, youth, and
4 dysfunctional families, two of whom are appointed by each agency.

5 (c) The task force shall meet at the call of the department.

6 (d) The commission shall act as the lead agency in
7 coordinating the development and implementation of the memorandum.

8 (e) The executive commissioner and the agencies shall
9 review and by rule revise the memorandum not later than August each
10 year.

11 Sec. 533A.042. EVALUATION OF ELDERLY RESIDENTS. (a) The
12 department shall evaluate each elderly resident at least annually
13 to determine if the resident can be appropriately served in a less
14 restrictive setting.

15 (b) The department shall consider the proximity to the
16 resident of family, friends, and advocates concerned with the
17 resident's well-being in determining whether the resident should be
18 moved from a department facility or to a different department
19 facility. The department shall recognize that a nursing facility
20 may not be able to meet the special needs of an elderly resident.

21 (c) In evaluating an elderly resident under this section and
22 to ensure appropriate placement, the department shall identify the
23 special needs of the resident, the types of services that will best
24 meet those needs, and the type of facility that will best provide
25 those services.

26 (d) The appropriate interdisciplinary team shall conduct
27 the evaluation of an elderly resident of a department facility.

1 (e) The department shall attempt to place an elderly
2 resident in a less restrictive setting if the department determines
3 that the resident can be appropriately served in that setting. The
4 department shall coordinate the attempt with the local intellectual
5 and developmental disability authority.

6 (f) A local intellectual and developmental disability
7 authority shall provide continuing care for an elderly resident
8 placed in the authority's service area under this section.

9 (g) The local intellectual and developmental disability
10 authority shall have the right of access to all residents and
11 records of residents who request continuing care services.

12 Sec. 533A.043. PROPOSALS FOR GERIATRIC CARE. (a) The
13 department shall solicit proposals from community providers to
14 operate community residential programs for elderly residents at
15 least every two years.

16 (b) The department shall require each provider to:

17 (1) offer adequate assurances of ability to:

18 (A) provide the required services;

19 (B) meet department standards; and

20 (C) safeguard the safety and well-being of each
21 resident; and

22 (2) sign a memorandum of agreement with the local
23 intellectual and developmental disability authority outlining the
24 responsibilities for continuity of care and monitoring, if the
25 provider is not the local authority.

26 (c) The department may fund a proposal through a contract if
27 the provider agrees to meet the requirements prescribed by

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1 Subsection (b) and agrees to provide the services at a cost that is
2 equal to or less than the cost to the department to provide the
3 services.

4 (d) The appropriate local intellectual and developmental
5 disability authority shall monitor the services provided to a
6 resident placed in a program funded under this section. The
7 department may monitor any service for which it contracts.

SUBCHAPTER C. POWERS AND DUTIES RELATING TO ICF-IID [~~ICF-MR~~]

PROGRAM

10 Sec. 533A.062 [~~533.062~~]. PLAN ON LONG-TERM CARE FOR PERSONS
11 WITH AN INTELLECTUAL DISABILITY [~~MENTAL RETARDATION~~]. (a) The
12 department shall biennially develop a proposed plan on long-term
13 care for persons with an intellectual disability [~~mental~~
14 ~~retardation~~].

15 (b) The proposed plan must specify the capacity of the HCS
16 waiver program for persons with an intellectual disability [~~mental~~
17 ~~retardation~~] and the number and levels of new ICF-IID [~~ICF-MR~~] beds
18 to be authorized in each region. In developing the proposed plan,
19 the department shall consider:

23 (3) the requirements of applicable federal law.

24 (c) Each proposed plan shall cover the subsequent fiscal
25 biennium. The department shall conduct a public hearing on the
26 proposed plan. Not later than July 1 of each even-numbered year,
27 the department shall submit the plan to the commission [Health and

1 Human Services Commission] for approval.

2 (d) The commission [~~Health and Human Services Commission~~]
3 may modify the proposed plan as necessary before its final
4 approval. [~~In determining the appropriate number of ICF-MR~~
5 ~~facilities for persons with a related condition, the department and~~
6 ~~the Health and Human Services Commission shall consult with the~~
7 ~~Texas Department of Human Services.~~]

8 (e) The commission [~~Health and Human Services Commission~~]
9 shall submit the proposed plan as part of the consolidated health
10 and human services budget recommendation required under Section
11 531.026, Government Code [13, Article 4413(502), Revised
12 Statutes].

13 (f) After legislative action on the appropriation for
14 long-term care services for persons with an intellectual disability
15 [~~mental retardation~~], the commission [~~Health and Human Services~~
16 ~~Commission~~] shall adjust the plan to ensure that the number of
17 ICF-IID [~~ICF-MR~~] beds licensed or approved as meeting license
18 requirements and the capacity of the HCS waiver program are within
19 appropriated funding amounts.

20 (g) After any necessary adjustments, the commission [~~Health~~
21 ~~and Human Services Commission~~] shall approve the final biennial
22 plan and publish the plan in the Texas Register.

23 (h) The department may submit proposed amendments to the
24 plan to the commission [~~Health and Human Services Commission~~].

25 (i) In this section, "HCS waiver program" means services
26 under the state Medicaid home and community-based services waiver
27 program for persons with an intellectual disability [~~mental~~

1 ~~retardation~~] adopted in accordance with 42 U.S.C. Section 1396n(c).

2 [Sec. 533.063. REVIEW OF ICF-MR RULES. (a) The department
3 and the Texas Department of Human Services shall meet as necessary
4 to discuss proposed changes in the rules or the interpretation of
5 the rules that govern the ICF-MR program.

6 [(b) The departments shall jointly adopt a written policy
7 interpretation letter that describes the proposed change and shall
8 make a copy of the letter available to providers.]

9 [Sec. 533.065. ICF-MR APPLICATION CONSOLIDATION LIST. (a)
10 The department shall maintain a consolidated list of applications
11 for certification for participation in the ICF-MR program.

12 [(b) The department shall list the applications in
13 descending order using the date on which the department received
14 the completed application.]

15 [(c) The department shall approve applications in the order
16 in which the applications are listed.]

17 [(d) The department shall notify the Texas Department of
18 Human Services of each application for a license or for compliance
19 with licensing standards the department approves.]

20 Sec. 533A.066 [533.066]. INFORMATION RELATING TO ICF-IID
21 [ICF-MR] PROGRAM. (a) At least annually, the department [and the
22 Texas Department of Human Services] shall [jointly] sponsor a
23 conference on the ICF-IID [ICF-MR] program to:

- 24 (1) assist providers in understanding survey rules;
- 25 (2) review deficiencies commonly found in ICF-IID
26 [ICF-MR] facilities; and
- 27 (3) inform providers of any recent changes in the

1 rules or in the interpretation of the rules relating to the ICF-IID
2 [~~ICF-MR~~] program.

3 (b) The department [~~departments~~] also may use any other
4 method to provide necessary information to providers, including
5 publications.

6 SUBCHAPTER D. POWERS AND DUTIES RELATING TO DEPARTMENT FACILITIES

7 Sec. 533A.081. DEVELOPMENT OF FACILITY BUDGETS. The
8 department, in budgeting for a facility, shall use uniform costs
9 for specific types of services a facility provides unless a
10 legitimate reason exists and is documented for the use of other
11 costs.

12 Sec. 533A.082. DETERMINATION OF SAVINGS IN FACILITIES. (a)
13 The department shall determine the degree to which the costs of
14 operating department facilities for persons with an intellectual
15 disability in compliance with applicable standards are affected as
16 populations in the facilities fluctuate.

17 (b) In making the determination, the department shall:

18 (1) assume that the current level of services and
19 necessary state of repair of the facilities will be maintained; and
20 (2) include sufficient funds to allow the department
21 to comply with the requirements of litigation and applicable
22 standards.

23 (c) The department shall allocate to community-based
24 intellectual disability programs any savings realized in operating
25 department facilities for persons with an intellectual disability.

26 Sec. 533A.083. CRITERIA FOR EXPANSION, CLOSURE, OR
27 CONSOLIDATION OF FACILITY. The department shall establish

1 objective criteria for determining when a new facility may be
2 needed and when a state supported living center may be expanded,
3 closed, or consolidated.

4 Sec. 533A.084. MANAGEMENT OF SURPLUS REAL PROPERTY. (a) To
5 the extent provided by this subtitle, the department, in
6 coordination with the executive commissioner, may lease, transfer,
7 or otherwise dispose of any surplus real property related to the
8 provision of services under this title, including any improvements
9 under its management and control, or authorize the lease, transfer,
10 or disposal of the property. Surplus property is property the
11 executive commissioner designates as having minimal value to the
12 present service delivery system and projects to have minimal value
13 to the service delivery system as described in the department's
14 long-range plan.

15 (b) The proceeds from the lease, transfer, or disposal of
16 surplus real property, including any improvements, shall be
17 deposited to the credit of the department in the Texas capital trust
18 fund established under Chapter 2201, Government Code. The proceeds
19 may be appropriated only for improvements to the department's
20 system of intellectual disability facilities.

21 (c) A lease proposal shall be advertised at least once a
22 week for four consecutive weeks in at least two newspapers. One
23 newspaper must be a newspaper published in the municipality in
24 which the property is located or the daily newspaper published
25 nearest to the property's location. The other newspaper must have
26 statewide circulation. Each lease is subject to the attorney
27 general's approval as to substance and form. The executive

1 commissioner shall adopt forms, rules, and contracts that, in the
2 executive commissioner's best judgment, will protect the state's
3 interests. The executive commissioner may reject any or all bids.

4 (d) This section does not authorize the executive
5 commissioner or department to close or consolidate a state
6 supported living center without first obtaining legislative
7 approval.

8 (e) Notwithstanding Subsection (c), the executive
9 commissioner, in coordination with the department, may enter into a
10 written agreement with the General Land Office to administer lease
11 proposals. If the General Land Office administers a lease proposal
12 under the agreement, notice that the property is offered for lease
13 must be published in accordance with Section 32.107, Natural
14 Resources Code.

15 Sec. 533A.0846 [533.0846]. INTELLECTUAL DISABILITY [MENTAL
16 RETARDATION] COMMUNITY SERVICES ACCOUNT. (a) The intellectual
17 disability [mental retardation] community services account is an
18 account in the general revenue fund that may be appropriated only
19 for the provision of intellectual disability [mental retardation]
20 services by or under contract with the department.

21 (b) The department shall deposit to the credit of the
22 intellectual disability [mental retardation] community services
23 account any money donated to the state for inclusion in the account,
24 including life insurance proceeds designated for deposit to the
25 account.

26 [(c) Interest earned on the mental retardation community
27 services account shall be credited to the account. The account is

1 exempt from the application of Section 403.095, Government Code.]

2 Sec. 533A.085. FACILITIES FOR INMATE AND PAROLEE CARE. (a)

3 With the written approval of the governor, the department may
4 contract with the Texas Department of Criminal Justice to transfer
5 facilities to the Texas Department of Criminal Justice or otherwise
6 provide facilities for:

7 (1) inmates with an intellectual disability in the
8 custody of the Texas Department of Criminal Justice; or

9 (2) persons with an intellectual disability paroled or
10 released under the supervision of the Texas Department of Criminal
11 Justice.

12 (b) An agency must report to the governor the agency's
13 reasons for proposing to enter into a contract under this section
14 and request the governor's approval.

15 Sec. 533A.087. LEASE OF REAL PROPERTY. (a) The department,
16 in coordination with the executive commissioner, may lease real
17 property related to the provision of services under this title,
18 including any improvements under the department's management and
19 control, regardless of whether the property is surplus property.
20 Except as provided by Subsection (c), the department, in
21 coordination with the executive commissioner, may award a lease of
22 real property only:

23 (1) at the prevailing market rate; and
24 (2) by competitive bid.

25 (b) The commission shall advertise a proposal for lease at
26 least once a week for four consecutive weeks in:

27 (1) a newspaper published in the municipality in which

1 the property is located or the daily newspaper published nearest to
2 the property's location; and

3 (2) a newspaper of statewide circulation.

4 (c) The department, in coordination with the executive
5 commissioner, may lease real property related to the provision of
6 services under this title or an improvement for less than the
7 prevailing market rate, without advertisement or without
8 competitive bidding, if:

9 (1) the executive commissioner determines that
10 sufficient public benefit will be derived from the lease; and

11 (2) the property is leased to:

12 (A) a federal or state agency;

13 (B) a unit of local government;

14 (C) a not-for-profit organization; or

15 (D) an entity related to the department by a
16 service contract.

17 (d) The executive commissioner shall adopt leasing rules,
18 forms, and contracts that will protect the state's interests.

19 (e) The executive commissioner may reject any bid.

20 (f) This section does not authorize the executive
21 commissioner or department to close or consolidate a facility used
22 to provide intellectual disability services without legislative
23 approval.

24 (g) Notwithstanding Subsections (a) and (b), the executive
25 commissioner, in coordination with the department, may enter into a
26 written agreement with the General Land Office to administer lease
27 proposals. If the General Land Office administers a lease proposal

1 under the agreement, notice that the property is offered for lease
2 must be published in accordance with Section 32.107, Natural
3 Resources Code.

4 SUBCHAPTER E. JAIL DIVERSION PROGRAM

5 Sec. 533A.108. PRIORITIZATION OF FUNDING FOR DIVERSION OF
6 PERSONS FROM INCARCERATION IN CERTAIN COUNTIES. (a) A local
7 intellectual and developmental disability authority may develop
8 and may prioritize its available funding for:

9 (1) a system to divert members of the priority
10 population, including those members with co-occurring substance
11 abuse disorders, before their incarceration or other contact with
12 the criminal justice system, to services appropriate to their
13 needs, including:

14 (A) screening and assessment services; and

15 (B) treatment services, including:

16 (i) short-term residential services;

17 (ii) crisis respite residential services;

18 and

19 (iii) continuity of care services;

20 (2) specialized training of local law enforcement and
21 court personnel to identify and manage offenders or suspects who
22 may be members of the priority population; and

23 (3) other model programs for offenders and suspects
24 who may be members of the priority population, including crisis
25 intervention training for law enforcement personnel.

26 (b) A local intellectual and developmental disability
27 authority developing a system, training, or a model program under

1 Subsection (a) shall collaborate with other local resources,
2 including local law enforcement and judicial systems and local
3 personnel.

4 (c) A local intellectual and developmental disability
5 authority may not implement a system, training, or a model program
6 developed under this section until the system, training, or program
7 is approved by the department.

8 SECTION 3.1336. Chapter 534, Health and Safety Code, is
9 amended to read as follows:

10 CHAPTER 534. COMMUNITY SERVICES

11 SUBCHAPTER A. COMMUNITY CENTERS

12 Sec. 534.0001. DEFINITIONS. In this subchapter:

13 (1) "Commissioner" means:

14 (A) the commissioner of state health services in
15 relation to:

16 (i) a community mental health center; or
17 (ii) the mental health services component
18 of a community mental health and intellectual disability center;
19 and

20 (B) the commissioner of aging and disability
21 services in relation to:

22 (i) a community intellectual disability
23 center; or

24 (ii) the intellectual disability services
25 component of a community mental health and intellectual disability
26 center.

27 (2) "Department" means:

1 (A) the Department of State Health Services in
2 relation to:

3 (i) a community mental health center; or
4 (ii) the mental health services component
5 of a community mental health and intellectual disability center;

6 and

7 (B) the Department of Aging and Disability
8 Services in relation to:

9 (i) a community intellectual disability
10 center; or
11 (ii) the intellectual disability services
12 component of a community mental health and intellectual disability
13 center.

14 Sec. 534.001. ESTABLISHMENT. (a) A county, municipality,
15 hospital district, or school district, or an organizational
16 combination of two or more of those local agencies, may establish
17 and operate a community center.

18 (b) In accordance with this subtitle, a community center may
19 be:

20 (1) a community mental health center that provides
21 mental health services;

22 (2) a community intellectual disability [~~mental~~
23 ~~retardation~~] center that provides intellectual disability [~~mental~~
24 ~~retardation~~] services; or

25 (3) a community mental health and intellectual
26 disability [~~mental retardation~~] center that provides mental health
27 and intellectual disability [~~mental retardation~~] services.

1 (c) A community center is:

2 (1) an agency of the state, a governmental unit, and a
3 unit of local government, as defined and specified by Chapters 101
4 and 102, Civil Practice and Remedies Code;

5 (2) a local government, as defined by Section 791.003,
6 Government Code;

7 (3) a local government for the purposes of Chapter
8 2259, Government Code; and

9 (4) a political subdivision for the purposes of
10 Chapter 172, Local Government Code.

11 (d) A community center may be established only if:

12 (1) the proposed center submits a copy of the contract
13 between the participating local agencies, if applicable, to:

14 (A) the Department of State Health Services for a
15 proposed center that will provide mental health services;

16 (B) the Department of Aging and Disability
17 Services for a proposed center that will provide intellectual
18 disability services; or

19 (C) both departments if the proposed center will
20 provide mental health and intellectual disability services
21 ~~[department a copy of the contract between the participating local~~
22 ~~agencies, if applicable];~~

23 (2) each appropriate [the] department approves the
24 proposed center's plan to develop and make available to the region's
25 residents an effective mental health or intellectual disability
26 ~~[mental retardation]~~ program, or both, through a community center
27 that is appropriately structured to include the financial,

1 physical, and personnel resources necessary to meet the region's
2 needs; and

3 (3) each [the] department from which the proposed
4 center seeks approval determines that the center can appropriately,
5 effectively, and efficiently provide those services in the region.

6 (e) Except as provided by this section, a community center
7 operating under this subchapter may operate only for the purposes
8 and perform only the functions defined in the center's plan. The
9 executive commissioner by rule shall specify the elements that must
10 be included in a plan and shall prescribe the procedure for
11 submitting, approving, and modifying a center's plan. In addition
12 to the services described in a center's plan, the center may provide
13 other health and human services and supports as provided by a
14 contract with or a grant received from a local, state, or federal
15 agency.

16 (f) Each function performed by a community center under this
17 title is a governmental function if the function is required or
18 affirmatively approved by any statute of this state or of the United
19 States or by a regulatory agency of this state or of the United
20 States duly acting under any constitutional or statutory authority
21 vesting the agency with such power. Notwithstanding any other law,
22 a community center is subject to Chapter 554, Government Code.

23 (g) An entity is, for the purpose of operating a psychiatric
24 center, a governmental unit and a unit of local government under
25 Chapter 101, Civil Practice and Remedies Code, and a local
26 government under Chapter 102, Civil Practice and Remedies Code, if
27 the entity:

- 1 (1) is not operated to make a profit;
- 2 (2) is created through an intergovernmental agreement
- 3 between a community mental health center and any other governmental
- 4 unit; and
- 5 (3) contracts with the community mental health center
- 6 and any other governmental unit that created it to operate a
- 7 psychiatric center.

8 Sec. 534.0015. PURPOSE AND POLICY. (a) A community center

9 created under this subchapter is intended to be a vital component in

10 a continuum of services for persons in this state with mental

11 illness or an intellectual disability [~~who are mentally ill or~~

12 ~~mentally retarded~~].

13 (b) It is the policy of this state that community centers

14 strive to develop services for persons with mental illness or an

15 intellectual disability [~~who are mentally ill or mentally~~

16 ~~retarded~~], and may provide requested services to persons with

17 developmental disabilities or with chemical dependencies, that are

18 effective alternatives to treatment in a large residential

19 facility.

20 Sec. 534.002. BOARD OF TRUSTEES FOR CENTER ESTABLISHED BY

21 ONE LOCAL AGENCY. The board of trustees of a community center

22 established by one local agency is composed of:

- 23 (1) the members of the local agency's governing body;
- 24 or
- 25 (2) not fewer than five or more than nine qualified
- 26 voters who reside in the region to be served by the center and who
- 27 are appointed by the local agency's governing body.

1 Sec. 534.003. BOARD OF TRUSTEES FOR CENTER ESTABLISHED BY
2 AT LEAST TWO LOCAL AGENCIES. (a) The board of trustees of a
3 community center established by an organizational combination of
4 local agencies is composed of not fewer than five or more than 13
5 members.

6 (b) The governing bodies of the local agencies shall appoint
7 the board members either from among the membership of the governing
8 bodies or from among the qualified voters who reside in the region
9 to be served by the center.

10 (c) When the center is established, the governing bodies
11 shall enter into a contract that stipulates the number of board
12 members and the group from which the members are chosen. They may
13 renegotiate or amend the contract as necessary to change the:

14 (1) method of choosing the members; or
15 (2) membership of the board of trustees to more
16 accurately reflect the ethnic and geographic diversity of the local
17 service area.

18 Sec. 534.004. PROCEDURES RELATING TO BOARD OF TRUSTEES
19 MEMBERSHIP. (a) The local agency or organizational combination of
20 local agencies that establishes a community center shall prescribe:

21 (1) the application procedure for a position on the
22 board of trustees;

23 (2) the procedure and criteria for making appointments
24 to the board of trustees;

25 (3) the procedure for posting notice of and filling a
26 vacancy on the board of trustees; and

27 (4) the grounds and procedure for removing a member of

1 the board of trustees.

2 (b) The local agency or organizational combination of local
3 agencies that appoints the board of trustees shall, in appointing
4 the members, attempt to reflect the ethnic and geographic diversity
5 of the local service area the community center serves. The local
6 agency or organizational combination shall include on the board of
7 trustees one or more persons otherwise qualified under this chapter
8 who are consumers of the types of services the center provides or
9 who are family members of consumers of the types of services the
10 center provides.

11 Sec. 534.005. TERMS; VACANCIES. (a) Appointed members of
12 the board of trustees who are not members of a local agency's
13 governing body serve staggered two-year terms. In appointing the
14 initial members, the appointing authority shall designate not less
15 than one-third or more than one-half of the members to serve
16 one-year terms and shall designate the remaining members to serve
17 two-year terms.

18 (b) A vacancy on a board of trustees composed of qualified
19 voters is filled by appointment for the remainder of the unexpired
20 term.

21 Sec. 534.006. TRAINING. (a) The executive commissioner
22 [board] by rule shall establish:

23 (1) an annual training program for members of a board
24 of trustees administered by the professional staff of that
25 community center, including the center's legal counsel; and

26 (2) an advisory committee to develop training
27 guidelines that includes representatives of advocates for persons

1 with mental illness or an intellectual disability [mental
2 ~~retardation~~] and representatives of boards of trustees.

3 (b) Before a member of a board of trustees may assume
4 office, the member shall attend at least one training session
5 administered by that center's professional staff to receive
6 information relating to:

7 (1) the enabling legislation that created the
8 community center;

9 (2) the programs the community center operates;

10 (3) the community center's budget for that program
11 year;

12 (4) the results of the most recent formal audit of the
13 community center;

14 (5) the requirements of Chapter 551, Government Code,
15 and Chapter 552, Government Code;

16 (6) the requirements of conflict of interest laws and
17 other laws relating to public officials; and

18 (7) any ethics policies adopted by the community
19 center.

20 Sec. 534.0065. QUALIFICATIONS; CONFLICT OF INTEREST;
21 REMOVAL. (a) As a local public official, a member of the board of
22 trustees of a community center shall uphold the member's position
23 of public trust by meeting and maintaining the applicable
24 qualifications for membership and by complying with the applicable
25 requirements relating to conflicts of interest.

26 (b) A person is not eligible for appointment as a member of a
27 board of trustees if the person or the person's spouse:

1 (1) owns or controls, directly or indirectly, more
2 than a 10 percent interest in a business entity or other
3 organization receiving funds from the community center by contract
4 or other method; or

5 (2) uses or receives a substantial amount of tangible
6 goods or funds from the community center, other than:

7 (A) compensation or reimbursement authorized by
8 law for board of trustees membership, attendance, or expenses; or
9 (B) as a consumer or as a family member of a
10 client or patient receiving services from the community center.

11 (c) The primary residence of a member of the board of
12 trustees must be in the local service area the member represents.

13 (d) A member of the board of trustees is subject to Chapter
14 171, Local Government Code.

15 (e) A member of the board of trustees may not:

16 (1) refer for services a client or patient to a
17 business entity owned or controlled by a member of the board of
18 trustees, unless the business entity is the only business entity
19 that provides the needed services within the jurisdiction of the
20 community center;

21 (2) use a community center facility in the conduct of a
22 business entity owned or controlled by that member;

23 (3) solicit, accept, or agree to accept from another
24 person or business entity a benefit in return for the member's
25 decision, opinion, recommendation, vote, or other exercise of
26 discretion as a local public official or for a violation of a duty
27 imposed by law;

1 (4) receive any benefit for the referral of a client or
2 a patient to the community center or to another business entity;

3 (5) appoint, vote for, or confirm the appointment of a
4 person to a paid office or position with the community center if the
5 person is related to a member of the board of trustees by affinity
6 within the second degree or by consanguinity within the third
7 degree; or

8 (6) solicit or receive a political contribution from a
9 supplier to or contractor with the community center.

10 (f) Not later than the date on which a member of the board of
11 trustees takes office by appointment or reappointment and not later
12 than the anniversary of that date, each member shall annually
13 execute and file with the community center an affidavit
14 acknowledging that the member has read the requirements for
15 qualification, conflict of interest, and removal prescribed by this
16 chapter.

17 (g) In addition to any grounds for removal adopted under
18 Section 534.004(a), it is a ground for removal of a member of a
19 board of trustees if the member:

20 (1) violates Chapter 171, Local Government Code;

21 (2) is not eligible for appointment to the board of
22 trustees at the time of appointment as provided by Subsections (b)
23 and (c);

24 (3) does not maintain during service on the board of
25 trustees the qualifications required by Subsections (b) and (c);

26 (4) violates a provision of Subsection (e);

27 (5) violates a provision of Section 534.0115; or

1 (6) does not execute the affidavit required by
2 Subsection (f).

3 (h) If a board of trustees is composed of members of the
4 governing body of a local agency or organizational combination of
5 local agencies, this section applies only to the qualifications for
6 and removal from membership on the board of trustees.

7 Sec. 534.007. PROHIBITED ACTIVITIES BY FORMER OFFICERS OR
8 EMPLOYEES; OFFENSE. (a) A former officer or employee of a
9 community center who ceases service or employment with the center
10 may not represent any person or receive compensation for services
11 rendered on behalf of any person regarding a particular matter in
12 which the former officer or employee participated during the period
13 of employment, either through personal involvement or because the
14 case or proceeding was a matter within the officer's or employee's
15 official responsibility.

16 (b) This section does not apply to:

17 (1) a former employee who is compensated on the last
18 date of service or employment below the amount prescribed by the
19 General Appropriations Act for salary group 17, Schedule A, or
20 salary group 9, Schedule B, of the position classification salary
21 schedule; or

22 (2) a former officer or employee who is employed by a
23 state agency or another community center.

24 (c) Subsection (a) does not apply to a proceeding related to
25 policy development that was concluded before the officer's or
26 employee's service or employment ceased.

27 (d) A former officer or employee of a community center

1 commits an offense if the former officer or employee violates this
2 section. An offense under this section is a Class A misdemeanor.

3 (e) In this section:

4 (1) "Participated" means to have taken action as an
5 officer or employee through decision, approval, disapproval,
6 recommendation, giving advice, investigation, or similar action.

7 (2) "Particular matter" means a specific
8 investigation, application, request for a ruling or determination,
9 proceeding related to the development of policy, contract, claim,
10 charge, accusation, arrest, or judicial or other proceeding.

11 Sec. 534.008. ADMINISTRATION BY BOARD. (a) The board of
12 trustees is responsible for the effective administration of the
13 community center.

14 (b) The board of trustees shall make policies that are
15 consistent with the applicable [department's] rules and standards
16 of each appropriate department.

17 Sec. 534.009. MEETINGS. (a) The board of trustees shall
18 adopt rules for the holding of regular and special meetings.

19 (b) Board meetings are open to the public to the extent
20 required by and in accordance with Chapter 551, Government Code.

21 (c) The board of trustees shall keep a record of its
22 proceedings in accordance with Chapter 551, Government Code. The
23 record is open for public inspection in accordance with that law.

24 (d) The board of trustees shall send to each appropriate
25 [the] department and each local agency that appoints the members a
26 copy of the approved minutes of board of trustees meetings by:

27 (1) mailing a copy appropriately addressed and with

1 the necessary postage paid using the United States Postal Service
2 [~~postal service~~]; or

3 (2) another method agreed to by the board of trustees
4 and the local agency.

5 Sec. 534.010. EXECUTIVE DIRECTOR. (a) The board of
6 trustees shall appoint an executive director for the community
7 center.

8 (b) The board of trustees shall:

9 (1) adopt a written policy governing the powers that
10 may be delegated to the executive director; and

11 (2) annually report to each local agency that appoints
12 the members the executive director's total compensation and
13 benefits.

14 Sec. 534.011. PERSONNEL. (a) The executive director, in
15 accordance with the policies of the board of trustees, shall employ
16 and train personnel to administer the community center's programs
17 and services. The community center may recruit those personnel and
18 contract for recruiting and training purposes.

19 (b) The board of trustees shall provide employees of the
20 community center with appropriate rights, privileges, and
21 benefits.

22 (c) The board of trustees may provide workers' compensation
23 benefits.

24 [(d) ~~The board of trustees shall prescribe the number of~~
25 ~~employees and their salaries. The board of trustees may choose to~~
26 ~~set salaries and benefits in compliance with a market analysis or~~
27 ~~internal salary study. If an internal salary study is used, the~~

1 ~~board of trustees shall conduct the study in accordance with the~~
2 ~~guidelines established by the commissioner.~~

3 [(e) ~~Instead of using a market analysis or internal salary~~
4 ~~study to establish salaries and benefits, the board of trustees may~~
5 ~~use the state position classification plan and the General~~
6 ~~Appropriations Act to determine the appropriate classification and~~
7 ~~relative compensation of officers and employees. The board of~~
8 ~~trustees may pay salaries in amounts less than those provided by the~~
9 ~~General Appropriations Act. For a position not on the~~
10 ~~classification plan, the board of trustees shall set the~~
11 ~~compensation according to guidelines adopted by the commissioner.~~

12 ~~The board of trustees may petition the department for approval to~~
13 ~~exclude a position from the position classification plan and to~~
14 ~~provide a stated salary for that position that exceeds the amount~~
15 ~~prescribed by the General Appropriations Act for the classified~~
16 ~~position.~~

17 [(f) ~~During a management audit of a community center, the~~
18 ~~department is entitled to confirm the method the center used to~~
19 ~~determine salaries and benefits.]~~

20 Sec. 534.0115. NEPOTISM. (a) The board of trustees or
21 executive director may not hire as a paid officer or employee of the
22 community center a person who is related to a member of the board of
23 trustees by affinity within the second degree or by consanguinity
24 within the third degree.

25 (b) An officer or employee who is related to a member of the
26 board of trustees in a prohibited manner may continue to be employed
27 if the person began the employment not later than the 31st day

1 before the date on which the member was appointed.

2 (c) The officer or employee or the member of the board of
3 trustees shall resign if the officer or employee began the
4 employment later than the 31st day before the date on which the
5 member was appointed.

6 (d) If an officer or employee is permitted to remain in
7 employment under Subsection (b), the related member of the board of
8 trustees may not participate in the deliberation of or voting on an
9 issue that is specifically applicable to the officer or employee
10 unless the issue affects an entire class or category of employees.

11 Sec. 534.012. ADVISORY COMMITTEES. (a) The board of
12 trustees may appoint committees, including medical committees, to
13 advise the board of trustees on matters relating to mental health
14 and intellectual disability [~~mental retardation~~] services.

15 (b) Each committee must be composed of at least three
16 members.

17 (c) The appointment of a committee does not relieve the
18 board of trustees of the final responsibility and accountability as
19 provided by this subtitle.

20 Sec. 534.013. COOPERATION OF DEPARTMENTS [~~DEPARTMENT~~].
21 Each appropriate [~~The~~] department shall provide assistance,
22 advice, and consultation to local agencies, boards of trustees, and
23 executive directors in the planning, development, and operation of
24 a community center.

25 Sec. 534.014. BUDGET; REQUEST FOR FUNDS. (a) Each
26 community center shall annually provide to each local agency that
27 appoints members to the board of trustees a copy of the center's:

- 1 (1) approved fiscal year operating budget;
- 2 (2) most recent annual financial audit; and
- 3 (3) staff salaries by position.

4 (b) The board of trustees shall annually submit to each
5 local agency that appoints the members a request for funds or
6 in-kind assistance to support the center.

7 Sec. 534.015. PROVISION OF SERVICES. (a) The board of
8 trustees may adopt rules to regulate the administration of mental
9 health or intellectual disability [~~mental retardation~~] services by
10 a community center. The rules must be consistent with the purposes,
11 policies, principles, and standards prescribed by this subtitle.

12 (b) The board of trustees may contract with a local agency
13 or a qualified person or organization to provide a portion of the
14 mental health or intellectual disability [~~mental retardation~~]
15 services.

16 (c) With the approval of each appropriate commissioner
17 [~~commissioner's approval~~], the board of trustees may contract with
18 the governing body of another county or municipality to provide
19 mental health and intellectual disability [~~mental retardation~~]
20 services to residents of that county or municipality.

21 (d) A community center may provide services to a person who
22 voluntarily seeks assistance or who has been committed to that
23 center.

24 Sec. 534.0155. FOR WHOM SERVICES MAY BE PROVIDED. (a) This
25 subtitle does not prevent a community center from providing
26 services to:

- 27 (1) a person with a chemical dependency;

1 (2) [redacted] a person with a developmental
2 disability; [redacted] or

3 (3) [redacted] a person younger than four years of age who is
4 eligible for early childhood intervention services [~~with a mental~~
5 ~~disability, as defined by Section 535.001~~].

6 (b) A community center may provide those services by
7 contracting with a public or private agency in addition to the
8 appropriate department.

9 Sec. 534.016. SCREENING AND CONTINUING CARE SERVICES. (a)
10 A community center shall provide screening services for:

11 (1) a person who requests voluntary admission to a
12 Department of State Health Services [~~department~~] facility for
13 persons with mental illness; and

14 (2) [and for] a person for whom proceedings for
15 involuntary commitment to a Department of State Health Services or
16 Department of Aging and Disability Services [~~department~~] facility
17 for persons with mental illness or an intellectual disability have
18 been initiated.

19 (b) A community center shall provide continuing mental
20 health and physical care services for a person referred to the
21 center by a Department of State Health Services [~~department~~]
22 facility and for whom the facility superintendent has recommended a
23 continuing care plan.

24 (c) Services provided under this section must be consistent
25 with the applicable [~~department's~~] rules and standards of each
26 appropriate department.

27 (d) The appropriate commissioner may designate a facility

1 other than the community center to provide the screening or
2 continuing care services if:

3 (1) local conditions indicate that the other facility
4 can provide the services more economically and effectively; or

5 (2) the commissioner determines that local conditions
6 may impose an undue burden on the community center.

7 Sec. 534.017. FEES FOR SERVICES. (a) A community center
8 shall charge reasonable fees for services the center provides,
9 unless prohibited by other service contracts or law.

10 (b) The community center may not deny services to a person
11 because of inability to pay for the services.

12 (c) The community center has the same rights, privileges,
13 and powers for collecting fees for treating patients or [and]
14 clients that each appropriate [the] department has by law.

15 (d) The county or district attorney of the county in which
16 the community center is located shall represent the center in
17 collecting fees when the center's executive director requests the
18 assistance.

19 Sec. 534.0175. TRUST EXEMPTION. (a) If a patient or client
20 is the beneficiary of a trust that has an aggregate principal of
21 \$250,000 or less, the corpus or income of the trust is not
22 considered to be the property of the patient or client or the
23 patient's or client's estate and is not liable for the patient's or
24 client's support. If the aggregate principal of the trust exceeds
25 \$250,000, only the portion of the corpus of the trust that exceeds
26 that amount and the income attributable to that portion are
27 considered to be the property of the patient or client or the

1 patient's or client's estate and are liable for the patient's or
2 client's support.

3 (b) To qualify for the exemption provided by Subsection (a),
4 the trust and the trustee must comply with the requirements
5 prescribed by Sections 552.018 and 593.081.

6 Sec. 534.018. GIFTS AND GRANTS. A community center may
7 accept gifts and grants of money, personal property, and real
8 property to use in providing the center's programs and services.

9 Sec. 534.019. CONTRIBUTION BY LOCAL AGENCY. A
10 participating local agency may contribute land, buildings,
11 facilities, other real and personal property, personnel, and funds
12 to administer the community center's programs and services.

13 Sec. 534.020. ACQUISITION AND CONSTRUCTION OF PROPERTY AND
14 FACILITIES BY COMMUNITY CENTER. (a) A community center may
15 purchase or lease-purchase real and personal property and may
16 construct buildings and facilities.

17 (b) The board of trustees shall require that an appraiser
18 certified by the Texas Appraiser Licensing and Certification Board
19 conduct an independent appraisal of real estate the community
20 center intends to purchase. The board of trustees may waive this
21 requirement if the purchase price is less than the value listed for
22 the property by the local appraisal district and the property has
23 been appraised by the local appraisal district within the preceding
24 two years. A community center may not purchase or lease-purchase
25 property for an amount that is greater than the property's
26 appraised value unless:

27 (1) the purchase or lease-purchase of that property at

1 that price is necessary;

2 (2) the board of trustees documents in the official
3 minutes the reasons why the purchase or lease-purchase is necessary
4 at that price; and

5 (3) a majority of the board approves the transaction.

6 (c) The board of trustees shall establish in accordance with
7 relevant [department] rules of each appropriate department
8 competitive bidding procedures and practices for capital purchases
9 and for purchases involving department funds or required local
10 matching funds.

11 Sec. 534.021. APPROVAL AND NOTIFICATION REQUIREMENTS. (a)
12 A community center must receive from each appropriate [~~the~~]
13 department prior written approval to acquire real property,
14 including a building, if the acquisition involves the use of
15 [~~department~~] funds of that department or local funds required to
16 match funds of that department [~~funds~~]. In addition, for
17 acquisition of nonresidential property, the community center must
18 notify each local agency that appoints members to the board of
19 trustees not later than the 31st day before it enters into a binding
20 obligation to acquire the property.

21 (b) A community center must notify each appropriate [~~the~~]
22 department and each local agency that appoints members to the board
23 of trustees not later than the 31st day before it enters into a
24 binding obligation to acquire real property, including a building,
25 if the acquisition does not involve the use of [~~department~~] funds of
26 that department or local funds required to match funds of that
27 department [~~funds~~]. Each appropriate [~~the~~] commissioner, on

1 request, may waive the 30-day requirement on a case-by-case basis.

2 (c) The executive commissioner [board] shall adopt rules
3 relating to the approval and notification process.

4 Sec. 534.022. FINANCING OF PROPERTY AND IMPROVEMENTS. (a)
5 To acquire or to refinance the acquisition of real and personal
6 property, to construct improvements to property, or to finance all
7 or part of a payment owed or to be owed on a credit agreement, a
8 community center may contract in accordance with Subchapter A,
9 Chapter 271, Local Government Code, or issue, execute, refinance,
10 or refund bonds, notes, obligations, or contracts. The community
11 center may secure the payment of the bonds, notes, obligations, or
12 contracts with a security interest in or pledge of its revenues or
13 by granting a mortgage on any of its properties.

14 (a-1) For purposes of Subsection (a), "revenues" includes
15 the following, as those terms are defined by Section 9.102,
16 Business & Commerce Code:

- 17 (1) an account;
18 (2) a chattel paper;
19 (3) a commercial tort claim;
20 (4) a deposit account;
21 (5) a document;
22 (6) a general intangible;
23 (7) a health care insurance receivable;
24 (8) an instrument;
25 (9) investment property;
26 (10) a letter-of-credit right; and
27 (11) proceeds.

1 (b) Except as provided by Subsection (f), the community
2 center shall issue the bonds, notes, or obligations in accordance
3 with Chapters 1201 and 1371, Government Code. The attorney general
4 must approve before issuance:

5 (1) notes issued in the form of public securities, as
6 that term is defined by Section [1201.002](#), Government Code;

7 (2) obligations, as that term is defined by Section
8 [1371.001](#), Government Code; and

9 (3) bonds.

10 (c) A limitation prescribed in Subchapter A, Chapter 271,
11 Local Government Code, relating to real property and the
12 construction of improvements to real property, does not apply to a
13 community center.

14 (e) A county or municipality acting alone or two or more
15 counties or municipalities acting jointly pursuant to interlocal
16 contract may create a public facility corporation to act on behalf
17 of one or more community centers pursuant to Chapter 303, Local
18 Government Code. Such counties or municipalities may exercise the
19 powers of a sponsor under that chapter, and any such corporation may
20 exercise the powers of a corporation under that chapter (including
21 but not limited to the power to issue bonds). The corporation may
22 exercise its powers on behalf of community centers in such manner as
23 may be prescribed by the articles and bylaws of the corporation,
24 provided that in no event shall one community center ever be liable
25 to pay the debts or obligation or be liable for the acts, actions,
26 or undertakings of another community center.

27 (f) The board of trustees of a community center may

1 authorize the issuance of an anticipation note in the same manner,
2 using the same procedure, and with the same rights under which an
3 eligible school district may authorize issuance under Chapter 1431,
4 Government Code, except that anticipation notes issued for the
5 purposes described by Section [1431.004\(a\)\(2\)](#), Government Code, may
6 not, in the fiscal year in which the attorney general approves the
7 notes for a community center, exceed 50 percent of the revenue
8 anticipated to be collected in that year.

9 Sec. 534.023. SALE OF REAL PROPERTY ACQUIRED SOLELY THROUGH
10 PRIVATE GIFT OR GRANT. (a) Except as provided by Subsection (d), a
11 community center may sell center real property, including a
12 building, without the approval of each appropriate [the] department
13 or any local agency that appoints members to the board of trustees,
14 only if the real property was acquired solely through a gift or
15 grant of money or real property from a private entity, including an
16 individual.

17 (b) A community center that acquires real property by gift
18 or grant shall, on the date the center acquires the gift or grant,
19 notify the private entity providing the gift or grant that:

20 (1) the center may subsequently sell the real
21 property; and

22 (2) the sale is subject to the provisions of this
23 section.

24 (c) Except as provided by Subsection (d), real property sold
25 under Subsection (a) must be sold for the property's fair market
26 value.

27 (d) Real property sold under Subsection (a) may be sold for

1 less than fair market value only if the board of trustees adopts a
2 resolution stating:

3 (1) the public purpose that will be achieved by the
4 sale; and

5 (2) the conditions and circumstances for the sale,
6 including conditions to accomplish and maintain the public purpose.

7 (e) A community center must notify each appropriate [~~the~~]
8 department and each local agency that appoints members to the board
9 of trustees not later than the 31st day before the date the center
10 enters into a binding obligation to sell real property under this
11 section. Each appropriate [~~The~~] commissioner, on request, may
12 waive the 30-day notice requirement on a case-by-case basis.

13 (f) The executive ~~commissioner~~ shall adopt rules
14 relating to the notification process.

15 (g) A community center may use proceeds received from a sale
16 of real property under this section only for a purpose authorized by
17 this subchapter or for a public purpose authorized for a community
18 center by state or federal law.

19 Sec. 534.031. SURPLUS PERSONAL PROPERTY. The executive
20 commissioner, in coordination with the appropriate department, may
21 transfer, with or without reimbursement, ownership and possession
22 of surplus personal property under that [~~the~~] department's control
23 or jurisdiction to a community center for use in providing mental
24 health or intellectual disability [~~mental retardation~~] services,
25 as appropriate.

26 Sec. 534.032. RESEARCH. A community center may engage in
27 research and may contract for that purpose.

1 Sec. 534.033. LIMITATION ON DEPARTMENT CONTROL AND REVIEW.

2 (a) It is the intent of the legislature that each [~~the~~] department
3 limit its control over, and routine reviews of, community center
4 programs to those programs that:

5 (1) use [~~department~~] funds from that department or use
6 required local funds that are matched with [~~department~~] funds from
7 that department;

8 (2) provide core or required services;

9 (3) provide services to former clients or patients of
10 a [~~department~~] facility of that department; or

11 (4) are affected by litigation in which that [~~the~~]
12 department is a defendant.

13 (b) Each appropriate [~~The~~] department may review any
14 community center program if the department has reason to suspect
15 that a violation of a department rule has occurred or if the
16 department receives an allegation of patient or client abuse.

17 (c) Each appropriate [~~The~~] department may determine whether
18 a particular program uses [~~department~~] funds from that department
19 or uses required local matching funds.

20 Sec. 534.035. REVIEW, AUDIT, AND APPEAL PROCEDURES. (a)

21 The executive commissioner [~~department~~] by rule shall establish
22 review, audit, and appeal procedures for community centers. The
23 procedures must ensure that reviews and audits are conducted in
24 sufficient quantity and type to provide reasonable assurance that a
25 community center has adequate and appropriate fiscal controls.

26 (b) In a community center plan approved under Section
27 534.001, the center must agree to comply with the review and audit

1 procedures established under this section.

2 (c) If, by a date prescribed by each appropriate [~~the~~]
3 commissioner, the community center fails to respond to a deficiency
4 identified in a review or audit to the satisfaction of that [~~the~~]
5 commissioner, that [~~the~~] department may sanction the center in
6 accordance with department [~~board~~] rules.

7 Sec. 534.036. FINANCIAL AUDIT. (a) The executive
8 commissioner [~~department~~] shall prescribe procedures for financial
9 audits of community centers. The executive commissioner
10 [~~department~~] shall develop the procedures with the assistance of
11 the state agencies and departments that contract with community
12 centers. The executive commissioner [~~department~~] shall coordinate
13 with each of those state agencies and departments to incorporate
14 each agency's financial and compliance requirements for a community
15 center into a single audit that meets the requirements of Section
16 534.068 or 534.121, as appropriate. Before prescribing or amending
17 the procedures, the executive commissioner [~~department~~] shall set a
18 deadline for those state agencies and departments to submit to the
19 executive commissioner [~~department~~] proposals relating to the
20 financial audit procedures. The procedures must be consistent with
21 any requirements connected with federal funding received by the
22 community center. [~~The department may not implement the procedures~~
23 ~~without the approval of the Health and Human Services Commission.~~]

24 (b) Each state agency or department that contracts with a
25 community center shall comply with the procedures developed under
26 this section.

27 (c) The executive commissioner [~~department~~] shall develop

1 protocols for a state agency or department to conduct additional
2 financial audit activities of a community center. [A state agency
3 or department may not conduct additional financial audit activities
4 of a community center without the approval of the Health and Human
5 Services Commission.]

6 Sec. 534.037. PROGRAM AUDIT. (a) The executive
7 commissioner [department] shall coordinate with each state agency
8 or department that contracts with a community center to prescribe
9 procedures based on risk assessment for coordinated program audits
10 of the activities of a community center. [The department may not
11 implement the procedures without the approval of the Health and
12 Human Services Commission.] The procedures must be consistent with
13 any requirements connected with federal funding received by the
14 community center.

15 (b) A program audit of a community center must be performed
16 in accordance with procedures developed under this section.

17 (c) This section does not prohibit a state agency or
18 department or an entity providing funding to a community center
19 from investigating a complaint against or performing additional
20 contract monitoring of a community center.

21 (d) A program audit under this section must evaluate:
22 (1) the extent to which the community center is
23 achieving the desired results or benefits established by the
24 legislature or by a state agency or department;
25 (2) the effectiveness of the community center's
26 organizations, programs, activities, or functions; and
27 (3) whether the community center is in compliance with

1 applicable laws.

2 Sec. 534.038. APPOINTMENT OF MANAGER OR MANAGEMENT TEAM.

3 (a) Each appropriate [The] commissioner may appoint a manager or
4 management team to manage and operate a community center if the
5 commissioner finds that the center or an officer or employee of the
6 center:

7 (1) intentionally, recklessly, or negligently failed
8 to discharge the center's duties under a contract with that [the]
9 department;

10 (2) misused state or federal money;

11 (3) engaged in a fraudulent act, transaction,
12 practice, or course of business;

13 (4) endangers or may endanger the life, health, or
14 safety of a person served by the center;

15 (5) failed to keep fiscal records or maintain proper
16 control over center assets as prescribed by Chapter 783, Government
17 Code;

18 (6) failed to respond to a deficiency in a review or
19 audit;

20 (7) substantially failed to operate within the
21 functions and purposes defined in the center's plan; or

22 (8) otherwise substantially failed to comply with this
23 subchapter or rules of that department [rules].

24 (b) Each appropriate [The] department shall give written
25 notification to the center and local agency or combination of
26 agencies responsible for making appointments to the local board of
27 trustees regarding:

1 (1) the appointment of the manager or management team;
2 and

3 (2) the circumstances on which the appointment is
4 based.

5 (c) Each appropriate [~~the~~] commissioner may require the
6 center to pay costs incurred by the manager or management team.

7 (d) The center may appeal a [~~the~~] commissioner's decision to
8 appoint a manager or management team as prescribed by rules of that
9 department [~~board rule~~]. The filing of a notice of appeal stays the
10 appointment unless the commissioner based the appointment on a
11 finding under Subsection (a)(2) or (4).

12 Sec. 534.039. POWERS AND DUTIES OF MANAGEMENT TEAM. (a) As
13 each appropriate [~~the~~] commissioner determines for each
14 appointment, a manager or management team appointed under Section
15 534.038 may:

16 (1) evaluate, redesign, modify, administer,
17 supervise, or monitor a procedure, operation, or the management of
18 a community center;

19 (2) hire, supervise, discipline, reassign, or
20 terminate the employment of a center employee;

21 (3) reallocate a resource and manage an asset of the
22 center;

23 (4) provide technical assistance to an officer or
24 employee of the center;

25 (5) require or provide staff development;

26 (6) require that a financial transaction,
27 expenditure, or contract for goods and services must be approved by

1 the manager or management team;

2 (7) redesign, modify, or terminate a center program or
3 service;

4 (8) direct the executive director, local board of
5 trustees, chief financial officer, or a fiscal or program officer
6 of the center to take an action;

7 (9) exercise a power or duty of an officer or employee
8 of the center; or

9 (10) make a recommendation to the local agency or
10 combination of agencies responsible for appointments to the local
11 board of trustees regarding the removal of a center trustee.

12 (b) The manager or management team shall supervise the
13 exercise of a power or duty by the local board of trustees.

14 (c) The manager or management team shall report monthly to
15 each appropriate [~~the~~] commissioner and local board of trustees on
16 actions taken.

17 (d) A manager or management team appointed under this
18 section may not use an asset or money contributed by a county,
19 municipality, or other local funding entity without the approval of
20 the county, municipality, or entity.

21 Sec. 534.040. RESTORING MANAGEMENT TO CENTER. (a) Each
22 month, each appropriate [~~the~~] commissioner shall evaluate the
23 performance of a community center managed by a manager or team
24 appointed under Section 534.038 to determine the feasibility of
25 restoring the center's management and operation to a local board of
26 trustees.

27 (b) The authority of the manager or management team

1 continues until each appropriate [~~the~~] commissioner determines
2 that the relevant factors listed under Section 534.038(a) no longer
3 apply.

4 (c) Following a determination under Subsection (b), each
5 appropriate [~~the~~] commissioner shall terminate the authority of the
6 manager or management team and restore authority to manage and
7 operate the center to the center's authorized officers and
8 employees.

9 SUBCHAPTER B. COMMUNITY-BASED MENTAL HEALTH SERVICES

10 Sec. 534.051. DEFINITIONS. In this subchapter:

11 (1) "Commissioner" means the commissioner of state
12 health services.

13 (2) "Department" means the Department of State Health
14 Services.

15 Sec. 534.052. RULES AND STANDARDS. (a) The executive
16 commissioner [~~board~~] shall adopt rules, including standards, the
17 executive commissioner [~~board~~] considers necessary and appropriate
18 to ensure the adequate provision of community-based mental health
19 [~~and mental retardation~~] services through a local mental health [~~or~~
20 ~~mental retardation~~] authority under this subchapter.

21 (b) The department shall send a copy of the rules to each
22 local mental health [~~or mental retardation~~] authority or other
23 provider receiving contract funds as a local mental health [~~or~~
24 ~~mental retardation~~] authority or designated provider.

25 Sec. 534.053. REQUIRED COMMUNITY-BASED MENTAL HEALTH
26 SERVICES. (a) The department shall ensure that, at a minimum, the
27 following services are available in each service area:

1 (1) 24-hour emergency screening and rapid crisis
2 stabilization services;

3 (2) community-based crisis residential services or
4 hospitalization;

5 (3) community-based assessments, including the
6 development of interdisciplinary treatment plans and diagnosis and
7 evaluation services;

8 (4) ~~family support services, including respite care,~~
9 ~~(5) case management services,~~

10 ~~(6)~~ medication-related services, including
11 medication clinics, laboratory monitoring, medication education,
12 mental health maintenance education, and the provision of
13 medication; and

14 (5) (7) psychosocial rehabilitation programs,
15 including social support activities, independent living skills,
16 and vocational training.

17 (b) The department shall arrange for appropriate
18 community-based services~~, including the assignment of a case~~
19 ~~manager,~~ to be available in each service area for each person
20 discharged from a department facility who is in need of care.

21 (c) To the extent that resources are available, the
22 department shall:

23 (1) ensure that the services listed in this section
24 are available for children, including adolescents, as well as
25 adults, in each service area;

26 (2) emphasize early intervention services for
27 children, including adolescents, who meet the department's

1 definition of being at high risk of developing severe emotional
2 disturbances or severe mental illnesses; and

3 (3) ensure that services listed in this section are
4 available for defendants required to submit to mental health
5 treatment under Article 17.032 or Section 5(a) or 11(d), Article
6 42.12, Code of Criminal Procedure.

7 Sec. 534.0535. JOINT DISCHARGE PLANNING. (a) The
8 executive commissioner [board] shall adopt, and the department
9 shall enforce, rules that require continuity of services and
10 planning for patient [~~or client~~] care between department facilities
11 and local mental health [~~or mental retardation~~] authorities.

12 (b) At a minimum, the rules must require joint discharge
13 planning between a department facility and a local mental health
14 [~~or mental retardation~~] authority before a facility discharges a
15 patient [~~or client~~] or places the patient [~~or client~~] on an extended
16 furlough with an intent to discharge.

17 (c) The local mental health [~~or mental retardation~~]
18 authority shall plan with the department facility and determine the
19 appropriate community services for the patient [~~or client~~].

20 (d) The local mental health [~~or mental retardation~~]
21 authority shall arrange for the provision of the services if
22 department funds are to be used and may subcontract with or make a
23 referral to a local agency or entity.

24 Sec. 534.054. DESIGNATION OF PROVIDER. (a) The department
25 shall identify and contract with a local mental health [~~or mental~~
26 ~~retardation~~] authority for each service area to ensure that
27 services are provided to patient [~~and client~~] populations

1 determined by the department. A local mental health [or mental
2 retardation] authority shall ensure that services to address the
3 needs of priority populations are provided as required by the
4 department and shall comply with the rules and standards adopted
5 under Section 534.052.

6 (c) The department may contract with a local agency or a
7 private provider or organization to act as a designated provider of
8 a service if the department:

9 (1) cannot negotiate a contract with a local mental
10 health [or mental retardation] authority to ensure that a specific
11 required service for priority populations is available in that
12 service area; or

13 (2) determines that a local mental health [or mental
14 retardation] authority does not have the capacity to ensure the
15 availability of that service.

16 Sec. 534.055. CONTRACTS FOR CERTAIN COMMUNITY SERVICES.

17 (a) [A mental health or mental retardation authority and a private
18 provider shall use a contract designed by the department as a model
19 contract for the provision of services at the community level for
20 persons with mental retardation or mental illness, including
21 residential services, if the contract involves the use of state
22 funds or funds for which the state has oversight responsibility.]

23 [(b) The department shall design one or more model contracts
24 and shall retain copies of each model contract in the central office
25 of the department.]

26 [(c) A model contract must:]

27 [(1) require that the services provided by the private

1 provider be based on the patient's or client's individual treatment
2 plan;

3 [(2) provide that a community-based residential
4 facility that is a family home as defined in Chapter 123, Human
5 Resources Code may house only a person with a disability as defined
6 in Section 123.002, Human Resources Code;

7 [(3) prohibit the use of the facility for purposes
8 such as restitution centers, homes for substance abusers, or
9 halfway houses; and

10 [(4) outline a dispute resolution procedure.

11 [(d)] The executive commissioner [department] shall design
12 a competitive procurement or similar system that a mental health
13 [or mental retardation] authority shall use in awarding an initial
14 contract for the provision of services at the community level for
15 persons with mental illness, including residential services, if the
16 contract involves the use of state money or money for which the
17 state has oversight responsibility [under this section].

18 (b) [(e)] The system must require that each local mental
19 health [or mental retardation] authority:

20 (1) ensure public participation in the authority's
21 decisions regarding whether to provide or to contract for a
22 service;

23 (2) make a reasonable effort to give notice of the
24 intent to contract for services to each potential private provider
25 in the local service area of the authority; and

26 (3) review each submitted proposal and award the
27 contract to the applicant that the authority determines has made

1 the lowest and best bid to provide the needed services.

2 (c) [(f)] Each local mental health [~~or mental retardation~~]
3 authority, in determining the lowest and best bid, shall consider
4 any relevant information included in the authority's request for
5 bid proposals, including:

6 (1) price;

7 (2) the ability of the bidder to perform the contract
8 and to provide the required services;

9 (3) whether the bidder can perform the contract or
10 provide the services within the period required, without delay or
11 interference;

12 (4) the bidder's history of compliance with the laws
13 relating to the bidder's business operations and the affected
14 services and whether the bidder is currently in compliance;

15 (5) whether the bidder's financial resources are
16 sufficient to perform the contract and to provide the services;

17 (6) whether necessary or desirable support and
18 ancillary services are available to the bidder;

19 (7) the character, responsibility, integrity,
20 reputation, and experience of the bidder;

21 (8) the quality of the facilities and equipment
22 available to or proposed by the bidder;

23 (9) the ability of the bidder to provide continuity of
24 services; and

25 (10) the ability of the bidder to meet all applicable
26 written departmental policies, principles, and regulations.

27 Sec. 534.056. COORDINATION OF ACTIVITIES. A local mental

1 health [~~or mental retardation~~] authority shall coordinate its
2 activities with the activities of other appropriate agencies that
3 provide care and treatment for persons with drug or alcohol
4 problems.

5 Sec. 534.058. STANDARDS OF CARE. (a) The executive
6 commissioner [~~department~~] shall develop standards of care for the
7 services provided by a local mental health [~~or mental retardation~~]
8 authority and its subcontractors under this subchapter.

9 (b) The standards must be designed to ensure that the
10 quality of the community-based mental health services is consistent
11 with the quality of care available in department facilities.

12 (c) In conjunction with local mental health [~~or mental~~
13 ~~retardation~~] authorities, the executive commissioner [~~department~~]
14 shall review the standards biennially to determine if each standard
15 is necessary to ensure the quality of care.

16 Sec. 534.059. CONTRACT COMPLIANCE FOR LOCAL AUTHORITIES.
17 (a) The department shall evaluate a local mental health [~~or mental~~
18 ~~retardation~~] authority's compliance with its contract to ensure the
19 provision of specific services to priority populations.

20 (b) If, by a date set by the commissioner, a local mental
21 health [~~or mental retardation~~] authority fails to comply with its
22 contract to ensure the provision of services to the satisfaction of
23 the commissioner, the department may impose a sanction as provided
24 by the applicable contract rule until the dispute is resolved. The
25 department shall notify the authority in writing of the
26 department's decision to impose a sanction.

27 (c) A local mental health [~~or mental retardation~~] authority

1 may appeal the department's decision to impose a sanction on the
2 authority. The executive commissioner [board] by rule shall
3 prescribe the appeal procedure.

4 (d) The filing of a notice of appeal stays the imposition of
5 the department's decision to impose a sanction except when an act or
6 omission by a local mental health [~~or mental retardation~~] authority
7 is endangering or may endanger the life, health, welfare, or safety
8 of a person.

9 (e) While an appeal under this section is pending, the
10 department may limit general revenue allocations to a local mental
11 health [~~or mental retardation~~] authority to monthly distributions.

12 Sec. 534.060. PROGRAM AND SERVICE MONITORING AND REVIEW OF
13 LOCAL AUTHORITIES. (a) The department shall develop mechanisms
14 for monitoring the services provided by a local mental health [~~or~~
15 ~~mental retardation~~] authority.

16 (b) The department shall review the program quality and
17 program performance results of a local mental health [~~or mental~~
18 ~~retardation~~] authority in accordance with a risk assessment and
19 evaluation system appropriate to the authority's contract
20 requirements. The department may determine the scope of the
21 review.

22 (c) A contract between a local mental health [~~or mental~~
23 ~~retardation~~] authority and the department must authorize the
24 department to have unrestricted access to all facilities, records,
25 data, and other information under the control of the authority as
26 necessary to enable the department to audit, monitor, and review
27 the financial and program activities and services associated with

1 department funds.

2 Sec. 534.0601. COORDINATED PROGRAM AUDITS OF LOCAL
3 AUTHORITIES. (a) The executive commissioner [~~department~~] shall
4 coordinate with each agency or department of the state that
5 contracts with a local mental health [~~or mental retardation~~] authority to prescribe procedures for a coordinated program audit
6 of the authority. The procedures must be:

7 (1) consistent with the requirements for the receipt
8 of federal funding by the authority; and

9 (2) based on risk assessment.

10 (b) A program audit must evaluate:

11 (1) the extent to which a local mental health [~~or~~
12 ~~mental retardation~~] authority is achieving the results or benefits
13 established by an agency or department of the state or by the
14 legislature;

15 (2) the effectiveness of the authority's organization,
16 program, activities, or functions; and

17 (3) the authority's compliance with law.

18 (c) A program audit of a local mental health [~~or mental~~
19 ~~retardation~~] authority must be performed in accordance with the
20 procedures prescribed under this section.

21 (d) The department may not implement a procedure for a
22 program audit under this section without the approval of the
23 executive commissioner [~~Health and Human Services Commission~~].

24 (e) This section does not prohibit an agency, department, or
25 other entity providing funding to a local mental health [~~or mental~~
26 ~~retardation~~] authority from investigating a complaint against the

1 authority or performing additional contract monitoring of the
2 authority.

3 Sec. 534.0602. FINANCIAL AUDITS OF LOCAL AUTHORITIES. (a)
4 The executive commissioner [department] shall prescribe procedures
5 for a financial audit of a local mental health [~~or mental~~
6 ~~retardation~~] authority. The procedures must be consistent with
7 requirements for the receipt of federal funding by the authority.

8 (b) The executive commissioner [department] shall develop
9 the procedures with the assistance of each agency or department of
10 the state that contracts with a local mental health [~~or mental~~
11 ~~retardation~~] authority. The executive commissioner [department]
12 shall incorporate each agency's or department's financial or
13 compliance requirements for an authority into a single audit that
14 meets the requirements of Section 534.068.

15 (c) Before prescribing or amending a procedure under this
16 section, the executive commissioner [department] must set a
17 deadline for agencies and departments of the state that contract
18 with local mental health [~~and mental retardation~~] authorities to
19 submit proposals relating to the procedure.

20 (d) An agency or department of the state that contracts with
21 a local mental health [~~or mental retardation~~] authority must comply
22 with a procedure developed under this section.

23 (e) The department may not implement a procedure under this
24 section without the approval of the executive commissioner [~~Health~~
25 ~~and Human Services Commission~~].

26 Sec. 534.0603. ADDITIONAL FINANCIAL AUDIT ACTIVITY. (a)
27 The executive commissioner [department] shall develop protocols

1 for an agency or department of the state to conduct additional
2 financial audit activities of a local mental health [or mental
3 retardation] authority.

4 (b) An agency or department of the state may not conduct
5 additional financial audit activities relating to a local mental
6 health [or mental retardation] authority without the approval of
7 the executive commissioner [Health and Human Services Commission].

8 (c) This section, and a protocol developed under this
9 section, do not apply to an audit conducted under Chapter 321,
10 Government Code.

11 Sec. 534.061. PROGRAM AND SERVICE MONITORING AND REVIEW OF
12 CERTAIN COMMUNITY SERVICES. (a) [The department shall develop
13 mechanisms for periodically monitoring the services of a provider
14 who contracts with a local mental health or mental retardation
15 authority to provide services for persons with mental retardation
16 or mental illness at the community level, including residential
17 services, if state funds or funds for which the state has oversight
18 responsibility are used to pay for at least part of the services.]

19 [(b)] The local mental health [or mental retardation]
20 authority shall monitor the services of a provider who contracts
21 with the authority to provide services for persons with mental
22 illness to ensure that the provider is delivering the services in a
23 manner consistent with the provider's contract.

24 (b) [(e)] Each provider contract involving the use of state
25 funds or funds for which the state has oversight responsibility
26 must authorize the local mental health [or mental retardation]
27 authority or the authority's designee and the department or the

1 department's designee to have unrestricted access to all
2 facilities, records, data, and other information under the control
3 of the provider as necessary to enable the department to audit,
4 monitor, and review the financial and program activities and
5 services associated with the contract.

6 (c) [←] The department may withdraw funding from a local
7 mental health [~~or mental retardation~~] authority that fails to
8 cancel a contract with a provider involving the use of state funds
9 or funds for which the state has oversight responsibility if:

10 (1) the provider is not fulfilling its contractual
11 obligations; and

12 (2) the authority has not taken appropriate action to
13 remedy the problem in accordance with department [~~board~~] rules.

14 (d) [←] The executive commissioner [~~board~~] by rule shall
15 prescribe procedures a local mental health [~~or mental retardation~~]
16 authority must follow in remedying a problem with a provider.

17 Sec. 534.063. PEER REVIEW ORGANIZATION. The department
18 shall assist a local mental health [~~or mental retardation~~]
19 authority in developing a peer review organization to provide
20 self-assessment of programs and to supplement department reviews
21 under Section 534.060.

22 Sec. 534.064. CONTRACT RENEWAL. The executive commissioner
23 may refuse to renew a contract with a local mental health [~~or mental~~
24 ~~retardation~~] authority and may select other agencies, entities, or
25 organizations to be the local mental health [~~or mental retardation~~]
26 authority if the department's evaluation of the authority's
27 performance under Section 534.059 indicates that the authority

1 cannot ensure the availability of the specific services to priority
2 populations required by the department and this subtitle.

3 Sec. 534.065. RENEWAL OF CERTAIN CONTRACTS FOR COMMUNITY
4 SERVICES. (a) A local mental health [~~or mental retardation~~]
5 authority shall review a contract scheduled for renewal that:

6 (1) is between the authority and a private provider;
7 (2) is for the provision of mental health [~~or mental~~
8 ~~retardation~~] services at the community level, including
9 residential services; and

10 (3) involves the use of state funds or funds for which
11 the state has oversight responsibility.

12 (b) The local mental health [~~or mental retardation~~]
13 authority may renew the contract only if the contract meets the
14 criteria provided by Section 533.016.

15 (c) The local mental health [~~or mental retardation~~]
16 authority and private provider shall negotiate a contract renewal
17 at arm's [arms] length and in good faith.

18 (d) This section applies to a contract renewal regardless of
19 the date on which the original contract was initially executed.

20 Sec. 534.066. LOCAL MATCH REQUIREMENT. (a) The department
21 shall include in a contract with a local mental health [~~or mental~~
22 ~~retardation~~] authority a requirement that some or all of the state
23 funds the authority receives be matched by local support in an
24 amount or proportion jointly agreed to by the department and the
25 authority's board of trustees and based on the authority's
26 financial capability and its overall commitment to other mental
27 health [~~or mental retardation~~] programs, as appropriate.

1 (b) [The department shall establish, for community services
2 divisions of department facilities that provide community-based
3 services required under this subchapter, a local match requirement
4 that is consistent with the requirements applied to other local
5 mental health or mental retardation authorities.]

6 [(c)] Patient fee income, third-party insurance income,
7 services and facilities contributed by the local mental health [or
8 mental retardation] authority, contributions by a county or
9 municipality, and other locally generated contributions, including
10 local tax funds, may be counted when calculating the local support
11 for a local mental health [or mental retardation] authority. The
12 department may disallow or reduce the value of services claimed as
13 support.

14 Sec. 534.067. FEE COLLECTION POLICY. The executive
15 commissioner [department] shall establish a uniform fee collection
16 policy for all local mental health [or mental retardation]
17 authorities that is equitable, provides for collections, and
18 maximizes contributions to local revenue.

19 Sec. 534.0675. NOTICE OF DENIAL, REDUCTION, OR TERMINATION
20 OF SERVICES. The executive commissioner [board] by rule, in
21 cooperation with local mental health [and mental retardation]
22 authorities, consumers, consumer advocates, and service providers,
23 shall establish a uniform procedure that each local mental health
24 [or mental retardation] authority shall use to notify consumers in
25 writing of the denial, involuntary reduction, or termination of
26 services and of the right to appeal those decisions.

27 Sec. 534.068. AUDITS. (a) As a condition to receiving

1 funds under this subtitle, a local mental health [~~and mental~~
2 ~~retardation~~] authority other than a state facility designated as an
3 authority must annually submit to the department a financial and
4 compliance audit prepared by a certified public accountant or
5 public accountant licensed by the Texas State Board of Public
6 Accountancy. To ensure the highest degree of independence and
7 quality, the local mental health [~~or mental retardation~~] authority
8 shall use an invitation-for-proposal process as prescribed by the
9 executive commissioner [~~department~~] to select the auditor.

10 (a-1) The audit required under Subsection (a) may be
11 published electronically on the local mental health [~~an~~]
12 authority's Internet website. An authority that electronically
13 publishes an audit under this subsection shall notify the
14 department that the audit is available on the authority's Internet
15 website on or before the date the audit is due.

16 (b) The audit must meet the minimum requirements as shall
17 be, and be in the form and in the number of copies as may be,
18 prescribed by the executive commissioner [~~department~~], subject to
19 review and comment by the state auditor.

20 (c) The local mental health [~~or mental retardation~~]
21 authority shall file the required number of copies of the audit
22 report with the department by the date prescribed by the executive
23 commissioner [~~department~~]. From the copies filed with the
24 department, copies of the report shall be submitted to the governor
25 and Legislative Budget Board.

26 (d) The local mental health [~~or mental retardation~~]
27 authority shall either approve or refuse to approve the audit

1 report. If the authority refuses to approve the report, the
2 authority shall include with the department's copies a statement
3 detailing the reasons for refusal.

4 (e) The commissioner and state auditor have access to all
5 vouchers, receipts, journals, or other records the commissioner or
6 auditor considers necessary to review and analyze the audit report.

7 (f) The department shall annually submit to the governor,
8 Legislative Budget Board, and Legislative Audit Committee a summary
9 of the significant findings identified during the department's
10 reviews of fiscal audit activities.

11 (g) The report required under Subsection (f) may be
12 published electronically on the department's Internet website. The
13 department shall notify each entity entitled to receive a copy of
14 the report that the report is available on the department's
15 Internet website on or before the date the report is due.

16 Sec. 534.069. CRITERIA FOR PROVIDING FUNDS FOR START-UP
17 COSTS. (a) The executive commissioner [board] by rule shall
18 develop criteria to regulate the provision of payment to a private
19 provider for start-up costs associated with the development of
20 residential and other community services for persons with mental
21 illness [~~or mental retardation~~].

22 (b) The criteria shall provide that start-up funds be
23 awarded only as a last resort and shall include provisions relating
24 to:

25 (1) the purposes for which start-up funds may be used;
26 (2) the ownership of capital property and equipment
27 obtained by the use of start-up funds; and

1 (3) the obligation of the private provider to repay
2 the start-up funds awarded by the department by direct repayment or
3 by providing services for a period agreed to by the parties.

4 Sec. 534.070. USE OF PROSPECTIVE PAYMENT FUNDS. (a) Each
5 local mental health [~~or mental retardation~~] authority that receives
6 prospective payment funds shall submit to the department a
7 quarterly report that clearly identifies how the provider or
8 program used the funds during the preceding fiscal quarter.

9 (b) The executive commissioner [~~board~~] by rule shall
10 prescribe the form of the report, the specific information that
11 must be included in the report, and the deadlines for submitting the
12 report.

13 (c) The department may not provide prospective payment
14 funds to a local mental health [~~or mental retardation~~] authority
15 that fails to submit the quarterly reports required by this
16 section.

17 (d) In this section, "prospective payment funds" means
18 money the department prospectively provides to a local mental
19 health [~~or mental retardation~~] authority to provide community
20 services to certain persons with [~~mental retardation or~~] mental
21 illness.

22 Sec. 534.071. ADVISORY COMMITTEE. A local mental health
23 [~~or mental retardation~~] authority may appoint a committee to advise
24 its governing board on a matter relating to the oversight and
25 provision of mental health [~~and mental retardation~~] services. The
26 appointment of a committee does not relieve the authority's
27 governing board of a responsibility prescribed by this subtitle.

1 SUBCHAPTER B-1. COMMUNITY-BASED INTELLECTUAL DISABILITY SERVICES

2 Sec. 534.101. DEFINITIONS. In this subchapter:

3 (1) "Commissioner" means the commissioner of aging and
4 disability services.

5 (2) "Department" means the Department of Aging and
6 Disability Services.

7 (3) "Department facility" means a state supported
8 living center, including the ICF-IID component of the Rio Grande
9 State Center.

10 Sec. 534.102. RULES AND STANDARDS. (a) The executive
11 commissioner shall adopt rules, including standards, the executive
12 commissioner considers necessary and appropriate to ensure the
13 adequate provision of community-based intellectual disability
14 services through a local intellectual and developmental disability
15 authority under this subchapter.

16 (b) The department shall send a copy of the rules to each
17 local intellectual and developmental disability authority or other
18 provider receiving contract funds as a local intellectual and
19 developmental disability authority or designated provider.

20 Sec. 534.103. REQUIRED COMMUNITY-BASED INTELLECTUAL
21 DISABILITY SERVICES. (a) The department shall ensure that, at a
22 minimum, the following services are available in each service area:

23 (1) community-based assessments, including diagnosis
24 and evaluation services;

25 (2) respite care; and

26 (3) case management services.

27 (b) The department shall arrange for appropriate

1 community-based services, including the assignment of a case
2 manager, to be available in each service area for each person
3 discharged from a department facility who is in need of care.

4 (c) To the extent that resources are available, the
5 department shall ensure that the services listed in this section
6 are available for children, including adolescents, as well as
7 adults, in each service area.

8 Sec. 534.104. JOINT DISCHARGE PLANNING. (a) The executive
9 commissioner shall adopt, and the department shall enforce, rules
10 that require continuity of services and planning for client care
11 between department facilities and local intellectual and
12 developmental disability authorities.

13 (b) At a minimum, the rules must require joint discharge
14 planning between a department facility and a local intellectual and
15 developmental disability authority before a facility discharges a
16 client or places the client on an extended furlough with an intent
17 to discharge.

18 (c) The local intellectual and developmental disability
19 authority shall plan with the department facility and determine the
20 appropriate community services for the client.

21 (d) The local intellectual and developmental disability
22 authority shall arrange for the provision of the services if
23 department funds are to be used and may subcontract with or make a
24 referral to a local agency or entity.

25 Sec. 534.105. DESIGNATION OF PROVIDER. (a) The department
26 shall identify and contract with a local intellectual and
27 developmental disability authority for each service area to ensure

1 that services are provided to client populations determined by the
2 department. A local intellectual and developmental disability
3 authority shall ensure that services to address the needs of
4 priority populations are provided as required by the department and
5 shall comply with the rules and standards adopted under Section
6 534.102.

7 (b) The department may contract with a local agency or a
8 private provider or organization to act as a designated provider of
9 a service if the department:

10 (1) cannot negotiate a contract with a local
11 intellectual and developmental disability authority to ensure that
12 a specific required service for priority populations is available
13 in that service area; or

14 (2) determines that a local intellectual and
15 developmental disability authority does not have the capacity to
16 ensure the availability of that service.

17 Sec. 534.106. CONTRACTS FOR CERTAIN COMMUNITY SERVICES.
18 (a) The executive commissioner shall design a competitive
19 procurement or similar system that an intellectual and
20 developmental disability authority shall use in awarding an initial
21 contract for the provision of services at the community level for
22 persons with an intellectual disability, including residential
23 services, if the contract involves the use of state money or money
24 for which the state has oversight responsibility.

25 (b) The system must require that each local intellectual and
26 developmental disability authority:

27 (1) ensure public participation in the authority's

1 decisions regarding whether to provide or to contract for a
2 service;

3 (2) make a reasonable effort to give notice of the
4 intent to contract for services to each potential private provider
5 in the local service area of the authority; and

6 (3) review each submitted proposal and award the
7 contract to the applicant that the authority determines has made
8 the lowest and best bid to provide the needed services.

9 (c) Each local intellectual and developmental disability
10 authority, in determining the lowest and best bid, shall consider
11 any relevant information included in the authority's request for
12 bid proposals, including:

13 (1) price;

14 (2) the ability of the bidder to perform the contract
15 and to provide the required services;

16 (3) whether the bidder can perform the contract or
17 provide the services within the period required, without delay or
18 interference;

19 (4) the bidder's history of compliance with the laws
20 relating to the bidder's business operations and the affected
21 services and whether the bidder is currently in compliance;

22 (5) whether the bidder's financial resources are
23 sufficient to perform the contract and to provide the services;

24 (6) whether necessary or desirable support and
25 ancillary services are available to the bidder;

26 (7) the character, responsibility, integrity,
27 reputation, and experience of the bidder;

1 (8) the quality of the facilities and equipment
2 available to or proposed by the bidder;

3 (9) the ability of the bidder to provide continuity of
4 services; and

5 (10) the ability of the bidder to meet all applicable
6 written departmental policies, principles, and regulations.

7 Sec. 534.107. COORDINATION OF ACTIVITIES. A local
8 intellectual and developmental disability authority shall
9 coordinate its activities with the activities of other appropriate
10 agencies that provide care and treatment for persons with drug or
11 alcohol problems.

12 Sec. 534.1075 [534.057]. RESPITE CARE. (a) The executive
13 commissioner [board] shall adopt rules relating to the provision of
14 respite care and shall develop a system to reimburse providers of
15 in-home respite care.

16 (b) The rules must:

17 (1) encourage the use of existing local providers;
18 (2) encourage family participation in the choice of a
19 qualified provider;

20 (3) establish procedures necessary to administer this
21 section, including procedures for:

22 (A) determining the amount and type of in-home
23 respite care to be authorized;

24 (B) reimbursing providers;

25 (C) handling appeals from providers;

26 (D) handling complaints from recipients of
27 in-home respite care;

1 (E) providing emergency backup for in-home
2 respite care providers; and

3 (F) advertising for, selecting, and training
4 in-home respite care providers; and

7 (c) The executive commissioner [board] shall establish
8 service and performance standards for department facilities and
9 designated providers to use in operating the in-home respite care
10 program. The executive commissioner [board] shall establish the
11 standards from information obtained from the families of [patients
12 and] clients receiving in-home respite care and from providers of
13 in-home respite care. The executive commissioner [board] may
14 obtain the information at a public hearing or from an advisory
15 group.

16 (d) The service and performance standards established by
17 the executive commissioner [board] under Subsection (c) must:

1 Sec. 534.108. STANDARDS OF CARE. (a) The executive
2 commissioner shall develop standards of care for the services
3 provided by a local intellectual and developmental disability
4 authority and its subcontractors under this subchapter.

5 (b) The standards must be designed to ensure that the
6 quality of community-based intellectual disability services is
7 consistent with the quality of care available in department
8 facilities.

9 (c) In conjunction with local intellectual and
10 developmental disability authorities, the executive commissioner
11 shall review the standards biennially to determine if each standard
12 is necessary to ensure the quality of care.

13 Sec. 534.109. CONTRACT COMPLIANCE FOR LOCAL AUTHORITIES.

14 (a) The department shall evaluate a local intellectual and
15 developmental disability authority's compliance with its contract
16 to ensure the provision of specific services to priority
17 populations.

18 (b) If, by a date set by the commissioner, a local
19 intellectual and developmental disability authority fails to
20 comply with its contract to ensure the provision of services to the
21 satisfaction of the commissioner, the department may impose a
22 sanction as provided by the applicable contract rule until the
23 dispute is resolved. The department shall notify the authority in
24 writing of the department's decision to impose a sanction.

25 (c) A local intellectual and developmental disability
26 authority may appeal the department's decision to impose a sanction
27 on the authority. The executive commissioner by rule shall

1 prescribe the appeal procedure.

2 (d) The filing of a notice of appeal stays the imposition of
3 the department's decision to impose a sanction except when an act or
4 omission by a local intellectual and developmental disability
5 authority is endangering or may endanger the life, health, welfare,
6 or safety of a person.

7 (e) While an appeal under this section is pending, the
8 department may limit general revenue allocations to a local
9 intellectual and developmental disability authority to monthly
10 distributions.

11 Sec. 534.110. PROGRAM AND SERVICE MONITORING AND REVIEW OF
12 LOCAL AUTHORITIES. (a) The department shall develop mechanisms
13 for monitoring the services provided by a local intellectual and
14 developmental disability authority.

15 (b) The department shall review the program quality and
16 program performance results of a local intellectual and
17 developmental disability authority in accordance with a risk
18 assessment and evaluation system appropriate to the authority's
19 contract requirements. The department may determine the scope of
20 the review.

21 (c) A contract between a local intellectual and
22 developmental disability authority and the department must
23 authorize the department to have unrestricted access to all
24 facilities, records, data, and other information under the control
25 of the authority as necessary to enable the department to audit,
26 monitor, and review the financial and program activities and
27 services associated with department funds.

1 Sec. 534.111. COORDINATED PROGRAM AUDITS OF LOCAL
2 AUTHORITIES. (a) The executive commissioner shall coordinate with
3 each agency or department of the state that contracts with a local
4 intellectual and developmental disability authority to prescribe
5 procedures for a coordinated program audit of the authority. The
6 procedures must be:

7 (1) consistent with the requirements for the receipt
8 of federal funding by the authority; and
9 (2) based on risk assessment.

10 (b) A program audit must evaluate:

11 (1) the extent to which a local intellectual and
12 developmental disability authority is achieving the results or
13 benefits established by an agency or department of the state or by
14 the legislature;

15 (2) the effectiveness of the authority's organization,
16 program, activities, or functions; and

17 (3) the authority's compliance with law.

18 (c) A program audit of a local intellectual and
19 developmental disability authority must be performed in accordance
20 with the procedures prescribed under this section.

21 (d) The department may not implement a procedure for a
22 program audit under this section without the approval of the
23 executive commissioner.

24 (e) This section does not prohibit an agency, department, or
25 other entity providing funding to a local intellectual and
26 developmental disability authority from investigating a complaint
27 against the authority or performing additional contract monitoring

1 of the authority.

2 Sec. 534.112. FINANCIAL AUDITS OF LOCAL AUTHORITIES. (a)
3 The executive commissioner shall prescribe procedures for a
4 financial audit of a local intellectual and developmental
5 disability authority. The procedures must be consistent with
6 requirements for the receipt of federal funding by the authority.

7 (b) The executive commissioner shall develop the procedures
8 with the assistance of each agency or department of the state that
9 contracts with a local intellectual and developmental disability
10 authority. The executive commissioner shall incorporate each
11 agency's or department's financial or compliance requirements for
12 an authority into a single audit that meets the requirements of
13 Section 534.121.

14 (c) Before prescribing or amending a procedure under this
15 section, the executive commissioner must set a deadline for
16 agencies and departments of the state that contract with local
17 intellectual and developmental disability authorities to submit
18 proposals relating to the procedure.

19 (d) An agency or department of the state that contracts with
20 a local intellectual and developmental disability authority must
21 comply with a procedure developed under this section.

22 (e) The department may not implement a procedure under this
23 section without the approval of the executive commissioner.

24 Sec. 534.113. ADDITIONAL FINANCIAL AUDIT ACTIVITY. (a)
25 The executive commissioner shall develop protocols for an agency or
26 department of the state to conduct additional financial audit
27 activities of a local intellectual and developmental disability

1 authority.

2 **(b) An agency or department of the state may not conduct**
3 additional financial audit activities relating to a local
4 intellectual and developmental disability authority without the
5 approval of the executive commissioner.

6 **(c) This section, and a protocol developed under this**
7 section, do not apply to an audit conducted under Chapter 321,
8 Government Code.

9 Sec. 534.114. PROGRAM AND SERVICE MONITORING AND REVIEW OF
10 CERTAIN COMMUNITY SERVICES. **(a)** The local intellectual and
11 developmental disability authority shall monitor the services of a
12 provider who contracts with the authority to provide services to
13 persons with an intellectual disability to ensure that the provider
14 is delivering the services in a manner consistent with the
15 provider's contract.

16 **(b) Each provider contract involving the use of state funds**
17 or funds for which the state has oversight responsibility must
18 authorize the local intellectual and developmental disability
19 authority or the authority's designee and the department or the
20 department's designee to have unrestricted access to all
21 facilities, records, data, and other information under the control
22 of the provider as necessary to enable the department to audit,
23 monitor, and review the financial and program activities and
24 services associated with the contract.

25 **(c) The department may withdraw funding from a local**
26 intellectual and developmental disability authority that fails to
27 cancel a contract with a provider involving the use of state funds

1 or funds for which the state has oversight responsibility if:

2 (1) the provider is not fulfilling its contractual
3 obligations; and

4 (2) the authority has not taken appropriate action to
5 remedy the problem in accordance with department rules.

6 (d) The executive commissioner by rule shall prescribe
7 procedures a local intellectual and developmental disability
8 authority must follow in remedying a problem with a provider.

9 Sec. 534.115. PEER REVIEW ORGANIZATION. The department
10 shall assist a local intellectual and developmental disability
11 authority in developing a peer review organization to provide
12 self-assessment of programs and to supplement department reviews
13 under Section 534.110.

14 Sec. 534.116. CONTRACT RENEWAL. The executive commissioner
15 may refuse to renew a contract with a local intellectual and
16 developmental disability authority and may select other agencies,
17 entities, or organizations to be the local intellectual and
18 developmental disability authority if the department's evaluation
19 of the authority's performance under Section 534.109 indicates that
20 the authority cannot ensure the availability of the specific
21 services to priority populations required by the department and
22 this subtitle.

23 Sec. 534.117. RENEWAL OF CERTAIN CONTRACTS FOR COMMUNITY
24 SERVICES. (a) A local intellectual and developmental disability
25 authority shall review a contract scheduled for renewal that:

26 (1) is between the authority and a private provider;
27 (2) is for the provision of intellectual disability

1 services at the community level, including residential services;
2 and

3 (3) involves the use of state funds or funds for which
4 the state has oversight responsibility.

5 (b) The local intellectual and developmental disability
6 authority may renew the contract only if the contract meets the
7 criteria provided by Section 533A.016.

8 (c) The local intellectual and developmental disability
9 authority and private provider shall negotiate a contract renewal
10 at arm's length and in good faith.

11 (d) This section applies to a contract renewal regardless of
12 the date on which the original contract was initially executed.

13 Sec. 534.118. LOCAL MATCH REQUIREMENT. (a) The department
14 shall include in a contract with a local intellectual and
15 developmental disability authority a requirement that some or all
16 of the state funds the authority receives be matched by local
17 support in an amount or proportion jointly agreed to by the
18 department and the authority's board of trustees and based on the
19 authority's financial capability and its overall commitment to
20 other intellectual disability programs, as appropriate.

21 (b) Client fee income, third-party insurance income,
22 services and facilities contributed by the local intellectual and
23 developmental disability authority, contributions by a county or
24 municipality, and other locally generated contributions, including
25 local tax funds, may be counted when calculating the local support
26 for a local intellectual and developmental disability authority.

27 The department may disallow or reduce the value of services claimed

1 as support.

2 Sec. 534.119. FEE COLLECTION POLICY. The executive
3 commissioner shall establish a uniform fee collection policy for
4 all local intellectual and developmental disability authorities
5 that is equitable, provides for collections, and maximizes
6 contributions to local revenue.

7 Sec. 534.120. NOTICE OF DENIAL, REDUCTION, OR TERMINATION
8 OF SERVICES. The executive commissioner by rule, in cooperation
9 with local intellectual and developmental disability authorities,
10 consumers, consumer advocates, and service providers, shall
11 establish a uniform procedure that each local intellectual and
12 developmental disability authority shall use to notify consumers in
13 writing of the denial, involuntary reduction, or termination of
14 services and of the right to appeal those decisions.

15 Sec. 534.121. AUDITS. (a) As a condition to receiving
16 funds under this subtitle, a local intellectual and developmental
17 disability authority other than a state facility designated as an
18 authority must annually submit to the department a financial and
19 compliance audit prepared by a certified public accountant or
20 public accountant licensed by the Texas State Board of Public
21 Accountancy. To ensure the highest degree of independence and
22 quality, the local intellectual and developmental disability
23 authority shall use an invitation-for-proposal process as
24 prescribed by the executive commissioner to select the auditor.

25 (a-1) The audit required under Subsection (a) may be
26 published electronically on the local intellectual and
27 developmental disability authority's Internet website. An

1 authority that electronically publishes an audit under this
2 subsection shall notify the department that the audit is available
3 on the authority's Internet website on or before the date the audit
4 is due.

5 (b) The audit must meet the minimum requirements as shall
6 be, and be in the form and in the number of copies as may be,
7 prescribed by the executive commissioner, subject to review and
8 comment by the state auditor.

9 (c) The local intellectual and developmental disability
10 authority shall file the required number of copies of the audit
11 report with the department by the date prescribed by the executive
12 commissioner. From the copies filed with the department, copies of
13 the report shall be submitted to the governor and Legislative
14 Budget Board.

15 (d) The local intellectual and developmental disability
16 authority shall either approve or refuse to approve the audit
17 report. If the authority refuses to approve the report, the
18 authority shall include with the department's copies a statement
19 detailing the reasons for refusal.

20 (e) The commissioner and state auditor have access to all
21 vouchers, receipts, journals, or other records the commissioner or
22 auditor considers necessary to review and analyze the audit report.

23 (f) The department shall annually submit to the governor,
24 Legislative Budget Board, and Legislative Audit Committee a summary
25 of the significant findings identified during the department's
26 reviews of fiscal audit activities.

27 (g) The report required under Subsection (f) may be

1 published electronically on the department's Internet website. The
2 department shall notify each entity entitled to receive a copy of
3 the report that the report is available on the department's
4 Internet website on or before the date the report is due.

5 Sec. 534.122. CRITERIA FOR PROVIDING FUNDS FOR START-UP
6 COSTS. (a) The executive commissioner by rule shall develop
7 criteria to regulate the provision of payment to a private provider
8 for start-up costs associated with the development of residential
9 and other community services for persons with an intellectual
10 disability.

11 (b) The criteria shall provide that start-up funds be
12 awarded only as a last resort and shall include provisions relating
13 to:

14 (1) the purposes for which start-up funds may be used;
15 (2) the ownership of capital property and equipment
16 obtained by the use of start-up funds; and
17 (3) the obligation of the private provider to repay
18 the start-up funds awarded by the department by direct repayment or
19 by providing services for a period agreed to by the parties.

20 Sec. 534.123. USE OF PROSPECTIVE PAYMENT FUNDS. (a) Each
21 local intellectual and developmental disability authority that
22 receives prospective payment funds shall submit to the department a
23 quarterly report that clearly identifies how the provider or
24 program used the funds during the preceding fiscal quarter.

25 (u) The executive commissioner by rule shall prescribe the
26 form of the report, the specific information that must be included
27 in the report, and the deadlines for submitting the report.

1 (c) The department may not provide prospective payment
2 funds to a local intellectual and developmental disability
3 authority that fails to submit the quarterly reports required by
4 this section.

5 (d) In this section, "prospective payment funds" means
6 money the department prospectively provides to a local intellectual
7 and developmental disability authority to provide community
8 services to certain persons with an intellectual disability.

9 Sec. 534.124. ADVISORY COMMITTEE. A local intellectual and
10 developmental disability authority may appoint a committee to
11 advise its governing board on a matter relating to the oversight and
12 provision of intellectual disability services. The appointment of
13 a committee does not relieve the authority's governing board of a
14 responsibility prescribed by this subtitle.

15 SUBCHAPTER C. HEALTH MAINTENANCE ORGANIZATIONS

16 Sec. 534.151 [534.101]. HEALTH MAINTENANCE ORGANIZATION
17 CERTIFICATE OF AUTHORITY. (a) One or more community centers may
18 create or operate a nonprofit corporation pursuant to the laws of
19 this state for the purpose of accepting capitated or other at-risk
20 payment arrangements for the provision of services designated in a
21 plan approved by each appropriate [the] department under Subchapter
22 A.

23 (b) Before a nonprofit corporation organized or operating
24 under Subsection (a) accepts or enters into any capitated or other
25 at-risk payment arrangement for services designated in a plan
26 approved by each appropriate [the] department under Subchapter A,
27 the nonprofit corporation must obtain the appropriate certificate

1 of authority from the Texas Department of Insurance to operate as a
2 health maintenance organization pursuant to Chapter 843, Insurance
3 Code.

4 (c) Before submitting any bids, a nonprofit corporation
5 operating under this subchapter shall disclose in an open meeting
6 the services to be provided by the community center through any
7 capitated or other at-risk payment arrangement by the nonprofit
8 corporation. Notice of the meeting must be posted in accordance
9 with Sections 551.041, 551.043, and 551.054, Government Code. Each
10 appropriate [~~The~~] department shall verify that the services
11 provided under any capitated or other at-risk payment arrangement
12 are within the scope of services approved by each appropriate [~~the~~]
13 department in each community center's plan required under
14 Subchapter A.

15 (d) The board of the nonprofit corporation shall:

16 (1) provide for public notice of the nonprofit
17 corporation's intent to submit a bid to provide or arrange services
18 through a capitated or other at-risk payment arrangement through
19 placement as a board agenda item on the next regularly scheduled
20 board meeting that allows at least 15 days' public review of the
21 plan; and

22 (2) provide an opportunity for public comment on the
23 services to be provided through such arrangements and on the
24 consideration of local input into the plan.

25 (e) The nonprofit corporation shall provide:

26 (1) public notice before verification and disclosure
27 of services to be provided by the community center through any

1 capitated or other at-risk payment arrangements by the nonprofit
2 corporation;

3 (2) an opportunity for public comment on the community
4 center services within the capitated or other at-risk payment
5 arrangements offered by the nonprofit corporation;

6 (3) published summaries of all relevant documentation
7 concerning community center services arranged through the
8 nonprofit corporation, including summaries of any similar
9 contracts the nonprofit corporation has entered into; and

10 (4) public access and review of all relevant
11 documentation.

12 (f) A nonprofit corporation operating under this
13 subchapter:

14 (1) is subject to the requirements of Chapters 551 and
15 552, Government Code;

16 (2) shall solicit public input on the operations of
17 the nonprofit corporation and allow public access to information on
18 the operations, including services, administration, governance,
19 revenues, and expenses, on request unless disclosure is expressly
20 prohibited by law or the information is confidential under law; and

21 (3) shall publish an annual report detailing the
22 services, administration, governance, revenues, and expenses of
23 the nonprofit corporation, including the disposition of any excess
24 revenues.

25 Sec. 534.152 [~~534.102~~]. LAWS AND RULES. A nonprofit
26 corporation created or operated under this subchapter that obtains
27 and holds a valid certificate of authority as a health maintenance

1 organization may exercise the powers and authority and is subject
2 to the conditions and limitations provided by this subchapter,
3 Chapter 843, Insurance Code, the Texas Nonprofit Corporation Law as
4 described by Section 1.008(d), Business Organizations Code
5 [~~Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's~~
6 ~~Texas Civil Statutes)~~], and rules of the Texas Department of
7 Insurance.

8 Sec. 534.153 [~~534.103~~]. APPLICATION OF LAWS AND RULES. A
9 health maintenance organization created and operating under this
10 subchapter is governed as, and is subject to the same laws and rules
11 of the Texas Department of Insurance as, any other health
12 maintenance organization of the same type. The commissioner of
13 insurance may adopt rules as necessary to accept funding sources
14 other than the sources specified by Section 843.405, Insurance
15 Code, from a nonprofit health maintenance organization created and
16 operating under this subchapter, to meet the minimum surplus
17 requirements of that section.

18 Sec. 534.154 [~~534.104~~]. APPLICABILITY [~~APPLICATION~~] OF
19 SPECIFIC LAWS. (a) A nonprofit health maintenance organization
20 created under Section 534.151 [~~534.101~~] is a health care provider
21 that is a nonprofit health maintenance organization created and
22 operated by a community center for purposes of Section 84.007(e),
23 Civil Practice and Remedies Code. The nonprofit health maintenance
24 organization is not a governmental unit or a unit of local
25 government, for purposes of Chapters 101 and 102, Civil Practice
26 and Remedies Code, respectively, or a local government for purposes
27 of Chapter 791, Government Code.

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6 Sec. 534.155 [~~534.105~~]. CONSIDERATION OF BIDS. Each
7 appropriate [The] department shall give equal consideration to bids
8 submitted by any entity, whether it be public, for-profit, or
9 nonprofit, if the department accepts bids to provide services
10 through a capitated or at-risk payment arrangement and if the
11 entities meet all other criteria as required by the department.

12 Sec. 534.156 [534.106]. CONDITIONS FOR CERTAIN CONTRACTS.
13 A contract between each appropriate [~~the~~] department and a health
14 maintenance organization formed by one or more community centers
15 must provide that the health maintenance organization may not form
16 a for-profit entity unless the organization transfers all of the
17 organization's assets to the control of the boards of trustees of
18 the community centers that formed the organization.

19 SECTION 3.1337. Chapter 551, Health and Safety Code, is
20 amended to read as follows:

CHAPTER 551. GENERAL PROVISIONS

22 SUBCHAPTER A. GENERAL POWERS AND DUTIES RELATING TO STATE
23 FACILITIES

24 Sec. 551.001. DEFINITIONS. In this subtitle:

1 (2) "Commissioner" means:

2 (A) the commissioner of state health services in
3 relation to mental health services; and
4 (B) the commissioner of aging and disability
5 services in relation to intellectual disability services [mental
6 health and mental retardation].

7 (3) "Department" means:

8 (A) the [Texas] Department of State Health
9 Services in relation to mental health services; and
10 (B) the Department of Aging and Disability
11 Services in relation to intellectual disability services [Mental
12 Health and Mental Retardation].

13 (4) "Department facility" means:

14 (A) a facility [~~under the department's~~
15 ~~jurisdiction~~] for persons with mental illness under the
16 jurisdiction of the Department of State Health Services; and
17 (B) a facility for persons with an intellectual
18 disability under the jurisdiction of the Department of Aging and
19 Disability Services [or mental retardation].

20 (5) "Executive commissioner" means the executive
21 commissioner of the Health and Human Services Commission.

22 Sec. 551.002. PROHIBITION OF INTEREST. The [A member of the
23 board, the] superintendent or director of a department facility[,
24 or a person connected with that [a] department facility may not:

25 (1) sell or have a concern in the sale of merchandise,

26 supplies, or other items to a department facility; or

27 (2) have an interest in a contract with a department

1 facility.

2 Sec. 551.003. DEPOSIT OF PATIENT OR CLIENT FUNDS. (a) The
3 superintendent or director of a department facility is the
4 custodian of the personal funds that belong to a facility patient or
5 client and that are on deposit with the institution.

6 (b) The superintendent or director may deposit or invest
7 those funds in:

8 (1) a bank in this state;
9 (2) federal bonds or obligations; or
10 (3) bonds or obligations for which the faith and
11 credit of the United States are pledged.

12 (c) The superintendent or director may combine the funds of
13 facility patients or clients only to deposit or invest the funds.

14 (d) The person performing the function of [facility's]
15 business manager at that facility shall maintain records of the
16 amount of funds on deposit for each facility patient or client.

17 Sec. 551.004. BENEFIT FUND. (a) The superintendent or
18 director may deposit the interest or increment accruing from funds
19 deposited or invested under Section 551.003 into a fund to be known
20 as the benefit fund. The superintendent or director is the trustee
21 of the fund.

22 (b) The superintendent or director may spend money from the
23 benefit fund for:

24 (1) educating or entertaining the patients or clients;
25 (2) barber or cosmetology services for the patients or
26 clients; and
27 (3) the actual expense incurred in maintaining the

1 fund.

2 Sec. 551.005. DISBURSEMENT OF PATIENT OR CLIENT FUNDS.

3 Funds in the benefit fund or belonging to a facility patient or
4 client may be disbursed only on the signatures of both the
5 facility's superintendent or director and the person performing the
6 function of business manager at that facility.

7 Sec. 551.006. FACILITY STANDARDS [~~BY DEPARTMENT OF HEALTH~~].

8 (a) The executive commissioner [~~Texas Department of Health~~] by
9 rule shall prescribe standards for department facilities relating
10 to building safety and the number and quality of staff. The staff
11 standards must provide that adequate staff exist to ensure a
12 continuous plan of adequate medical, psychiatric, nursing, and
13 social work services for patients and clients of a department
14 facility.

15 (b) Each department [~~The Texas Department of Health~~] shall
16 approve [~~department~~] facilities of that department that meet
17 applicable standards and, when requested, shall certify the
18 approval to the Centers for Medicare and Medicaid Services [~~Texas~~
19 ~~Department of Human Services or the United States Health Care~~
20 ~~Financing Administration~~].

21 Sec. 551.007. BUILDING AND IMPROVEMENT PROGRAM. (a) The
22 executive commissioner, in coordination with the appropriate
23 department, shall design, construct, equip, furnish, and maintain
24 buildings and improvements authorized by law at department
25 facilities.

26 (b) The executive commissioner [~~department~~] may employ
27 architects and engineers to prepare plans and specifications and to

1 supervise construction of buildings and improvements. The
2 executive commissioner [department] shall employ professional,
3 technical, and clerical personnel to carry out the design and
4 construction functions prescribed by this section, subject to the
5 General Appropriations Act and other applicable law.

6 ~~[(c) The board shall adopt rules in accordance with this~~
7 ~~section and other applicable law relating to awarding contracts for~~
8 ~~the construction of buildings and improvements. The department~~
9 ~~shall award contracts for the construction of buildings and~~
10 ~~improvements to the qualified bidder who makes the lowest and best~~
11 ~~bid.~~

12 ~~[(d) The department may not award a construction contract~~
13 ~~for an amount that exceeds the amount of funds available for the~~
14 ~~project.~~

15 ~~[(e) The department shall require each successful bidder to~~
16 ~~give a bond payable to the state in an amount equal to the amount of~~
17 ~~the bid and conditioned on the faithful performance of the~~
18 ~~contract.~~

19 ~~[(f) The department may reject any or all bids.~~

20 ~~[(g) The department may waive, suspend, or modify a~~
21 ~~provision of this section that might conflict with a federal~~
22 ~~statute, rule, regulation, or administrative procedure if the~~
23 ~~waiver, suspension, or modification is essential to the receipt of~~
24 ~~federal funds for a project. If a project is financed entirely from~~
25 ~~federal funds, a standard required by a federal statute, rule, or~~
26 ~~regulation controls.~~

27 ~~[Sec. 551.008. TRANSFER OF FACILITIES. (a) The department~~

1 ~~may transfer the South Campus of the Vernon State Hospital to the~~
2 ~~Texas Youth Commission contingent upon the agreement of the~~
3 ~~governing board of the department and the executive commissioner of~~
4 ~~the Texas Youth Commission.~~

5 ~~[(b) In this section, "transfer" means to convey title to,~~
6 ~~lease, or otherwise convey the beneficial use of facilities,~~
7 ~~equipment, and land appurtenant to the facilities.]~~

8 Sec. 551.009. HILL COUNTRY LOCAL MENTAL HEALTH AUTHORITY
9 CRISIS STABILIZATION UNIT. (a) In this section, "department"
10 means the Department of State Health Services.

11 (a-1) The department [~~Department of State Health Services~~]
12 shall contract with the local mental health authority serving the
13 Hill Country area, including Kerr County, to operate a crisis
14 stabilization unit on the grounds of the Kerrville State Hospital
15 as provided by this section. The unit must be a 16-bed facility
16 separate from the buildings used by the Kerrville State Hospital.

17 (b) The department shall include provisions in the contract
18 requiring the local mental health authority to ensure that the
19 crisis stabilization unit provides short-term residential
20 treatment, including medical and nursing services, designed to
21 reduce a patient's acute symptoms of mental illness and prevent a
22 patient's admission to an inpatient mental health facility.

23 (c) The local mental health authority shall contract with
24 Kerrville State Hospital to provide food service, laundry service,
25 and lawn care.

26 (d) The crisis stabilization unit may not be used to provide
27 care to:

1 (1) children; or
2 (2) adults committed to or court ordered to [sentenced
3 ~~to]~~ a department [~~state mental~~] facility as provided by Chapter
4 46C, Code of Criminal Procedure.

5 (e) The local mental health authority operating the crisis
6 stabilization unit under contract shall use, for the purpose of
7 operating the 16-bed unit, the money appropriated to the department
8 for operating 16 beds in state hospitals that is allocated to the
9 local mental health authority. The department shall ensure that
10 the local mental health authority retains the remainder of the
11 local authority's state hospital allocation that is not used for
12 operating the 16-bed unit. The department may allocate additional
13 funds appropriated to the department for state hospitals to the
14 crisis stabilization unit.

15 (f) The department shall reduce the number of beds the
16 department operates in the state hospital system by 16. The
17 department, in collaboration with the local mental health
18 authority, shall ensure that the 16 beds in the crisis
19 stabilization unit are made available to other mental health
20 authorities for use as designated by the department.

21 SUBCHAPTER B. PROVISIONS APPLICABLE TO FACILITY SUPERINTENDENT OR
22 DIRECTOR [~~AND BUSINESS MANAGER~~]

23 Sec. 551.022. POWERS AND DUTIES OF SUPERINTENDENT. (a) The
24 superintendent of a department facility for persons with mental
25 illness is the administrative head of that facility.

26 (b) The superintendent has the custody of and
27 responsibility to care for the buildings, grounds, furniture, and

1 other property relating to the facility.

2 (c) The superintendent shall:

3 (1) oversee the admission and discharge of patients
4 [and clients];

5 (2) keep a register of all patients [and clients]
6 admitted to or discharged from the facility;

7 (3) supervise repairs and improvements to the
8 facility;

9 (4) ensure that facility money is spent judiciously
10 and economically;

11 (5) keep an accurate and detailed account of all money
12 received and spent, stating the source of the money and to whom and
13 the purpose for which the money is spent; and

14 (6) keep a full record of the facility's operations.

15 (d) In accordance with department [board] rules and
16 departmental operating procedures, the superintendent may:

17 (1) establish policy to govern the facility that the
18 superintendent considers will best promote the patients' [and
19 clients'] interest and welfare;

20 (2) appoint subordinate officers, teachers, and other
21 employees and set their salaries, in the absence of other law; and

22 (3) remove an officer, teacher, or employee for good
23 cause.

24 (e) This section does not apply to a state supported living
25 center or the director of a state supported living center.

26 Sec. 551.0225. POWERS AND DUTIES OF STATE SUPPORTED LIVING
27 CENTER DIRECTOR. (a) The director of a state supported living

1 center is the administrative head of the center.

2 (b) The director of a state supported living center has the
3 custody of and responsibility to care for the buildings, grounds,
4 furniture, and other property relating to the center.

5 (c) The director of a state supported living center shall:

6 (1) oversee the admission and discharge of residents
7 and clients;

8 (2) keep a register of all residents and clients
9 admitted to or discharged from the center;

10 (3) ensure that the civil rights of residents and
11 clients of the center are protected;

12 (4) ensure the health, safety, and general welfare of
13 residents and clients of the center;

14 (5) supervise repairs and improvements to the center;

15 (6) ensure that center money is spent judiciously and
16 economically;

17 (7) keep an accurate and detailed account of all money
18 received and spent, stating the source of the money and on whom and
19 the purpose for which the money is spent;

20 (8) keep a full record of the center's operations;

21 (9) monitor the arrival and departure of individuals
22 to and from the center as appropriate to ensure the safety of
23 residents; and

24 (10) ensure that residents' family members and legally
25 authorized representatives are notified of serious events that may
26 indicate problems in the care or treatment of residents.

27 (d) In accordance with department rules and operating

1 procedures, the director of a state supported living center may:

2 (1) establish policy to govern the center that the
3 director considers will best promote the residents' interest and
4 welfare;

5 (2) hire subordinate officers, teachers, and other
6 employees and set their salaries, in the absence of other law; and

7 (3) dismiss a subordinate officer, teacher, or
8 employee for good cause.

9 (e) The Department of Aging and Disability Services shall,
10 with input from residents of a state supported living center, and
11 the family members and legally authorized representatives of those
12 residents, develop a policy that defines "serious event" for
13 purposes of Subsection (c)(10).

14 Sec. 551.024. SUPERINTENDENT'S OR DIRECTOR'S DUTY TO ADMIT
15 COMMISSIONER AND EXECUTIVE COMMISSIONER [~~BOARD MEMBERS~~]. (a) The
16 superintendent or director shall admit into every part of the
17 department facility the commissioner of that department and the
18 executive commissioner [~~members of the board~~].

19 (b) The superintendent or director shall on request show any
20 book, paper, or account relating to the department facility's
21 business, management, discipline, or government to the
22 commissioner of that department or the executive commissioner
23 [~~board member~~].

24 (c) The superintendent or director shall give to the
25 commissioner of that department or the executive commissioner [~~a~~
26 ~~board member~~] any requested copy, abstract, or report.

27 Sec. 551.025. DUTY TO REPORT MISSING PATIENT OR CLIENT. If

1 a person receiving inpatient intellectual disability [~~mental~~
2 ~~retardation~~] services or court-ordered inpatient mental health
3 services [~~in a department facility~~] leaves a department [~~the~~]
4 facility without notifying the facility or without the facility's
5 consent, the facility director or superintendent shall immediately
6 report the person as a missing person to an appropriate law
7 enforcement agency in the area in which the facility is located.

8 Sec. 551.026. PERSON PERFORMING BUSINESS MANAGER FUNCTION.

9 (a) The person performing the function of business manager of a
10 department facility is the chief disbursing officer of the
11 department facility.

12 (b) The person performing the function of business manager
13 of a department facility is directly responsible to the
14 superintendent or director.

15 SUBCHAPTER C. POWERS AND DUTIES RELATING TO PATIENT OR CLIENT CARE

16 Sec. 551.041. MEDICAL AND DENTAL TREATMENT. (a) Each [~~The~~]
17 department shall provide or perform recognized medical and dental
18 treatment or services to a person admitted or committed to that
19 [~~the~~] department's care. Each [~~The~~] department may perform this
20 duty through an authorized agent.

21 (b) Each [~~The~~] department may contract for the support,
22 maintenance, care, or medical or dental treatment or service with a
23 municipal, county, or state hospital, a private physician, a
24 licensed nursing facility [~~home~~] or hospital, or a hospital
25 district. The authority to contract provided by this subsection is
26 in addition to other contractual authority granted to the
27 department. A contract entered into under this subsection may not

1 assign a lien accruing to this state.

2 (c) If a [~~the~~] department requests consent to perform
3 medical or dental treatment or services from a person or the
4 guardian of the person whose consent is considered necessary and a
5 reply is not obtained immediately, or if there is no guardian or
6 responsible relative of the person to whom a request can be made,
7 the superintendent or director of a department facility shall
8 order:

9 (1) medical treatment or services for the person on
10 the advice and consent of three physicians licensed by the Texas
11 Medical [State] Board [~~of Medical Examiners~~], at least one of whom
12 is primarily engaged in the private practice of medicine; or

13 (2) dental treatment or services for the person on the
14 advice and consent of a dentist licensed by the State Board of
15 Dental Examiners and of two physicians licensed by the Texas
16 Medical [State] Board [~~of Medical Examiners~~], at least one of whom
17 is primarily engaged in the private practice of medicine.

18 (d) This section does not authorize the performance of an
19 operation involving sexual sterilization or a frontal lobotomy.

20 Sec. 551.042. OUTPATIENT CLINICS. (a) If funds are
21 available, the Department of State Health Services [~~department~~] may
22 establish in locations the department considers necessary
23 outpatient clinics to treat persons with mental illness.

24 (b) As necessary to establish and operate the clinics:

25 (1) [~~r~~] the department may:

26 (A) [~~(1)~~] acquire facilities;

27 (B) [~~(2)~~] hire personnel;

1 ~~[(3) adopt rules;]~~ and
2 (C) ~~[(4)]~~ contract with persons, corporations,
3 and local, state, and federal agencies; and
4 (2) the executive commissioner may adopt rules.

5 ~~[Sec. 551.043. MENTAL HYGIENE CLINIC SERVICE.]~~ (a) The
6 department may establish a mental hygiene clinic service through
7 its agents and facilities.

8 ~~[(b) The clinic service shall cooperate with the Texas~~
9 ~~Education Agency and local boards of education in studying the~~
10 ~~mental and physical health of children.~~

11 ~~[(1) with serious retardation in school progress or in~~
12 ~~mental development; or~~
13 ~~[(2) who have personality development problems.]~~

14 Sec. 551.044. OCCUPATIONAL THERAPY PROGRAMS. (a) Each
15 [The] department may provide equipment, materials, and merchandise
16 for occupational therapy programs at department facilities.

17 (b) The superintendent or director of a department facility
18 may, in accordance with rules of that department [~~rules~~], contract
19 for the provision of equipment, materials, and merchandise for
20 occupational therapy programs. If the contractor retains the
21 finished or semi-finished product, the contract shall provide for a
22 fair and reasonable rental payment to the applicable department by
23 the contractor for the use of facility premises or equipment. The
24 rental payment is determined by the amount of time the facility
25 premises or equipment is used in making the products.

26 (c) The finished products made in an occupational therapy
27 program may be sold and the proceeds placed in the patients' or

1 clients' benefit fund, the patients' or clients' trust fund, or a
2 revolving fund for use by the patients or clients. A patient or
3 client may keep the finished product if the patient or client
4 purchases the material for the product from the state.

5 (d) Each [~~The~~] department may accept donations of money or
6 materials for use in occupational therapy programs and may use a
7 donation in the manner requested by the donor if not contrary to the
8 [~~board~~] policy of that department.

9 SECTION 3.1338. Sections 552.016(b), (c), and (d), Health
10 and Safety Code, are amended to read as follows:

11 (b) The executive commissioner [~~department~~] may use the
12 projected cost of providing inpatient services to establish by rule
13 the maximum fee that may be charged to a payer.

14 (c) The executive commissioner by rule [~~department~~] may
15 establish the maximum fee according to one or a combination of the
16 following:

17 (1) a statewide per capita;
18 (2) an individual facility per capita; or
19 (3) the type of service provided.

20 (d) Notwithstanding Subsection (b), the executive
21 commissioner by rule [~~department~~] may establish a fee in excess of
22 the department's projected cost of providing inpatient services
23 that may be charged to a payer:

24 (1) who is not an individual; and
25 (2) whose method of determining the rate of
26 reimbursement to a provider results in the excess.

27 SECTION 3.1339. Sections 552.017(a), (b), (d), and (e),

1 Health and Safety Code, are amended to read as follows:

2 (a) The executive commissioner [department] by rule shall
3 establish a sliding fee schedule for the payment by the patient's
4 parents of the state's total costs for the support, maintenance,
5 and treatment of a patient younger than 18 years of age.

6 (b) The executive commissioner [department] shall set the
7 fee according to the parents' net taxable income and ability to pay.

8 (d) In determining the portion of the costs of the patient's
9 support, maintenance, and treatment that the parents are required
10 to pay, the department, in accordance with rules adopted by the
11 executive commissioner, shall adjust, when appropriate, the
12 payment required under the fee schedule to allow for consideration
13 of other factors affecting the ability of the parents to pay.

14 (e) The executive commissioner [department] shall evaluate
15 and, if necessary, revise the fee schedule at least once every five
16 years.

17 SECTION 3.1340. Section 552.018(e), Health and Safety Code,
18 is amended to read as follows:

19 (e) For the purposes of this section, the following are not
20 considered to be trusts and are not entitled to the exemption
21 provided by this section:

22 (1) a guardianship established under the former Texas
23 Probate Code or under the Estates Code;

24 (2) a trust established under Chapter 142, Property
25 Code;

26 (3) a facility custodial account established under
27 Section 551.003;

1 (4) the provisions of a divorce decree or other court
2 order relating to child support obligations;

3 (5) an administration of a decedent's estate; or

4 (6) an arrangement in which funds are held in the
5 registry or by the clerk of a court.

6 SECTION 3.1341. Sections 552.019(a), (b), (c), and (g),
7 Health and Safety Code, are amended to read as follows:

8 (a) A county or district attorney shall, on the written
9 request of the department, represent the state in filing a claim in
10 probate court or a petition in a court of competent jurisdiction[+

11 [(-1)] to require the person responsible for a patient
12 to appear in court and show cause why the state should not have
13 judgment against the person for the costs of the patient's support,
14 maintenance, and treatment[; or

15 [(-2) if the liability arises under Subchapter D,
16 Chapter 593, to require a person responsible for a resident to
17 appear in court and show cause why the state should not have
18 judgment against the person for the resident's support and
19 maintenance in a residential care facility operated by the
20 department].

21 (b) On a sufficient showing, the court may enter judgment
22 against[+

23 [(-1)] the person responsible for the patient for the
24 costs of the patient's support, maintenance, and treatment[; or

25 [(-2) the person responsible for the resident for the
26 costs of the resident's support and maintenance].

27 (c) Sufficient evidence to authorize the court to enter

1 judgment is [+]

2 [+(1)] a verified account, sworn to by the
3 superintendent [~~or director~~] of the hospital in which the patient
4 is being treated, or has been treated, as to the amount due [+ or

5 [+(2) a verified account, sworn to by the
6 superintendent or director of the residential care facility in
7 which the person with mental retardation resided or has resided, as
8 to the amount due].

9 (g) In this section, "person" [+]

10 [+(1) "Person] responsible for a patient" means the
11 guardian of a patient, a person liable for the support of the
12 patient, or both.

13 [+(2) "Person responsible for a resident" means the
14 resident, a person liable for the support of the resident, or both.

15 [+(3) "Resident" means a person admitted to a
16 residential care facility operated by the department for persons
17 with mental retardation.]

18 SECTION 3.1342. The heading to Chapter 553, Health and
19 Safety Code, is amended to read as follows:

20 CHAPTER 553. SAN ANTONIO STATE SUPPORTED LIVING CENTER [~~SCHOOLS~~]

21 SECTION 3.1343. Section 553.001, Health and Safety Code, is
22 transferred to Subchapter A, Chapter 593, Health and Safety Code,
23 redesignated as Section 593.014, Health and Safety Code, and
24 amended to read as follows:

25 Sec. 593.014 [~~553.001~~]. EPILEPSY. A person may not be
26 denied admission to a residential care facility [~~state institution~~
27 or school] because the person suffers from epilepsy.

1 SECTION 3.1344. Section 553.022, Health and Safety Code, is
2 amended to read as follows:

3 Sec. 553.022. SAN ANTONIO STATE SUPPORTED LIVING CENTER
4 [~~SCHOOL~~]. (a) The San Antonio State Supported Living Center
5 [~~School~~] is for the education, care, and treatment of persons with
6 an intellectual disability [~~mental retardation~~].

7 (b) The [~~Texas~~] Department of Aging and Disability Services
8 [~~Mental Health and Mental Retardation~~] may enter into agreements
9 with the [~~Texas~~] Department of State Health Services for use of the
10 excess facilities of a public health hospital as defined by Section
11 13.033 [~~the Texas Center for Infectious Disease~~] in the operation
12 of the state supported living center [~~school~~].

13 SECTION 3.1345. Chapter 554, Health and Safety Code, is
14 amended by adding Section 554.0001 to read as follows:

15 Sec. 554.0001. DEFINITION. In this chapter, "department"
16 means the Department of State Health Services.

17 SECTION 3.1346. Section 555.001, Health and Safety Code, is
18 amended by amending Subdivisions (1), (2), (3), (4), (6), and (15)
19 and adding Subdivision (10-a) to read as follows:

20 (1) "Alleged offender resident" means a person with an
21 intellectual disability [~~mental retardation~~] who:

22 (A) was committed to or transferred to a state
23 supported living center under Chapter 46B or 46C, Code of Criminal
24 Procedure, as a result of being charged with or convicted of a
25 criminal offense; or

26 (B) is a child committed to or transferred to a
27 state supported living center under Chapter 55, Family Code, as a

1 result of being alleged by petition or having been found to have
2 engaged in delinquent conduct constituting a criminal offense.

3 (2) "Center" means the state supported living centers
4 and the ICF-IID [~~ICF-MR~~] component of the Rio Grande State Center.

5 (3) "Center employee" means an employee of a state
6 supported living center or the ICF-IID [~~ICF-MR~~] component of the
7 Rio Grande State Center.

8 (4) "Client" means a person with an intellectual
9 disability [~~mental retardation~~] who receives ICF-IID [~~ICF-MR~~]
10 services from a state supported living center or the ICF-IID
11 [~~ICF-MR~~] component of the Rio Grande State Center.

12 (6) "Complaint" means information received by the
13 office of independent ombudsman regarding a possible violation of a
14 right of a resident or client and includes information received
15 regarding a failure by a state supported living center or the
16 ICF-IID [~~ICF-MR~~] component of the Rio Grande State Center to comply
17 with the department's policies and procedures relating to the
18 community living options information process.

19 (10-a) "ICF-IID" has the meaning assigned by Section
20 531.002.

21 (15) "Resident" means a person with an intellectual
22 disability [~~mental retardation~~] who resides in a state supported
23 living center or the ICF-IID [~~ICF-MR~~] component of the Rio Grande
24 State Center.

25 SECTION 3.1347. Sections 555.002(d) and (e), Health and
26 Safety Code, are amended to read as follows:

27 (d) The department shall ensure that the forensic state

1 supported living center:

2 (1) complies with the requirements for ICF-IID
3 [~~ICF-MR~~] certification under the Medicaid program, as appropriate;
4 and

5 (2) has additional center employees, including direct
6 care employees, to protect the safety of center employees,
7 residents, and the community.

8 (e) The department shall collect data regarding the
9 commitment of alleged offender residents to state supported living
10 centers, including any offense with which an alleged offender
11 resident is charged, the location of the committing court, whether
12 the alleged offender resident has previously been in the custody of
13 the Texas Juvenile Justice Department [~~Youth Commission~~] or the
14 Department of Family and Protective Services, and whether the
15 alleged offender resident receives mental health services or
16 previously received any services under a Section 1915(c) waiver
17 program. The department shall annually submit to the governor, the
18 lieutenant governor, the speaker of the house of representatives,
19 and the standing committees of the legislature with primary subject
20 matter jurisdiction over state supported living centers a report of
21 the information collected under this section. The report may not
22 contain personally identifiable information for any person in the
23 report.

24 SECTION 3.1348. Sections 555.024(a), (b), and (e), Health
25 and Safety Code, are amended to read as follows:

26 (a) Before a center employee begins to perform the
27 employee's duties without direct supervision, the department shall

1 provide the employee with competency training and a course of
2 instruction about the general duties of a center employee. The
3 department shall ensure the basic center employee competency course
4 focuses on:

5 (1) the uniqueness of the individuals the center
6 employee serves;

7 (2) techniques for improving quality of life for and
8 promoting the health and safety of individuals with an intellectual
9 disability [~~mental retardation~~]; and

10 (3) the conduct expected of center employees.

11 (b) The department shall ensure the training required by
12 Subsection (a) provides instruction and information regarding the
13 following topics:

14 (1) the general operation and layout of the center at
15 which the person is employed, including armed intruder lockdown
16 procedures;

17 (2) an introduction to intellectual disabilities
18 [~~mental retardation~~];

19 (3) an introduction to autism;

20 (4) an introduction to mental illness and dual
21 diagnosis;

22 (5) the rights of individuals with an intellectual
23 disability [~~mental retardation~~] who receive services from the
24 department;

25 (6) respecting personal choices made by residents and
26 clients;

27 (7) the safe and proper use of restraints;

- 10 (9) preventing and treating infection;
- 11 (10) first aid;
- 12 (11) cardiopulmonary resuscitation;
- 13 (12) the Health Insurance Portability and
- 14 Accountability Act of 1996 (Pub. L. No. 104-191); and
- 15 (13) the rights of center employees.

16 (e) A center may allow an employee of an ICF-IID
17 [intermediate care facility for persons with mental retardation]
18 licensed by the department, an employee of a person licensed or
19 certified to provide Section 1915(c) waiver program services, or
20 another employee or professional involved in the provision of
21 services to persons with an intellectual disability [mental
22 retardation] to receive information and training under this
23 section, as appropriate. The center may charge an administrative
24 fee in an amount not to exceed the cost of providing the information
25 or training.

26 SECTION 3.1349. Section 555.025(d), Health and Safety Code,
27 is amended to read as follows:

1 (d) The department shall ensure that the use of video
2 surveillance equipment under this section complies with federal
3 requirements for ICF-IID [~~ICF-MR~~] certification.

4 SECTION 3.1350. Section 555.051, Health and Safety Code, is
5 amended to read as follows:

6 Sec. 555.051. ESTABLISHMENT; PURPOSE. The office of
7 independent ombudsman is established for the purpose of
8 investigating, evaluating, and securing the rights of residents and
9 clients of state supported living centers and the ICF-IID [~~ICF-MR~~]
10 component of the Rio Grande State Center. The office is
11 administratively attached to the department. The department shall
12 provide administrative support and resources to the office as
13 necessary for the office to perform its duties.

14 SECTION 3.1351. Section 555.053(b), Health and Safety Code,
15 is amended to read as follows:

16 (b) The governor may appoint as independent ombudsman only
17 an individual with at least five years of experience managing and
18 ensuring the quality of care and services provided to individuals
19 with an intellectual disability [~~mental retardation~~].

20 SECTION 3.1352. Section 555.054(b), Health and Safety Code,
21 is amended to read as follows:

22 (b) The independent ombudsman may hire as assistant
23 ombudsmen only individuals with at least five years of experience
24 ensuring the quality of care and services provided to individuals
25 with an intellectual disability [~~mental retardation~~].

26 SECTION 3.1353. Section 555.057(b), Health and Safety Code,
27 is amended to read as follows:

1 (b) The records of the independent ombudsman are
2 confidential, except that the independent ombudsman shall:

3 (1) share with the Department of Family and Protective
4 Services a communication that may involve the abuse, neglect, or
5 exploitation of a resident or client;

6 (2) share with the inspector general a communication
7 that may involve an alleged criminal offense;

8 (3) share with the regulatory services division of the
9 department a communication that may involve a violation of an
10 ICF-IID [~~ICF-MR~~] standard or condition of participation; and

11 (4) disclose the ombudsman's nonprivileged records if
12 required by a court order on a showing of good cause.

13 SECTION 3.1354. Section 555.059(a), Health and Safety Code,
14 is amended to read as follows:

15 (a) The independent ombudsman shall:

16 (1) evaluate the process by which a center
17 investigates, reviews, and reports an injury to a resident or
18 client or an unusual incident;

19 (2) evaluate the delivery of services to residents and
20 clients to ensure that the rights of residents and clients are fully
21 observed, including ensuring that each center conducts sufficient
22 unannounced patrols;

23 (3) immediately refer a complaint alleging the abuse,
24 neglect, or exploitation of a resident or client to the Department
25 of Family and Protective Services;

26 (4) refer a complaint alleging employee misconduct
27 that does not involve abuse, neglect, or exploitation or a possible

1 violation of an ICF-IID [~~ICF-MR~~] standard or condition of
2 participation to the regulatory services division of the
3 department;

4 (5) refer a complaint alleging a criminal offense,
5 other than an allegation of abuse, neglect, or exploitation of a
6 resident or client, to the inspector general;

7 (6) conduct investigations of complaints, other than
8 complaints alleging criminal offenses or the abuse, neglect, or
9 exploitation of a resident or client, if the office determines
10 that:

11 (A) a resident or client or the resident's or
12 client's family may be in need of assistance from the office; or

13 (B) a complaint raises the possibility of a
14 systemic issue in the center's provision of services;

15 (7) conduct biennial on-site audits at each center of:

16 (A) the ratio of direct care employees to
17 residents;

18 (B) the provision and adequacy of training to:

19 (i) center employees; and

20 (ii) direct care employees; and

21 (C) if the center serves alleged offender
22 residents, the provision of specialized training to direct care
23 employees;

24 (8) conduct an annual audit of each center's policies,
25 practices, and procedures to ensure that each resident and client
26 is encouraged to exercise the resident's or client's rights,
27 including:

5 (A) executive commissioner;
6 (B) commissioner;
7 (C) Aging and Disability Services Council;
8 (D) governor;
9 (E) lieutenant governor;
10 (F) speaker of the house of representatives;
11 (G) standing committees of the senate and house
12 of representatives with primary jurisdiction over state supported
13 living centers; and
14 (H) state auditor;

19 (11) review all final reports produced by the
20 Department of Family and Protective Services, the regulatory
21 services division of the department, and the inspector general
22 regarding a complaint referred by the independent ombudsman;

1 client;

2 (13) make appropriate referrals under any of the
3 duties and powers listed in this subsection; and

4 (14) monitor and evaluate the department's actions
5 relating to any problem identified or recommendation included in a
6 report received from the Department of Family and Protective
7 Services relating to an investigation of alleged abuse, neglect, or
8 exploitation of a resident or client.

9 SECTION 3.1355. Section 571.003, Health and Safety Code, is
10 amended by amending Subdivisions (2), (5), (7), (9), (11), (14),
11 and (18) and adding Subdivision (5-a) to read as follows:

12 (2) "Commissioner" means the commissioner of state
13 health services [~~mental health and mental retardation~~].

14 (5) "Department" means the [~~Texas~~] Department of State
15 Health Services [~~Mental Health and Mental Retardation~~].

16 (5-a) "Executive commissioner" means the executive
17 commissioner of the Health and Human Services Commission.

18 (7) "General hospital" means a hospital operated
19 primarily to diagnose, care for, and treat [~~physically ill~~] persons
20 who are physically ill.

21 (9) "Inpatient mental health facility" means a mental
22 health facility that can provide 24-hour residential and
23 psychiatric services and that is:

24 (A) a facility operated by the department;

25 (B) a private mental hospital licensed by the
26 department [~~Texas Department of Health~~];

27 (C) a community center, facility operated by or

1 under contract with a community center or other entity the
2 department designates to provide mental health services;

3 (D) a local mental health authority or a facility
4 operated by or under contract with a local mental health authority;

5 (E) an identifiable part of a general hospital in
6 which diagnosis, treatment, and care for persons with mental
7 illness is provided and that is licensed by the department [~~Texas~~
8 ~~Department of Health~~]; or

9 (F) a hospital operated by a federal agency.

10 (11) "Local mental health authority" means an entity
11 to which the executive commissioner [~~board~~] delegates the executive
12 commissioner's [~~its~~] authority and responsibility within a
13 specified region for planning, policy development, coordination,
14 including coordination with criminal justice entities, and
15 resource development and allocation and for supervising and
16 ensuring the provision of mental health services to persons with
17 mental illness in the most appropriate and available setting to
18 meet individual needs in one or more local service areas.

19 (14) "Mental illness" means an illness, disease, or
20 condition, other than epilepsy, dementia, substance abuse
21 [~~senility, alcoholism~~], or intellectual disability [~~mental~~
22 ~~deficiency~~], that:

23 (A) substantially impairs a person's thought,
24 perception of reality, emotional process, or judgment; or

25 (B) grossly impairs behavior as demonstrated by
26 recent disturbed behavior.

27 (18) "Physician" means:

1 (A) a person licensed to practice medicine in
2 this state;

3 (B) a person employed by a federal agency who has
4 a license to practice medicine in any state; or

5 (C) a person authorized to perform medical acts
6 under a physician-in-training [~~an institutional~~] permit at a Texas
7 postgraduate training program approved by the Accreditation
8 Council for [~~on~~] Graduate Medical Education, the American
9 Osteopathic Association, or the Texas Medical [~~State~~] Board [~~of~~
10 Medical Examiners].

11 SECTION 3.1356. Section 571.006, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 571.006. EXECUTIVE COMMISSIONER AND DEPARTMENT
14 POWERS. (a) The executive commissioner may adopt rules as
15 necessary for the proper and efficient treatment of persons with
16 mental illness.

17 (b) The department may:

18 (1) [~~adopt rules as necessary for the proper and~~
19 ~~efficient treatment of persons with mental illness;~~

20 [~~(2)~~] prescribe the form and content of applications,
21 certificates, records, and reports provided for under this
22 subtitle;

23 (2) [~~(3)~~] require reports from a facility
24 administrator relating to the admission, examination, diagnosis,
25 release, or discharge of any patient;

26 (3) [~~(4)~~] regularly visit each mental health facility
27 to review the commitment procedure for each new patient admitted

1 after the last visit; and

2 (4) [5] visit a mental health facility to
3 investigate a complaint made by a patient or by a person on behalf
4 of a patient.

5 SECTION 3.1357. Section 571.0065, Health and Safety Code,
6 is amended to read as follows:

7 Sec. 571.0065. TREATMENT METHODS. (a) The executive
8 commissioner [board] by rule may adopt procedures for an advisory
9 committee to review treatment methods for persons with mental
10 illness.

11 (b) A state agency that has knowledge of or receives a
12 complaint relating to an abusive treatment method shall report that
13 knowledge or forward a copy of the complaint to the department
14 [board].

15 (c) A mental health facility, physician, or other mental
16 health professional is not liable for an injury or other damages
17 sustained by a person as a result of the failure of the facility,
18 physician, or professional to administer or perform a treatment
19 prohibited by statute or rules adopted by the executive
20 commissioner [board].

21 SECTION 3.1358. Section 571.0066(a), Health and Safety
22 Code, is amended to read as follows:

23 (a) The executive commissioner [board] by rule shall
24 require a mental health facility that admits a patient under this
25 subtitle to provide to the patient in the patient's primary
26 language, if possible, information relating to prescription
27 medications ordered by the patient's treating physician.

1 SECTION 3.1359. Section 571.009, Health and Safety Code, is
2 amended to read as follows:

3 Sec. 571.009. EFFECT OF CERTAIN CONDITIONS ON ADMISSION OR
4 COMMITMENT. A person with mental illness may not be denied
5 admission or commitment to a mental health facility because the
6 person also suffers from epilepsy, dementia, substance abuse
7 [~~senility, alcoholism~~], or intellectual disability [~~mental~~
8 ~~deficiency~~].

9 SECTION 3.1360. Section 571.0167(c), Health and Safety
10 Code, is amended to read as follows:

11 (c) In a habeas corpus proceeding in which a department
12 [~~state~~] inpatient mental health facility or a physician employed by
13 a department [~~state~~] inpatient mental health facility is a party as
14 a result of enforcing a commitment order, the appropriate attorney
15 prescribed by Section 571.016 shall represent the facility or
16 physician, or both the facility and physician if both are parties,
17 unless the attorney determines that representation violates the
18 Texas Disciplinary Rules of Professional Conduct.

19 SECTION 3.1361. Sections 571.025(a), (d), (e), (f), (g),
20 (h), (i), (j), (k), (l), (m), and (n), Health and Safety Code, are
21 amended to read as follows:

22 (a) The department [~~board~~] may impose an administrative
23 penalty against a person licensed or regulated under this subtitle
24 who violates this subtitle or a rule or order adopted under this
25 subtitle.

26 (d) If the department [~~commissioner~~] determines that a
27 violation has occurred, the department [~~commissioner~~] may issue [~~to~~

1 ~~the board~~] a report that states the facts on which the determination
2 is based and the department's [~~commissioner's~~] recommendation on
3 the imposition of a penalty, including a recommendation on the
4 amount of the penalty.

5 (e) Within 14 days after the date the report is issued, the
6 department [~~commissioner~~] shall give written notice of the report
7 to the person. The notice may be given by certified mail. The
8 notice must include a brief summary of the alleged violation and a
9 statement of the amount of the recommended penalty and must inform
10 the person that the person has a right to a hearing on the
11 occurrence of the violation, the amount of the penalty, or both the
12 occurrence of the violation and the amount of the penalty.

13 (f) Within 20 days after the date the person receives the
14 notice, the person in writing may accept the determination and
15 recommended penalty of the department [~~commissioner~~] or may make a
16 written request for a hearing on the occurrence of the violation,
17 the amount of the penalty, or both the occurrence of the violation
18 and the amount of the penalty.

19 (g) If the person accepts the determination and recommended
20 penalty of the department [~~commissioner~~], the department [~~board~~] by
21 order shall [~~approve the determination and~~] impose the recommended
22 penalty.

23 (h) If the person requests a hearing or fails to respond
24 timely to the notice, the department [~~commissioner~~] shall set a
25 hearing and give notice of the hearing to the person. The
26 administrative law judge shall make findings of fact and
27 conclusions of law and promptly issue to the department [~~board~~] a

1 proposal for a decision about the occurrence of the violation and
2 the amount of a proposed penalty. Based on the findings of fact,
3 conclusions of law, and proposal for a decision, the department
4 [board] by order may find that a violation has occurred and impose a
5 penalty or may find that no violation occurred.

6 (i) The notice of the department's [board's] order given to
7 the person under Chapter 2001, Government Code, must include a
8 statement of the right of the person to judicial review of the
9 order.

10 (j) Within 30 days after the date the department's [board's]
11 order is final as provided by Subchapter F, Chapter 2001,
12 Government Code, the person shall:

13 (1) pay the amount of the penalty;
14 (2) pay the amount of the penalty and file a petition
15 for judicial review contesting the occurrence of the violation, the
16 amount of the penalty, or both the occurrence of the violation and
17 the amount of the penalty; or

18 (3) without paying the amount of the penalty, file a
19 petition for judicial review contesting the occurrence of the
20 violation, the amount of the penalty, or both the occurrence of the
21 violation and the amount of the penalty.

22 (k) Within the 30-day period, a person who acts under
23 Subsection (j)(3) may:

24 (1) stay enforcement of the penalty by:
25 (A) paying the amount of the penalty to the court
26 for placement in an escrow account; or
27 (B) giving to the court a supersedeas bond that

1 is approved by the court for the amount of the penalty and that is
2 effective until all judicial review of the department's [board's]
3 order is final; or

4 (2) request the court to stay enforcement of the
5 penalty by:

6 (A) filing with the court a sworn affidavit of
7 the person stating that the person is financially unable to pay the
8 amount of the penalty and is financially unable to give the
9 supersedeas bond; and

10 (B) giving a copy of the affidavit to the
11 department [commissioner] by certified mail.

12 (1) The department [commissioner] on receipt of a copy of an
13 affidavit under Subsection (k)(2) may file with the court within
14 five days after the date the copy is received a contest to the
15 affidavit. The court shall hold a hearing on the facts alleged in
16 the affidavit as soon as practicable and shall stay the enforcement
17 of the penalty on finding that the alleged facts are true. The
18 person who files an affidavit has the burden of proving that the
19 person is financially unable to pay the amount of the penalty and to
20 give a supersedeas bond.

21 (m) If the person does not pay the amount of the penalty and
22 the enforcement of the penalty is not stayed, the department
23 [commissioner] may refer the matter to the attorney general for
24 collection of the amount of the penalty.

25 (n) Judicial review of the order of the department [board]:

26 (1) is instituted by filing a petition as provided by
27 Subchapter G, Chapter 2001, Government Code; and

1 (2) is under the substantial evidence rule.

2 SECTION 3.1362. Sections 571.027(a) through (e), Health and
3 Safety Code, are amended to read as follows:

4 (a) The executive commissioner [board] shall appoint an
5 advisory committee on inpatient mental health services to advise
6 the executive commissioner [board] on:

10 (2) [coordination and communication between the
11 department, the Texas Department of Health, and facilities
12 described by Section 571.003(9)(B) or (E) to address consistency
13 between the agencies in interpretation and enforcement of agency
14 policies and other rules; and

15 [(3)] training for inpatient mental health facility
16 surveyors or investigators.

17 (b) The executive commissioner [board] shall appoint to the
18 committee:

1 adolescent psychiatry; and

2 (4) one family member of a person who has been a
3 consumer of mental health services provided by a facility described
4 by Section 571.003(9)(B) or (E).

5 (c) The executive commissioner [~~Texas Board of Health~~]
6 shall provide the advisory committee with two persons to represent
7 the department [~~Texas Department of Health~~]. The representatives
8 may address the advisory committee on any issue relevant to a matter
9 before the advisory committee, but the representatives may not vote
10 on any matter. The executive commissioner [~~Texas Board of Health~~]
11 shall consider designating an inpatient mental health facility
12 surveyor or investigator to be a representative under this
13 subsection.

14 (d) Except for persons who represent the department [~~Texas~~
15 ~~Department of Health~~] designated under Subsection (c), members of
16 the advisory committee serve staggered four-year terms. A member's
17 term expires on August 31 of the fourth year following the member's
18 appointment.

19 (e) The executive commissioner [~~board~~] shall fill vacancies
20 on the advisory committee [~~board~~] in the same manner as the original
21 appointment.

22 SECTION 3.1363. Section 572.0022(a), Health and Safety
23 Code, is amended to read as follows:

24 (a) A mental health facility shall provide to a patient in
25 the patient's primary language, if possible, and in accordance with
26 department [~~board~~] rules information relating to prescription
27 medication ordered by the patient's treating physician.

1 SECTION 3.1364. Sections 572.0025(a), (c), and (e), Health
2 and Safety Code, are amended to read as follows:

3 (a) The executive commissioner [board] shall adopt rules
4 governing the voluntary admission of a patient to an inpatient
5 mental health facility, including rules governing the intake and
6 assessment procedures of the admission process.

7 (c) The assessment provided for by the rules may be
8 conducted only by a professional who meets the qualifications
9 prescribed by department [board] rules.

10 (e) In accordance with department [board] rule, a facility
11 shall provide annually a minimum of eight hours of inservice
12 training regarding intake and assessment for persons who will be
13 conducting an intake or assessment for the facility. A person may
14 not conduct intake or assessments without having completed the
15 initial and applicable annual inservice training.

16 SECTION 3.1365. Section 572.003(e), Health and Safety Code,
17 is amended to read as follows:

18 (e) In addition to the rights provided by this subtitle, a
19 person voluntarily admitted to an inpatient mental health facility
20 under Section 572.002(3)(B) has the right to be evaluated by a
21 physician at regular intervals to determine the person's need for
22 continued inpatient treatment. The executive commissioner
23 [department] by rule shall establish the intervals at which a
24 physician shall evaluate a person under this subsection.

25 SECTION 3.1366. Section 573.001(a), Health and Safety Code,
26 is amended to read as follows:

27 (a) A peace officer, without a warrant, may take a person

1 into custody if the officer:

2 (1) has reason to believe and does believe that:

3 (A) the person is a person with mental illness
4 [mentally ill]; and

5 (B) because of that mental illness there is a
6 substantial risk of serious harm to the person or to others unless
7 the person is immediately restrained; and

8 (2) believes that there is not sufficient time to
9 obtain a warrant before taking the person into custody.

10 SECTION 3.1367. Section 573.003(a), Health and Safety Code,
11 is amended to read as follows:

12 (a) A guardian of the person of a ward who is 18 years of age
13 or older, without the assistance of a peace officer, may transport
14 the ward to an inpatient mental health facility for a preliminary
15 examination in accordance with Section 573.021 if the guardian has
16 reason to believe and does believe that:

17 (1) the ward is a person with mental illness [mentally
18 ill]; and

19 (2) because of that mental illness there is a
20 substantial risk of serious harm to the ward or to others unless the
21 ward is immediately restrained.

22 SECTION 3.1368. Section 573.022(a), Health and Safety Code,
23 is amended to read as follows:

24 (a) A person may be admitted to a facility for emergency
25 detention only if the physician who conducted the preliminary
26 examination of the person makes a written statement that:

27 (1) is acceptable to the facility;

1 (2) states that after a preliminary examination it is
2 the physician's opinion that:

3 (A) the person is a person with mental illness
4 [mentally ill];

5 (B) the person evidences a substantial risk of
6 serious harm to the person [himself] or to others;

7 (C) the described risk of harm is imminent unless
8 the person is immediately restrained; and

9 (D) emergency detention is the least restrictive
10 means by which the necessary restraint may be accomplished; and

11 (3) includes:

12 (A) a description of the nature of the person's
13 mental illness;

14 (B) a specific description of the risk of harm
15 the person evidences that may be demonstrated either by the
16 person's behavior or by evidence of severe emotional distress and
17 deterioration in the person's mental condition to the extent that
18 the person cannot remain at liberty; and

19 (C) the specific detailed information from which
20 the physician formed the opinion in Subdivision (2).

21 SECTION 3.1369. Section 573.023(b), Health and Safety Code,
22 is amended to read as follows:

23 (b) A person admitted to a facility under Section 573.022
24 shall be released if the facility administrator determines at any
25 time during the emergency detention period that one of the criteria
26 prescribed by Section 573.022(a)(2) [573.022(2)] no longer
27 applies.

1 SECTION 3.1370. Section 573.025(c), Health and Safety Code,
2 is amended to read as follows:

3 (c) The executive commissioner [~~of the Health and Human~~
4 ~~Services Commission~~] by rule shall prescribe the manner in which
5 the person is informed of the person's rights under this section and
6 this subtitle.

7 SECTION 3.1371. Section 574.001(f), Health and Safety Code,
8 is amended to read as follows:

9 (f) An application in which the proposed patient is a child
10 in the custody of the Texas Juvenile Justice Department [~~Youth~~
11 ~~Commission~~] may be filed in the county in which the child's
12 commitment to the Texas Juvenile Justice Department [~~commission~~]
13 was ordered.

14 SECTION 3.1372. Section 574.002(c), Health and Safety Code,
15 is amended to read as follows:

16 (c) Any application must contain the following information
17 according to the applicant's information and belief:

18 (1) the proposed patient's name and address;
19 (2) the proposed patient's county of residence in this
20 state;

21 (3) a statement that the proposed patient is a person
22 with mental illness [~~mentally ill~~] and meets the criteria in
23 Section 574.034 or 574.035 for court-ordered mental health
24 services; and

25 (4) whether the proposed patient is charged with a
26 criminal offense.

27 SECTION 3.1373. Section 574.011(a), Health and Safety Code,

1 is amended to read as follows:

2 (a) A certificate of medical examination for mental illness
3 must be sworn to, dated, and signed by the examining physician. The
4 certificate must include:

5 (1) the name and address of the examining physician;
6 (2) the name and address of the person examined;
7 (3) the date and place of the examination;
8 (4) a brief diagnosis of the examined person's
9 physical and mental condition;

10 (5) the period, if any, during which the examined
11 person has been under the care of the examining physician;

12 (6) an accurate description of the mental health
13 treatment, if any, given by or administered under the direction of
14 the examining physician; and

15 (7) the examining physician's opinion that:

16 (A) the examined person is a person with mental
17 illness [mentally ill]; and

18 (B) as a result of that illness the examined
19 person is likely to cause serious harm to the person [himself] or to
20 others or is:

21 (i) suffering severe and abnormal mental,
22 emotional, or physical distress;

23 (ii) experiencing substantial mental or
24 physical deterioration of the proposed patient's [his] ability to
25 function independently, which is exhibited by the proposed
26 patient's inability, except for reasons of indigence, to provide
27 for the proposed patient's basic needs, including food, clothing,

1 health, or safety; and

(iii) not able to make a rational and informed decision as to whether to submit to treatment.

4 SECTION 3.1374. Section 574.022(a), Health and Safety Code,
5 is amended to read as follows:

(a) The judge or designated magistrate may issue a protective custody order if the judge or magistrate determines:

12 (2) the proposed patient presents a substantial risk
13 of serious harm to the proposed patient [himself] or others if not
14 immediately restrained pending the hearing.

15 SECTION 3.1375. Section 574.025(a), Health and Safety Code,
16 is amended to read as follows:

17 (a) A hearing must be held to determine if:

27 SECTION 3.1376. Section 574.026(d), Health and Safety Code,

1 is amended to read as follows:

2 (d) The notification of probable cause hearing shall read as
3 follows:

4 (Style of Case)

5 NOTIFICATION OF PROBABLE CAUSE HEARING

6 On this the _____ day of _____, 20____ [~~19~~], the
7 undersigned hearing officer heard evidence concerning the need for
8 protective custody of _____ (hereinafter referred to as
9 proposed patient). The proposed patient was given the opportunity
10 to challenge the allegations that the proposed patient [~~(s)he~~]
11 presents a substantial risk of serious harm to self or others.

12 The proposed patient and the proposed patient's [~~his~~]
13 attorney _____ have been given written notice that the
14 (attorney)

15 proposed patient was placed under an order of protective custody
16 and the reasons for such order on _____.
17 (date of notice)

18 I have examined the certificate of medical examination for mental
19 illness and _____. Based on
20 (other evidence considered)

21 this evidence, I find that there is probable cause to believe that
22 the proposed patient presents a substantial risk of serious harm to
23 the proposed patient [~~himself~~] (yes ____ or no ____) or others (yes
24 ____ or no ____) such that the proposed patient [~~(s)he~~] cannot be at
25 liberty pending final hearing because

26 _____

27 _____.
28 (reasons for finding; type of risk found)

29 SECTION 3.1377. Section 574.032(f), Health and Safety Code,

1 is amended to read as follows:

2 (f) In a hearing before a jury, the jury shall determine if
3 the proposed patient is a person with mental illness [~~mentally ill~~]
4 and meets the criteria for court-ordered mental health services.
5 The jury may not make a finding about the type of services to be
6 provided to the proposed patient.

7 SECTION 3.1378. Section 574.033(a), Health and Safety Code,
8 is amended to read as follows:

9 (a) The court shall enter an order denying an application
10 for court-ordered temporary or extended mental health services if
11 after a hearing the court or jury fails to find, from clear and
12 convincing evidence, that the proposed patient is a person with
13 mental illness [~~mentally ill~~] and meets the applicable criteria for
14 court-ordered mental health services.

15 SECTION 3.1379. Sections 574.034(a) and (b), Health and
16 Safety Code, are amended to read as follows:

17 (a) The judge may order a proposed patient to receive
18 court-ordered temporary inpatient mental health services only if
19 the judge or jury finds, from clear and convincing evidence, that:

20 (1) the proposed patient is a person with mental
21 illness [~~mentally ill~~]; and

22 (2) as a result of that mental illness the proposed
23 patient:

24 (A) is likely to cause serious harm to the
25 proposed patient [~~himself~~

26 (B) is likely to cause serious harm to others; or

27 (C) is:

(i) suffering severe and abnormal mental, emotional, or physical distress;

11 (b) The judge may order a proposed patient to receive
12 court-ordered temporary outpatient mental health services only if:

17 (A) the proposed patient is a person with mental
18 illness [~~mentally ill~~];

19 (B) the nature of the mental illness is severe
20 and persistent;

21 (C) as a result of the mental illness, the
22 proposed patient will, if not treated, continue to:

23 (i) suffer severe and abnormal mental,
24 emotional, or physical distress; and

25 (ii) experience deterioration of the
26 ability to function independently to the extent that the proposed
27 patient will be unable to live safely in the community without

1 court-ordered outpatient mental health services; and

2 (D) the proposed patient has an inability to
3 participate in outpatient treatment services effectively and
4 voluntarily, demonstrated by:

5 (i) any of the proposed patient's actions
6 occurring within the two-year period which immediately precedes the
7 hearing; or

12 SECTION 3.1380. Sections 574.035(a) and (b), Health and
13 Safety Code, are amended to read as follows:

14 (a) The judge may order a proposed patient to receive
15 court-ordered extended inpatient mental health services only if the
16 jury, or the judge if the right to a jury is waived, finds, from
17 clear and convincing evidence, that:

20 (2) as a result of that mental illness the proposed
21 patient:

22 (A) is likely to cause serious harm to the
23 proposed patient [himself];

24 (B) is likely to cause serious harm to others; or

25 (C) is:

(i) suffering severe and abnormal mental

27 emotional, or physical distress.

(4) the proposed patient has received court-ordered inpatient mental health services under this subtitle or under Chapter 46B, Code of Criminal Procedure, for at least 60 consecutive days during the preceding 12 months.

15 (b) The judge may order a proposed patient to receive
16 court-ordered extended outpatient mental health services only if:

21 (A) the proposed patient is a person with mental
22 illness [mentally ill];

23 (B) the nature of the mental illness is severe
24 and persistent;

25 (C) as a result of the mental illness, the
26 proposed patient will, if not treated, continue to:

27 (i) suffer severe and abnormal mental,

1 emotional, or physical distress; and

2 (ii) experience deterioration of the
3 ability to function independently to the extent that the proposed
4 patient will be unable to live safely in the community without
5 court-ordered outpatient mental health services;

(D) the proposed patient has an inability to participate in outpatient treatment services effectively and voluntarily, demonstrated by:

12 (ii) specific characteristics of the
13 proposed patient's clinical condition that make impossible a
14 rational and informed decision whether to submit to voluntary
15 outpatient treatment;

16 (E) the proposed patient's condition is expected
17 to continue for more than 90 days; and

18 (F) the proposed patient has received:

23 (ii) court-ordered outpatient mental
24 health services under this subtitle or under Subchapter D or E,
25 Chapter 46B, Code of Criminal Procedure, during the preceding 60
26 days.

27 SECTION 3.1381. Section 574.036(a), Health and Safety Code,

1 is amended to read as follows:

2 (a) The judge shall dismiss the jury, if any, after a
3 hearing in which a person is found to be a person with mental
4 illness [~~mentally ill~~] and to meet the criteria for court-ordered
5 temporary or extended mental health services.

6 SECTION 3.1382. Section 574.0415(a), Health and Safety
7 Code, is amended to read as follows:

8 (a) A mental health facility shall provide to a patient in
9 the patient's primary language, if possible, and in accordance with
10 department [~~board~~] rules information relating to prescription
11 medication ordered by the patient's treating physician.

12 SECTION 3.1383. Section 574.0455(b), Health and Safety
13 Code, is amended to read as follows:

14 (b) The executive commissioner [~~Department of State Health~~
15 ~~services~~] shall prescribe uniform standards:

16 (1) that a person must meet to be listed as a qualified
17 transportation service provider under Subsection (a); and

18 (2) prescribing requirements relating to how the
19 transportation of a person to a mental health facility by a
20 qualified transportation service provider is provided.

21 SECTION 3.1384. Section 574.103(a), Health and Safety Code,
22 is amended to read as follows:

23 (a) In this section, "ward" has the meaning assigned by
24 Section 1002.030, Estates [~~601, Texas Probate~~] Code.

25 SECTION 3.1385. Section 575.003, Health and Safety Code, is
26 amended to read as follows:

27 Sec. 575.003. ADMISSION OF PERSONS WITH CHEMICAL DEPENDENCY

1 [ALCOHOLICS] AND PERSONS CHARGED WITH CRIMINAL OFFENSE. This
2 subtitle does not affect the admission to a state mental health
3 facility of:

4 (1) a person with a chemical dependency [~~an alcoholic~~]
5 admitted under Chapter 462; or

6 (2) a person charged with a criminal offense admitted
7 under Subchapter D or E, Chapter 46B, Code of Criminal Procedure.

8 SECTION 3.1386. Section 575.012, Health and Safety Code, is
9 amended to read as follows:

10 Sec. 575.012. TRANSFER OF PERSON WITH AN INTELLECTUAL
11 DISABILITY [~~MENTAL RETARDATION~~] TO AN INPATIENT MENTAL HEALTH
12 FACILITY OPERATED BY THE DEPARTMENT. (a) An inpatient mental
13 health facility may not transfer a patient who is also a person with
14 an intellectual disability [~~mental retardation~~] to a department
15 mental health facility unless, before initiating the transfer, the
16 facility administrator of the inpatient mental health facility
17 obtains from the commissioner a determination that space is
18 available in a department facility unit that is specifically
19 designed to serve such a person.

20 (b) The department shall maintain an appropriate number of
21 hospital-level beds for persons with an intellectual disability
22 [~~mental retardation~~] who are committed for court-ordered mental
23 health services to meet the needs of the local mental health
24 authorities. The number of beds the department maintains must be
25 determined according to the previous year's need.

26 SECTION 3.1387. The heading to Section 575.013, Health and
27 Safety Code, is amended to read as follows:

1 Sec. 575.013. TRANSFER OF PERSON WITH AN INTELLECTUAL
2 DISABILITY [~~MENTAL RETARDATION~~] TO STATE SUPPORTED LIVING CENTER
3 [~~SCHOOL~~].

4 SECTION 3.1388. Sections 575.013(a) and (b), Health and
5 Safety Code, are amended to read as follows:

6 (a) The facility administrator of an inpatient mental
7 health facility operated by the department may transfer an
8 involuntary patient in the facility to a state supported living
9 center [~~school~~] for persons with an intellectual disability [~~mental~~
10 ~~retardation~~] if:

11 (1) an examination of the patient indicates that the
12 patient has symptoms of an intellectual disability [~~mental~~
13 ~~retardation~~] to the extent that training, education,
14 rehabilitation, care, treatment, and supervision in a state
15 supported living center [~~school~~] are in the patient's best
16 interest;

17 (2) the director of the state supported living center
18 to which the patient is to be transferred agrees to the transfer;
19 and

20 (3) the facility administrator coordinates the
21 transfer with the director of that state supported living center.

22 (b) A certificate containing the diagnosis and the facility
23 administrator's recommendation of transfer to a specific state
24 supported living center [~~school~~] shall be furnished to the
25 committing court.

26 SECTION 3.1389. Section 575.017, Health and Safety Code, is
27 amended to read as follows:

1 Sec. 575.017. TRANSFER OF RECORDS. The facility
2 administrator of the transferring inpatient mental health facility
3 shall send the patient's appropriate hospital records, or a copy of
4 the records, to the hospital or facility administrator of the
5 mental hospital or state supported living center [school] to which
6 the patient is transferred.

7 SECTION 3.1390. Section 577.001(b), Health and Safety Code,
8 is amended to read as follows:

9 (b) A community center or other entity designated by the
10 department [~~Texas Department of Mental Health and Mental~~
11 ~~Retardation~~] to provide mental health services may not operate a
12 mental health facility that provides court-ordered mental health
13 services without a license issued by the department under this
14 chapter.

15 SECTION 3.1391. Section 577.002, Health and Safety Code, is
16 amended to read as follows:

17 Sec. 577.002. EXEMPTIONS FROM LICENSING REQUIREMENT. A
18 mental health facility operated by the department [~~Texas Department~~
19 ~~of Mental Health and Mental Retardation~~] or a federal agency need
20 not be licensed under this chapter.

21 SECTION 3.1392. Section 577.003, Health and Safety Code, is
22 amended to read as follows:

23 Sec. 577.003. ADDITIONAL LICENSE NOT REQUIRED. A mental
24 hospital licensed under this chapter that the department [~~Texas~~
25 ~~Department of Mental Health and Mental Retardation~~] designates to
26 provide mental health services is not required to obtain an
27 additional license to provide court-ordered mental health

1 services.

2 SECTION 3.1393. Sections 577.006(a), (b), (c), (e), (g),
3 and (i), Health and Safety Code, are amended to read as follows:

4 (a) The department shall charge each hospital every two
5 years a [~~an annual~~] license fee for an initial license or a license
6 renewal.

7 (b) The executive commissioner [~~board~~] by rule shall adopt
8 the fees authorized by Subsection (a) in accordance with Section
9 12.0111 and according to a schedule under which the number of beds
10 in the hospital determines the amount of the fee. [~~The fee may not~~
11 ~~exceed \$15 a bed.~~] A minimum license fee may be established. [~~The~~
12 ~~minimum fee may not exceed \$1,000.~~]

13 (c) The executive commissioner [~~board~~] by rule shall adopt
14 fees for hospital plan reviews according to a schedule under which
15 the amounts of the fees are based on the estimated construction
16 costs.

17 (e) The department shall charge a fee for field surveys of
18 construction plans reviewed under this section. The executive
19 commissioner [~~board~~] by rule shall adopt a fee schedule for the
20 surveys that provides a minimum fee [~~of \$500~~] and a maximum fee [~~of~~
21 \$1,000] for each survey conducted.

22 (g) The executive commissioner [~~department~~] may establish
23 staggered license renewal dates and dates on which fees are due.

24 (i) All license fees collected shall be deposited to the
25 credit of the general revenue fund [~~in the state treasury to the~~
26 ~~credit of the department to administer and enforce this chapter.~~
27 ~~These fees may be appropriated only to the department.~~].

1 SECTION 3.1394. Section 577.009, Health and Safety Code, is
2 amended to read as follows:

3 Sec. 577.009. LIMITATION ON CERTAIN CONTRACTS. A community
4 center or other entity the department [Texas Department of Mental
5 Health and Mental Retardation] designates to provide mental health
6 services may not contract with a mental health facility to provide
7 court-ordered mental health services unless the facility is
8 licensed by the department.

9 SECTION 3.1395. Section 577.010(a), Health and Safety Code,
10 is amended to read as follows:

11 (a) The executive commissioner [Texas Board of Mental
12 Health and Mental Retardation] shall adopt rules and standards the
13 executive commissioner [board] considers necessary and appropriate
14 to ensure the proper care and treatment of patients in a private
15 mental hospital or mental health facility required to obtain a
16 license under this chapter.

17 SECTION 3.1396. Section 577.0101(a), Health and Safety
18 Code, is amended to read as follows:

19 (a) The executive commissioner [board] shall adopt rules
20 governing the transfer or referral of a patient from a private
21 mental hospital to an inpatient mental health facility.

22 SECTION 3.1397. Section 578.003(a), Health and Safety Code,
23 is amended to read as follows:

24 (a) The executive commissioner [board] by rule shall adopt a
25 standard written consent form to be used when electroconvulsive
26 therapy is considered. The executive commissioner [board] by rule
27 shall also prescribe the information that must be contained in the

1 written supplement required under Subsection (c). In addition to
2 the information required under this section, the form must include
3 the information required by the Texas Medical Disclosure Panel for
4 electroconvulsive therapy. In developing the form, the executive
5 commissioner [board] shall consider recommendations of the panel.
6 Use of the consent form prescribed by the executive commissioner
7 [board] in the manner prescribed by this section creates a
8 rebuttable presumption that the disclosure requirements of
9 Sections 74.104 and 74.105, Civil Practice and Remedies Code, have
10 been met.

11 SECTION 3.1398. Sections 578.006(b), (c), (d), and (f),
12 Health and Safety Code, are amended to read as follows:

13 (b) A mental hospital or facility administering
14 electroconvulsive therapy or a private physician administering the
15 therapy on an outpatient basis must file an application for
16 registration under this section. The applicant must submit the
17 application to the department on a form prescribed by [the]
18 department rule.

19 (c) The application must be accompanied by a nonrefundable
20 application fee. The executive commissioner by rule [board] shall
21 set the fee in a reasonable amount not to exceed the cost to the
22 department to administer this section.

23 (d) The application must contain:

24 (1) the model, manufacturer, and age of each piece of
25 equipment used to administer the therapy; and
26 (2) any other information required by [the] department
27 rule.

1 (f) The executive commissioner [board] by rule may prohibit
2 the registration and use of equipment of a type, model, or age the
3 executive commissioner [board] determines is dangerous.

4 SECTION 3.1399. Section 578.007(b), Health and Safety Code,
5 is amended to read as follows:

6 (b) A report must state for each quarter:

7 (1) the number of patients who received the therapy,
8 including:

9 (A) the number of persons voluntarily receiving
10 mental health services who consented to the therapy;

11 (B) the number of involuntary patients who
12 consented to the therapy; and

13 (C) the number of involuntary patients for whom a
14 guardian of the person consented to the therapy;

15 (2) the age, sex, and race of the persons receiving the
16 therapy;

17 (3) the source of the treatment payment;

18 (4) the average number of nonelectroconvulsive
19 treatments;

20 (5) the average number of electroconvulsive
21 treatments administered for each complete series of treatments, but
22 not including maintenance treatments;

23 (6) the average number of maintenance
24 electroconvulsive treatments administered per month;

25 (7) the number of fractures, reported memory losses,
26 incidents of apnea, and cardiac arrests without death;

27 (8) autopsy findings if death followed within 14 days

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1 after the date of the administration of the therapy; and
2 (9) any other information required by [the] department
3 rule.

4 SECTION 3.1400. The heading to Subtitle D, Title 7, Health
5 and Safety Code, is amended to read as follows:

6 SUBTITLE D. PERSONS WITH AN INTELLECTUAL DISABILITY [~~MENTAL~~
7 ~~RETARDATION~~] ACT

8 SECTION 3.1401. Section 591.001, Health and Safety Code, is
9 amended to read as follows:

10 Sec. 591.001. SHORT TITLE. This subtitle may be cited as
11 the Persons with an Intellectual Disability [~~Mental Retardation~~]
12 Act.

13 SECTION 3.1402. Section 591.002, Health and Safety Code, is
14 amended to read as follows:

15 Sec. 591.002. PURPOSE. (a) It is the public policy of this
16 state that persons with an intellectual disability [~~mental~~
17 ~~retardation~~] have the opportunity to develop to the fullest extent
18 possible their potential for becoming productive members of
19 society.

(b) It is the purpose of this subtitle to provide and assure
a continuum of quality services to meet the needs of all persons
with an intellectual disability [mental retardation] in this state.

23 (c) The state's responsibility to persons with an
24 intellectual disability [~~mental retardation~~] does not replace or
25 impede parental rights and responsibilities or terminate the
26 activities of persons, groups, or associations that advocate for
27 and assist persons with an intellectual disability [~~mental~~

1 ~~retardation~~].

2 (d) It is desirable to preserve and promote living at home
3 if feasible. If living at home is not possible and placement in a
4 residential care facility [~~for persons with mental retardation~~] is
5 necessary, a person must be admitted in accordance with basic due
6 process requirements, giving appropriate consideration to parental
7 desires if possible. The person must be admitted to a facility that
8 provides habilitative training for the person's condition, that
9 fosters the personal development of the person, and that enhances
10 the person's ability to cope with the environment.

11 (e) Because persons with an intellectual disability [~~mental~~
12 ~~retardation~~] have been denied rights solely because they are
13 persons with an intellectual disability [~~of their retardation~~], the
14 general public should be educated to the fact that persons with an
15 intellectual disability [~~mental retardation~~] who have not been
16 adjudicated incompetent and for whom a guardian has not been
17 appointed by a due process proceeding in a court have the same
18 rights and responsibilities enjoyed by all citizens of this state.
19 All citizens are urged to assist persons with an intellectual
20 disability [~~mental retardation~~] in acquiring and maintaining
21 rights and in participating in community life as fully as possible.

22 SECTION 3.1403. Section 591.003, Health and Safety Code, is
23 amended by amending Subdivisions (3), (4), (5), (6), (7), (8), (9),
24 (10), (14), (15-a), (16), (18), (19), (22), and (23) and adding
25 Subdivisions (4-a) and (9-a) to read as follows:

26 (3) "Care" means the life support and maintenance
27 services or other aid provided to a person with an intellectual

1 disability [~~mental retardation~~], including dental, medical, and
2 nursing care and similar services.

3 (4) "Client" means a person receiving intellectual
4 disability [~~mental retardation~~] services from the department or a
5 community center. The term includes a resident.

6 (4-a) "Commission" means the Health and Human Services
7 Commission.

8 (5) "Commissioner" means the commissioner of aging and
9 disability services [~~mental health and mental retardation~~].

10 (6) "Community center" means an entity organized under
11 Subchapter A, Chapter 534, that provides intellectual disability
12 [~~mental retardation~~] services.

13 (7) "Department" means the [~~Texas~~] Department of Aging
14 and Disability Services [~~Mental Health and Mental Retardation~~].

15 (8) "Interdisciplinary team" means a group of
16 intellectual disability [~~mental retardation~~] professionals and
17 paraprofessionals who assess the treatment, training, and
18 habilitation needs of a person with an intellectual disability
19 [~~mental retardation~~] and make recommendations for services for that
20 person.

21 (9) "Director" means the director or superintendent of
22 a residential care facility [~~community center~~].

23 (9-a) "Executive commissioner" means the executive
24 commissioner of the Health and Human Services Commission.

25 (10) "Group home" means a residential arrangement,
26 other than a residential care facility, operated by the department
27 or a community center in which not more than 15 persons with an

1 intellectual disability [~~mental retardation~~] voluntarily live and
2 under appropriate supervision may share responsibilities for
3 operation of the living unit.

4 (14) "Intellectual disability [~~mental retardation~~]
5 services" means programs and assistance for persons with an
6 intellectual disability [~~mental retardation~~] that may include a
7 determination of an intellectual disability [~~mental retardation~~],
8 interdisciplinary team recommendations, education, special
9 training, supervision, care, treatment, rehabilitation,
10 residential care, and counseling, but does not include those
11 services or programs that have been explicitly delegated by law to
12 other state agencies.

13 (15-a) "Person with an intellectual disability" means
14 a person determined by a physician or psychologist licensed in this
15 state or certified by the department to have subaverage general
16 intellectual functioning with deficits in adaptive behavior.

17 (16) "Person with mental retardation" means a person
18 with an intellectual disability.

19 (18) "Residential care facility" means a state
20 supported living center or the ICF-IID component of the Rio Grande
21 Center [~~facility operated by the department or a community center~~
22 ~~that provides 24-hour services, including domiciliary services,~~
23 ~~directed toward enhancing the health, welfare, and development of~~
24 ~~persons with mental retardation~~].

25 (19) "Service provider" means a person who provides
26 intellectual disability [~~mental retardation~~] services.

27 (22) "Training" means the process by which a person

1 with an intellectual disability [~~mental retardation~~] is
2 habilitated and may include the teaching of life and work skills.

3 (23) "Treatment" means the process by which a service
4 provider attempts to ameliorate the condition of a person with an
5 intellectual disability [~~mental retardation~~].

6 SECTION 3.1404. Section 591.004, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 591.004. RULES. The executive commissioner [~~board~~] by
9 rule shall ensure the implementation of this subtitle.

10 SECTION 3.1405. Sections 591.011(a), (b), (c), and (e),
11 Health and Safety Code, are amended to read as follows:

12 (a) Subject to the executive commissioner's authority to
13 adopt rules and policies, the [~~The~~] department shall make all
14 reasonable efforts consistent with available resources to:

15 (1) assure that each identified person with an
16 intellectual disability [~~mental retardation~~] who needs
17 intellectual disability [~~mental retardation~~] services is given
18 while these services are needed quality care, treatment, education,
19 training, and rehabilitation appropriate to the person's
20 individual needs other than those services or programs explicitly
21 delegated by law to other governmental agencies;

22 (2) initiate, carry out, and evaluate procedures to
23 guarantee to persons with an intellectual disability [~~mental~~
24 ~~retardation~~] the rights listed in this subtitle;

25 (3) carry out this subtitle, including planning,
26 initiating, coordinating, promoting, and evaluating all programs
27 developed;

1 (4) provide either directly or by cooperation,
2 negotiation, or contract with other agencies and those persons and
3 groups listed in Section 533A.034 [533.034], a continuum of
4 services to persons with an intellectual disability [mental
5 retardation]; and

6 (5) provide, either directly or by contract with other
7 agencies, a continuum of services to children, juveniles, or adults
8 with an intellectual disability [mental retardation] committed
9 into the department's custody by the juvenile or criminal courts.

10 (b) The services provided by the department under
11 Subsection (a)(4) shall include:

12 (1) treatment and care;

13 (2) education and training, including sheltered
14 workshop programs;

15 (3) counseling and guidance; and

16 (4) development of residential and other facilities to
17 enable persons with an intellectual disability [mental
18 retardation] to live and be habilitated in the community.

19 (c) The facilities provided under Subsection (b) shall
20 include group homes, foster homes, halfway houses, and day-care
21 facilities for persons with an intellectual disability [mental
22 retardation] to which the department has assigned persons with an
23 intellectual disability [mental retardation].

24 (e) The department shall have the right of access to all
25 clients [residents] and records of clients [residents] who are
26 placed with residential service providers.

27 SECTION 3.1406. Section 591.013, Health and Safety Code, is

1 amended to read as follows:

2 Sec. 591.013. LONG-RANGE PLAN. (a) The commission
3 [~~department and the Texas Department of Human Services~~] shall
4 [~~jointly~~] develop a long-range plan for services to persons with
5 intellectual and developmental disabilities[~~, including mental~~
6 ~~retardation~~].

7 (b) The executive commissioner [~~of each department~~] shall
8 appoint the necessary staff to develop the plan through research of
9 appropriate topics and public hearings to obtain testimony from
10 persons with knowledge of or interest in state services to persons
11 with intellectual and developmental disabilities[~~, including~~
12 ~~mental retardation~~].

13 (c) In developing the plan, the commission [~~department~~]
14 shall consider existing plans or studies made by the commission or
15 department [~~departments~~].

16 (d) The plan must address at least the following topics:

17 (1) the needs of persons with intellectual and
18 developmental disabilities[~~, including mental retardation~~];

19 (2) how state services should be structured to meet
20 those needs;

21 (3) how the ICF-IID [~~ICF-MR~~] program, the waiver
22 program under Section 1915(c), federal Social Security Act, other
23 programs under Title XIX, federal Social Security Act, and other
24 federally funded programs can best be structured and financed to
25 assist the state in delivering services to persons with
26 intellectual and developmental disabilities[~~, including mental~~
27 ~~retardation~~];

1 (4) the statutory limits and rule or policy changes
2 necessary to ensure the controlled growth of the programs under
3 Title XIX, federal Social Security Act, and other federally funded
4 programs;

5 (5) methods for expanding services available through
6 the ICF-IID [~~ICF-MR~~] program to persons with related conditions as
7 defined by federal regulations relating to the medical assistance
8 program; and

9 (6) the cost of implementing the plan.

10 (e) The commission and the department [~~departments~~] shall,
11 if necessary, modify their respective long-range plans and other
12 existing plans relating to the provision of services to persons
13 with intellectual and developmental disabilities[, ~~including~~
14 ~~mental retardation~~] to incorporate the provisions of the [~~joint~~]
15 plan.

16 (f) The commission [~~departments~~] shall review and revise
17 the plan biennially. The commission and the [~~Each~~] department
18 shall consider the most recent revision of the plan in any
19 modifications of the commission's or [~~that~~] department's long-range
20 plans and in each future budget request.

21 (g) This section does not affect the authority of the
22 commission and the department [~~and the Texas Department of Human~~
23 ~~Services~~] to carry out their separate functions as established by
24 state and federal law.

25 (h) In this section, "ICF-IID [~~ICF-MR~~] program" means the
26 medical assistance program serving persons with intellectual and
27 developmental disabilities [~~mental retardation~~] who receive care

1 in intermediate care facilities.

2 SECTION 3.1407. Sections 591.022(a), (b), and (c), Health
3 and Safety Code, are amended to read as follows:

4 (a) A person who intentionally violates the rights
5 guaranteed by this subtitle to a person with an intellectual
6 disability [~~mental retardation~~] is liable to the person injured by
7 the violation in an amount of not less than \$100 or more than
8 \$5,000.

9 (b) A person who recklessly violates the rights guaranteed
10 by this subtitle to a person with an intellectual disability
11 [~~mental retardation~~] is liable to the person injured by the
12 violation in an amount of not less than \$100 or more than \$1,000.

13 (c) A person who intentionally releases confidential
14 information or records of a person with an intellectual disability
15 [~~mental retardation~~] in violation of law is liable to the person
16 injured by the unlawful disclosure for \$1,000 or three times the
17 actual damages, whichever is greater.

18 SECTION 3.1408. Sections 591.023(a) and (e), Health and
19 Safety Code, are amended to read as follows:

20 (a) A district court, in an action brought in the name of the
21 state by the state attorney general or a district or county attorney
22 within the attorney's respective jurisdiction, may issue a
23 temporary restraining order, a temporary injunction, or a permanent
24 injunction to:

25 (1) restrain and prevent a person from violating this
26 subtitle or a rule adopted by the executive commissioner
27 [~~department~~] under this subtitle; or

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4 (e) A civil penalty recovered under this section shall be
5 paid to the state for use in intellectual disability [mental
6 ~~retardation~~] services.

7 SECTION 3.1409. The heading to Chapter 592, Health and
8 Safety Code, is amended to read as follows:

9 CHAPTER 592. RIGHTS OF PERSONS WITH AN INTELLECTUAL DISABILITY
10 [MENTAL RETARDATION]

11 SECTION 3.1410. Section 592.001, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 592.001. PURPOSE. The purpose of this chapter is to
14 recognize and protect the individual dignity and worth of each
15 person with an intellectual disability [mental retardation].

16 SECTION 3.1411. Section 592.002, Health and Safety Code, is
17 amended to read as follows:

18 Sec. 592.002. RULES. The executive commissioner [board] by
19 rule shall ensure the implementation of the rights guaranteed in
20 this chapter.

SECTION 3.1412. Subchapter B, Chapter 592, Health and Safety Code, is amended to read as follows:

23 SUBCHAPTER B. BASIC BILL OF RIGHTS

24 Sec. 592.011. RIGHTS GUARANTEED. (a) Each person with an
25 intellectual disability [~~mental retardation~~] in this state has the
26 rights, benefits, and privileges guaranteed by the constitution and
27 laws of the United States and this state.

1 (b) The rights specifically listed in this subtitle are in
2 addition to all other rights that persons with an intellectual
3 disability [~~mental retardation~~] have and are not exclusive or
4 intended to limit the rights guaranteed by the constitution and
5 laws of the United States and this state.

6 Sec. 592.012. PROTECTION FROM EXPLOITATION AND ABUSE. Each
7 person with an intellectual disability [~~mental retardation~~] has the
8 right to protection from exploitation and abuse because of the
9 person's intellectual disability [~~mental retardation~~].

10 Sec. 592.013. LEAST RESTRICTIVE LIVING ENVIRONMENT. Each
11 person with an intellectual disability [~~mental retardation~~] has the
12 right to live in the least restrictive setting appropriate to the
13 person's individual needs and abilities and in a variety of living
14 situations, including living:

- 15 (1) alone;
16 (2) in a group home;
17 (3) with a family; or
18 (4) in a supervised, protective environment.

19 Sec. 592.014. EDUCATION. Each person with an intellectual
20 disability [~~mental retardation~~] has the right to receive publicly
21 supported educational services, including those services provided
22 under the Education Code, that are appropriate to the person's
23 individual needs regardless of [~~the person's~~]:

- 24 (1) the person's chronological age;
25 (2) the degree of the person's intellectual disability
26 [~~retardation~~];
27 (3) the person's accompanying disabilities or

1 handicaps; or

2 (4) the person's admission or commitment to
3 intellectual disability [~~mental retardation~~] services.

4 Sec. 592.015. EMPLOYMENT. An employer, employment agency,
5 or labor organization may not deny a person equal opportunities in
6 employment because of the person's intellectual disability [~~mental~~
7 ~~retardation~~], unless:

8 (1) the person's intellectual disability [~~mental~~
9 ~~retardation~~] significantly impairs the person's ability to perform
10 the duties and tasks of the position for which the person has
11 applied; or

12 (2) the denial is based on a bona fide occupational
13 qualification reasonably necessary to the normal operation of the
14 particular business or enterprise.

15 Sec. 592.016. HOUSING. An owner, lessee, sublessee,
16 assignee, or managing agent or other person having the right to
17 sell, rent, or lease real property, or an agent or employee of any
18 of these, may not refuse to sell, rent, or lease to any person or
19 group of persons solely because the person is a person with an
20 intellectual disability [~~mental retardation~~] or a group that
21 includes one or more persons with an intellectual disability
22 [~~mental retardation~~].

23 Sec. 592.017. TREATMENT AND SERVICES. Each person with an
24 intellectual disability [~~mental retardation~~] has the right to
25 receive for the person's intellectual disability [~~mental~~
26 ~~retardation~~] adequate treatment and habilitative services that:

27 (1) are suited to the person's individual needs;

7 Sec. 592.018. DETERMINATION OF AN INTELLECTUAL DISABILITY
8 [~~MENTAL RETARDATION~~]. A person thought to be a person with an
9 intellectual disability [~~mental retardation~~] has the right
10 promptly to receive a determination of an intellectual disability
11 [~~mental retardation~~] using diagnostic techniques that are adapted
12 to that person's cultural background, language, and ethnic origin
13 to determine if the person is in need of intellectual disability
14 [~~mental retardation~~] services as provided by Subchapter A, Chapter
15 593.

16 Sec. 592.019. ADMINISTRATIVE HEARING. A person who files
17 an application for a determination of an intellectual disability
18 [~~mental retardation~~] has the right to request and promptly receive
19 an administrative hearing under Subchapter A, Chapter 593, to
20 contest the findings of the determination of an intellectual
21 ~~disability [mental retardation]~~.

22 Sec. 592.020. INDEPENDENT DETERMINATION OF AN INTELLECTUAL
23 DISABILITY [~~MENTAL RETARDATION~~]. A person for whom a determination
24 of an intellectual disability [~~mental retardation~~] is performed or
25 a person who files an application for a determination of an
26 intellectual disability [~~mental retardation~~] under Section 593.004
27 and who questions the validity or results of the determination of an

1 intellectual disability [~~mental retardation~~] has the right to an
2 additional, independent determination of an intellectual
3 disability [~~mental retardation~~] performed at the person's own
4 expense.

5 Sec. 592.021. ADDITIONAL RIGHTS. Each person with an
6 intellectual disability [~~mental retardation~~] has the right to:

7 (1) presumption of competency;
8 (2) due process in guardianship proceedings; and
9 (3) fair compensation for the person's labor for the
10 economic benefit of another, regardless of any direct or incidental
11 therapeutic value to the person.

12 SECTION 3.1413. Sections [592.033\(c\)](#) and (d), Health and
13 Safety Code, are amended to read as follows:

14 (c) The plan shall be implemented as soon as possible but
15 not later than the 30th day after the date on which the client is
16 admitted or committed to intellectual disability [~~mental~~
17 ~~retardation~~] services.

18 (d) The content of an individualized habilitation plan is as
19 required by department rule and as may be required by the department
20 by contract.

21 SECTION 3.1414. Section [592.036\(a\)](#), Health and Safety Code,
22 is amended to read as follows:

23 (a) Except as provided by Section [593.030](#), a client, the
24 parent if the client is a minor, or a guardian of the person may
25 withdraw the client from intellectual disability [~~mental~~
26 ~~retardation~~] services.

27 SECTION 3.1415. Section [592.039](#), Health and Safety Code, is

1 amended to read as follows:

2 Sec. 592.039. GRIEVANCES. A client, or a person acting on
3 behalf of a person with an intellectual disability [~~mental~~
4 ~~retardation~~] or a group of persons with an intellectual disability
5 [~~mental retardation~~], has the right to submit complaints or
6 grievances regarding the infringement of the rights of a person
7 with an intellectual disability [~~mental retardation~~] or the
8 delivery of intellectual disability [~~mental retardation~~] services
9 against a person, group of persons, organization, or business to
10 the department's Office of Consumer Rights and Services
11 [~~appropriate public responsibility committee~~] for investigation
12 and appropriate action.

13 SECTION 3.1416. Section 592.040(a), Health and Safety Code,
14 is amended to read as follows:

15 (a) On admission for intellectual disability [~~mental~~
16 ~~retardation~~] services, each client, and the parent if the client is
17 a minor or the guardian of the person of the client, shall be given
18 written notice of the rights guaranteed by this subtitle. The
19 notice shall be in plain and simple language.

20 SECTION 3.1417. The heading to Section 592.054, Health and
21 Safety Code, is amended to read as follows:

22 Sec. 592.054. DUTIES OF [~~SUPERINTENDENT OR~~] DIRECTOR.

23 SECTION 3.1418. Section 592.054(a), Health and Safety Code,
24 is amended to read as follows:

25 (a) Except as limited by this subtitle, the [~~superintendent~~
26 ~~or~~] director shall provide without further consent necessary care
27 and treatment to each court-committed resident and make available

1 necessary care and treatment to each voluntary resident.

2 SECTION 3.1419. Section 592.153(a), Health and Safety Code,
3 is amended to read as follows:

4 (a) In this section, "ward" has the meaning assigned by
5 Section 1002.030, Estates [601, Texas Probate] Code.

6 SECTION 3.1420. The heading to Chapter 593, Health and
7 Safety Code, is amended to read as follows:

8 CHAPTER 593. ADMISSION AND COMMITMENT TO INTELLECTUAL DISABILITY
9 [MENTAL RETARDATION] SERVICES

10 SECTION 3.1421. Section 593.001, Health and Safety Code, is
11 amended to read as follows:

12 Sec. 593.001. ADMISSION. A person may be admitted for
13 intellectual disability [mental retardation] services offered by
14 the department or a community center, admitted voluntarily to a
15 residential care program, or committed to a residential care
16 facility, only as provided by this chapter.

17 SECTION 3.1422. Section 593.002, Health and Safety Code, is
18 amended to read as follows:

19 Sec. 593.002. CONSENT REQUIRED. (a) Except as provided by
20 Subsection (b), the department or a community center may not
21 provide intellectual disability [mental retardation] services to a
22 client without the client's legally adequate consent.

23 (b) The department or community center may provide
24 nonresidential intellectual disability [mental retardation]
25 services, including a determination of an intellectual disability
26 [mental retardation], to a client without the client's legally
27 adequate consent if the department or community center has made all

1 reasonable efforts to obtain consent.

2 (c) The executive commissioner [board] by rule shall
3 prescribe the efforts to obtain consent that are reasonable and the
4 documentation for those efforts.

5 SECTION 3.1423. Section 593.003, Health and Safety Code, is
6 amended to read as follows:

7 Sec. 593.003. REQUIREMENT OF DETERMINATION OF AN
8 INTELLECTUAL DISABILITY [MENTAL RETARDATION]. [(a)] Except as
9 provided by Sections 593.027, 593.0275, and 593.028, a person is
10 not eligible to receive intellectual disability [mental
11 retardation] services unless the person first is determined to be a
12 person with an intellectual disability [have mental retardation].

13 [(b) This section does not apply to an eligible child with a
14 developmental disability receiving services under Subchapter A,
15 Chapter 535.]

16 SECTION 3.1424. The heading to Section 593.004, Health and
17 Safety Code, is amended to read as follows:

18 Sec. 593.004. APPLICATION FOR DETERMINATION OF AN
19 INTELLECTUAL DISABILITY [MENTAL RETARDATION].

20 SECTION 3.1425. Section 593.004(b), Health and Safety Code,
21 is amended to read as follows:

22 (b) A person believed to be a person with an intellectual
23 disability [mental retardation], the parent if the person is a
24 minor, or the guardian of the person may make written application to
25 an authorized provider for a determination of an intellectual
26 disability [mental retardation] using forms provided by the
27 department.

1 SECTION 3.1426. The heading to Section 593.005, Health and
2 Safety Code, is amended to read as follows:

3 Sec. 593.005. DETERMINATION OF AN INTELLECTUAL DISABILITY
4 [MENTAL RETARDATION].

5 SECTION 3.1427. Sections 593.005(a-1) and (d), Health and
6 Safety Code, are amended to read as follows:

7 (a-1) An authorized provider shall perform the
8 determination of an intellectual disability [mental retardation].
9 The department may charge a reasonable fee for certifying an
10 authorized provider.

11 (d) If the person is indigent, the determination of an
12 intellectual disability [mental retardation] shall be performed at
13 the department's expense by an authorized provider.

14 SECTION 3.1428. Section 593.006, Health and Safety Code, is
15 amended to read as follows:

16 Sec. 593.006. REPORT. A person who files an application for
17 a determination of an intellectual disability [mental retardation]
18 under Section 593.004 shall be promptly notified in writing of the
19 findings.

20 SECTION 3.1429. Section 593.007, Health and Safety Code, is
21 amended to read as follows:

22 Sec. 593.007. NOTIFICATION OF CERTAIN RIGHTS. The
23 department shall inform the person who filed an application for a
24 determination of an intellectual disability [mental retardation]
25 of the person's right to:

26 (1) an independent determination of an intellectual
27 disability [mental retardation] under Section 592.020; and

(2) an administrative hearing under Section 593.008 by the agency that conducted the determination of an intellectual disability [mental retardation] to contest the findings.

4 SECTION 3.1430. Sections 593.008(b) and (e), Health and
5 Safety Code, are amended to read as follows:

6 (b) The proposed client, contestant, and their respective
7 representative by right may:

(3) examine witnesses.

15 (e) The executive commissioner [board] by rule shall
16 implement the hearing procedures.

17 SECTION 3.1431. Section 593.012(a), Health and Safety Code,
18 is amended to read as follows:

19 (a) The director [superintendent] of a residential care
20 facility to which a client has been admitted for court-ordered care
21 and treatment may have a client who is absent without authority
22 taken into custody, detained, and returned to the facility by
23 issuing a certificate to a law enforcement agency of the
24 municipality or county in which the facility is located or by
25 obtaining a court order issued by a magistrate in the manner
26 prescribed by Section 574.083.

27 SECTION 3.1432. Sections 593.013(b) and (f), Health and

1 Safety Code, are amended to read as follows:

2 (b) An interdisciplinary team shall:

3 (1) interview the person with an intellectual
4 disability [~~mental retardation~~], the person's parent if the person
5 is a minor, and the person's guardian;

6 (2) review the person's:

7 (A) social and medical history;

8 (B) medical assessment, which shall include an
9 audiological, neurological, and vision screening;

10 (C) psychological and social assessment; and

11 (D) determination of adaptive behavior level;

12 (3) determine the person's need for additional
13 assessments, including educational and vocational assessments;

14 (4) obtain any additional assessment necessary to plan
15 services;

16 (5) identify the person's habilitation and service
17 preferences and needs; and

18 (6) recommend services to address the person's needs
19 that consider the person's preferences.

20 (f) If the court has ordered the interdisciplinary team
21 report and recommendations under Section 593.041, the team shall
22 promptly send a copy of the report and recommendations to the court,
23 the person with an intellectual disability [~~mental retardation~~] or
24 the person's legal representative, the person's parent if the
25 person is a minor, and the person's guardian.

26 SECTION 3.1433. The heading to Subchapter B, Chapter 593,
27 Health and Safety Code, is amended to read as follows:

1 SUBCHAPTER B. APPLICATION AND ADMISSION TO VOLUNTARY INTELLECTUAL
2 DISABILITY [~~MENTAL RETARDATION~~] SERVICES

3 SECTION 3.1434. Section 593.021(a), Health and Safety Code,
4 is amended to read as follows:

5 (a) The proposed client or the parent if the proposed client
6 is a minor may apply for voluntary intellectual disability [~~mental~~
7 ~~retardation~~] services under Section 593.022, 593.026, 593.027,
8 593.0275, or 593.028.

9 SECTION 3.1435. The heading to Section 593.022, Health and
10 Safety Code, is amended to read as follows:

11 Sec. 593.022. ADMISSION TO VOLUNTARY INTELLECTUAL
12 DISABILITY [~~MENTAL RETARDATION~~] SERVICES.

13 SECTION 3.1436. Section 593.022(a), Health and Safety Code,
14 is amended to read as follows:

15 (a) An eligible person who applies for intellectual
16 disability [~~mental retardation~~] services may be admitted as soon as
17 appropriate services are available.

18 SECTION 3.1437. Section 593.023(a), Health and Safety Code,
19 is amended to read as follows:

20 (a) The executive commissioner [~~board~~] by rule shall
21 develop and adopt procedures permitting a client, a parent if the
22 client is a minor, or a guardian of the person to participate in
23 planning the client's treatment and habilitation, including a
24 decision to recommend or place a client in an alternative setting.

25 SECTION 3.1438. Section 593.026, Health and Safety Code, is
26 amended to read as follows:

27 Sec. 593.026. REGULAR VOLUNTARY ADMISSION. A regular

1 voluntary admission is permitted if:

2 (1) space is available at the facility for which
3 placement is requested; and

4 (2) the facility director [superintendent] determines
5 that the facility provides services that meet the needs of the
6 proposed resident.

7 SECTION 3.1439. Section 593.027, Health and Safety Code, is
8 amended to read as follows:

9 Sec. 593.027. EMERGENCY ADMISSION. (a) An emergency
10 admission to a residential care facility is permitted without a
11 determination of an intellectual disability [~~mental retardation~~]
12 and an interdisciplinary team recommendation if:

13 (1) there is persuasive evidence that the proposed
14 resident is a person with an intellectual disability [~~mental~~
15 ~~retardation~~];

16 (2) space is available at the facility for which
17 placement is requested;

18 (3) the proposed resident has an urgent need for
19 services that the facility director [superintendent] determines
20 the facility provides; and

21 (4) the facility can provide relief for the urgent
22 need within a year after admission.

23 (b) A determination of an intellectual disability [~~mental~~
24 ~~retardation~~] and an interdisciplinary team recommendation for the
25 person admitted under this section shall be performed within 30
26 days after the date of admission.

27 SECTION 3.1440. Section 593.0275, Health and Safety Code,

1 is amended to read as follows:

2 Sec. 593.0275. EMERGENCY SERVICES. (a) A person may
3 receive emergency services without a determination of an
4 intellectual disability [~~mental retardation~~] if:

5 (1) there is persuasive evidence that the person is a
6 person with an intellectual disability [~~mental retardation~~];

7 (2) emergency services are available; and

8 (3) the person has an urgent need for emergency
9 services.

10 (b) A determination of an intellectual disability [~~mental~~
11 ~~retardation~~] for the person served under this section shall be
12 performed within 30 days after the date the services begin.

13 SECTION 3.1441. Sections 593.028(a) and (b), Health and
14 Safety Code, are amended to read as follows:

15 (a) A person may be admitted to a residential care facility
16 for respite care without a determination of an intellectual
17 disability [~~mental retardation~~] and interdisciplinary team
18 recommendation if:

19 (1) there is persuasive evidence that the proposed
20 resident is a person with an intellectual disability [~~mental~~
21 ~~retardation~~];

22 (2) space is available at the facility for which
23 respite care is requested;

24 (3) the facility director [~~superintendent~~] determines
25 that the facility provides services that meet the needs of the
26 proposed resident; and

27 (4) the proposed resident or the proposed resident's

1 family urgently requires assistance or relief that can be provided
2 within a period not to exceed 30 consecutive days after the date of
3 admission.

4 (b) If the relief sought by the proposed resident or the
5 proposed resident's family has not been provided within 30 days,
6 one 30-day extension may be allowed if:

7 (1) the facility director [superintendent] determines
8 that the relief may be provided in the additional period; and

9 (2) the parties agreeing to the original placement
10 consent to the extension.

11 SECTION 3.1442. Section 593.029, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 593.029. TREATMENT OF MINOR WHO REACHES MAJORITY.
14 When a facility resident who is voluntarily admitted as a minor
15 approaches 18 years of age and continues to be in need of
16 residential services, the facility director [superintendent] shall
17 ensure that when the resident becomes an adult:

18 (1) the resident's legally adequate consent for
19 admission to the facility is obtained from the resident or the
20 guardian of the person; or

21 (2) an application is filed for court commitment under
22 Subchapter C.

23 SECTION 3.1443. Section 593.030, Health and Safety Code, is
24 amended to read as follows:

25 Sec. 593.030. WITHDRAWAL FROM SERVICES. A resident
26 voluntarily admitted to a residential care facility may not be
27 detained more than 96 hours after the time the resident, the

1 resident's parents if the resident is a minor, or the guardian of
2 the resident's person requests discharge of the resident as
3 provided by department rules, unless:

4 (1) the facility director [superintendent] determines
5 that the resident's condition or other circumstances are such that
6 the resident cannot be discharged without endangering the safety of
7 the resident or the general public;

8 (2) the facility director [superintendent] files an
9 application for judicial commitment under Section [593.041](#); and

10 (3) a court issues a protective custody order under
11 Section [593.044](#) pending a final determination on the application.

12 SECTION 3.1444. Sections [593.041\(a\), \(b\), \(c\), and \(e\)](#),
13 Health and Safety Code, are amended to read as follows:

14 (a) A proposed resident, if an adult, a parent if the
15 proposed resident is a minor, the guardian of the person, the court,
16 or any other interested person, including a community center or
17 agency that conducted a determination of an intellectual disability
18 [~~mental retardation~~] of the proposed resident, may file an
19 application for an interdisciplinary team report and
20 recommendation that the proposed client is in need of long-term
21 placement in a residential care facility.

22 (b) Except as provided by Subsection (e), the application
23 must be filed with the county clerk in the county in which the
24 proposed resident resides. If the director [superintendent] of a
25 residential care facility files an application for judicial
26 commitment of a voluntary resident, the county in which the
27 facility is located is considered the resident's county of

1 residence.

2 (c) The county court has original jurisdiction of all
3 judicial proceedings for commitment of a person with an
4 intellectual disability [~~mental retardation~~] to residential care
5 facilities.

6 (e) An application in which the proposed patient is a child
7 in the custody of the Texas Juvenile Justice Department [~~Youth~~
8 ~~Commission~~] may be filed in the county in which the child's
9 commitment to the Texas Juvenile Justice Department [~~the~~
10 ~~commission~~] was ordered.

11 SECTION 3.1445. Section 593.044(a), Health and Safety Code,
12 is amended to read as follows:

13 (a) The court in which an application for a hearing is filed
14 may order the proposed resident taken into protective custody if
15 the court determines from certificates filed with the court that
16 the proposed resident is:

17 (1) believed to be a person with an intellectual
18 disability [~~mental retardation~~]; and

19 (2) likely to cause injury to the proposed resident
20 [~~himself~~] or others if not immediately restrained.

21 SECTION 3.1446. Section 593.048, Health and Safety Code, is
22 amended to read as follows:

23 Sec. 593.048. HEARING NOTICE. (a) Not later than the 11th
24 day before the date set for the hearing, a copy of the application,
25 notice of the time and place of the hearing and, if appropriate, the
26 order for the determination of an intellectual disability [~~mental~~
27 ~~retardation~~] and interdisciplinary team report and recommendations

1 shall be served on:

- 2 (1) the proposed resident or the proposed resident's
3 representative;
- 4 (2) the parent if the proposed resident is a minor;
5 (3) the guardian of the person; and
6 (4) the department.

7 (b) The notice must specify in plain and simple language:

- 8 (1) the right to an independent determination of an
9 intellectual disability [~~mental retardation~~] under Section
10 593.007; and
- 11 (2) the provisions of Sections 593.043, 593.047,
12 593.049, 593.050, and 593.053.

13 SECTION 3.1447. Section 593.050(d), Health and Safety Code,
14 is amended to read as follows:

15 (d) The Texas Rules of Evidence apply. The results of the
16 determination of an intellectual disability [~~mental retardation~~]
17 and the current interdisciplinary team report and recommendations
18 shall be presented in evidence.

19 SECTION 3.1448. Section 593.052(a), Health and Safety Code,
20 is amended to read as follows:

21 (a) A proposed resident may not be committed to a
22 residential care facility unless:

- 23 (1) the proposed resident is a person with an
24 intellectual disability [~~mental retardation~~];
- 25 (2) evidence is presented showing that because of the
26 proposed resident's intellectual disability [~~retardation~~], the
27 proposed resident:

1 (A) represents a substantial risk of physical

2 impairment or injury to the proposed resident [himself] or others;

3 or

4 (B) is unable to provide for and is not providing
5 for the proposed resident's most basic personal physical needs;

6 (3) the proposed resident cannot be adequately and
7 appropriately habilitated in an available, less restrictive
8 setting; and

9 (4) the residential care facility provides
10 habilitative services, care, training, and treatment appropriate
11 to the proposed resident's needs.

12 SECTION 3.1449. Section 593.073, Health and Safety Code, is
13 amended to read as follows:

14 Sec. 593.073. DETERMINATION OF RESIDENTIAL COSTS. The
15 executive commissioner [~~board~~] by rule may determine the cost of
16 support, maintenance, and treatment of a resident.

17 SECTION 3.1450. Sections 593.074(b), (c), and (d), Health
18 and Safety Code, are amended to read as follows:

19 (b) The executive commissioner [~~department~~] may use the
20 projected cost of providing residential services to establish by
21 rule the maximum fee that may be charged to a payer.

22 (c) The executive commissioner by rule [~~department~~] may
23 establish maximum fees on one or a combination of the following:

24 (1) a statewide per capita;

25 (2) an individual facility per capita; or

26 (3) the type of service provided.

27 (d) Notwithstanding Subsection (b), the executive

1 commissioner by rule [department] may establish a fee in excess of
2 the department's projected cost of providing residential services
3 that may be charged to a payer:

4 (1) who is not an individual; and
5 (2) whose method of determining the rate of
6 reimbursement to a provider results in the excess.

7 SECTION 3.1451. Sections 593.075(a), (b), (d), and (e),
8 Health and Safety Code, are amended to read as follows:

9 (a) The executive commissioner [board] by rule shall
10 establish a sliding fee schedule for the payment by the resident's
11 parents of the state's total costs for the support, maintenance,
12 and treatment of a resident younger than 18 years of age.

13 (b) The executive commissioner by rule [board] shall set the
14 fee according to the parents' net taxable income and ability to pay.

15 (d) In determining the portion of the costs of the
16 resident's support, maintenance, and treatment that the parents are
17 required to pay, the department, in accordance with rules adopted
18 by the executive commissioner, shall adjust, when appropriate, the
19 payment required under the fee schedule to allow for consideration
20 of other factors affecting the ability of the parents to pay.

21 (e) The executive commissioner [department] shall evaluate
22 and, if necessary, revise the fee schedule at least once every five
23 years.

24 SECTION 3.1452. Section 593.077(a), Health and Safety Code,
25 is amended to read as follows:

26 (a) Child support payments for the benefit of a resident
27 paid or owed by a parent under court order are considered the

1 property and estate of the resident and the [department may]:

2 (1) department may be reimbursed for the costs of a
3 resident's support, maintenance, and treatment from those amounts;
4 and

5 (2) executive commissioner by rule may establish a fee
6 based on the child support obligation in addition to other fees
7 authorized by this subchapter.

8 SECTION 3.1453. Section 593.081(f), Health and Safety Code,
9 is amended to read as follows:

10 (f) For the purposes of this section, the following are not
11 considered to be trusts and are not entitled to the exemption
12 provided by this section:

13 (1) a guardianship established under the former Texas
14 Probate Code or under the Estates Code;

15 (2) a trust established under Chapter 142, Property
16 Code;

17 (3) a facility custodial account established under
18 Section 551.003;

19 (4) the provisions of a divorce decree or other court
20 order relating to child support obligations;

21 (5) an administration of a decedent's estate; or

22 (6) an arrangement in which funds are held in the
23 registry or by the clerk of a court.

24 SECTION 3.1454. Subchapter D, Chapter 593, Health and
25 Safety Code, is amended by adding Section 593.082 to read as
26 follows:

27 Sec. 593.082. FILING OF CLAIMS. (a) In this section:

1 (1) "Person responsible for a resident" means the
2 resident, a person liable for the support of the resident, or both.

3 (2) "Resident" means a person admitted to a
4 residential care facility operated by the department for persons
5 with an intellectual disability.

6 (b) A county or district attorney shall, on the written
7 request of the department, represent the state in filing a claim in
8 probate court or a petition in a court of competent jurisdiction to
9 require a person responsible for a resident to appear in court and
10 show cause why the state should not have judgment against the person
11 for the resident's support and maintenance in a residential care
12 facility operated by the department.

13 (c) On a sufficient showing, the court may enter judgment
14 against the person responsible for the resident for the costs of the
15 resident's support and maintenance.

16 (d) Sufficient evidence to authorize the court to enter
17 judgment is a verified account, sworn to by the director of the
18 residential care facility in which the person with an intellectual
19 disability resided or has resided, as to the amount due.

20 (e) The judgment may be enforced as in other cases.

21 (f) The county or district attorney representing the state
22 is entitled to a commission of 10 percent of the amount collected.

23 (g) The attorney general shall represent the state if the
24 county and district attorney refuse or are unable to act on the
25 department's request.

26 SECTION 3.1455. Section 593.092, Health and Safety Code, is
27 amended to read as follows:

1 Sec. 593.092. DISCHARGE OF PERSON VOLUNTARILY ADMITTED TO
2 RESIDENTIAL CARE FACILITY. (a) Except as otherwise provided, a
3 resident voluntarily admitted to a residential care facility under
4 a law in force before January 1, 1978, shall be discharged not later
5 than the 96th hour after the time the facility director
6 [~~superintendent~~] receives written request from the person on whose
7 application the resident was admitted, or on the resident's own
8 request.

9 (b) The facility director [~~superintendent~~] may detain the
10 resident for more than 96 hours in accordance with Section 593.030.

11 SECTION 3.1456. Sections 594.001(b) and (c), Health and
12 Safety Code, are amended to read as follows:

13 (b) This chapter does not apply to the:

14 (1) transfer of a client for emergency medical,
15 dental, or psychiatric care for not more than 30 consecutive days;

16 (2) voluntary withdrawal of a client from intellectual
17 disability [~~mental retardation~~] services; or

18 (3) discharge of a client by a [~~superintendent or~~]
19 director because the person is not a person with an intellectual
20 disability [~~mental retardation~~] according to the results of the
21 determination of an intellectual disability [~~mental retardation~~].

22 (c) A discharge under Subsection (b)(3) is without further
23 hearings, unless an administrative hearing under Subchapter A,
24 Chapter 593, to contest the determination of an intellectual
25 disability [~~mental retardation~~] is requested.

26 SECTION 3.1457. Section 594.002, Health and Safety Code, is
27 amended to read as follows:

1 Sec. 594.002. LEAVE; FURLough. The director
2 [superintendent] may grant or deny a resident a leave of absence or
3 furlough.

4 SECTION 3.1458. Section 594.014(b), Health and Safety Code,
5 is amended to read as follows:

6 (b) A client may not be transferred to another facility or
7 discharged from intellectual disability [~~mental retardation~~]
8 services unless the client is given the opportunity to request and
9 receive an administrative hearing to contest the proposed transfer
10 or discharge.

11 SECTION 3.1459. Section 594.015(b), Health and Safety Code,
12 is amended to read as follows:

13 (b) The client, the parent of a client who is a minor, the
14 guardian of the person, and the director [superintendent] have the
15 right to:

16 (1) be present and represented at the hearing; and
17 (2) have reasonable access at a reasonable time before
18 the hearing to any records concerning the client relevant to the
19 proposed action.

20 SECTION 3.1460. Section 594.016(d), Health and Safety Code,
21 is amended to read as follows:

22 (d) If an appeal is not filed from a final order granting a
23 request for a transfer or discharge, the director [superintendent]
24 shall proceed with the transfer or discharge.

25 SECTION 3.1461. Section 594.019(a), Health and Safety Code,
26 is amended to read as follows:

27 (a) The department shall provide appropriate alternative or

1 follow-up supportive services consistent with available resources
2 by agreement among the department, the local intellectual and
3 developmental disability [~~mental retardation~~] authority in the
4 area in which the client will reside, and the client, parent of a
5 client who is a minor, or guardian of the person. The services
6 shall be consistent with the rights guaranteed in Chapter 592.

7 SECTION 3.1462. Subchapter C, Chapter 594, Health and
8 Safety Code, is amended by adding Section 594.0301 to read as
9 follows:

10 Sec. 594.0301. DEFINITION. In this subchapter, "state
11 mental hospital" has the meaning assigned by Section 571.003.

12 SECTION 3.1463. Section 594.032(a), Health and Safety Code,
13 is amended to read as follows:

14 (a) The director [~~superintendent~~] may transfer a resident
15 committed to a residential care facility under Subchapter C,
16 Chapter 593, to a state mental hospital for mental health care if:

17 (1) an examination of the resident by a licensed
18 physician indicates symptoms of mental illness to the extent that
19 care, treatment, [~~control~~] and rehabilitation in a state mental
20 hospital is in the best interest of the resident;

21 (2) the hospital administrator of the state mental
22 hospital to which the resident is to be transferred agrees to the
23 transfer; and

24 (3) the director coordinates the transfer with the
25 hospital administrator of the state mental hospital.

26 SECTION 3.1464. Section 594.036(b), Health and Safety Code,
27 is amended to read as follows:

1 (b) Notice shall also be served on the parents if the
2 resident is a minor and on the guardian for the resident's person if
3 the resident has been declared to be incapacitated as provided by
4 the former Texas Probate Code or the Estates Code and a guardian has
5 been appointed.

6 SECTION 3.1465. Section 594.041(b), Health and Safety Code,
7 is amended to read as follows:

8 (b) A person may not be transferred to a state mental
9 hospital except on competent medical or psychiatric testimony.

10 SECTION 3.1466. The heading to Section 594.044, Health and
11 Safety Code, is amended to read as follows:

12 Sec. 594.044. TRANSFER TO [OF] RESIDENTIAL CARE FACILITY.

13 SECTION 3.1467. Section 594.044(b), Health and Safety Code,
14 is amended to read as follows:

15 (b) The hospital administrator of the state mental hospital
16 shall notify the director [superintendent] of the facility from
17 which the resident was transferred that hospitalization in a state
18 mental hospital is not necessary or appropriate for the resident.
19 The director [superintendent] shall immediately provide for the
20 return of the resident to the facility.

21 SECTION 3.1468. Section 594.045(a), Health and Safety Code,
22 is amended to read as follows:

23 (a) If a resident has been transferred to a state mental
24 hospital under a court order under this subchapter, the hospital
25 administrator of the state mental hospital shall:

26 (1) send a certificate to the committing court stating
27 that the resident does not require hospitalization in a state

1 mental hospital but requires care in a residential care facility
2 because of the resident's intellectual disability [~~mental~~
3 ~~retardation~~]; and

4 (2) request that the resident be transferred to a
5 residential care facility.

6 SECTION 3.1469. Section 595.001, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 595.001. CONFIDENTIALITY OF RECORDS. Records of the
9 identity, diagnosis, evaluation, or treatment of a person that are
10 maintained in connection with the performance of a program or
11 activity relating to an intellectual disability [~~mental~~
12 ~~retardation~~] are confidential and may be disclosed only for the
13 purposes and under the circumstances authorized by this chapter,
14 subject to applicable federal and other state law [~~under Sections~~
15 ~~595.003 and 595.004~~].

16 SECTION 3.1470. Section 595.002, Health and Safety Code, is
17 amended to read as follows:

18 Sec. 595.002. RULES. The executive commissioner [~~board19 shall adopt rules to carry out this chapter that are [~~the department~~
20 ~~considers~~] necessary or proper to:~~

21 (1) prevent circumvention or evasion of the chapter;
22 or

23 (2) facilitate compliance with the chapter.

24 SECTION 3.1471. Section 595.005(a), Health and Safety Code,
25 is amended to read as follows:

26 (a) The content of a confidential record may be disclosed
27 without the consent required under Section 595.003 to:

1 (1) medical personnel to the extent necessary to meet
2 a medical emergency;

3 (2) qualified personnel for management audits,
4 financial audits, program evaluations, or research approved by the
5 department; or

6 (3) personnel legally authorized to conduct
7 investigations concerning complaints of abuse or denial of rights
8 of persons with an intellectual disability [~~mental retardation~~].

9 SECTION 3.1472. Section 595.0055(b), Health and Safety
10 Code, is amended to read as follows:

11 (b) Notwithstanding any other law, on request by a
12 representative of a cemetery organization or funeral
13 establishment, the director [~~superintendent~~] of a residential care
14 facility shall release to the representative the name, date of
15 birth, or date of death of a person who was a resident at the
16 facility when the person died, unless the person or the person's
17 guardian provided written instructions to the facility not to
18 release the person's name or dates of birth and death. A
19 representative of a cemetery organization or a funeral
20 establishment may use a name or date released under this subsection
21 only for the purpose of inscribing the name or date on a grave
22 marker.

23 SECTION 3.1473. Section 595.008, Health and Safety Code, is
24 amended to read as follows:

25 Sec. 595.008. EXCHANGE OF RECORDS. The prohibitions
26 against disclosure apply to an exchange of records between
27 government agencies or persons, except for exchanges of information

1 necessary for:

2 (1) delivery of services to clients; or
3 (2) payment for intellectual disability [~~mental~~
4 ~~retardation~~] services as defined in this subtitle.

5 SECTION 3.1474. Section 595.010, Health and Safety Code, is
6 amended to read as follows:

7 Sec. 595.010. DISCLOSURE OF PHYSICAL OR MENTAL CONDITION.
8 This chapter does not prohibit a qualified professional from
9 disclosing the current physical and mental condition of a person
10 with an intellectual disability [~~mental retardation~~] to the
11 person's parent, guardian, relative, or friend.

12 SECTION 3.1475. Sections 597.001(2), (4), (5), and (8),
13 Health and Safety Code, are amended to read as follows:

14 (2) "Client" means a person receiving services in a
15 community-based ICF-IID [~~ICF-MR facility~~].

16 (4) "ICF-IID" [~~ICF-MR~~] has the meaning assigned by
17 Section 531.002.

18 (5) "Interdisciplinary team" means those
19 interdisciplinary teams defined in the Code of Federal Regulations
20 for participation in the intermediate care facilities for
21 individuals with intellectual and developmental disabilities [~~the~~
22 ~~mentally retarded~~].

23 (8) "Surrogate decision-maker" means an individual
24 authorized under Section 597.041 to consent on behalf of a client
25 residing in an ICF-IID [~~ICF-MR facility~~].

26 SECTION 3.1476. Section 597.002, Health and Safety Code, is
27 amended to read as follows:

1 Sec. 597.002. RULES. The executive commissioner [board]
2 may adopt rules necessary to implement this chapter [~~not later than~~
3 ~~180 days after its effective date~~].

4 SECTION 3.1477. Section 597.021, Health and Safety Code, is
5 amended to read as follows:

6 Sec. 597.021. ICF-IID [~~ICF-MR~~] ASSESSMENT OF CLIENT'S
7 CAPACITY TO CONSENT TO TREATMENT. (a) The executive commissioner
8 [board] by rule shall require an ICF-IID [~~ICF-MR facility~~]
9 certified in this state to assess the capacity of each adult client
10 without a legal guardian to make treatment decisions when there is
11 evidence to suggest the individual is not capable of making a
12 decision covered under this chapter.

13 (b) The rules must require the use of a uniform assessment
14 process prescribed by department [board] rule to determine a
15 client's capacity to make treatment decisions.

16 SECTION 3.1478. The heading to Subchapter C, Chapter 597,
17 Health and Safety Code, is amended to read as follows:

18 SUBCHAPTER C. SURROGATE CONSENT FOR ICF-IID [~~ICF-MR~~] CLIENTS

19 SECTION 3.1479. Section 597.041(d), Health and Safety Code,
20 is amended to read as follows:

21 (d) Any dispute as to the right of a party to act as a
22 surrogate decision-maker may be resolved only by a court of record
23 under Title 3, Estates [~~Chapter V, Texas Probate~~] Code.

24 SECTION 3.1480. Section 597.043(c), Health and Safety Code,
25 is amended to read as follows:

26 (c) The list of qualified individuals from which committee
27 members are drawn shall include:

1 (1) health care professionals licensed or registered
2 in this state who have specialized training in medicine,
3 psychopharmacology, nursing, or psychology;

4 (2) persons with an intellectual disability [~~mental~~
5 ~~retardation~~] or parents, siblings, spouses, or children of a person
6 with an intellectual disability [~~mental retardation~~];

7 (3) attorneys licensed in this state who have
8 knowledge of legal issues of concern to persons with an
9 intellectual disability [~~mental retardation~~] or to the families of
10 persons with an intellectual disability [~~mental retardation~~];

11 (4) members of private organizations that advocate on
12 behalf of persons with an intellectual disability [~~mental~~
13 ~~retardation~~]; and

14 (5) persons with demonstrated expertise or interest in
15 the care and treatment of persons with an intellectual disability
16 [~~mental disabilities~~].

17 SECTION 3.1481. Section 597.044(a), Health and Safety Code,
18 is amended to read as follows:

19 (a) If the results of the assessment conducted in accordance
20 with Section 597.021 indicate that a client who does not have a
21 legal guardian or surrogate decision-maker lacks the capacity to
22 make a treatment decision about major medical or dental treatment,
23 psychoactive medication, or a highly restrictive procedure, the
24 ICF-IID [~~ICF-MR facility~~] must file an application for a treatment
25 decision with the department.

26 SECTION 3.1482. Sections 597.045(b) and (c), Health and
27 Safety Code, are amended to read as follows:

1 (b) The ICF-IID [~~ICF-MR facility~~] with assistance from the
2 department shall schedule a review of the application.

3 (c) The ICF-IID [~~ICF-MR facility~~] with assistance from the
4 department shall send notice of the date, place, and time of the
5 review to the surrogate consent committee, the client who is the
6 subject of the application, the client's actively involved parent,
7 spouse, adult child, or other person known to have a demonstrated
8 interest in the care and welfare of the client, and any other person
9 as prescribed by department [~~board~~] rule. The ICF-IID [~~ICF-MR~~
10 ~~facility~~] shall include a copy of the application and a statement of
11 the committee's procedure for consideration of the application,
12 including the opportunity to be heard or to present evidence and to
13 appeal.

14 SECTION 3.1483. Section [597.047](#), Health and Safety Code, is
15 amended to read as follows:

16 Sec. 597.047. CONFIDENTIAL INFORMATION. Notwithstanding
17 any other state law, a person licensed by this state to provide
18 services related to health care or to the treatment or care of a
19 person with an intellectual disability [~~mental retardation~~], a
20 developmental disability, or a mental illness shall provide to the
21 committee members any information the committee requests that is
22 relevant to the client's need for a proposed treatment.

23 SECTION 3.1484. Section [597.048\(f\)](#), Health and Safety Code,
24 is amended to read as follows:

25 (f) At any time before the committee makes its determination
26 of a client's best interest under Section [597.049](#), the committee
27 chair may suspend the review of the application for not more than

1 five days if any person applies for appointment as the client's
2 guardian of the person in accordance with the Estates [~~Texas~~
3 ~~Probate~~] Code.

4 SECTION 3.1485. Section 597.050(b), Health and Safety Code,
5 is amended to read as follows:

6 (b) The ICF-IID [~~ICF-MR facility~~] shall send a copy of the
7 committee's opinion to:

- 8 (1) each person notified under Section 597.045; and
9 (2) the department.

10 SECTION 3.1486. Section 597.054(a), Health and Safety Code,
11 is amended to read as follows:

12 (a) Each ICF-IID [~~ICF-MR~~] shall develop procedures for the
13 surrogate consent committees in accordance with the rules adopted
14 under Section 597.002.

15 SECTION 3.1487. Section 612.002(a), Health and Safety Code,
16 is amended to read as follows:

17 (a) Under the compact, the governor shall appoint the
18 executive commissioner of the Health and Human Services Commission
19 [~~mental health and mental retardation~~] as the compact
20 administrator.

21 SECTION 3.1488. Section 612.005(b), Health and Safety Code,
22 is amended to read as follows:

23 (b) If a supplementary agreement requires or contemplates
24 the use of an institution or facility of this state or requires or
25 contemplates the provision of a service by this state, the
26 supplementary agreement does not take effect until approved by the
27 executive commissioner and the head of the department or agency:

1 (1) under whose jurisdiction the institution or
2 facility is operated; or

3 (2) that will perform the service.

4 SECTION 3.1489. Section [614.001](#), Health and Safety Code, is
5 amended by amending Subdivisions (2), (6), (7), (8), and (10) and
6 adding Subdivision (4-a) to read as follows:

7 (2) "Case management" means a process by which a
8 person or team responsible for establishing and continuously
9 maintaining contact with a person with mental illness, a
10 developmental disability, or an intellectual disability [~~mental~~
11 ~~retardation~~] provides that person with access to services required
12 by the person and ensures the coordinated delivery of those
13 services to the person.

14 (4-a) "Executive commissioner" means the executive
15 commissioner of the Health and Human Services Commission.

16 (6) "Mental impairment" means a mental illness, an
17 intellectual disability [~~mental retardation~~], or a developmental
18 disability.

19 (7) "Intellectual disability" [~~Mental retardation~~]
20 has the meaning assigned by Section [591.003](#).

21 (8) "Offender with a medical or mental impairment"
22 means a juvenile or adult who is arrested or charged with a criminal
23 offense and who:

24 (A) is a person with:

25 (i) [~~has~~] a mental impairment; or

26 (ii) a physical disability, terminal
27 illness, or significant illness; or

1 (B) is elderly[~~, physically disabled, terminally~~
2 ~~ill, or significantly ill~~].

3 (10) "Person with an intellectual disability [~~mental~~
4 ~~retardation~~]" means a juvenile or adult with an intellectual
5 disability [~~mental retardation~~] that is not a mental disorder who,
6 because of the mental deficit, requires special training,
7 education, supervision, treatment, care, or control in the person's
8 home or community or in a private [~~or state~~] school or state
9 supported living center for persons with an intellectual disability
10 [~~mental retardation~~].

11 SECTION 3.1490. Sections 614.002(a), (b), and (e), Health
12 and Safety Code, are amended to read as follows:

13 (a) The Advisory Committee to the Texas Board of Criminal
14 Justice on Offenders with Medical or Mental Impairments is composed
15 of 28 [~~29~~] members.

16 (b) The governor shall appoint, with the advice and consent
17 of the senate:

18 (1) four at-large members who have expertise in mental
19 health, intellectual disabilities [~~mental retardation~~], or
20 developmental disabilities, three of whom must be forensic
21 psychiatrists or forensic psychologists;

22 (2) one at-large member who is the judge of a district
23 court with criminal jurisdiction;

24 (3) one at-large member who is a prosecuting attorney;

25 (4) one at-large member who is a criminal defense
26 attorney;

27 (5) two at-large members who have expertise in the

1 juvenile justice or criminal justice system; and

2 (6) one at-large member whose expertise can further
3 the mission of the committee.

4 (e) The executive head of each of the following agencies,
5 divisions of agencies, or associations, or that person's designated
6 representative, shall serve as a member of the committee:

7 (1) the correctional institutions division of the
8 Texas Department of Criminal Justice;

9 (2) the Department of State Health Services;

10 (3) the parole division of the Texas Department of
11 Criminal Justice;

12 (4) the community justice assistance division of the
13 Texas Department of Criminal Justice;

14 (5) the Texas Juvenile Justice Department;

15 (6) the Department of Assistive and Rehabilitative
16 Services;

17 (7) the Correctional Managed Health Care Committee;

18 (8) [the] Mental Health America of [Association in]
19 Texas;

20 (9) the Board of Pardons and Paroles;

21 (10) the Texas Commission on Law Enforcement;

22 (11) the Texas Council of Community [Mental Health and
23 Mental Retardation] Centers;

24 (12) the Commission on Jail Standards;

25 (13) the Texas Council for Developmental
26 Disabilities;

27 (14) the Arc of Texas [Association for Retarded

1 citizens];

2 (15) the National Alliance on Mental Illness [for the
3 ~~Mentally Ill~~] of Texas;

4 (16) the Parent Association for the Retarded of Texas,
5 Inc.;

6 (17) the Health and Human Services Commission; and

7 (18) the Department of Aging and Disability Services.

8 SECTION 3.1491. Section 614.008(a), Health and Safety Code,
9 is amended to read as follows:

10 (a) The office may maintain at least one program in a county
11 selected by the office to employ a cooperative community-based
12 alternative system to divert from the state criminal justice system
13 offenders with mental impairments or offenders who are identified
14 as being elderly or persons with physical disabilities, terminal
15 illnesses, or significant illnesses[, ~~physically disabled,~~
16 ~~terminally ill, or significantly ill~~] and to rehabilitate those
17 offenders.

18 SECTION 3.1492. Section 614.013, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 614.013. CONTINUITY OF CARE FOR OFFENDERS WITH MENTAL
21 IMPAIRMENTS. (a) The Texas Department of Criminal Justice, the
22 Department of State Health Services, the bureau of identification
23 and records of the Department of Public Safety, representatives of
24 local mental health or intellectual and developmental disability
25 [~~mental retardation~~] authorities appointed by the commissioner of
26 the Department of State Health Services, and the directors of
27 community supervision and corrections departments shall adopt a

1 memorandum of understanding that establishes their respective
2 responsibilities to institute a continuity of care and service
3 program for offenders with mental impairments in the criminal
4 justice system. The office shall coordinate and monitor the
5 development and implementation of the memorandum of understanding.

6 (b) The memorandum of understanding must establish methods
7 for:

8 (1) identifying offenders with mental impairments in
9 the criminal justice system and collecting and reporting prevalence
10 rate data to the office;

11 (2) developing interagency rules, policies,
12 procedures, and standards for the coordination of care of and the
13 exchange of information on offenders with mental impairments by
14 local and state criminal justice agencies, the Department of State
15 Health Services and the Department of Aging and Disability Services
16 [~~Texas Department of Mental Health and Mental Retardation~~], local
17 mental health or intellectual and developmental disability [~~mental~~
18 ~~retardation~~] authorities, the Commission on Jail Standards, and
19 local jails;

20 (3) identifying the services needed by offenders with
21 mental impairments to reenter the community successfully; and

22 (4) establishing a process to report implementation
23 activities to the office.

24 (c) The Texas Department of Criminal Justice, the
25 Department of State Health Services, local mental health or
26 intellectual and developmental disability [~~mental retardation~~]
27 authorities, and community supervision and corrections departments

1 shall:

2 (1) operate the continuity of care and service program
3 for offenders with mental impairments in the criminal justice
4 system with funds appropriated for that purpose; and
5 (2) actively seek federal grants or funds to operate
6 and expand the program.

7 (d) Local and state criminal justice agencies shall,
8 whenever possible, contract with local mental health or
9 intellectual and developmental disability [~~mental retardation~~]
10 authorities to maximize Medicaid funding and improve on the
11 continuity of care and service program for offenders with mental
12 impairments in the criminal justice system.

13 (e) The office, in coordination with each state agency
14 identified in Subsection (b)(2), shall develop a standardized
15 process for collecting and reporting the memorandum of
16 understanding implementation outcomes by local and state criminal
17 justice agencies and local and state mental health or intellectual
18 and developmental disability [~~mental retardation~~] authorities.
19 The findings of these reports shall be submitted to the office by
20 September 1 of each even-numbered year and shall be included in
21 recommendations to the board in the office's biennial report under
22 Section [614.009](#).

23 SECTION 3.1493. Section [614.014](#), Health and Safety Code, is
24 amended to read as follows:

25 Sec. 614.014. CONTINUITY OF CARE FOR ELDERLY OFFENDERS.
26 (a) The Texas Department of Criminal Justice and the executive
27 commissioner[, ~~the Texas Department of Human Services, and the~~

1 ~~Texas Department on Aging~~] by rule shall adopt a memorandum of
2 understanding that establishes the [~~their~~] respective
3 responsibilities of the Texas Department of Criminal Justice, the
4 Department of State Health Services, the Department of Aging and
5 Disability Services, and the Department of Assistive and
6 Rehabilitative Services to institute a continuity of care and
7 service program for elderly offenders in the criminal justice
8 system. The office shall coordinate and monitor the development
9 and implementation of the memorandum of understanding.

10 (b) The memorandum of understanding must establish methods
11 for:

12 (1) identifying elderly offenders in the criminal
13 justice system;

14 (2) developing interagency rules, policies, and
15 procedures for the coordination of care of and the exchange of
16 information on elderly offenders by local and state criminal
17 justice agencies, the Department of State Health Services, the
18 Department of Aging and Disability Services, and the Department of
19 Assistive and Rehabilitative Services [~~Texas Department of Human~~
20 ~~Services, and the Texas Department on Aging~~]; and

21 (3) identifying the services needed by elderly
22 offenders to reenter the community successfully.

23 (c) The Texas Department of Criminal Justice, the
24 Department of State Health Services, the Department of Aging and
25 Disability Services, and the Department of Assistive and
26 Rehabilitative Services [~~Texas Department of Human Services, and~~
27 ~~the Texas Department on Aging~~] shall:

1 (1) operate the continuity of care and service program
2 for elderly offenders in the criminal justice system with funds
3 appropriated for that purpose; and

4 (2) actively seek federal grants or funds to operate
5 and expand the program.

6 SECTION 3.1494. Section 614.015, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 614.015. CONTINUITY OF CARE FOR [PHYSICALLY DISABLED,
9 TERMINALLY ILL, OR SIGNIFICANTLY ILL] OFFENDERS WITH PHYSICAL
10 DISABILITIES, TERMINAL ILLNESSES, OR SIGNIFICANT ILLNESSES. (a)
11 The Texas Department of Criminal Justice and the executive
12 commissioner[, the Department of Assistive and Rehabilitative
13 Services, the Department of State Health Services, and the
14 Department of Aging and Disability Services] by rule shall adopt a
15 memorandum of understanding that establishes the [their]
16 respective responsibilities of the Texas Department of Criminal
17 Justice, the Department of Assistive and Rehabilitative Services,
18 the Department of State Health Services, and the Department of
19 Aging and Disability Services to institute a continuity of care and
20 service program for offenders in the criminal justice system who
21 are persons with physical disabilities, terminal illnesses, or
22 significant illnesses [physically disabled, terminally ill, or
23 significantly ill]. The council shall coordinate and monitor the
24 development and implementation of the memorandum of understanding.

25 (b) The memorandum of understanding must establish methods
26 for:

27 (1) identifying offenders in the criminal justice

1 system who are persons with physical disabilities, terminal
2 illnesses, or significant illnesses [~~physically disabled,~~
3 ~~terminally ill, or significantly ill~~];

4 (2) developing interagency rules, policies, and
5 procedures for the coordination of care of and the exchange of
6 information on offenders who are persons with physical
7 disabilities, terminal illnesses, or significant illnesses
8 [~~physically disabled, terminally ill, or significantly ill~~] by
9 local and state criminal justice agencies, the Texas Department of
10 Criminal Justice, the Department of Assistive and Rehabilitative
11 Services, the Department of State Health Services, and the
12 Department of Aging and Disability Services; and

13 (3) identifying the services needed by offenders who
14 are persons with physical disabilities, terminal illnesses, or
15 significant illnesses [~~physically disabled, terminally ill, or~~
16 ~~significantly ill~~] to reenter the community successfully.

17 (c) The Texas Department of Criminal Justice, the
18 Department of Assistive and Rehabilitative Services, the
19 Department of State Health Services, and the Department of Aging
20 and Disability Services shall:

21 (1) operate, with funds appropriated for that purpose,
22 the continuity of care and service program for offenders in the
23 criminal justice system who are persons with physical disabilities,
24 terminal illnesses, or significant illnesses [~~physically disabled,~~
25 ~~terminally ill, or significantly ill~~]; and

26 (2) actively seek federal grants or funds to operate
27 and expand the program.

1 SECTION 3.1495. Section 614.016, Health and Safety Code, is
2 amended to read as follows:

3 Sec. 614.016. CONTINUITY OF CARE FOR CERTAIN OFFENDERS BY
4 LAW ENFORCEMENT AND JAILS. (a) The office, the Texas Commission on
5 Law Enforcement, the bureau of identification and records of the
6 Department of Public Safety, and the Commission on Jail Standards
7 by rule shall adopt a memorandum of understanding that establishes
8 their respective responsibilities to institute a continuity of care
9 and service program for offenders in the criminal justice system
10 who are persons with mental impairments, physical disabilities,
11 terminal illnesses, or significant illnesses, or who are [mentally
12 impaired,] elderly[, physically disabled, terminally ill, or
13 significantly ill].

14 (b) The memorandum of understanding must establish methods
15 for:

16 (1) identifying offenders in the criminal justice
17 system who are persons with mental impairments, physical
18 disabilities, terminal illnesses, or significant illnesses, or who
19 are [mentally impaired,] elderly[, physically disabled, terminally
20 ill, or significantly ill];

21 (2) developing procedures for the exchange of
22 information relating to offenders who are persons with mental
23 impairments, physical disabilities, terminal illnesses, or
24 significant illnesses, or who are [mentally impaired,] elderly[,
25 physically disabled, terminally ill, or significantly ill] by the
26 office, the Texas Commission on Law Enforcement, and the Commission
27 on Jail Standards for use in the continuity of care and services

1 program; and

8 SECTION 3.1496. Section 614.018(b), Health and Safety Code,
9 is amended to read as follows:

10 (b) The memorandum of understanding must establish methods
11 for:

26 (3) identifying the services needed by juveniles with
27 mental impairments in the juvenile justice system.

1 SECTION 3.1497. Section 614.019, Health and Safety Code, is
2 amended to read as follows:

3 Sec. 614.019. PROGRAMS FOR JUVENILES. (a) The office, in
4 cooperation with the Department of State Health Services [~~Texas~~
5 ~~Commission on Alcohol and Drug Abuse, the Texas Department of~~
6 ~~Mental Health and Mental Retardation~~], the Department of Family and
7 Protective [~~and Regulatory~~] Services, the Texas Juvenile Justice
8 Department [~~Probation Commission, the Texas Youth Commission~~], and
9 the Texas Education Agency, may establish and maintain programs,
10 building on existing successful efforts in communities, to address
11 prevention, intervention, and continuity of care for juveniles with
12 mental health and substance abuse disorders.

13 (b) A child with mental illness who is receiving continuity
14 of care services during parole from the Texas Juvenile Justice
15 Department [~~Youth Commission~~] and who is no longer eligible to
16 receive services from a local mental health authority when the
17 child becomes 17 years of age because the child does not meet the
18 requirements of a local service area plan under Section 533.0352(a)
19 may continue to receive continuity of care services from the office
20 until the child completes the child's parole.

21 (c) A child with mental illness or an intellectual
22 disability [~~mental retardation~~] who is discharged from the Texas
23 Juvenile Justice Department under Section 244.011, Human Resources
24 Code, may receive continuity of care services from the office for a
25 minimum of 90 days after discharge from the department [~~commission~~]
26 and for as long as necessary for the child to demonstrate sufficient
27 stability to transition successfully to mental health or

1 intellectual disability [~~mental retardation~~] services provided by
2 a local mental health or intellectual and developmental disability
3 [~~mental retardation~~] authority.

4 SECTION 3.1498. Section 614.020(b), Health and Safety Code,
5 is amended to read as follows:

6 (b) The program must be modeled after other assertive
7 community treatment programs established by the [~~Texas~~] Department
8 of State Health Services [~~Mental Health and Mental Retardation~~].
9 The program is limited to serving not more than 30 program
10 participants at any time.

11 SECTION 3.1499. Section 614.021(a), Health and Safety Code,
12 is amended to read as follows:

13 (a) In this section, "wrongfully imprisoned person" has the
14 meaning assigned by Section 501.101 [~~501.102~~], Government Code.

15 SECTION 3.1500. Chapter 615, Health and Safety Code, is
16 amended to read as follows:

17 CHAPTER 615. MISCELLANEOUS PROVISIONS

18 Sec. 615.001. COUNTY RESPONSIBILITY. Each commissioners
19 court shall provide for the support of a person with mental illness
20 or an intellectual disability [~~mental retardation~~] who is:

- 21 (1) a resident of the county;
22 (2) unable to provide self-support; and
23 (3) cannot be admitted to a state mental health or
24 intellectual disability [~~mental retardation~~] facility.

25 Sec. 615.002. ACCESS TO [~~MENTAL HEALTH~~] RECORDS BY
26 PROTECTION AND ADVOCACY SYSTEM. (a) Notwithstanding other state
27 law, the protection and advocacy system established in this state

1 under the federal Protection and Advocacy for Individuals with
2 Mental Illness [~~Mentally Ill Individuals~~] Act [of 1986] (42 U.S.C.
3 Sec. 10801 et seq.) and the Developmental Disabilities Assistance
4 and Bill of Rights Act of 2000 (42 U.S.C. Sec. 15001 et seq.) is
5 entitled to access to records relating to persons with mental
6 illness or developmental disabilities to the extent authorized by
7 federal law.

8 (b) If the person [~~patient~~] consents to notification, the
9 protection and advocacy system shall notify the [~~Texas~~] Department
10 of State Health Services or the Department of Aging and Disability
11 Services, as appropriate, [~~Mental Health and Mental Retardation's~~
12 ~~Office of Client Services and Rights Protection~~] if the system
13 decides to investigate a complaint of abuse, neglect, or rights
14 violation that relates to a person with mental illness or a
15 developmental disability who is a patient or client in a facility or
16 program operated by, licensed by, certified by, or in a contractual
17 relationship with that [~~the~~] department.

18 SECTION 3.1501. Section 671.001(d), Health and Safety Code,
19 is amended to read as follows:

20 (d) A registered nurse or physician assistant may determine
21 and pronounce a person dead in situations other than those
22 described by Subsection (b) if permitted by written policies of a
23 licensed health care facility, institution, or entity providing
24 services to that person. Those policies must include physician
25 assistants who are credentialed or otherwise permitted to practice
26 at the facility, institution, or entity. If the facility,
27 institution, or entity has an organized nursing staff and an

1 organized medical staff or medical consultant, the nursing staff
2 and medical staff or consultant shall jointly develop and approve
3 those policies. The executive commissioner of the Health and Human
4 Services Commission [board] shall adopt rules to govern policies
5 for facilities, institutions, or entities that do not have
6 organized nursing staffs and organized medical staffs or medical
7 consultants.

8 SECTION 3.1502. Section 672.002(d), Health and Safety Code,
9 is amended to read as follows:

10 (d) A review team may include:

11 (1) a criminal prosecutor involved in prosecuting
12 crimes involving family violence;

13 (2) a peace officer;

14 (3) a justice of the peace or medical examiner;

15 (4) a public health professional;

16 (5) a representative of the Department of Family and
17 Protective [~~and Regulatory~~] Services engaged in providing adult
18 protective services;

19 (6) a mental health services provider;

20 (7) a representative of the family violence shelter
21 center providing services to the county;

22 (8) the victim witness advocate in the county
23 prosecutor's office;

24 (9) a representative from the battering intervention
25 and prevention program for the county; and

26 (10) a community supervision and corrections
27 department officer.

1 SECTION 3.1503. Section 672.008, Health and Safety Code, is
2 amended to read as follows:

3 Sec. 672.008. REPORT. (a) Not later than December 15 of
4 each even-numbered year, each review team shall submit to the
5 Department of Family and Protective [~~and Regulatory~~] Services a
6 report on deaths reviewed.

7 (b) Subject to Section 672.009, the Department of Family and
8 Protective [~~and Regulatory~~] Services shall make the reports
9 received under Subsection (a) available to the public.

10 SECTION 3.1504. Section 673.001, Health and Safety Code, is
11 amended to read as follows:

12 Sec. 673.001. DEFINITIONS. In this chapter:

13 (1) "Commissioner" means the commissioner of state
14 health services.

15 (2) "Department" means the [~~Texas~~] Department of State
16 Health Services.

17 (3) "Executive commissioner" means the executive
18 commissioner of the Health and Human Services Commission.

19 SECTION 3.1505. Sections 673.002(b) and (c), Health and
20 Safety Code, are amended to read as follows:

21 (b) The justice of the peace or medical examiner shall
22 inform the child's legal guardian or parents that an autopsy shall
23 be performed on the child. The state shall reimburse a county \$500
24 for the cost of the autopsy if the primary cause of death of the
25 child is sudden infant death syndrome. The executive commissioner
26 [~~department~~] shall adopt rules that:

27 (1) define sudden infant death syndrome; and

1 (2) describe the method for obtaining reimbursement
2 for the cost of an autopsy.

3 (c) Reimbursement required by Subsection (b) [of this
4 section] is subject to the availability of funds.

5 SECTION 3.1506. Section 694.001, Health and Safety Code, is
6 amended to read as follows:

7 Sec. 694.001. DUTIES OF [TEXAS] DEPARTMENT OF STATE HEALTH
8 SERVICES. The [Texas] Department of State Health Services shall
9 regulate the disposal, transportation, interment, and disinterment
10 of dead bodies to the extent reasonable and necessary to protect
11 public health and safety.

12 SECTION 3.1507. Section 751.010(a), Health and Safety Code,
13 is amended to read as follows:

14 (a) After notice and a public hearing, the executive
15 commissioner of the Health and Human Services Commission [Texas
16 ~~Board of Health~~] shall adopt rules relating to minimum standards of
17 health and sanitation to be maintained at mass gatherings.

18 SECTION 3.1508. Section 755.033(a), Health and Safety Code,
19 is amended to read as follows:

20 (a) The executive director shall enter into interagency
21 agreements with the [Texas] Department of State Health Services,
22 the Texas Commission on Fire Protection, and the Texas Department
23 of Insurance under which inspectors, marshals, or investigators
24 from those agencies who discover unsafe or unregistered boilers in
25 the course and scope of inspections conducted as part of regulatory
26 or safety programs administered by those agencies are required to
27 report the unsafe or unregistered boilers to the executive

1 director.

2 SECTION 3.1509. Section [757.010](#)(b), Health and Safety Code,
3 is amended to read as follows:

4 (b) An owner of a multiunit rental complex or a rental
5 dwelling in a condominium, cooperative, or town home project with a
6 pool or a property owners association that owns, controls, or
7 maintains a pool may, at the person's option, exceed the standards
8 of this chapter or those adopted [~~by the Texas Board of Health~~]
9 under Section [757.011](#). A tenant or occupant in a multiunit rental
10 complex and a member of a property owners association may, by
11 express written agreement, require the owner of the complex or the
12 association to exceed those standards.

13 SECTION 3.1510. Section [757.011](#), Health and Safety Code, is
14 amended to read as follows:

15 Sec. 757.011. RULEMAKING AUTHORITY [~~OF TEXAS BOARD OF~~
16 ~~HEALTH~~]. The executive commissioner of the Health and Human
17 Services Commission [~~Texas Board of Health~~] may adopt rules
18 requiring standards for design and construction of pool yard
19 enclosures that exceed the requirements of this chapter and that
20 apply to all pools and pool yards subject to this chapter. An owner
21 of a multiunit rental complex or a rental dwelling in a condominium,
22 cooperative, or town home project with a pool or a property owners
23 association that owns, controls, or maintains a pool shall comply
24 with and shall be liable for failure to comply with those rules to
25 the same extent as if they were part of this chapter.

26 SECTION 3.1511. Sections [773.003](#)(6), (10), and (18), Health
27 and Safety Code, are amended to read as follows:

1 (6) "Commissioner" means the commissioner of state
2 health services.

3 (10) "Emergency medical services personnel" means:
4 (A) emergency care attendant;
5 (B) emergency medical technicians;
6 (C) advanced emergency medical technicians
7 [~~technicians=intermediate~~];
8 (D) emergency medical technicians--paramedic; or
9 (E) licensed paramedic.

10 (18) "Medical supervision" means direction given to
11 emergency medical services personnel by a licensed physician under
12 Subtitle B, Title 3, Occupations Code, and the rules adopted under
13 that subtitle by the Texas [~~State Board of~~] Medical Board
14 [~~Examiners~~].

15 SECTION 3.1512. Section 773.0045(b), Health and Safety
16 Code, is amended to read as follows:

17 (b) The department on a case-by-case basis may temporarily
18 exempt emergency medical services personnel who primarily practice
19 in a rural area from a requirement imposed either by Section 773.050
20 or 773.055 or by a department rule adopted [~~by the department~~] under
21 Section 773.050 or 773.055 if specific circumstances that affect
22 the rural area served by the emergency medical services personnel
23 justify the exemption. The department may temporarily exempt the
24 emergency medical services personnel from a requirement imposed:

25 (1) by a department rule adopted under Section 773.050
26 or 773.055 only if the department finds that, under the
27 circumstances, imposing the requirement would not be in the best

1 interests of the people in the rural area who are served by the
2 emergency medical services personnel; and

3 (2) by Section 773.050 or 773.055 only if the
4 department finds that, under the circumstances, there is a
5 substantial risk that imposing the requirement will detrimentally
6 affect the health or safety of one or more persons in the affected
7 rural area or hinder the ability of emergency medical services
8 personnel who practice in the area to alleviate a threat to the
9 health or safety of one or more persons in the area.

10 SECTION 3.1513. Section 773.006, Health and Safety Code, is
11 amended to read as follows:

12 Sec. 773.006. FUND FOR EMERGENCY MEDICAL SERVICES, TRAUMA
13 FACILITIES, AND TRAUMA CARE SYSTEMS. (a) The fund for emergency
14 medical services, trauma facilities, and trauma care systems is
15 established as an account in the general revenue fund. Money in the
16 account may be appropriated only to the department [bureau] for the
17 purposes specified by Section 773.122.

18 (b) The account is composed of money deposited to the
19 account under Article 102.0185, Code of Criminal Procedure[, and
20 ~~the earnings of the account~~].

21 (c) Section [~~Sections 403.095 and~~] 404.071, Government
22 Code, does [do] not apply to the account.

23 SECTION 3.1514. Sections 773.011(b), (c), and (d), Health
24 and Safety Code, are amended to read as follows:

25 (b) The executive commissioner [board] shall adopt rules
26 establishing minimum standards for the creation and operation of a
27 subscription program.

1 (c) The executive commissioner [board] shall adopt a rule
2 that requires an emergency medical services provider to secure a
3 surety bond in the amount of sums to be subscribed before soliciting
4 subscriptions and creating and operating a subscription program.
5 The surety bond must be issued by a company that is licensed by or
6 eligible to do business in this state.

7 (d) The executive commissioner [board] may adopt rules for
8 waiver of the surety bond.

9 SECTION 3.1515. Sections 773.012(a) and (j), Health and
10 Safety Code, are amended to read as follows:

11 (a) The governor shall appoint an advisory council to advise
12 the department [board] regarding matters related to the
13 responsibilities of the executive commissioner [board],
14 commissioner, and department under this chapter. In making
15 appointments to the advisory council, the governor shall ensure
16 that approximately one-half of the members of the advisory council
17 are residents of rural areas of the state.

18 (j) The advisory council periodically shall review
19 department [board] rules relating to this chapter and may recommend
20 changes in those rules to the department [board]. The department
21 [board and the commissioner] shall ensure that the advisory council
22 is given adequate time and opportunity to review and comment on each
23 rule proposed for adoption by the executive commissioner [board]
24 under this chapter, including the amendment or repeal of an
25 existing rule, but not including an emergency rule.

26 SECTION 3.1516. Section 773.013, Health and Safety Code, is
27 amended to read as follows:

1 Sec. 773.013. PEER ASSISTANCE PROGRAM. The department may
2 establish, approve, and fund a peer assistance program in
3 accordance with Section 467.003 and department [~~board~~] rules.

4 SECTION 3.1517. Sections 773.014(b) and (c), Health and
5 Safety Code, are amended to read as follows:

6 (b) The executive commissioner [~~department~~] shall adopt
7 rules designed to protect the public health and safety to implement
8 this section. The rules must provide that emergency medical
9 services personnel may administer an epinephrine auto-injector
10 device to another only if the person has successfully completed a
11 training course, approved by the department, in the use of the
12 device that is consistent with the national standard training
13 curriculum for emergency medical technicians.

14 (c) An emergency medical services provider or first
15 responder organization may acquire, possess, maintain, and dispose
16 of epinephrine auto-injector devices, and emergency medical
17 services personnel may carry, maintain, administer, and dispose of
18 epinephrine auto-injector devices, only in accordance with:

19 (1) rules adopted [~~by the department~~] under this
20 section; and

21 (2) a delegated practice agreement that provides for
22 medical supervision by a licensed physician who either:

23 (A) acts as a medical director for an emergency
24 medical services system or a licensed hospital; or

25 (B) has knowledge and experience in the delivery
26 of emergency care.

27 SECTION 3.1518. Sections 773.021(a) and (c), Health and

1 Safety Code, are amended to read as follows:

2 (a) The department [bureau] shall develop a state plan for
3 the prompt and efficient delivery of adequate emergency medical
4 services to acutely sick or injured persons.

5 (c) The advisory council shall consider the department's
6 [bureau's] actions under Subsection (a), and the department [board]
7 shall review the council's recommendations.

8 SECTION 3.1519. Section 773.022, Health and Safety Code, is
9 amended to read as follows:

10 Sec. 773.022. SERVICE DELIVERY AREAS. The department
11 [bureau] shall divide the state into emergency medical services
12 delivery areas that coincide, to the extent possible, with other
13 regional planning areas.

14 SECTION 3.1520. Section 773.023(a), Health and Safety Code,
15 is amended to read as follows:

16 (a) The department [bureau] shall:

17 (1) identify all public or private agencies and
18 institutions that are used or may be used for emergency medical
19 services in each delivery area; and

20 (2) enlist the cooperation of all concerned agencies
21 and institutions in developing a well-coordinated plan for
22 delivering emergency medical services in each delivery area.

23 SECTION 3.1521. Section 773.024, Health and Safety Code, is
24 amended to read as follows:

25 Sec. 773.024. FEDERAL PROGRAMS. The department [bureau] is
26 the state agency designated to develop state plans required for
27 participation in federal programs involving emergency medical

1 services. The department [bureau] may receive and disburse
2 available federal funds to implement the service programs.

3 SECTION 3.1522. Sections **773.025(a), (c), (d), and (e)**,
4 Health and Safety Code, are amended to read as follows:

5 (a) The department [bureau] shall identify all individuals
6 and public or private agencies and institutions that are or may be
7 engaged in emergency medical services training in each delivery
8 area.

9 (c) A governmental entity that sponsors or wishes to sponsor
10 an emergency medical services provider may request the department
11 [bureau] to provide emergency medical services training for
12 emergency care attendants at times and places that are convenient
13 for the provider's personnel, if the training is not available
14 locally.

15 (d) A governmental entity or nongovernmental organization
16 that sponsors or wishes to sponsor an emergency medical services
17 provider or first responder organization in a rural or underserved
18 area may request the department [bureau] to provide or facilitate
19 the provision of initial training for emergency care attendants, if
20 the training is not available locally. The department [bureau]
21 shall ensure that the training is provided. The department
22 [bureau] shall provide the training without charge, or contract
23 with qualified instructors to provide the training without charge,
24 to students who agree to perform emergency care attendant services
25 for at least one year with the local emergency medical services
26 provider or first responder organization. The training must be
27 provided at times and places that are convenient to the students.

1 The department [bureau] shall require that at least three students
2 are scheduled to take any class offered under this subsection.

3 (e) To facilitate all levels of emergency medical services
4 training, the department [bureau] shall consult with and solicit
5 comment from emergency medical services providers, first responder
6 organizations, persons who provide emergency medical services
7 training, and other entities interested in emergency medical
8 services training programs.

9 SECTION 3.1523. Section [773.0415](#), Health and Safety Code,
10 is amended to read as follows:

11 Sec. 773.0415. LIMITATION ON INFORMATION REQUIRED FOR
12 CERTIFICATE RENEWAL. The requirements and procedures adopted by
13 the executive commissioner [~~department~~] for the renewal of a
14 certificate to practice as emergency medical services personnel
15 issued under this chapter:

16 (1) may not require an applicant to provide unchanged
17 criminal history information already included in one or more of the
18 applicant's previous applications for certification or for
19 certificate renewal filed with the department; and

20 (2) may require the applicant to provide only
21 information relevant to the period occurring since the date of the
22 applicant's last application for certification or for certificate
23 renewal, as applicable, including information relevant to any new
24 requirement applicable to the certificate held by the applicant.

25 SECTION 3.1524. Section [773.045\(c\)](#), Health and Safety Code,
26 is amended to read as follows:

27 (c) An air ambulance company based in another state that

1 transports patients from a point in this state is required to be
2 licensed by the department as an emergency medical services
3 provider. The department shall issue a license to an air ambulance
4 company under this subsection if the company applies as required by
5 this chapter and has met the [department's] qualifications
6 specified in department rules for safely transporting patients. An
7 air ambulance company accredited by the Commission [Committee] on
8 Accreditation of [Air Ambulance] Medical Transport Systems
9 [Services] is rebuttably presumed to have met the department's
10 qualifications.

11 SECTION 3.1525. Section 773.046(c), Health and Safety Code,
12 is amended to read as follows:

13 (c) The executive commissioner [board] shall adopt rules as
14 necessary to administer this section.

15 SECTION 3.1526. Sections 773.048 and 773.0495, Health and
16 Safety Code, are amended to read as follows:

17 Sec. 773.048. ADVANCED EMERGENCY MEDICAL TECHNICIAN
18 [~~TECHNICIAN-INTERMEDIATE~~] QUALIFICATIONS. An individual
19 qualifies as an advanced emergency medical technician
20 [~~technician-intermediate~~] if the individual is certified by the
21 department as minimally proficient to provide emergency
22 prehospital care by initiating under medical supervision certain
23 procedures, including intravenous therapy and endotracheal or
24 esophageal intubation.

25 Sec. 773.0495. LICENSED PARAMEDIC QUALIFICATIONS. An
26 individual qualifies as a licensed paramedic if the department
27 determines that the individual is minimally proficient to provide

1 advanced life support that includes initiation under medical
2 supervision of certain procedures, including intravenous therapy,
3 endotracheal or esophageal intubation, electrical cardiac
4 defibrillation or cardioversion, and drug therapy. In addition, a
5 licensed paramedic must complete a curriculum that includes
6 college-level course work in accordance with department rules
7 [~~adopted by the board~~].

8 SECTION 3.1527. Section 773.050(h), Health and Safety Code,
9 is amended to read as follows:

10 (h) The department may provide a prescreening criminal
11 history record check for an emergency medical services personnel
12 applicant to determine the applicant's eligibility to receive
13 certification before enrollment in the educational and training
14 requirements mandated by the executive commissioner. The executive
15 commissioner by rule may prescribe [~~department may charge~~] a
16 reasonable fee for the costs associated with prescreening to charge
17 each applicant who requests prescreening. The department shall
18 collect the prescribed fee.

19 SECTION 3.1528. Section 773.0505, Health and Safety Code,
20 is amended to read as follows:

21 Sec. 773.0505. RULES REGARDING ADVERTISING OR COMPETITIVE
22 BIDDING. (a) The executive commissioner [~~board~~] may not adopt
23 rules restricting advertising or competitive bidding by a license
24 or certificate holder except to prohibit false, misleading, or
25 deceptive practices.

26 (b) In [~~its~~] rules to prohibit false, misleading, or
27 deceptive practices, the executive commissioner [~~board~~] may not

1 include a rule that:

- 2 (1) restricts the use of any medium for advertising;
- 3 (2) restricts the use of a license or certificate
- 4 holder's personal appearance or voice in an advertisement;
- 5 (3) relates to the size or duration of an
- 6 advertisement by the license or certificate holder; or
- 7 (4) restricts the license or certificate holder's
- 8 advertisement under a trade name.

9 SECTION 3.1529. Sections [773.052](#)(a) and (c), Health and
10 Safety Code, are amended to read as follows:

11 (a) An emergency medical services provider with a specific
12 hardship may apply to the department [bureau chief] for a variance
13 from a rule adopted under this chapter. The executive commissioner
14 by rule [board] may adopt a fee of not more than \$30 for filing an
15 application for a variance.

16 (c) The department [bureau chief] shall grant to a sole
17 provider for a service area a variance from the minimum standards
18 for staffing and equipment for the provision of basic life-support
19 emergency medical services if the provider is an emergency medical
20 services provider exempt from the payment of fees under Section
21 [773.0581](#).

22 SECTION 3.1530. Section [773.054](#)(b), Health and Safety Code,
23 is amended to read as follows:

24 (b) Each application must be made to the department on a
25 form prescribed by the department [board] and under department
26 rules [adopted by the board].

27 SECTION 3.1531. Sections [773.055](#)(a), (d), and (g), Health

1 and Safety Code, are amended to read as follows:

2 (a) A nonrefundable fee must accompany each application for
3 emergency medical services personnel certification. The fee may
4 not exceed:

5 (1) \$90 for an emergency medical technician-paramedic
6 or advanced emergency medical technician
7 [~~technician-intermediate~~];

8 (2) \$60 for an emergency medical technician or
9 emergency care attendant;

10 (3) \$90 for recertification of an emergency medical
11 technician-paramedic or advanced emergency medical technician
12 [~~technician-intermediate~~];

13 (4) \$60 for recertification of an emergency medical
14 technician or emergency care attendant; or

15 (5) \$120 for certification or recertification of a
16 licensed paramedic.

17 (d) The department shall furnish a person who fails an
18 examination for certification with an analysis of the person's
19 performance on the examination if requested in writing by that
20 person. The executive commissioner [~~board~~] may adopt rules to
21 allow a person who fails the examination to retake all or part of
22 the examination. A fee of not more than \$30 must accompany each
23 application for reexamination.

24 (g) The executive commissioner [~~board~~] by rule may adopt a
25 system under which certificates expire on various dates during the
26 year. For the year in which the certificate expiration date is
27 changed, the department shall prorate certificate fees on a monthly

1 basis so that each certificate holder pays only that portion of the
2 certificate fee that is allocable to the number of months during
3 which the certificate is valid. On renewal of the certificate on
4 the new expiration date, the total certificate renewal fee is
5 payable.

6 SECTION 3.1532. Sections [773.057](#)(a), (b), and (c), Health
7 and Safety Code, are amended to read as follows:

8 (a) An emergency medical services provider must submit an
9 application for a license in accordance with procedures prescribed
10 by the executive commissioner [board].

11 (b) A nonrefundable application and vehicle fee determined
12 by the executive commissioner by rule [board] must accompany each
13 application. The application fee may not exceed \$500 for each
14 application and the vehicle fee may not exceed \$180 for each
15 emergency medical services vehicle operated by the provider.

16 (c) The department may delegate vehicle inspections to the
17 commissioners court of a county or the governing body of a
18 municipality. The delegation must be made:

19 (1) at the request of the commissioners court or
20 governing body; and

21 (2) in accordance with criteria and procedures adopted
22 by the executive commissioner [board].

23 SECTION 3.1533. Section [773.0572](#), Health and Safety Code,
24 is amended to read as follows:

25 Sec. 773.0572. PROVISIONAL LICENSES. The executive
26 commissioner [board] by rule shall establish conditions under which
27 an emergency medical services provider who fails to meet the

1 minimum standards prescribed by this chapter may be issued a
2 provisional license. The department may issue a provisional
3 license to an emergency medical services provider under this
4 chapter if the department finds that issuing the license would
5 serve the public interest and that the provider meets the
6 requirements of the rules adopted under this section. A
7 nonrefundable fee of not more than \$30 must accompany each
8 application for a provisional license.

9 SECTION 3.1534. Section 773.060(b), Health and Safety Code,
10 is amended to read as follows:

11 (b) The department shall deposit the fees and other funds in
12 the state treasury to the credit of the bureau of emergency
13 management account in the general revenue fund. The account [fund]
14 may be used only to administer this chapter.

15 SECTION 3.1535. Section 773.061(d), Health and Safety Code,
16 is amended to read as follows:

17 (d) The department may place on probation a course or
18 training program or a person, including emergency medical services
19 personnel, an emergency medical services provider license holder,
20 or a program instructor, examiner, or course coordinator, whose
21 certificate, license, or approval is suspended. If a suspension is
22 probated, the department may require the person or the sponsor of a
23 course or training program, as applicable:

24 (1) to report regularly to the department on matters
25 that are the basis of the probation;

26 (2) to limit practice to the areas prescribed by the
27 department [board]; or

1 (3) to continue or review professional education until
2 the person attains a degree of skill satisfactory to the department
3 in those areas that are the basis of the probation.

4 SECTION 3.1536. Section [773.0611\(c\)](#), Health and Safety
5 Code, is amended to read as follows:

6 (c) The executive commissioner [~~board~~] shall adopt rules
7 for unannounced inspections authorized under this section. The
8 department or its representative shall perform unannounced
9 inspections in accordance with those rules. An emergency medical
10 services provider shall pay to the department a nonrefundable fee
11 of not more than \$30 if reinspection is necessary to determine
12 compliance with this chapter and the rules adopted under this
13 chapter.

14 SECTION 3.1537. Section [773.0612\(b\)](#), Health and Safety
15 Code, is amended to read as follows:

16 (b) A report, record, or working paper used or developed in
17 an investigation under this section is confidential and may be used
18 only for purposes consistent with department [~~the~~] rules [~~adopted~~
19 ~~by the board~~].

20 SECTION 3.1538. Section [773.0613\(b\)](#), Health and Safety
21 Code, is amended to read as follows:

22 (b) The executive commissioner [~~department~~] shall adopt
23 rules relating to the type of information an emergency medical
24 services provider must provide under this section and the manner in
25 which the information must be provided.

26 SECTION 3.1539. Section [773.0614\(a\)](#), Health and Safety
27 Code, is amended to read as follows:

1 (a) In addition to the grounds under Section [773.061](#), the
2 department [~~commissioner~~] may suspend or revoke a certificate,
3 disqualify a person from receiving a certificate, or deny a person
4 the opportunity to take a certification examination on the grounds
5 that the person has been convicted of, or placed on deferred
6 adjudication community supervision or deferred disposition for, an
7 offense that directly relates to the duties and responsibilities of
8 emergency medical services personnel.

9 SECTION 3.1540. Section [773.06141\(a\)](#), Health and Safety
10 Code, is amended to read as follows:

11 (a) The department [~~commissioner~~] may suspend, revoke, or
12 deny an emergency medical services provider license on the grounds
13 that the provider's administrator of record, employee, or other
14 representative:

15 (1) has been convicted of, or placed on deferred
16 adjudication community supervision or deferred disposition for, an
17 offense that directly relates to the duties and responsibilities of
18 the administrator, employee, or representative, other than an
19 offense for which points are assigned under Section [708.052](#),
20 Transportation Code;

21 (2) has been convicted of or placed on deferred
22 adjudication community supervision or deferred disposition for an
23 offense, including:

24 (A) an offense listed in Sections 3g(a)(1)(A)
25 through (H), Article [42.12](#), Code of Criminal Procedure; or

26 (B) an offense, other than an offense described
27 by Subdivision (1), for which the person is subject to registration

1 under Chapter 62, Code of Criminal Procedure; or

2 (3) has been convicted of Medicare or Medicaid fraud,
3 has been excluded from participation in the state Medicaid program,
4 or has a hold on payment for reimbursement under the state Medicaid
5 program under Subchapter C, Chapter 531, Government Code.

6 SECTION 3.1541. Sections [773.0615\(a\), \(b\), and \(c\)](#), Health
7 and Safety Code, are amended to read as follows:

8 (a) In determining whether an offense directly relates to
9 the duties and responsibilities of emergency medical services
10 personnel under Section [773.0614\(a\)](#), the department [~~commissioner~~]
11 shall consider:

12 (1) the nature and seriousness of the crime;

13 (2) the relationship of the crime to the purposes for
14 requiring certification to engage in emergency medical services;

15 (3) the extent to which certification might offer an
16 opportunity to engage in further criminal activity of the same type
17 as that in which the person previously had been involved; and

18 (4) the relationship of the crime to the ability,
19 capacity, or fitness required to perform the duties and discharge
20 the responsibilities of emergency medical services personnel.

21 (b) In determining the fitness to perform the duties and
22 discharge the responsibilities of emergency medical services
23 personnel for a person who has been convicted of, or placed on
24 deferred adjudication community supervision or deferred
25 disposition for, a crime the department [~~commissioner~~] shall
26 consider, in addition to the factors listed in Subsection (a):

27 (1) the extent and nature of the person's past criminal

1 activity;

2 (2) the age of the person when the crime was committed;

3 (3) the amount of time that has elapsed since the

4 person's last criminal activity;

5 (4) the conduct and work activity of the person before

6 and after the criminal activity;

7 (5) evidence of the person's rehabilitation or

8 rehabilitative effort while incarcerated, after release, or since

9 imposition of community supervision or deferred adjudication; and

10 (6) other evidence of the person's fitness, including

11 letters of recommendation from:

12 (A) prosecutors, law enforcement officers,

13 correctional officers, or community supervision officers who

14 prosecuted, arrested, or had custodial or other responsibility for

15 the person;

16 (B) the sheriff or chief of police in the

17 community where the person resides; and

18 (C) any other person in contact with the person.

19 (c) The applicant or certificate holder has the

20 responsibility, to the extent possible, to obtain and provide to

21 the department [commissioner] the recommendations of the persons

22 required by Subsection (b)(6).

23 SECTION 3.1542. Sections 773.0616(a) and (b), Health and

24 Safety Code, are amended to read as follows:

25 (a) A proceeding [before the commissioner] to consider the

26 issues under Section 773.0615 is governed by Chapter 2001,

27 Government Code.

1 (b) The executive commissioner shall issue guidelines
2 relating to the department's [~~commissioner's~~] decision-making
3 under Sections 773.0614 and 773.0615. The guidelines must state
4 the reasons a particular crime is considered to relate to emergency
5 medical services personnel and include any other criterion that may
6 affect the decisions of the department [~~commissioner~~].

7 SECTION 3.1543. Section 773.0617, Health and Safety Code,
8 is amended to read as follows:

9 Sec. 773.0617. NOTICE AND REVIEW OF SUSPENSION, REVOCATION,
10 DISQUALIFICATION FOR, OR DENIAL OF CERTIFICATION. (a) If the
11 department [~~commissioner~~] suspends or revokes a certification,
12 denies a person a certificate, or denies the opportunity to be
13 examined for a certificate under Section 773.0614, the department
14 [~~commissioner~~] shall notify the person in writing of:

15 (1) the reason for the suspension, revocation, denial,
16 or disqualification;

17 (2) the review procedure provided by Subsection (b);
18 and

19 (3) the earliest date the person may appeal the action
20 of the department [~~commissioner~~].

21 (b) A person whose certificate has been suspended or revoked
22 or who has been denied a certificate or the opportunity to take an
23 examination and who has exhausted the person's administrative
24 appeals may file an action in the district court in Travis County
25 for review of the evidence presented to the department
26 [~~commissioner~~] and the decision of the department [~~commissioner~~].

27 (c) The petition for an action under Subsection (b) must be

1 filed not later than the 30th day after the date the department's
2 [commissioner's] decision is final.

3 SECTION 3.1544. Sections 773.062(a) and (c), Health and
4 Safety Code, are amended to read as follows:

5 (a) The commissioner [bureau chief] shall issue an
6 emergency order to suspend a certificate or license issued under
7 this chapter if the commissioner [bureau chief] has reasonable
8 cause to believe that the conduct of any certificate or license
9 holder creates an imminent danger to the public health or safety.

10 (c) The holder may request in writing a hearing on the
11 emergency suspension. The department shall refer the matter to the
12 State Office of Administrative Hearings. An administrative law
13 judge of that office shall conduct the hearing not earlier than the
14 10th day or later than the 30th day after the date on which the
15 request is received by the department, shall make findings of fact,
16 and shall issue a written proposal for decision regarding whether
17 the department should [and may] continue, modify, or rescind the
18 suspension. The department's [department] hearing rules and
19 Chapter 2001, Government Code, govern the hearing and any appeal
20 from a disciplinary action related to the hearing.

21 SECTION 3.1545. Section 773.064(a), Health and Safety Code,
22 is amended to read as follows:

23 (a) A person commits an offense if the person knowingly
24 practices as, attempts to practice as, or represents himself to be
25 an emergency medical technician-paramedic, advanced emergency
26 medical technician [technician-intermediate], emergency medical
27 technician, emergency care attendant, or licensed paramedic and the

1 person does not hold an appropriate certificate issued by the
2 department under this chapter. An offense under this subsection is
3 a Class A misdemeanor.

4 SECTION 3.1546. Sections [773.065\(a\), \(b\), and \(c\)](#), Health
5 and Safety Code, are amended to read as follows:

6 (a) The department [~~commissioner~~] may assess an
7 administrative penalty against an emergency medical services
8 provider or a course coordinator who violates this chapter or a rule
9 adopted or an order issued under this chapter.

10 (b) In determining the amount of the penalty, the department
11 [~~commissioner~~] shall consider:

12 (1) the emergency medical services provider's or
13 course coordinator's previous violations;

14 (2) the seriousness of the violation;

15 (3) any hazard to the health and safety of the public;

16 (4) the emergency medical services provider's or
17 course coordinator's demonstrated good faith; and

18 (5) any other matter as justice may require.

19 (c) The penalty may not exceed \$7,500 for each violation.

20 The executive commissioner [~~board~~] by rule shall establish
21 gradations of penalties in accordance with the relative seriousness
22 of the violation.

23 SECTION 3.1547. Sections [773.066\(b\), \(c\), \(d\), and \(e\)](#),
24 Health and Safety Code, are amended to read as follows:

25 (b) If a hearing is held, the department shall refer the
26 matter to the State Office of Administrative Hearings. An
27 administrative law judge of that office [~~commissioner~~] shall

1 conduct the hearing, make findings of fact, and [shall] issue to the
2 department a written proposal for decision regarding whether the
3 emergency medical services provider or course coordinator
4 committed a violation and the amount of any penalty to be assessed.

5 (c) If the emergency medical services provider or course
6 coordinator charged with the violation does not request a hearing,
7 the department [commissioner] shall determine whether the provider
8 or course coordinator committed a violation and the amount of any
9 penalty to be assessed.

10 (d) After making a determination under this section
11 [Subsection (b) or (c)] that a penalty is to be assessed against an
12 emergency medical services provider or a course coordinator, the
13 department [commissioner] shall issue an order requiring that the
14 emergency medical services provider or course coordinator pay the
15 penalty.

16 (e) Not later than the 30th day after the date an order is
17 issued under Subsection (d), the department [commissioner] shall
18 give written notice of the order to the emergency medical services
19 provider or course coordinator.

20 SECTION 3.1548. Sections 773.067(b), (c), (d), and (e),
21 Health and Safety Code, are amended to read as follows:

22 (b) Within the 30-day period, a person who acts under
23 Subsection (a)(3) may:

24 (1) stay enforcement of the penalty by:

25 (A) paying the amount of the penalty to the court
26 for placement in an escrow account; or

27 (B) giving to the court a supersedeas bond that

1 is approved by the court for the amount of the penalty and that is
2 effective until all judicial review of the department's
3 [~~commissioner's~~] order is final; or

4 (2) request the court to stay enforcement of the
5 penalty by:

6 (A) filing with the court a sworn affidavit of
7 the person stating that the person is financially unable to pay the
8 amount of the penalty and is financially unable to give the
9 supersedeas bond; and

10 (B) giving a copy of the affidavit to the
11 department [~~commissioner~~] by certified mail.

12 (c) If the department [~~commissioner~~] receives a copy of an
13 affidavit under Subsection (b)(2), the department [~~commissioner~~]
14 may file with the court, within five days after the date the copy is
15 received, a contest to the affidavit. The court shall hold a
16 hearing on the facts alleged in the affidavit as soon as practicable
17 and shall stay the enforcement of the penalty on finding that the
18 alleged facts are true. The person who files an affidavit has the
19 burden of proving that the person is financially unable to pay the
20 amount of the penalty and to give a supersedeas bond.

21 (d) If the person does not pay the amount of the penalty and
22 the enforcement of the penalty is not stayed, the department
23 [~~commissioner~~] may refer the matter to the attorney general for
24 collection of the amount of the penalty.

25 (e) Judicial review of the order of the department
26 [~~commissioner~~]:

27 (1) is instituted by filing a petition as provided by

1 Subchapter G, Chapter 2001, Government Code; and
2 (2) is under the substantial evidence rule.

3 SECTION 3.1549. Section 773.069, Health and Safety Code, is
4 amended to read as follows:

5 Sec. 773.069. RECOVERY OF ADMINISTRATIVE PENALTY BY
6 ATTORNEY GENERAL. The attorney general at the request of the
7 department [~~commissioner~~] may bring a civil action to recover an
8 administrative penalty assessed under this subchapter.

9 SECTION 3.1550. Section 773.070, Health and Safety Code, is
10 amended to read as follows:

11 Sec. 773.070. DENIAL OF CERTIFICATION OR LICENSURE FOR
12 FAILURE TO PROVIDE [~~ACCESS TO~~] CERTAIN CRIMINAL HISTORY RECORD
13 INFORMATION. [~~(e)~~] The department [~~board~~] may deny licensure or
14 certification to an applicant who does not provide a complete set of
15 the required fingerprints to obtain criminal history record
16 information.

17 SECTION 3.1551. Section 773.071(a), Health and Safety Code,
18 is amended to read as follows:

19 (a) To the extent feasible, the executive commissioner
20 [~~board~~] by rule shall set the fees under this subchapter in amounts
21 necessary for the department to recover the cost of administering
22 this subchapter.

23 SECTION 3.1552. Sections 773.092(b), (c), and (e), Health
24 and Safety Code, are amended to read as follows:

25 (b) Information under Subsection (a)(4) [~~Subdivision (4)~~]
26 is discoverable in any court or administrative proceeding in this
27 state if the court or administrative body has jurisdiction of the

1 subject matter, pursuant to rules of procedure specified for the
2 matter.

3 (c) Subsection (a)(5) [~~Subdivision (5)~~] does not authorize
4 the release of confidential information to instigate or
5 substantiate criminal charges against a patient.

6 (e) Communications and records that are confidential under
7 this section may be disclosed to:

8 (1) medical or law enforcement personnel if the
9 emergency medical services personnel, the physician providing
10 medical supervision, or the emergency medical services provider
11 determines that there is a probability of imminent physical danger
12 to any person or if there is a probability of immediate mental or
13 emotional injury to the patient;

14 (2) governmental agencies if the disclosure is
15 required or authorized by law;

16 (3) qualified persons to the extent necessary for
17 management audits, financial audits, program evaluation, system
18 improvement, or research, except that any report of the research,
19 audit, or evaluation may not directly or indirectly identify a
20 patient;

21 (4) any person who bears a written consent of the
22 patient or other persons authorized to act on the patient's behalf
23 for the release of confidential information as provided by Section
24 [773.093](#);

25 (5) the department for data collection or complaint
26 investigation;

27 (6) other emergency medical services personnel, other

1 physicians, and other personnel under the direction of a physician
2 who are participating in the diagnosis, evaluation, or treatment of
3 a patient; or

4 (7) individuals, corporations, or governmental
5 agencies involved in the payment or collection of fees for
6 emergency medical services rendered by emergency medical services
7 personnel.

8 SECTION 3.1553. The heading to Section [773.112](#), Health and
9 Safety Code, is amended to read as follows:

10 Sec. 773.112. ~~[DUTIES OF BOARD]~~ RULES.

11 SECTION 3.1554. Section [773.112](#)(a), Health and Safety Code,
12 is amended to read as follows:

13 (a) The executive commissioner ~~[board]~~ by rule shall adopt
14 minimum standards and objectives to implement emergency medical
15 services and trauma care systems. The executive commissioner
16 ~~[board]~~ by rule shall provide for the designation of trauma
17 facilities and for triage, transfer, and transportation policies.
18 The executive commissioner ~~[board]~~ shall consider guidelines
19 adopted by the American College of Surgeons and the American
20 College of Emergency Physicians in adopting rules under this
21 section.

22 SECTION 3.1555. Section [773.113](#), Health and Safety Code, is
23 amended to read as follows:

24 Sec. 773.113. DUTIES OF DEPARTMENT ~~[BUREAU]~~. (a) The
25 department ~~[bureau]~~ shall:

26 (1) develop and monitor a statewide emergency medical
27 services and trauma care system;

1 (2) designate trauma facilities;
2 (3) develop and maintain a trauma reporting and
3 analysis system to:

4 (A) identify severely injured trauma patients at
5 each health care facility in this state;

6 (B) identify the total amount of uncompensated
7 trauma care expenditures made each fiscal year by each health care
8 facility in this state; and

9 (C) monitor trauma patient care in each health
10 care facility, including each designated trauma center, in
11 emergency medical services and trauma care systems in this state;
12 and

13 (4) provide for coordination and cooperation between
14 this state and any other state with which this state shares a
15 standard metropolitan statistical area.

16 (b) The department [bureau] may grant an exception to a rule
17 adopted under Section 773.112 if it finds that compliance with the
18 rule would not be in the best interests of the persons served in the
19 affected local emergency medical services and trauma care delivery
20 area.

21 SECTION 3.1556. Section 773.1135, Health and Safety Code,
22 is transferred to Section 773.113, Health and Safety Code,
23 redesignated as Section 773.113(c), Health and Safety Code, and
24 amended to read as follows:

25 (c) [~~Sec. 773.1135. DUTIES OF DEPARTMENT.~~] The department
26 shall develop performance measures for regional advisory councils
27 in trauma service areas to:

1 (1) promote the provision of a minimum level of
2 emergency medical services in a trauma service area in accordance
3 with the rules adopted under Section [773.112](#);

4 (2) promote the provision of quality care and service
5 by the emergency medical services and trauma care system in
6 accordance with the rules adopted under Section [773.112](#); and

7 (3) maximize the accuracy of information provided by a
8 regional advisory council to the department ~~[or bureau]~~ for
9 increased council effectiveness.

10 SECTION 3.1557. Section [773.114](#)(a), Health and Safety Code,
11 is amended to read as follows:

12 (a) Each emergency medical services and trauma care system
13 must have:

14 (1) local or regional medical control for all field
15 care and transportation, consistent with geographic and current
16 communications capability;

17 (2) triage, transport, and transfer protocols; and

18 (3) one or more hospitals categorized according to
19 trauma care capabilities using standards adopted by department
20 ~~[board]~~ rule.

21 SECTION 3.1558. Section [773.115](#), Health and Safety Code, is
22 amended to read as follows:

23 Sec. 773.115. TRAUMA FACILITIES. (a) The department
24 ~~[bureau]~~ may designate trauma facilities that are a part of an
25 emergency medical services and trauma care system. A trauma
26 facility shall be designated by the level of trauma care and
27 services provided in accordance with the American College of

1 Surgeons guidelines for level I and II trauma facilities and
2 department rules [~~adopted by the board~~] for level III and IV trauma
3 facilities. In adopting rules under this section, the executive
4 commissioner [~~board~~] may consider trauma caseloads, geographic
5 boundaries, or minimum population requirements, but the department
6 [~~bureau~~] may not deny designation solely on these criteria. The
7 executive commissioner [~~board~~] may not set an arbitrary limit on
8 the number of facilities designated as trauma facilities.

9 (b) A health care facility may apply to the department
10 [~~bureau~~] for designation as a trauma facility, and the department
11 [~~bureau~~] shall grant the designation if the facility meets the
12 requirements for designation prescribed by department [~~board~~]
13 rules.

14 (c) A [~~After September 1, 1993, a~~] health care facility may
15 not use the terms "trauma facility," "trauma hospital," "trauma
16 center," or similar terminology in its signs or advertisements or
17 in the printed materials and information it provides to the public
18 unless the facility has been designated as a trauma facility under
19 this subchapter.

20 SECTION 3.1559. Sections 773.116(a), (b), and (d), Health
21 and Safety Code, are amended to read as follows:

22 (a) The department [~~bureau~~] shall charge a fee to a health
23 care facility that applies for initial or continuing designation as
24 a trauma facility.

25 (b) The executive commissioner [~~board~~] by rule shall set the
26 amount of the fee schedule for initial or continuing designation as
27 a trauma facility according to the number of beds in the health care

1 facility. The amount of the fee may not exceed:

- 2 (1) \$5,000 for a Level I or II facility;
3 (2) \$2,500 for a Level III facility; or
4 (3) \$1,000 for a Level IV facility.

5 (d) To the extent feasible, the executive commissioner
6 [board] by rule shall set the fee in an amount necessary for the
7 department to recover the cost directly related to designating
8 trauma facilities under this subchapter.

9 SECTION 3.1560. Sections [773.119](#)(b) and (c), Health and
10 Safety Code, are amended to read as follows:

11 (b) The executive commissioner [board] by rule shall
12 establish eligibility criteria for awarding the grants. The rules
13 must require the department to consider:

14 (1) the need of an area for the provision of emergency
15 medical services or trauma care and the extent to which the grant
16 would meet the identified need;

17 (2) the availability of personnel and training
18 programs;

19 (3) the availability of other funding sources;

20 (4) the assurance of providing quality services;

21 (5) the use or acquisition of helicopters for
22 emergency medical evacuation; and

23 (6) the development or existence of an emergency
24 medical services system.

25 (c) The department may approve grants according to
26 department [the] rules [~~adopted by the board~~]. A grant awarded
27 under this section is governed by Chapter 783, Government Code,

1 [the Uniform Grant and Contract Management Act of 1981 (Article
2 4413(32g), Vernon's Texas Civil Statutes)] and by the rules adopted
3 under that chapter [Act].

4 SECTION 3.1561. Section 773.122(e), Health and Safety Code,
5 is amended to read as follows:

6 (e) In any fiscal year, the commissioner may use not more
7 than three percent of the appropriated money from the accounts
8 after any amount necessary to maintain the reserve established by
9 Subsection (b) is deducted to fund the administrative costs [~~of the~~
10 ~~bureau of emergency management~~] of the department associated with
11 administering the state emergency medical services program, the
12 trauma program, and the accounts and to fund the costs of monitoring
13 and providing technical assistance for those programs and the
14 accounts.

15 SECTION 3.1562. The heading to Subchapter F, Chapter 773,
16 Health and Safety Code, is amended to read as follows:

17 SUBCHAPTER F. MEDICAL INFORMATION PROVIDED BY CERTAIN EMERGENCY
18 MEDICAL SERVICES CALL TAKERS [~~OPERATORS~~]

19 SECTION 3.1563. Section 773.141(2), Health and Safety Code,
20 is amended to read as follows:

21 (2) "Emergency medical services call taker
22 [~~operator~~]" means a person who, as a volunteer or employee of a
23 public agency, as that term is defined by Section 771.001, receives
24 emergency calls.

25 SECTION 3.1564. Section 773.143, Health and Safety Code, is
26 amended to read as follows:

27 Sec. 773.143. PROVISION OF MEDICAL INFORMATION. An

1 emergency medical services call taker [operator] may provide
2 medical information to a member of the public during an emergency
3 call if:

4 (1) the call taker [operator] has successfully
5 completed an emergency medical services call taker [operator]
6 training program and holds a certificate issued under Section
7 **773.144**; and

8 (2) the information provided substantially conforms
9 to the protocol for delivery of the information adopted by the
10 executive commissioner [board] under Section **773.145**.

11 SECTION 3.1565. Section **773.144**, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 773.144. TRAINING PROGRAMS. (a) The department may
14 offer emergency medical services call taker [operator] training
15 programs and may approve training programs offered by other
16 persons. The executive commissioner [board] by rule shall
17 establish minimum standards for approval of training programs and
18 certification and decertification of program instructors.

19 (b) The provider of an emergency medical services call taker
20 [operator] training program shall issue an emergency medical
21 services call taker [operator] a certificate evidencing completion
22 of the training program. The executive commissioner [board] by
23 rule may require that, before issuance of the certificate, the call
24 taker [operator] successfully complete an examination administered
25 by the department [board], by the provider of the training program,
26 or by another person.

27 (c) The executive commissioner [board] by rule may provide

1 that a certificate issued under Subsection (b) expires at the end of
2 a specified period not less than one year after the date on which
3 the certificate is issued and may adopt requirements, including
4 additional training or examination, for renewal of the certificate.

5 (d) The executive commissioner [board] by rule may adopt
6 other requirements relating to emergency medical services call
7 taker [operator] training programs. The establishment of minimum
8 standards under this section does not prohibit the entity that is
9 employing or accepting the volunteer services of the emergency
10 medical services call taker [operator] from imposing additional
11 training standards or procedures.

12 SECTION 3.1566. Section 773.145, Health and Safety Code, is
13 amended to read as follows:

14 Sec. 773.145. MEDICAL INFORMATION. The executive
15 commissioner [board] by rule shall adopt a protocol that must be
16 used to provide medical information under Section 773.143. The
17 protocol may include the use of a flash-card system or other similar
18 system designed to make the information readily accessible to the
19 emergency medical services call taker [operator] in an
20 understandable form.

21 SECTION 3.1567. Section 773.146(a), Health and Safety Code,
22 is amended to read as follows:

23 (a) An emergency medical services call taker [operator] who
24 holds a certificate under Section 773.144 is not liable for damages
25 that arise from the provision of medical information according to
26 the protocol adopted under Section 773.145 if the information is
27 provided in good faith. This subsection does not apply to an act or

1 omission of the call taker [operator] that constitutes gross
2 negligence, recklessness, or intentional misconduct. This
3 subsection does not affect any liability imposed on a public agency
4 for the conduct of the emergency medical services call taker
5 [operator] under Section 101.062, Civil Practice and Remedies Code.

6 SECTION 3.1568. Section 773.147(a), Health and Safety Code,
7 is amended to read as follows:

8 (a) The executive commissioner [board] by rule may adopt
9 fees for:

10 (1) training programs provided by the department
11 [board] under Section 773.144; and

12 (2) the approval of program instructors and of
13 training programs offered by other persons.

14 SECTION 3.1569. Section 773.171(a), Health and Safety Code,
15 is amended to read as follows:

16 (a) The emergency medical services for children program is
17 in the department [~~bureau of emergency management~~].

18 SECTION 3.1570. The heading to Section 773.173, Health and
19 Safety Code, is amended to read as follows:

20 Sec. 773.173. [~~DUTIES OF BOARD~~] RULES.

21 SECTION 3.1571. Sections 773.173(a), (b), and (c), Health
22 and Safety Code, are amended to read as follows:

23 (a) On the recommendation of the advisory council
24 [~~committee~~], the executive commissioner [board] shall adopt
25 minimum standards and objectives to implement a pediatric emergency
26 services system, including rules that:

27 (1) provide guidelines for categorization of a

1 facility's pediatric capability;

2 (2) provide for triage, transfer, and transportation

3 policies for pediatric care;

4 (3) establish guidelines for:

5 (A) prehospital care management for triage and

6 transportation of a pediatric patient;

7 (B) prehospital and hospital equipment that is

8 necessary and appropriate for the care of a pediatric patient;

9 (C) necessary pediatric emergency equipment and

10 training in long-term care facilities; and

11 (D) an interhospital transfer system for a

12 critically ill or injured pediatric patient; and

13 (4) provide for data collection and analysis.

14 (b) The executive commissioner [board] and the advisory

15 council [committee] shall consider guidelines endorsed by the

16 American Academy of Pediatrics and the American College of Surgeons

17 in recommending and adopting rules under this section.

18 (c) The department [bureau] may grant an exception to a rule

19 adopted under this section if it finds that compliance with the rule

20 would not be in the best interests of persons served in the affected

21 local pediatric emergency medical services system.

22 SECTION 3.1572. Section 773.204(c), Health and Safety Code,

23 is amended to read as follows:

24 (c) In developing the stroke emergency transport plan and

25 stroke facility criteria, the stroke committee shall consult the

26 criteria for stroke facilities established by national medical

27 organizations such as The [the] Joint Commission [~~on Accreditation~~

1 ~~ef Healthcare Organizations~~].

2 SECTION 3.1573. Section 774.002(a), Health and Safety Code,
3 is amended to read as follows:

4 (a) A municipality or other political subdivision that
5 employs emergency medical technicians may pay educational
6 incentive pay to employees holding certificates from the [Texas]
7 Department of State Health Services as emergency medical
8 technicians.

9 SECTION 3.1574. Section 777.008(b), Health and Safety Code,
10 is amended to read as follows:

11 (b) The committee is composed of:

12 (1) one public member appointed by the Commission on
13 State Emergency Communications;

14 (2) six members who represent the six regional poison
15 control centers, one appointed by the chief executive officer of
16 each center;

17 (3) one member appointed by the commissioner of state
18 health services [~~the Department of State Health Services~~]; and

19 (4) one member who is a health care professional
20 designated as the poison control program coordinator appointed by
21 the Commission on State Emergency Communications.

22 SECTION 3.1575. Section 779.002, Health and Safety Code, is
23 amended to read as follows:

24 Sec. 779.002. TRAINING. (a) A person or entity that
25 acquires an automated external defibrillator shall ensure that:

26 (1) each user of the automated external defibrillator
27 receives training given or approved by the [Texas] Department of

1 State Health Services in:

2 (A) cardiopulmonary resuscitation; and
3 (B) use of the automated external defibrillator;
4 and

5 (2) a licensed physician is involved in the training
6 program to ensure compliance with the requirements of this chapter.

7 (b) The executive commissioner of the Health and Human
8 Services Commission [~~Texas Department of Health~~] shall adopt rules
9 establishing the minimum requirements for the training required by
10 this section. In adopting rules under this section, the executive
11 commissioner [~~Texas Department of Health~~] shall consider the
12 guidelines for automated external defibrillator training approved
13 by the American Heart Association, the American Red Cross, or
14 another nationally recognized association.

15 SECTION 3.1576. Section 781.001, Health and Safety Code, is
16 amended by adding Subdivision (4-a) to read as follows:

17 (4-a) "Executive commissioner" means the executive
18 commissioner of the Health and Human Services Commission.

19 SECTION 3.1577. Sections 781.051(b), (c), and (d), Health
20 and Safety Code, are amended to read as follows:

21 (b) The executive commissioner shall adopt rules necessary
22 to administer this chapter.

23 (c) The executive commissioner by rule shall establish fees
24 necessary to administer this chapter, including fees for processing
25 and issuing or renewing a license or registration under this
26 chapter.

27 (d) The department [~~commissioner~~] shall prescribe forms

1 required by this chapter.

2 SECTION 3.1578. Section 781.103, Health and Safety Code, is
3 amended to read as follows:

4 Sec. 781.103. APPLICATION FOR LICENSE. An application for
5 a license under this chapter must be in the form prescribed by the
6 department [~~commissioner~~] and include:

7 (1) the full name and business address of the
8 applicant;

9 (2) the name under which the applicant intends to do
10 business;

11 (3) a statement as to the general nature of the
12 business in which the applicant intends to engage;

13 (4) if the applicant is an entity other than an
14 individual, the full name and residence address of each partner,
15 officer, and director of the applicant, and of the applicant's
16 manager;

17 (5) a verified statement of the applicant's experience
18 qualifications;

19 (6) a report from the Department of Public Safety
20 stating the applicant's record of any convictions for a Class B
21 misdemeanor or equivalent offense or a greater offense;

22 (7) the social security number of the individual
23 making the application; and

24 (8) other information, evidence, statements, or
25 documents required by the department.

26 SECTION 3.1579. Section 781.105, Health and Safety Code, is
27 amended to read as follows:

1 Sec. 781.105. FORM OF LICENSE. The department
2 [commissioner] shall prescribe the form of a license, including a
3 branch office license. The license must include:

- 4 (1) the name of the license holder;
5 (2) the name under which the license holder is to
6 operate; and
7 (3) the license number and the date the license was
8 issued.

9 SECTION 3.1580. Section 781.108(d), Health and Safety Code,
10 is amended to read as follows:

11 (d) After suspension of the license, the department may not
12 reinstate the license until an application, in the form prescribed
13 by the department [commissioner], is filed accompanied by a proper
14 insurance certificate. The department may deny the application
15 notwithstanding the applicant's compliance with this section:

- 16 (1) for a reason that would justify suspending,
17 revoking, or denying a license; or
18 (2) if, during the suspension, the applicant performs
19 a practice for which a license is required.

20 SECTION 3.1581. Section 781.155(b), Health and Safety Code,
21 is amended to read as follows:

22 (b) The executive commissioner [department] by rule may
23 adopt additional qualifications for an individual to be registered
24 under this subchapter.

25 SECTION 3.1582. Section 781.254, Health and Safety Code, is
26 amended to read as follows:

27 Sec. 781.254. STAGGERED RENEWAL; PRORATION OF LICENSE FEE.

1 The executive commissioner [department] by rule may adopt a system
2 under which licenses expire on various dates during the year. For
3 the year in which the expiration date of a license is changed, the
4 department shall prorate license fees on a monthly basis so that
5 each license holder pays only that portion of the license fee that
6 is allocable to the number of months during which the license is
7 valid. On renewal of the license on the new expiration date, the
8 total license renewal fee is payable.

9 SECTION 3.1583. Section 781.352, Health and Safety Code, is
10 amended to read as follows:

11 Sec. 781.352. HEARING. (a) If the department proposes to
12 revoke or suspend a person's license or registration, the person is
13 entitled to a hearing before an administrative law judge of [~~a~~
14 ~~hearings officer appointed by~~] the State Office of Administrative
15 Hearings.

16 (b) The executive commissioner shall prescribe procedures
17 for appealing to the department a decision to revoke or suspend a
18 license or registration.

19 SECTION 3.1584. Section 781.453, Health and Safety Code, is
20 amended to read as follows:

21 Sec. 781.453. [REPORT AND] NOTICE OF VIOLATION AND PENALTY.
22 (a) If the department [~~commissioner or the commissioner's~~
23 ~~designee~~] determines that a violation occurred, the [~~commissioner~~
24 ~~or the designee may issue to the~~] department, within [~~a report~~
25 ~~stating:~~]

26 [+(1) ~~the facts on which the determination is based,~~
27 ~~and~~

1 [¶(2) the commissioner's or the designee's
2 recommendation on the imposition of an administrative penalty,
3 including a recommendation on the amount of the penalty.]

4 [(b) Within] 14 days after the date the report is issued,
5 [the commissioner or the commissioner's designee] shall give
6 written notice of the violation [report] to the person by certified
7 mail.

8 (b) The notice under Subsection (a) must:

9 (1) include a brief summary of the alleged violation;
10 (2) state the amount of the recommended administrative
11 penalty; and
12 (3) inform the person of the person's right to a
13 hearing on the occurrence of the violation, the amount of the
14 penalty, or both.

15 SECTION 3.1585. Section 781.454, Health and Safety Code, is
16 amended to read as follows:

17 Sec. 781.454. PENALTY TO BE PAID OR HEARING REQUESTED. (a)
18 Within 10 days after the date the person receives the notice, the
19 person in writing may:

20 (1) accept the department's determination and
21 recommended administrative penalty [of the commissioner or the
22 commissioner's designee]; or

23 (2) [make a] request [for] a hearing on the occurrence
24 of the violation, the amount of the penalty, or both.

25 (b) If the person accepts the determination and recommended
26 penalty [of the commissioner or the commissioner's designee], the
27 department by order shall [approve the determination and] impose

1 the recommended penalty.

2 SECTION 3.1586. Section 781.455(a), Health and Safety Code,
3 is amended to read as follows:

4 (a) If the person requests a hearing or fails to respond in a
5 timely manner to the notice, an administrative law judge of the
6 State Office of Administrative Hearings [~~the commissioner or the~~
7 ~~commissioner's designee~~] shall set a hearing and the department
8 shall give written notice of the hearing to the person.

9 SECTION 3.1587. Sections 781.457(b) and (c), Health and
10 Safety Code, are amended to read as follows:

11 (b) Within the 30-day period prescribed by Subsection (a), a
12 person who files a petition for judicial review may:

13 (1) stay enforcement of the penalty by:

14 (A) paying the penalty to the court for placement
15 in an escrow account; or

16 (B) giving the court a supersedeas bond approved
17 by the court that:

18 (i) is for the amount of the penalty; and

19 (ii) is effective until all judicial review
20 of the department's order is final; or

21 (2) request the court to stay enforcement of the
22 penalty by:

23 (A) filing with the court a sworn affidavit of
24 the person stating that the person is financially unable to pay the
25 penalty and is financially unable to give the supersedeas bond; and

26 (B) giving a copy of the affidavit to the
27 department [~~commissioner or the commissioner's designee~~] by

1 certified mail.

2 (c) If the department [~~commissioner or the commissioner's~~
3 ~~designee~~] receives a copy of an affidavit under Subsection (b)(2),
4 the department [~~commissioner or the designee~~] may file with the
5 court, within five days after the date the copy is received, a
6 contest to the affidavit.

7 SECTION 3.1588. Section 782.001(2), Health and Safety Code,
8 is amended to read as follows:

9 (2) "Executive commissioner" [~~Commissioner~~] means
10 the executive commissioner of the Health and Human Services
11 Commission.

12 SECTION 3.1589. Section 782.002(b), Health and Safety Code,
13 as added by Chapter 1149 (S.B. 1119), Acts of the 80th Legislature,
14 Regular Session, 2007, is amended to read as follows:

15 (b) The account is composed of money deposited to the credit
16 of the account under Sections 542.406 and [~~Section~~] 707.008,
17 Transportation Code [~~, and the earnings of the account~~].

18 SECTION 3.1590. Section 782.002(c), Health and Safety Code,
19 is amended to read as follows:

20 (c) Section [~~Sections 403.095~~ and] 404.071, Government
21 Code, does [do] not apply to the account.

22 SECTION 3.1591. Section 782.003(a), Health and Safety Code,
23 as added by Chapter 1149 (S.B. 1119), Acts of the 80th Legislature,
24 Regular Session, 2007, is amended to read as follows:

25 (a) The executive commissioner shall use money appropriated
26 from the regional trauma account established under Section 782.002
27 to fund uncompensated care of designated trauma facilities and

1 county and regional emergency medical services located in the area
2 served by the trauma service area regional advisory council that
3 serves the local authority submitting money under Section 542.406
4 or 707.008, Transportation Code.

5 SECTION 3.1592. Section 782.003(b), Health and Safety Code,
6 is amended to read as follows:

7 (b) In any fiscal year, the executive commissioner shall
8 use:

9 (1) 96 percent of the money appropriated from the
10 account to fund a portion of the uncompensated trauma care provided
11 at facilities designated as state trauma facilities by the
12 Department of State Health Services;

13 (2) two percent of the money appropriated from the
14 account for county and regional emergency medical services;

15 (3) one percent of the money appropriated from the
16 account for distribution to the 22 trauma service area regional
17 advisory councils; and

18 (4) one percent of the money appropriated from the
19 account to fund administrative costs of the commission.

20 SECTION 3.1593. Section 821.001, Health and Safety Code, is
21 amended to read as follows:

22 Sec. 821.001. DEFINITION. In this subchapter, "animal"
23 includes every living nonhuman [~~dumb~~] creature.

24 SECTION 3.1594. Section 821.052(b), Health and Safety Code,
25 is amended to read as follows:

26 (b) A person may euthanize all other animals in the custody
27 of an animal shelter, including birds and reptiles, only in

1 accordance with the applicable methods, recommendations, and
2 procedures set forth in the edition [~~2000 Report~~] of the American
3 Veterinary Medical Association Guidelines for the [~~Panel on~~]
4 Euthanasia of Animals [~~as modified or superseded by a subsequent~~
5 ~~report of the American Veterinary Medical Association Panel on~~
6 ~~Euthanasia~~] that is approved by the executive commissioner [~~board~~].

7 SECTION 3.1595. Section 821.053, Health and Safety Code, is
8 amended to read as follows:

9 Sec. 821.053. REQUIREMENTS FOR USE OF SODIUM PENTOBARBITAL.

10 (a) The executive commissioner [~~board~~] by rule shall establish the
11 requirements and procedures for administering sodium pentobarbital
12 to euthanize an animal in the custody of an animal shelter.

13 (b) A person may administer sodium pentobarbital to
14 euthanize an animal in the custody of an animal shelter only in
15 accordance with the requirements and procedures established by
16 department [~~board~~] rule.

17 SECTION 3.1596. Section 821.056(a), Health and Safety Code,
18 is amended to read as follows:

19 (a) A person commits an offense if the person violates this
20 subchapter or a [~~board~~] rule adopted under this subchapter.

21 SECTION 3.1597. Section 821.057, Health and Safety Code, is
22 amended to read as follows:

23 Sec. 821.057. INJUNCTION. A court of competent
24 jurisdiction, on the petition of any person, may prohibit by
25 injunction the substantial violation of this subchapter or a
26 [~~board~~] rule adopted under this subchapter.

27 SECTION 3.1598. Section 822.006(d), Health and Safety Code,

1 is amended to read as follows:

2 (d) It is a defense to prosecution under Section [822.005\(a\)](#)
3 that the person is a person with a disability [~~disabled~~] and uses
4 the dog to provide assistance, the dog is trained to provide
5 assistance to a person with a disability, and the person is using
6 the dog to provide assistance in connection with the person's
7 disability.

8 SECTION 3.1599. Section [822.101](#), Health and Safety Code, is
9 amended by adding Subdivision (4-a) to read as follows:

10 (4-a) "Executive commissioner" means the executive
11 commissioner of the Health and Human Services Commission.

12 SECTION 3.1600. Section [822.102\(a\)](#), Health and Safety Code,
13 is amended to read as follows:

14 (a) This subchapter does not apply to:

15 (1) a county, municipality, or agency of the state or
16 an agency of the United States or an agent or official of a county,
17 municipality, or agency acting in an official capacity;

18 (2) a research facility, as that term is defined by
19 Section 2(e), Animal Welfare Act (7 U.S.C. Section 2132), and its
20 subsequent amendments, that is licensed by the secretary of
21 agriculture of the United States under that Act;

22 (3) an organization that is an accredited member of
23 the [~~American Zoo and Aquarium~~] Association of Zoos and Aquariums;

24 (4) an injured, infirm, orphaned, or abandoned
25 dangerous wild animal while being transported for care or
26 treatment;

27 (5) an injured, infirm, orphaned, or abandoned

1 dangerous wild animal while being rehabilitated, treated, or cared
2 for by a licensed veterinarian, an incorporated humane society or
3 animal shelter, or a person who holds a rehabilitation permit
4 issued under Subchapter C, Chapter 43, Parks and Wildlife Code;

5 (6) a dangerous wild animal owned by and in the custody
6 and control of a transient circus company that is not based in this
7 state if:

8 (A) the animal is used as an integral part of the
9 circus performances; and

10 (B) the animal is kept within this state only
11 during the time the circus is performing in this state or for a
12 period not to exceed 30 days while the circus is performing outside
13 the United States;

14 (7) a dangerous wild animal while in the temporary
15 custody or control of a television or motion picture production
16 company during the filming of a television or motion picture
17 production in this state;

18 (8) a dangerous wild animal owned by and in the
19 possession, custody, or control of a college or university solely
20 as a mascot for the college or university;

21 (9) a dangerous wild animal while being transported in
22 interstate commerce through the state in compliance with the Animal
23 Welfare Act (7 U.S.C. Section 2131 et seq.) and its subsequent
24 amendments and the regulations adopted under that Act;

25 (10) a nonhuman primate owned by and in the control and
26 custody of a person whose only business is supplying nonhuman
27 primates directly and exclusively to biomedical research

1 facilities and who holds a Class "A" or Class "B" dealer's license
2 issued by the secretary of agriculture of the United States under
3 the Animal Welfare Act (7 U.S.C. Section 2131 et seq.) and its
4 subsequent amendments;

5 (11) a dangerous wild animal that is:

6 (A) owned by or in the possession, control, or
7 custody of a person who is a participant in a species survival plan
8 of the [American Zoo and Aquarium] Association of Zoos and
9 Aquariums for that species; and

10 (B) an integral part of that species survival
11 plan; and

12 (12) in a county west of the Pecos River that has a
13 population of less than 25,000, a cougar, bobcat, or coyote in the
14 possession, custody, or control of a person that has trapped the
15 cougar, bobcat, or coyote as part of a predator or depredation
16 control activity.

17 SECTION 3.1601. Section 822.106(b), Health and Safety Code,
18 is amended to read as follows:

19 (b) Not later than the 10th day after the date a person
20 receives a certificate of registration, the person shall file a
21 clear and legible copy of the certificate of registration with the
22 [Texas] Department of State Health Services. The executive
23 commissioner [department] shall establish a procedure for filing a
24 certificate of registration and by rule shall establish [charge] a
25 reasonable fee to be collected by the department in an amount
26 sufficient to recover the cost associated with filing a certificate
27 of registration under this subsection.

1 SECTION 3.1602. Section 822.111, Health and Safety Code, is
2 amended to read as follows:

3 Sec. 822.111. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER
4 [~~BOARD~~]; CAGING REQUIREMENTS AND STANDARDS. (a) The executive
5 commissioner [~~board~~] by rule shall establish caging requirements
6 and standards for the keeping and confinement of a dangerous wild
7 animal to ensure that the animal is kept in a manner and confined in
8 a primary enclosure that:

9 (1) protects and enhances the public's health and
10 safety;

11 (2) prevents escape by the animal; and

12 (3) provides a safe, healthy, and humane environment
13 for the animal.

14 (b) An owner of a dangerous wild animal shall keep and
15 confine the animal in accordance with the caging requirements and
16 standards established by the executive commissioner [~~board~~].

17 (c) An animal registration agency may approve a deviation
18 from the caging requirements and standards established by the
19 executive commissioner [~~board~~], only if:

20 (1) the animal registration agency has good cause for
21 the deviation; and

22 (2) the deviation:

23 (A) does not compromise the public's health and
24 safety;

25 (B) does not reduce the total area of the primary
26 enclosure below that established by the executive commissioner
27 [~~board~~]; and

1 (c) does not otherwise adversely affect the
2 overall welfare of the animal involved.

3 SECTION 3.1603. Section 823.001(4), Health and Safety Code,
4 is amended to read as follows:

5 (4) "Department" means the [Texas] Department of State
6 Health Services.

7 SECTION 3.1604. Sections 823.003(a) and (e), Health and
8 Safety Code, are amended to read as follows:

9 (a) Each animal shelter operated in this state shall comply
10 with the standards for:

11 (1) housing and sanitation as provided in [existing on
12 ~~September 1, 1982, and adopted under]~~ Chapter 826 for quarantine
13 and impoundment facilities; and

14 (2) animal control officer training adopted under
15 Chapter 829.

16 (e) The executive commissioner of the Health and Human
17 Services Commission [board] may require each person operating an
18 animal shelter to keep records of the date and disposition of
19 animals in its custody, to maintain the records on the business
20 premises of the animal shelter, and to make the records available
21 for inspection at reasonable times.

22 SECTION 3.1605. Section 826.002, Health and Safety Code, is
23 amended by amending Subdivisions (5) and (9) and adding Subdivision
24 (7-a) to read as follows:

25 (5) "Department" means the [Texas] Department of State
26 Health Services.

27 (7-a) "Executive commissioner" means the executive

1 commissioner of the Health and Human Services Commission.

2 (9) "Quarantine" means strict confinement of an animal
3 specified in an order of the department [board] or its designee:

4 (A) on the private premises of the animal's owner
5 or at a facility approved by the department [board] or its designee;
6 and

7 (B) under restraint by closed cage or paddock or
8 in any other manner approved by department [board] rule.

9 SECTION 3.1606. The heading to Subchapter B, Chapter 826,
10 Health and Safety Code, is amended to read as follows:

11 SUBCHAPTER B. GENERAL POWERS AND DUTIES OF EXECUTIVE COMMISSIONER,
12 DEPARTMENT, [BOARD] AND LOCAL GOVERNMENTS

13 SECTION 3.1607. Section 826.011, Health and Safety Code, is
14 amended to read as follows:

15 Sec. 826.011. GENERAL POWERS AND DUTIES OF EXECUTIVE
16 COMMISSIONER AND DEPARTMENT [BOARD]. (a) The department [board]
17 or its designee, with the cooperation of the governing bodies of
18 counties and municipalities, shall administer the rabies control
19 program established by this chapter.

20 (b) The executive commissioner [board] shall adopt rules
21 necessary to effectively administer this chapter.

22 (c) The department [board] or its designee may enter into
23 contracts or agreements with public or private entities to carry
24 out this chapter. The contracts or agreements may provide for
25 payment by the state for materials, equipment, and services.

26 (d) Subject to any limitations or conditions prescribed by
27 the legislature, the department [board] or its designee may seek,

1 receive, and spend funds received through appropriations, grants,
2 or donations from public or private sources for the rabies control
3 program established by this chapter.

4 (e) The department [board] or its designee may compile,
5 analyze, publish, and distribute information relating to the
6 control of rabies for the education of physicians, veterinarians,
7 public health personnel, and the public.

8 SECTION 3.1608. Section 826.012, Health and Safety Code, is
9 amended to read as follows:

10 Sec. 826.012. MINIMUM STANDARDS FOR RABIES CONTROL. This
11 chapter and the rules adopted by the executive commissioner [board]
12 under this chapter are the minimum standards for rabies control.

13 SECTION 3.1609. Section 826.013, Health and Safety Code, is
14 amended to read as follows:

15 Sec. 826.013. COUNTIES AND MUNICIPALITIES MAY ADOPT
16 CHAPTER. The governing body of a municipality or the commissioners
17 court of a county may adopt this chapter and the standards adopted
18 by the executive commissioner [board].

19 SECTION 3.1610. Section 826.014, Health and Safety Code, is
20 amended to read as follows:

21 Sec. 826.014. COUNTIES MAY ADOPT ORDINANCES AND RULES. (a)
22 The commissioners court of a county may adopt ordinances or rules
23 that establish a local rabies control program in the county and set
24 local standards that are compatible with and equal to or more
25 stringent than the program established by this chapter and the
26 department rules adopted under this chapter [~~by the board~~].

27 (b) County ordinances or rules adopted under this section

1 supersede this chapter and the department rules adopted under this
2 chapter [~~of the board~~] within that county so that dual enforcement
3 will not occur.

4 SECTION 3.1611. Section 826.015, Health and Safety Code, is
5 amended to read as follows:

6 Sec. 826.015. MUNICIPALITIES MAY ADOPT ORDINANCES OR RULES.

7 (a) The governing body of a municipality may adopt ordinances or
8 rules that establish a local rabies control program in the
9 municipality and set local standards that are compatible with and
10 equal to or more stringent than:

11 (1) the ordinances or rules adopted by the county in
12 which the municipality is located; and

13 (2) the program established by this chapter and the
14 department rules adopted under this chapter [~~by the board~~].

15 (b) Municipal ordinances or rules adopted under this
16 section supersede ordinances or rules adopted by the county in
17 which the municipality is located, this chapter, and the department
18 rules adopted under this chapter [~~of the board~~] within that
19 municipality so that multiple enforcement will not occur.

20 SECTION 3.1612. Sections 826.017(b) and (c), Health and
21 Safety Code, are amended to read as follows:

22 (b) Except as restricted by department [~~board~~] rule, the
23 officer designated as the local rabies control authority may be the
24 county health officer, municipal health officer, animal control
25 officer, peace officer, or any entity that the commissioners court
26 or governing body considers appropriate.

27 (c) Among other duties, the local rabies control authority

1 shall enforce:

2 (1) this chapter and the department [board] rules that
3 comprise the minimum standards for rabies control;

4 (2) the ordinances or rules of the municipality or
5 county that the local rabies control authority serves; and

6 (3) the rules adopted by the executive commissioner
7 [board] under the area rabies quarantine provisions of Section
8 **826.045.**

9 SECTION 3.1613. Sections **826.021(a)** and (b), Health and
10 Safety Code, are amended to read as follows:

11 (a) Except as otherwise provided by department [board]
12 rule, the owner of a dog or cat shall have the animal vaccinated
13 against rabies by the time the animal is four months of age and at
14 regular intervals thereafter as prescribed by department [board]
15 rule.

16 (b) A veterinarian who vaccinates a dog or cat against
17 rabies shall issue to the animal's owner a vaccination certificate
18 in a form that meets the minimum standards approved by the executive
19 commissioner [board].

20 SECTION 3.1614. Section **826.022(a)**, Health and Safety Code,
21 is amended to read as follows:

22 (a) A person commits an offense if the person fails or
23 refuses to have each dog or cat owned by the person vaccinated
24 against rabies and the animal is required to be vaccinated under:

25 (1) Section **826.021** and department [board] rules; or

26 (2) ordinances or rules adopted under this chapter by
27 a county or municipality within whose jurisdiction the act occurs.

1 SECTION 3.1615. Sections 826.025(a) and (b), Health and
2 Safety Code, are amended to read as follows:

3 (a) The department may provide vaccine and hyperimmune
4 serum in accordance with department [board] policies or procedures
5 for the use and benefit of a person exposed, or suspected of having
6 been exposed, to rabies.

7 (b) In accordance with department [board] rules and
8 eligibility standards, the department is entitled to be reimbursed
9 by or on behalf of the person receiving the vaccine or serum for
10 actual costs incurred in providing the vaccine or serum.

11 SECTION 3.1616. Sections 826.042(a) and (b), Health and
12 Safety Code, are amended to read as follows:

13 (a) The executive commissioner [board] shall adopt rules
14 governing the testing of quarantined animals and the procedure for
15 and method of quarantine.

16 (b) The local rabies control authority or a veterinarian
17 shall quarantine or test in accordance with department [board]
18 rules any animal that the local rabies control authority or
19 veterinarian has probable cause to believe is rabid, may have been
20 exposed to rabies, or may have exposed a person to rabies.

21 SECTION 3.1617. Section 826.044(a), Health and Safety Code,
22 is amended to read as follows:

23 (a) A person commits an offense if the person fails or
24 refuses to quarantine or present for quarantine or testing an
25 animal that:

26 (1) is required to be placed in quarantine or
27 presented for testing under Section 826.042 and department [board]

1 rules; or

2 (2) is required to be placed in quarantine under
3 ordinances or rules adopted under this chapter by a county or
4 municipality within whose jurisdiction the act occurs.

5 SECTION 3.1618. Sections [826.045\(a\), \(b\), \(d\), and \(e\)](#),
6 Health and Safety Code, are amended to read as follows:

7 (a) If rabies is known to exist in an area, the department
8 [~~board~~] or its designee may declare an area rabies quarantine to
9 prevent or contain a rabies epizootic.

10 (b) On the declaration that a quarantine exists, the
11 executive commissioner [~~board~~] shall:

12 (1) define the borders of the quarantine area; and
13 (2) adopt permanent or emergency rules.

14 (d) The quarantine remains in effect until the 181st day
15 after the date on which the last case of rabies is diagnosed in a
16 dog, cat, or other animal species that caused the department
17 [~~board~~] or its designee to declare a quarantine, unless the
18 department [~~board~~] or its designee, by declaration, removes the
19 quarantine before that date.

20 (e) While the quarantine is in effect, the rules adopted by
21 the executive commissioner [~~board~~] supersede all other applicable
22 ordinances or rules applying to the quarantine area and apply until
23 the department [~~board~~] or its designee removes the quarantine by
24 declaration or until the rules expire or are revoked by the
25 executive commissioner [~~board~~].

26 SECTION 3.1619. Section [826.046\(a\)](#), Health and Safety Code,
27 is amended to read as follows:

1 (a) A person commits an offense if the person violates or
2 attempts to violate a department rule [~~of the board~~] adopted under
3 Section 826.045 governing an area rabies quarantine.

4 SECTION 3.1620. Section 826.051, Health and Safety Code, is
5 amended to read as follows:

6 Sec. 826.051. MINIMUM STANDARDS FOR QUARANTINE AND
7 IMPOUNDMENT FACILITIES. (a) The executive commissioner [~~board~~]
8 shall adopt rules governing the types of facilities that may be used
9 to quarantine animals.

10 (b) The executive commissioner [~~board~~] by rule shall
11 establish minimum standards for impoundment facilities and for the
12 care of impounded animals.

13 (c) In accordance with department [~~board~~] rules, a local
14 rabies control authority may contract with one or more public or
15 private entities to provide and operate a quarantine facility.

16 SECTION 3.1621. Section 826.052, Health and Safety Code, is
17 amended to read as follows:

18 Sec. 826.052. INSPECTIONS. An employee of the department,
19 on the presentation of appropriate credentials to the local rabies
20 control authority or the authority's designee, may conduct a
21 reasonable inspection of a quarantine or impoundment facility at a
22 reasonable hour to determine if the facility complies with:

23 (1) the minimum standards adopted by the executive
24 commissioner [~~board~~] for those facilities; and

25 (2) the requirements for animal control officer
26 training adopted under Chapter 829.

27 SECTION 3.1622. Section 826.053, Health and Safety Code, is

1 amended to read as follows:

2 Sec. 826.053. HEARING. (a) A person aggrieved by an action
3 of the department in amending, limiting, suspending, or revoking
4 any approval required of the department by this chapter may request
5 a hearing [~~before the department~~].

6 (b) A [~~The department shall conduct the~~] hearing held under
7 this section must be conducted in accordance with Chapter 2001,
8 Government Code, and the department's formal hearing rules.

9 SECTION 3.1623. Section 826.054(a), Health and Safety Code,
10 is amended to read as follows:

11 (a) At the request of the commissioner, the attorney general
12 may bring suit in the name of the state to enjoin the operation of a
13 quarantine or impoundment facility that fails to meet the minimum
14 standards established by this chapter and department [~~board~~] rules.

15 SECTION 3.1624. Section 826.055(a), Health and Safety Code,
16 is amended to read as follows:

17 (a) A person commits an offense if the person operates a
18 facility for quarantined or impounded animals that fails to meet
19 standards for approval established by:

20 (1) department [~~board~~] rules; or

21 (2) ordinances or rules adopted under this chapter by
22 a county or municipality.

23 SECTION 3.1625. The heading to Section 828.014, Health and
24 Safety Code, is amended to read as follows:

25 Sec. 828.014. ANIMAL FRIENDLY ACCOUNT; DEDICATION.

26 SECTION 3.1626. Section 828.014, Health and Safety Code, is
27 amended by amending Subsections (a), (b), and (c) and adding

1 Subsection (b-1) to read as follows:

2 (a) The [Texas Department of Health] animal friendly
3 account is a separate account in the general revenue fund. The
4 account is composed of:

5 (1) money deposited to the credit of the account under
6 former Section 502.291, Transportation Code, and under Section
7 504.605, Transportation Code; and

8 (2) gifts, grants, donations, and legislative
9 appropriations.

10 (b) The [Texas] Department of State Health Services
11 administers the account.

12 (b-1) The Department of State Health Services [department]
13 may spend money credited to the account or money deposited to the
14 associated trust fund account created under Section 504.6012,
15 Transportation Code, only to:

16 (1) make grants to eligible organizations that
17 sterilize animals owned by the general public at minimal or no cost;
18 and

19 (2) defray the cost of administering the account.

20 (c) The Department of State Health Services [Texas Board of
21 Health:

22 [+] may accept gifts, donations, and grants from any
23 source for the benefit of the account. The executive commissioner
24 of the Health and Human Services Commission [, and]

25 [+] by rule shall establish guidelines for spending
26 money described by Subsection (b-1) [credited to the account].

27 SECTION 3.1627. Section 829.005, Health and Safety Code, is

1 amended to read as follows:

2 Sec. 829.005. FEE. The department and any authorized
3 animal control course sponsor, in accordance with department rules,
4 may collect [~~charge~~] reasonable fees to cover the cost of arranging
5 and conducting an animal control course.

6 SECTION 3.1628. Sections [841.022](#)(a) and (c), Health and
7 Safety Code, are amended to read as follows:

8 (a) The executive director of the Texas Department of
9 Criminal Justice and the commissioner of state health services [~~the~~
10 ~~Department of State Health Services~~] jointly shall establish a
11 multidisciplinary team to review available records of a person
12 referred to the team under Section [841.021](#). The team must include:

13 (1) one person from the Department of State Health
14 Services;

15 (2) two persons from the Texas Department of Criminal
16 Justice, one of whom must be from the victim services division
17 [~~office~~] of that department;

18 (3) one person from the Department of Public Safety;

19 (4) two persons from the office or office personnel;
20 and

21 (5) one person from the Council on Sex Offender
22 Treatment.

23 (c) Not later than the 60th day after the date the
24 multidisciplinary team receives notice under Section [841.021](#)(a) or
25 (b), the team shall:

26 (1) assess whether the person is a repeat sexually
27 violent offender and whether the person is likely to commit a

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1 sexually violent offense after release or discharge;

2 (2) give notice of that assessment to the Texas

3 Department of Criminal Justice or the [Texas] Department of State

4 [Mental] Health Services [~~and Mental Retardation~~], as appropriate;

5 and

(3) recommend the assessment of the person for a behavioral abnormality, as appropriate.

8 SECTION 3.1629. Section 841.150, Health and Safety Code, is
9 amended to read as follows:

10 Sec. 841.150. EFFECT OF SUBSEQUENT COMMITMENT OR
11 CONFINEMENT ON ORDER OF CIVIL COMMITMENT. (a) The duties imposed
12 by this chapter are suspended for the duration of any confinement of
13 a person, or if applicable any other commitment of a person to a
14 community center, mental health facility, or state supported living
15 center [school], by governmental action.

16 (b) In this section:

17 (1) "Community center" means a center established
18 under Subchapter A, Chapter 534.

21 (3) "State supported living center [school]" has the
22 meaning assigned by Section 531.002.

23 SECTION 3.1630. Section [1001.001](#), Health and Safety Code,
24 is amended to read as follows:

25 Sec. 1001.001. DEFINITIONS. In this title [chapter]:

26 (1) "Commission" means the Health and Human Services
27 Commission.

1 (2) "Commissioner" means the commissioner of state
2 health services.

3 (3) "Council" means the State Health Services Council.

4 (4) "Department" means the Department of State Health
5 Services.

6 (5) "Executive commissioner" means the executive
7 commissioner of the Health and Human Services Commission.

8 SECTION 3.1631. Section 1001.051(c), Health and Safety
9 Code, is amended to read as follows:

10 (c) Subject to the control of the executive commissioner,
11 the commissioner shall:

12 (1) act as the department's chief administrative
13 officer;

14 (2) in accordance with the procedures prescribed by
15 Section 531.00551, Government Code, assist the executive
16 commissioner in the development and implementation of policies and
17 guidelines needed for the administration of the department's
18 functions;

19 (3) in accordance with the procedures adopted by the
20 executive commissioner under Section 531.00551, Government Code,
21 assist the executive commissioner in the development of rules
22 relating to the matters within the department's jurisdiction,
23 including the delivery of services to persons and the rights and
24 duties of persons who are served or regulated by the department; and

25 (4) serve as a liaison between the department and
26 commission.

27 SECTION 3.1632. Section 1001.056(c), Health and Safety

1 Code, is amended to read as follows:

2 (c) The policy statement must be:

3 (1) updated annually;

4 (2) reviewed by the Texas Workforce [~~state~~] Commission
5 civil rights division [~~on Human Rights~~] for compliance with
6 Subsection (b)(1); and

7 (3) filed with the governor's office.

8 SECTION 3.1633. Section 1001.0711(a), Health and Safety
9 Code, is amended to read as follows:

10 (a) The executive commissioner [~~commission~~] by rule shall
11 establish a School Health Advisory Committee at the department to
12 provide assistance to the council in establishing a leadership role
13 for the department in support for and delivery of coordinated
14 school health programs and school health services.

15 SECTION 3.1634. Section 1001.080(a), Health and Safety
16 Code, is amended to read as follows:

17 (a) In this section, "individual's legally authorized
18 representative" means:

19 (1) a parent, managing conservator, or guardian of an
20 individual, if the individual is a minor;

21 (2) a guardian of an individual, if the individual has
22 been adjudicated incompetent to manage the individual's personal
23 affairs; or

24 (3) an agent of the individual authorized under a
25 medical [~~durable~~] power of attorney for health care.

26 SECTION 3.1635. Subchapter D, Chapter 1001, Health and
27 Safety Code, is amended by adding Sections 1001.084 and 1001.085 to

1 read as follows:

2 Sec. 1001.084. CONTRACTING AND AUDITING AUTHORITY;
3 DELEGATION. (a) The executive commissioner, as authorized by
4 Section 531.0055, Government Code, may delegate to the department
5 the executive commissioner's authority under that section for
6 contracting and auditing relating to the department's powers,
7 duties, functions, and activities.

8 (b) If the executive commissioner does not make a delegation
9 under Subsection (a), a reference in law to the department with
10 respect to the department's contracting or auditing authority means
11 the executive commissioner. If the executive commissioner makes a
12 delegation under Subsection (a), a reference in law to the
13 department's contracting or auditing authority means that
14 authority the executive commissioner has delegated to the
15 department.

16 (c) If the executive commissioner revokes all or part of a
17 delegation made under Subsection (a), a reference in law to the
18 department with respect to a function for which the delegation was
19 revoked means the executive commissioner or another entity to which
20 the executive commissioner delegates that authority.

21 (d) It is the legislature's intent that the executive
22 commissioner retain the authority over and responsibility for
23 contracting and auditing at each health and human services agency
24 as provided by Section 531.0055, Government Code. A statute
25 enacted on or after January 1, 2015, that references the
26 contracting or auditing authority of the department does not give
27 the department direct contracting or auditing authority unless the

1 statute expressly provides that the contracting or auditing
2 authority:

3 (1) is given directly to the department; and
4 (2) is an exception to the exclusive contracting and
5 auditing authority given to the executive commissioner under
6 Section 531.0055, Government Code.

7 Sec. 1001.085. MANAGEMENT AND DIRECTION BY EXECUTIVE
8 COMMISSIONER. The department's powers and duties prescribed by
9 this chapter and other law, including enforcement activities and
10 functions, are subject to the executive commissioner's oversight
11 under Chapter 531, Government Code, to manage and direct the
12 operations of the department.

13 SECTION 3.1636. Section 1001.202(c), Health and Safety
14 Code, as added by Chapter 352 (H.B. 2392), Acts of the 83rd
15 Legislature, Regular Session, 2013, is amended to read as follows:

16 (c) The executive commissioner [~~department~~] may adopt rules
17 necessary to implement this subchapter.

18 SECTION 3.1637. Section 1002.052(b), Health and Safety
19 Code, is amended to read as follows:

20 (b) The following ex officio, nonvoting members also serve
21 on the board:

22 (1) the commissioner [~~of the department~~];
23 (2) the executive commissioner;
24 (3) the commissioner of insurance;
25 (4) the executive director of the Employees Retirement
26 System of Texas;
27 (5) the executive director of the Teacher Retirement

1 System of Texas;

2 (6) the state Medicaid director of the commission

3 [~~Health and Human Services Commission~~];

4 (7) the executive director of the Texas Medical Board;

5 (8) the commissioner of aging and disability services

6 [~~the Department of Aging and Disability Services~~];

7 (9) the executive director of the Texas Workforce
8 Commission;

9 (10) the commissioner of the Texas Higher Education
10 Coordinating Board; and

11 (11) a representative from each state agency or system
12 of higher education that purchases or provides health care
13 services, as determined by the governor.

14 SECTION 3.1638. Section [1002.102\(b\)](#), Health and Safety
15 Code, is amended to read as follows:

16 (b) The institute shall study and develop recommendations
17 for measuring quality of care and efficiency across:

18 (1) all state employee and state retiree benefit
19 plans;

20 (2) employee and retiree benefit plans provided
21 through the Teacher Retirement System of Texas;

22 (3) the [~~state~~] medical assistance program under
23 Chapter 32, Human Resources Code; and

24 (4) the child health plan program under Chapter 62.

25 SECTION 3.1639. The following provisions of the Health and
26 Safety Code are repealed:

27 (1) Section [11.002](#);

- 1 (26) Section 62.1012;
- 2 (27) Section 63.001;
- 3 (28) Sections 81.043(c) and (d) and 81.050(i);
- 4 (29) Section 85.013;
- 5 (30) Sections 85.083 and 85.084;
- 6 (31) Subchapter F, Chapter 85;
- 7 (32) Sections 85.271(1) and (3);
- 8 (33) Sections 87.001(5) and (10);
- 9 (34) Section 88.001(12);
- 10 (35) Section 92.008;
- 11 (36) Section 93.011;
- 12 (37) Sections 96.001(1) and (2);
- 13 (38) Sections 98.001(3), (4), and (5);
- 14 (39) Section 101.0075;
- 15 (40) Section 103.0105;
- 16 (41) Sections 103A.001(1) and (3);
- 17 (42) Sections 104.002(1), (2), (3), and (4);
- 18 (43) Section 105.008;
- 19 (44) Chapter 112;
- 20 (45) Sections 115.001(2) and (3);
- 21 (46) Sections 117.001(1) and (3);
- 22 (47) Sections 141.013(b) and 141.017(e);
- 23 (48) Sections 142.001(10) and (11-b);
- 24 (49) Section 142.015;
- 25 (50) Section 142.016;
- 26 (51) Section 144.082(e);
- 27 (52) Section 146.019(s);

- 1 (76) Sections [432.003](#)(1), (2), and (4) and [432.022](#)(e);
- 2 (77) Sections [433.003](#)(4) and [433.095](#)(e);
- 3 (78) Sections [436.002](#)(4), (5), (13), and (17);
- 4 (79) Sections [437.001](#)(1), (2), (3), and (3-a);
- 5 (80) Section [438.041](#)(1);
- 6 (81) Section [438.042](#)(b), as added by Chapter 885 (H.B.
7 1682), Acts of the 72nd Legislature, Regular Session, 1991;
- 8 (82) Section [438.101](#)(1);
- 9 (83) Section [438.151](#);
- 10 (84) Section [439.004](#);
- 11 (85) Sections [440.003](#)(2), (3), (4), and (15);
- 12 (86) Section [441.001](#);
- 13 (87) Chapter 461;
- 14 (88) Section [462.001](#)(4);
- 15 (89) Chapter 463;
- 16 (90) Sections [464.001](#)(2) and [464.013](#);
- 17 (91) Sections [466.002](#)(2) and (3);
- 18 (92) Section [466.023](#)(g);
- 19 (93) Subchapters A and C, Chapter 468;
- 20 (94) Section [485.001](#)(3);
- 21 (95) Section [486.001](#)(a)(2);
- 22 (96) Section [501.001](#)(1);
- 23 (97) Sections [502.003](#)(2) and (8);
- 24 (98) Section [502.0141](#)(e);
- 25 (99) Section [503.001](#)(1);
- 26 (100) Sections [505.004](#)(2) and (6) and [505.011](#)(f);
- 27 (101) Sections [506.004](#)(2) and (6) and [506.011](#)(f);

1 SECTION 3.1640. The repeal by this Act of Chapter 463,
2 Health and Safety Code, does not apply to an offense committed under
3 that chapter before the effective date of this Act. An offense
4 committed under Chapter 463, Health and Safety Code, is governed by
5 the law in effect when the offense was committed, and the former law
6 is continued in effect for that purpose.

7 ARTICLE 4. HUMAN RESOURCES CODE

8 SECTION 4.001. The heading to Title 2, Human Resources
9 Code, is amended to read as follows:

10 TITLE 2. [DEPARTMENT OF] HUMAN SERVICES AND [DEPARTMENT OF]
11 PROTECTIVE [AND REGULATORY] SERVICES IN GENERAL

12 SECTION 4.002. Chapter 11, Human Resources Code, is amended
13 to read as follows:

14 CHAPTER 11. GENERAL PROVISIONS

15 Sec. 11.001. DEFINITIONS. In [~~Except as provided by~~
16 ~~Section 40.001, in~~] this title:

17 (1) [~~"Board"~~ means the Texas Board of Human Services.]

18 [~~(2)~~ "Department" means the Texas Department of Human
19 Services.]

20 [~~(3)~~ "Commissioner" means the Commissioner of Human
21 Services.]

22 [~~(4)~~] "Assistance" means all forms of assistance and
23 services for needy persons authorized by Subtitle C.

24 (2) "Commission" means the Health and Human Services
25 Commission.

26 (3) "Executive commissioner" means the executive
27 commissioner of the Health and Human Services Commission.

1 (4) [45] "Financial assistance" means money payments
2 for needy persons authorized by Chapter 31.

3 (5) [46] "Medical assistance" means assistance for
4 needy persons authorized by Chapter 32.

5 Sec. 11.002. PURPOSE OF TITLE; CONSTRUCTION. (a) The
6 purpose of this title is to establish a program of social security
7 to provide necessary and prompt assistance to the citizens of this
8 state who are entitled to avail themselves of its provisions.

9 (b) This title shall be liberally construed in order that
10 its purposes may be accomplished as equitably, economically, and
11 expeditiously as possible.

12 Sec. 11.003. RESPONSIBILITY OF COUNTIES AND MUNICIPALITIES
13 NOT AFFECTED. No provision of this title is intended to release the
14 counties and municipalities in this state from the specific
15 responsibilities they have with regard to the support of public
16 welfare, child welfare, and relief services. Funds which the
17 counties and municipalities may appropriate for the support of
18 those programs may be administered through the ~~department's~~ local
19 or regional offices of the commission or Department of Aging and
20 Disability Services, and if administered in that manner must be
21 devoted exclusively to the programs in the county or municipality
22 making the appropriation.

23 Sec. 11.004. POWERS AND FUNCTIONS NOT AFFECTED. The
24 provisions of this title are not intended to interfere with the
25 powers and functions of the commission, the health and human
26 services agencies, as defined by Section 531.001, Government Code
27 ~~[Texas Rehabilitation Commission, the Texas Commission for the~~

1 ~~Blind, the division of maternal and child health of the Texas~~
2 ~~Department of Health~~, or county juvenile boards.

3 SECTION 4.003. Chapter 12, Human Resources Code, is amended
4 to read as follows:

5 CHAPTER 12. PENAL PROVISIONS

6 Sec. 12.001. PROHIBITED ACTIVITIES. (a) A person who is
7 not licensed to practice law in Texas commits an offense if the
8 person charges a fee for representing or aiding an applicant or
9 recipient in procuring assistance from the state agency
10 administering the assistance ~~[department]~~.

11 (b) A person commits an offense if the person advertises,
12 holds himself or herself out for, or solicits the procurement of
13 assistance from the state agency administering the assistance
14 ~~[department]~~.

15 (c) An offense under this section is a Class A misdemeanor.

16 Sec. 12.002. UNLAWFUL USE OF FUNDS. (a) A person charged
17 with the duty or responsibility of administering, disbursing,
18 auditing, or otherwise handling the grants, funds, or money
19 provided for in this title commits an offense if the person
20 misappropriates the grants, funds, or money or by deception or
21 fraud wrongfully distributes the grants, funds, or money to any
22 person.

23 (b) An offense under this section is a felony punishable by
24 confinement in the Texas Department of Criminal Justice for a term
25 of not less than two or more than seven years.

26 Sec. 12.003. DISCLOSURE OF INFORMATION PROHIBITED. (a)
27 Except for purposes directly connected with the administration of

1 the [department's] assistance programs of the commission or
2 Department of Aging and Disability Services, as applicable, it is
3 an offense for a person to solicit, disclose, receive, or make use
4 of, or to authorize, knowingly permit, participate in, or acquiesce
5 in the use of the names of, or any information concerning, persons
6 applying for or receiving assistance if the information is directly
7 or indirectly derived from the records, papers, files, or
8 communications of the commission or department or acquired by
9 employees of the commission or department in the performance of
10 their official duties.

11 (b) An offense under this section is a Class A misdemeanor.

12 SECTION 4.004. The heading to Subtitle B, Title 2, Human
13 Resources Code, is amended to read as follows:

14 SUBTITLE B. ADMINISTRATIVE PROVISIONS AND GENERAL FUNCTIONS
15 RELATING TO [STRUCTURE AND FUNCTIONS OF DEPARTMENT OF] HUMAN
16 SERVICES

17 SECTION 4.005. The heading to Chapter 21, Human Resources
18 Code, is amended to read as follows:

19 CHAPTER 21. ADMINISTRATIVE PROVISIONS RELATING TO AGENCIES
20 ADMINISTERING ASSISTANCE PROGRAMS [FOR DEPARTMENT OF HUMAN
21 SERVICES]

22 SECTION 4.006. Section 21.007, Human Resources Code, is
23 transferred to Subchapter C, Chapter 161, Human Resources Code,
24 redesignated as Section 161.0541, Human Resources Code, and amended
25 to read as follows:

26 Sec. 161.0541 [21.007]. MAINTENANCE OF MERIT SYSTEM. [The
27 ~~department may establish a merit system for its employees.~~] The

1 merit system established as provided by Section 161.054 may be
2 maintained in conjunction with other state agencies that are
3 required by federal law to operate under a merit system.

4 SECTION 4.007. Sections 21.011, 21.012, and 21.013, Human
5 Resources Code, are amended to read as follows:

6 Sec. 21.011. ANNUAL REPORT ON DEPARTMENT OF AGING AND
7 DISABILITY SERVICES [REPORTS]. [~~(a)~~] On or before December 31 of
8 each year the Department of Aging and Disability Services
9 [~~commissioner~~] shall prepare and submit to the commission [~~board~~] a
10 full report on the operation and administration of the department
11 under this title together with the department's [~~commissioner's~~]
12 recommendations for changes. [~~The report must include information~~
13 ~~relating to the status of the client-centered outcome measures~~
14 ~~developed by the department under Section 21.00605(b) and the~~
15 ~~department's progress in improving those outcome measures.~~] The
16 commission [~~board~~] shall submit the report to the governor and the
17 legislature.

18 Sec. 21.012. CONFIDENTIALITY OF INFORMATION. (a) The
19 executive commissioner [~~department~~] shall establish [~~and enforce~~]
20 reasonable rules governing the custody, use, and preservation of
21 the [~~department's~~] records, papers, files, and communications of
22 the commission and the Department of Aging and Disability Services
23 under this title. The commission and the department shall:

24 (1) enforce the agency's rules; and
25 (2) provide safeguards which restrict the use or
26 disclosure of information concerning applicants for or recipients
27 of the commission's and the department's assistance programs to

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1 purposes directly connected with the administration of the
2 programs.

3 (b) If under a provision of law lists of the names and
4 addresses of recipients of the commission's or the department's
5 assistance programs are furnished to or held by a governmental
6 agency other than the commission or the department, that agency or
7 the person with responsibility for adopting rules for that agency
8 shall adopt rules necessary to prevent the publication of the lists
9 or the use of the lists for purposes not directly connected with the
10 administration of the assistance programs.

Sec. 21.013. OATHS AND ACKNOWLEDGMENTS. A local representative of the commission or the Department of Aging and Disability Services [department] who is responsible for investigating and determining the eligibility of an applicant for assistance authorized in this title may administer oaths and take acknowledgments concerning all matters relating to the administration of this title. The representative shall sign the oaths or acknowledgments and indicate the representative's [his or her] position and title but need not seal the instruments. The representative [agent] has the same authority as a notary public coextensive with the limits of the state for the purpose of administering the provisions of this title.

23 SECTION 4.008. The heading to Chapter 22, Human Resources
24 Code, is amended to read as follows:

25 CHAPTER 22. GENERAL FUNCTIONS RELATING TO [OF DEPARTMENT OF] HUMAN
26 SERVICES

27 SECTION 4.009. Section 22.0001, Human Resources Code, is

1 amended to read as follows:

2 Sec. 22.0001. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF
3 CONFLICT WITH OTHER LAW [~~OF COMMISSIONER OF HEALTH AND HUMAN~~
4 ~~SERVICES~~]. [~~The commissioner of health and human services has the~~
5 ~~powers and duties relating to the board and commissioner as~~
6 ~~provided by Section 531.0055, Government Code.~~] To the extent a
7 power or duty given to the [board or] commissioner of aging and
8 disability services by this title or another law conflicts with
9 Section 531.0055, Government Code, Section 531.0055 controls.

10 SECTION 4.010. Section 22.001, Human Resources Code, is
11 amended to read as follows:

12 Sec. 22.001. GENERAL POWERS AND DUTIES OF COMMISSION [~~THE~~
13 ~~DEPARTMENT~~]. (a) The executive commissioner [~~department~~] is
14 responsible for supervising the administration of [~~administering~~]
15 the welfare functions authorized in this title.

16 (b) The commission [~~the department~~] shall administer
17 medical assistance to needy persons [~~who are aged, blind, or~~
18 ~~disabled~~] and financial and medical assistance to [~~needy~~] families
19 with dependent children.

20 (b-1) The executive commissioner [~~department~~] shall [~~also~~
21 ~~administer or~~] supervise general relief services. [~~The department~~
22 ~~may administer state child day-care services.~~]

23 (c) The commission [~~department~~] shall assist other
24 governmental agencies in performing services in conformity with the
25 purposes of this title when so requested and shall cooperate with
26 the agencies when expedient.

27 (d) The commission [~~department~~] shall conduct research and

1 compile statistics on public welfare programs in the state. The
2 research must include all phases of dependency and delinquency and
3 related problems. The commission [department] shall cooperate with
4 other public and private agencies in developing plans for the
5 prevention and treatment of conditions giving rise to public
6 welfare problems.

7 SECTION 4.011. Sections 22.0011 and 22.0015, Human
8 Resources Code, are amended to read as follows:

9 Sec. 22.0011. DEFINITIONS [DEFINITION]. In this chapter:

10 (1) "Department" means the Department of Aging and
11 Disability Services.

12 (2) "Long-term [~~, except in Section 22.032,~~
13 ~~long-term~~] care services" means the provision of personal care and
14 assistance related to health and social services given episodically
15 or over a sustained period to assist individuals of all ages and
16 their families to achieve the highest level of functioning
17 possible, regardless of the setting in which the assistance is
18 given.

19 Sec. 22.0015. EVALUATION AND IMPROVEMENT OF PROGRAMS. The
20 commission and the department shall conduct research, analysis, and
21 reporting of the [~~its~~] programs administered by each agency under
22 this title to evaluate and improve the programs. The commission and
23 the department may contract with one or more independent entities
24 to assist the commission or the department, as applicable, with the
25 research, analysis, and reporting required by this section.

26 SECTION 4.012. Sections 22.002 and 22.003, Human Resources
27 Code, are amended to read as follows:

1 Sec. 22.002. ADMINISTRATION OF FEDERAL WELFARE PROGRAMS.

2 (a) The commission [department] is the state agency designated to
3 cooperate with the federal government in the administration of
4 Titles IV, XIX, and XX of the federal Social Security Act. The
5 commission [department] shall administer other titles added to the
6 act after January 1, 1979, unless another state agency is
7 designated by law to perform the additional functions. The
8 commission [department] shall cooperate with federal, state, and
9 local governmental agencies in the enforcement and administration
10 of the federal act, and the executive commissioner shall promulgate
11 rules to effect that cooperation.

12 (b) The commission [department] shall cooperate with the
13 United States Department of Health and Human Services[, Education,
14 and Welfare] and other federal agencies in a reasonable manner and
15 in conformity with the provisions of this title to the extent
16 necessary to qualify for federal assistance for persons entitled to
17 benefits under the federal Social Security Act. The commission
18 [department] shall make reports periodically in compliance with
19 federal regulations.

20 (c) The commission [department] may establish and maintain
21 programs of assistance and services authorized by federal law and
22 designed to help needy families and individuals attain and retain
23 the capability of independence and self-care. Notwithstanding any
24 other provision of law, the commission [department] may extend the
25 scope of its programs to the extent necessary to ensure that federal
26 matching funds are available, if the commission [department]
27 determines that the extension of scope is feasible and within the

1 limits of appropriated funds.

2 (d) If the commission [department] determines that a
3 provision of state welfare law conflicts with a provision of
4 federal law, the executive commissioner [department] may
5 promulgate policies and rules necessary to allow the state to
6 receive and expend federal matching funds to the fullest extent
7 possible in accordance with the federal statutes and the provisions
8 of this title and the state constitution and within the limits of
9 appropriated funds.

10 (e) The commission [department] may accept, expend, and
11 transfer federal and state funds appropriated for programs
12 authorized by federal law. The commission [department] may accept,
13 expend, and transfer funds received from a county, municipality, or
14 public or private agency or from any other source, and the funds
15 shall be deposited in the state treasury subject to withdrawal on
16 order of the executive commissioner in accordance with the
17 commission's [department's] rules.

18 (f) The commission [department] may enter into agreements
19 with federal, state, or other public or private agencies or
20 individuals to accomplish the purposes of the programs authorized
21 in Subsection (c) [~~of this section~~]. The agreements or contracts
22 between the commission [department] and other state agencies are
23 not subject to Chapter 771, Government Code [~~the Interagency~~
24 ~~Cooperation Act (Article 4413(32), Vernon's Texas Civil~~
25 ~~Statutes~~]).

26 (g) In administering social service programs authorized by
27 the Social Security Act, the commission [department] may prepay an

1 agency or facility for expenses incurred under a contract with the
2 commission [department] to provide a social service.

3 (h) The executive commissioner by rule [department] may set
4 and the commission may charge reasonable fees for services provided
5 in administering social service programs authorized by the Social
6 Security Act. The executive commissioner [department] shall set
7 the amount of each fee according to the cost of the service provided
8 and the ability of the recipient to pay.

9 (i) The commission [department] may not deny services
10 administered under this section to any person because of that
11 person's inability to pay for services.

12 Sec. 22.003. RESEARCH AND DEMONSTRATION PROJECTS. (a) The
13 commission and the department may conduct research and
14 demonstration projects that in the judgment of the executive
15 commissioner will assist in promoting the purposes of the
16 commission's and the department's assistance programs. The
17 commission and the department may conduct the projects
18 independently or in cooperation with a public or private agency.

19 (b) The executive commissioner [department] may authorize
20 the use of state or federal funds available for commission or
21 department [its] assistance programs or for research and
22 demonstration projects to support the projects. The projects must
23 be consistent with the state and federal laws making the funds
24 available.

25 SECTION 4.013. Sections 22.0031(a) and (d), Human Resources
26 Code, are amended to read as follows:

27 (a) The commission [department] shall establish programs of

1 case management for high-risk pregnant women and high-risk children
2 to age one as provided under Section 1915(g) of the federal Social
3 Security Act (42 U.S.C. Section 1396n).

4 (d) The commission [department] shall use existing funds of
5 the commission [department] or any other lawful source to fund and
6 support the projects for high-risk pregnant women and high-risk
7 children.

8 SECTION 4.014. Section 22.004, Human Resources Code, is
9 amended to read as follows:

10 Sec. 22.004. PROVISION OF LEGAL SERVICES. (a) On request,
11 the commission [department] may provide legal services to an
12 applicant for or recipient of assistance at a hearing before the
13 commission [department].

14 (b) The services must be provided by an attorney licensed to
15 practice law in Texas or by a law student acting under the
16 supervision of a law teacher or a legal services organization, and
17 the attorney or law student must be approved by the commission
18 [department].

19 (c) The executive commissioner [department] shall adopt a
20 reasonable fee schedule for the legal services. The fees may not
21 exceed those customarily charged by an attorney for similar
22 services for a private client. The fees may be paid only from funds
23 appropriated to the commission [department] for the purpose of
24 providing these legal services.

25 SECTION 4.015. The heading to Section 22.005, Human
26 Resources Code, is amended to read as follows:

27 Sec. 22.005. CUSTODIAN OF ASSISTANCE FUNDS.

1 SECTION 4.016. Section 22.005(f), Human Resources Code, is
2 amended to read as follows:

3 (f) The comptroller is the designated custodian of all funds
4 administered by the commission and the department and received by
5 the state from the federal government or any other source for the
6 purpose of implementing the provisions of the Social Security Act.
7 The comptroller may receive the funds, pay them into the proper fund
8 or account of the general fund of the state treasury, provide for
9 the proper custody of the funds, and make disbursements of the funds
10 on the order of the commission or the department and on warrant of
11 the comptroller.

12 SECTION 4.017. Section 22.007, Human Resources Code, is
13 amended to read as follows:

14 Sec. 22.007. PUBLIC INFORMATION CONTRACT REQUIREMENT. (a)
15 Each contract between the commission or the department and a
16 provider of services under this title must contain a provision that
17 authorizes the commission or the department to display at the
18 service provider's place of business public awareness information
19 on services provided by the commission or the department.

20 (b) Notwithstanding Subsection (a) [~~of this section~~], the
21 commission or department may not require a physician to display in
22 the physician's private offices public awareness information on
23 services provided by the commission or department.

24 SECTION 4.018. Section 22.008(a), Human Resources Code, is
25 amended to read as follows:

26 (a) The executive commissioner [department] shall adopt
27 rules [~~develop enforcement guidelines~~] for the department's [~~its~~]

1 community care program that relate to the service delivery
2 standards required of persons who contract with the department to
3 carry out its community care program. The department shall apply
4 the rules [guidelines] consistently across the state.

5 SECTION 4.019. Sections 22.009(a), (b), (c), (d), (e), and
6 (g), Human Resources Code, are amended to read as follows:

7 (a) The executive commissioner [board] shall appoint
8 advisory committees [~~on the recommendation of the commissioner~~] to
9 assist the executive commissioner, commission, and department
10 [board] in performing their [its] duties.

11 (b) The executive commissioner [board] shall appoint each
12 advisory committee to provide for a balanced representation of the
13 general public, providers, consumers, and other persons, state
14 agencies, or groups with knowledge of and interest in the
15 committee's field of work.

16 (c) The executive commissioner [board] shall specify each
17 advisory committee's purpose, powers, and duties and shall require
18 each committee to report to the executive commissioner [board] in a
19 manner specified by the executive commissioner [board] concerning
20 the committee's activities and the results of its work.

21 (d) The executive commissioner [board] shall establish
22 procedures for receiving reports concerning activities and
23 accomplishments of advisory committees established to advise the
24 executive commissioner, commission, [board] or department. The
25 executive commissioner [board ~~on the recommendation of the~~
26 ~~commissioner~~] may appoint additional members to those committees
27 and establish additional duties of those committees as the

1 executive commissioner [board] determines to be necessary.

2 (e) The executive commissioner [board] shall adopt rules to
3 implement this section. Those rules must provide that during the
4 development of rules relating to an area in which an advisory
5 committee exists the committee must be allowed to assist in the
6 development of and to comment on the rules before the rules are
7 finally adopted. ~~[The rules may allow the department to bypass this~~
~~procedure only in an emergency situation. However, the department~~
~~shall submit emergency rules to the appropriate advisory committee~~
~~for review at the first committee meeting that occurs after the~~
~~rules are adopted.]~~

12 (g) Subsections (c) through (f) [~~of this section~~] apply to
13 each ~~department~~ advisory committee created under this section [~~or~~
14 ~~under other law~~].

15 SECTION 4.020. Sections 22.011 through 22.017, Human
16 Resources Code, are amended to read as follows:

17 Sec. 22.011. MEMORANDUM OF UNDERSTANDING ON SERVICES TO
18 ~~[DISABLED]~~ PERSONS WITH DISABILITIES. (a) The commission, the
19 department, the ~~Texas~~ Department of State Health Services, the
20 ~~Texas~~ Department of Assistive and Rehabilitative Services, the
21 Department of Family and Protective Services [~~Mental Health and~~
22 ~~Mental Retardation~~, the ~~Texas Rehabilitation Commission~~, the ~~Texas~~
23 ~~Commission for the Blind~~, the ~~Texas Commission for the Deaf and Hard~~
24 ~~of Hearing~~], and the Texas Education Agency shall enter into
25 ~~[adopt]~~ a joint memorandum of understanding to facilitate the
26 coordination of services to ~~disabled~~ persons with disabilities.

27 The memorandum shall:

1 (1) clarify the financial and service
2 responsibilities of each agency in relation to [disabled] persons
3 with disabilities; and

4 (2) address how the agency will share data relating to
5 services delivered to [disabled] persons with disabilities by each
6 agency.

7 (b) These agencies in the formulation of this memorandum of
8 understanding shall consult with and solicit input from advocacy
9 and consumer groups.

10 (c) Not later than the last month of each state fiscal year,
11 the [~~department and the other~~] agencies shall review and update the
12 memorandum.

13 (d) The executive commissioner and the commissioner of
14 education [~~Each agency~~] by rule shall adopt the memorandum of
15 understanding and all revisions to the memorandum.

16 Sec. 22.013. MEMORANDUM OF UNDERSTANDING ON PUBLIC
17 AWARENESS INFORMATION. (a) The commission, the department, the
18 [~~Texas~~] Department of State Health Services, [~~the Texas Department~~
19 ~~of Mental Health and Mental Retardation,~~] and the Department of
20 Assistive and Rehabilitative Services [~~Texas Rehabilitation~~
21 ~~Commission~~] shall enter into [~~adopt~~] a joint memorandum of
22 understanding that authorizes and requires the exchange and
23 distribution among the agencies of public awareness information
24 relating to services provided by or through the agencies.

25 (b) Not later than the last month of each state fiscal year,
26 the [~~department and the other~~] agencies shall review and update the
27 memorandum.

1 (c) The executive commissioner [~~Each agency~~] by rule shall
2 adopt the memorandum of understanding and all revisions to the
3 memorandum.

4 Sec. 22.014. MEMORANDUM OF UNDERSTANDING ON HOSPITAL AND
5 LONG-TERM CARE SERVICES. (a) The commission, the department, and
6 the [~~Texas~~] Department of State Health Services[~~, and the Texas~~
7 ~~Department of Mental Health and Mental Retardation~~] shall enter
8 into [~~adopt~~] a memorandum of understanding that:

9 (1) clearly defines the responsibilities of each
10 agency in providing, regulating, and funding hospital or long-term
11 care services; and

12 (2) defines the procedures and standards that each
13 agency will use to provide, regulate, and fund hospital or
14 long-term care services.

15 (b) The memorandum must provide that no new rules or
16 regulations that would increase the costs of providing the required
17 services or would increase the number of personnel in hospital or
18 long-term care facilities may be promulgated by the executive
19 commissioner [~~either the department, the Department of Health, or~~
20 ~~the Department of Mental Health and Mental Retardation~~] unless the
21 executive commissioner [~~of health~~] certifies that the new rules or
22 regulations are urgent as well as necessary to protect the health or
23 safety of recipients of hospital or long-term care services.

24 (c) The memorandum must provide that any rules or
25 regulations proposed by the commission, the department, or the
26 Department of State Health Services[~~, or the Department of Mental~~
27 ~~Health and Mental Retardation~~] which would increase the costs of

1 providing the required services or which would increase the number
2 of personnel in hospital or long-term care facilities must be
3 accompanied by a fiscal note prepared by the agency proposing said
4 rules and submitted to the executive commissioner [department].
5 The fiscal note should set forth the expected impact which the
6 proposed rule or regulation will have on the cost of providing the
7 required service and the anticipated impact of the proposed rule or
8 regulation on the number of personnel in hospital or long-term care
9 facilities. The memorandum must provide that in order for a rule to
10 be finally adopted the commission [department] must provide written
11 verification that funds are available to adequately reimburse
12 hospital or long-term care service providers for any increased
13 costs resulting from the rule or regulation. The commission
14 [department] is not required to provide written verification if the
15 executive commissioner [~~of health~~] certifies that a new rule or
16 regulation is urgent as well as necessary to protect the health or
17 safety of recipients of hospital or long-term care services.

18 (d) The memorandum must provide that upon final adoption of
19 any rule increasing the cost of providing the required services,
20 the executive commissioner [department] must establish
21 reimbursement rates sufficient to cover the increased costs related
22 to the rule. The executive commissioner [department] is not
23 required to establish reimbursement rates sufficient to cover the
24 increased cost related to a rule or regulation if the executive
25 commissioner [~~of health~~] certifies that the rule or regulation is
26 urgent as well as necessary to protect the health or safety of
27 recipients of hospital or long-term care services.

1 (e) The memorandum must provide that Subsections (b)
2 through (d) [~~of this section~~] do not apply if the rules are required
3 by state or federal law or federal regulations.

4 (f) These agencies in the formulation of this memorandum of
5 understanding shall consult with and solicit input from advocacy
6 and consumer groups.

7 (g) Not later than the last month of each state fiscal year,
8 the [~~department and the other~~] agencies shall review and update the
9 memorandum.

10 (h) The executive commissioner [~~Each agency~~] by rule shall
11 adopt the memorandum of understanding and all revisions to the
12 memorandum.

13 Sec. 22.015. REPORTING OF PHYSICIAN MISCONDUCT OR
14 MALPRACTICE. (a) If the commission or the department receives an
15 allegation that a physician employed by or under contract with the
16 commission or the department under this title has committed an
17 action that constitutes a ground for the denial or revocation of the
18 physician's license under Section [164.051](#), Occupations Code, the
19 commission or the department, as applicable, shall report the
20 information to the Texas [~~State Board of~~] Medical Board [~~Examiners~~]
21 in the manner provided by Section [154.051](#), Occupations Code.

22 (b) The commission or the department shall provide the Texas
23 [~~State Board of~~] Medical Board [~~Examiners~~] with a copy of any report
24 or finding relating to an investigation of an allegation reported
25 to the Texas [~~State Board of~~] Medical Board [~~Examiners~~].

26 Sec. 22.016. SPECIAL PURCHASING PROCEDURES. The department
27 shall coordinate with the commission in complying [~~comply~~] with any

1 special purchasing procedures requiring competitive review under
2 Subtitle D, Title 10, Government Code, for purchasing under this
3 title.

4 Sec. 22.017. PROGRAM ACCESSIBILITY. The commission
5 ~~[department]~~ shall prepare and maintain a written plan that
6 describes how persons who do not speak English or who have physical,
7 mental, or developmental disabilities can be provided reasonable
8 access to the commission's and the department's programs under this
9 title. The commission may solicit the assistance of a health and
10 human services agency in the preparation or maintenance of the
11 plan.

12 SECTION 4.021. Sections 22.018(a), (b), and (c), Human
13 Resources Code, are amended to read as follows:

14 (a) The department and the chief administrative law judge of
15 the State Office of Administrative Hearings shall enter into
16 ~~[adopt]~~ a memorandum of understanding under which the State Office
17 of Administrative Hearings, on behalf of the department, conducts
18 all contested case hearings authorized or required by law to be
19 conducted under this title by the department under the
20 administrative procedure law, Chapter 2001, Government Code.

21 (b) The memorandum of understanding shall require the chief
22 administrative law judge, the department, and the executive
23 commissioner to cooperate in connection with a contested case
24 hearing and may authorize the State Office of Administrative
25 Hearings to perform any administrative act, including giving of
26 notice, that is required to be performed by the department or
27 commissioner of aging and disability services.

1 (c) The memorandum of understanding shall address whether
2 the administrative law judge who conducts a contested case hearing
3 for the State Office of Administrative Hearings on behalf of the
4 department shall:

5 (1) enter the final decision in the case after
6 completion of the hearing; or

7 (2) propose a decision to the department or the
8 commissioner of aging and disability services for final
9 consideration.

10 SECTION 4.022. Section 22.019, Human Resources Code, is
11 amended to read as follows:

12 Sec. 22.019. DUE PROCESS PROCEDURES. (a) The commission
13 and the department may not retroactively apply a rule, standard,
14 guideline, or policy interpretation under this title.

15 (b) Any [~~The department shall adopt any~~] changes in agency
16 [~~departmental~~] policy shall be adopted in accordance with the
17 rulemaking [~~rule-making~~] provisions of Chapter 2001, Government
18 Code. Periodic [~~The department shall use periodic~~] bulletins and
19 indexes shall be used to notify contractors of changes in policy and
20 to explain the changes. A [~~The department may not adopt a~~] change
21 in agency [~~departmental~~] policy may not be adopted if it [that]
22 takes effect before the date on which [~~the department notifies~~]
23 contractors are notified as prescribed by this subsection.

24 (c) The executive commissioner [~~board~~] shall adopt a rule
25 requiring the commission or the department, as applicable, to
26 respond in writing to each written inquiry from a contractor under
27 this title not later than the 14th day after the date on which the

1 commission or the department receives the inquiry.

2 SECTION 4.023. Section 22.020, Human Resources Code, is
3 amended to read as follows:

4 Sec. 22.020. AUDIT PROCEDURE. At any time during an audit,
5 the commission or the department, as applicable, shall permit a
6 contractor under this title to submit additional or alternative
7 documentation to prove that services were delivered to an eligible
8 client. Any recovery of costs by the commission or the department
9 from the contractor for using additional or alternative
10 documentation may not exceed the amount the contractor would
11 otherwise be entitled to receive under the contract as
12 administrative costs.

13 SECTION 4.024. Section 22.021(a), Human Resources Code, is
14 amended to read as follows:

15 (a) Funds [If funds are] appropriated to the commission or
16 the department for the general support or development of a service
17 under this title that is needed throughout the state[, the
18 department] shall be allocated [allocate those funds] equitably
19 across the state.

20 SECTION 4.025. Section 22.022, Human Resources Code, is
21 amended to read as follows:

22 Sec. 22.022. RESIDENCY REQUIREMENTS. To the extent
23 permitted by law the commission and the department shall only
24 provide services under this title to legal residents of the United
25 States or the State of Texas.

26 SECTION 4.026. Sections 22.023(b), (c), (d), and (e), Human
27 Resources Code, are amended to read as follows:

1 (b) Subject to the limitations in Subsection (c) [~~of this~~
2 ~~section~~], the commission [~~department~~] may purchase and pay the
3 premiums for a conversion policy or other health insurance coverage
4 for a person who is diagnosed as having AIDS, HIV, or other terminal
5 or chronic illness and whose income level is less than 200 percent
6 of the federal poverty level, based on the federal Office of
7 Management and Budget poverty index in effect at the time coverage
8 is provided, even though a person may be eligible for benefits under
9 Chapter 32 [~~of this code~~]. Health insurance coverage for which
10 premiums may be paid under this section includes coverage purchased
11 from an insurance company authorized to do business in this state, a
12 group hospital service [~~services~~] corporation operating under
13 Chapter 842, Insurance Code, a health maintenance organization
14 operating under Chapter 843, Insurance Code, or an insurance pool
15 created by the federal or state government or a political
16 subdivision of the state.

17 (c) If a person is eligible for benefits under Chapter 32
18 [~~of this code~~], the commission [~~department~~] may not purchase or pay
19 premiums for a health insurance policy under this section if the
20 premiums to be charged for the health insurance coverage are
21 greater than premiums paid for benefits under Chapter 32 [~~of this~~
22 ~~code~~]. The commission [~~department~~] may not purchase or pay
23 premiums for health insurance coverage under this section for a
24 person at the same time that that person is covered by benefits
25 under Chapter 32 [~~of this code~~].

26 (d) The commission [~~department~~] shall pay for that coverage
27 with money made available to the commission [~~it~~] for that purpose.

1 (e) The executive commissioner [board] by rule may adopt
2 necessary rules, criteria, and plans and may enter into necessary
3 contracts to carry out this section.

4 SECTION 4.027. Sections 22.024 and 22.025, Human Resources
5 Code, are amended to read as follows:

6 Sec. 22.024. DEVELOPMENT OF SERVICE PLAN FOR ELDERLY
7 PERSONS OR PERSONS WITH DISABILITIES [~~DISABLED~~]. If the
8 commission, the department, the Department of State Health
9 Services, the Department of Assistive and Rehabilitative Services
10 [~~the Texas Department of Human Services, Texas Department of Mental~~
11 ~~Health and Mental Retardation, Texas Commission for the Deaf and~~
12 ~~Hard of Hearing, Texas Department on Aging~~], or another agency
13 funded in the General Appropriations Act under appropriations for
14 health, welfare, and rehabilitation agencies receives funds to
15 provide case management services to [~~the~~] elderly persons or
16 persons with disabilities [~~disabled~~], the agency shall provide
17 information to its staff concerning the services other agencies
18 provide to those populations. The agency's staff shall use that
19 information to develop a comprehensive service plan for its
20 clients.

21 Sec. 22.025. ERROR-RATE REDUCTION. (a) The commission
22 [~~department~~] shall:

23 (1) set progressive goals for improving the
24 commission's [~~department's~~] error rates in the financial assistance
25 program under Chapter 31 [~~aid to families with dependent children~~]
26 and supplemental nutrition assistance program [~~food stamp~~
27 ~~programs~~]; and

1 (2) develop a specific schedule to meet those goals.
2 (c) As appropriate, the commission [department] shall
3 include in its employee evaluation process a rating system that
4 emphasizes error-rate reduction and workload.

5 (d) The commission [department] shall take appropriate
6 action if a region has a higher than average error rate and that
7 rate is not reduced in a reasonable period.

8 SECTION 4.028. Sections 22.0251 through 22.0255, Human
9 Resources Code, are amended to read as follows:

10 Sec. 22.0251. TIMELY DETERMINATION OF OVERPAYMENTS. (a)
11 Subject to the approval of the executive commissioner [of health
12 and human services], the commission [department] shall:

13 (1) determine and record the time taken by the
14 commission [department] to establish an overpayment claim in the
15 supplemental nutrition assistance [food stamp] program or the
16 program of financial assistance under Chapter 31;

17 (2) set progressive goals for reducing the time
18 described by Subdivision (1); and

19 (3) adopt a schedule to meet the goals set under
20 Subdivision (2).

21 (b) The commission [department] shall submit to the
22 governor and the Legislative Budget Board an annual report
23 detailing the commission's [department's] progress in reaching its
24 goals under Subsection (a)(2). The report may be consolidated with
25 any other report relating to the same subject that the commission
26 [department] is required to submit under other law.

27 Sec. 22.0252. TELEPHONE COLLECTION PROGRAM. (a) The

1 commission [department] shall use the telephone to attempt to
2 collect reimbursement from a person who receives a benefit granted
3 in error under the supplemental nutrition assistance [~~food stamp~~]
4 program or the program of financial assistance under Chapter 31.

5 (b) The commission [department] shall submit to the
6 governor and the Legislative Budget Board an annual report on the
7 operation and success of the telephone collection program. The
8 report may be consolidated with any other report relating to the
9 same subject that the commission [department] is required to submit
10 under other law.

11 (c) The commission [department] shall ensure that the
12 telephone collection program attempts to collect reimbursement for
13 all identified delinquent payments for which 15 days or more have
14 elapsed since the initial notice of delinquency was sent to the
15 recipient.

16 (d) The commission [department] shall use an automated
17 collections system to monitor the results of the telephone
18 collection program. The system must:

19 (1) accept data from the accounts receivable tracking
20 system used by the commission [department];

21 (2) automate recording tasks performed by a collector,
22 including providing access to commission [department] records
23 regarding the recipient and recording notes and actions resulting
24 from a call placed to the recipient;

25 (3) automatically generate a letter to a recipient
26 following a telephone contact that confirms the action to be taken
27 regarding the delinquency;

1 (4) monitor the receipt of scheduled payments from a
2 recipient for repayment of a delinquency; and

3 (5) generate reports regarding the effectiveness of
4 individual collectors and of the telephone collection program.

5 Sec. 22.0253. PARTICIPATION IN FEDERAL TAX REFUND OFFSET
6 PROGRAM. The commission [department] shall participate in the
7 Federal Tax Refund Offset Program (FTROP) to attempt to recover
8 benefits granted by the commission [department] in error under the
9 supplemental nutrition assistance [~~food stamp~~] program. The
10 commission [department] shall submit as many claims that meet
11 program criteria as possible for offset against income tax returns.

12 Sec. 22.0254. PROSECUTION OF FRAUDULENT CLAIMS. (a) The
13 commission [department] shall keep a record of the dispositions of
14 referrals made by the commission [department] to a district
15 attorney concerning fraudulent claims for benefits under the
16 supplemental nutrition assistance [~~food stamp~~] program or the
17 program of financial assistance under Chapter 31.

18 (b) The commission [department] may:

19 (1) request status information biweekly from the
20 appropriate district attorney on each major fraudulent claim
21 referred by the commission [department];

22 (2) request a written explanation from the appropriate
23 district attorney for each case referred in which the district
24 attorney declines to prosecute; and

25 (3) encourage the creation of a special welfare fraud
26 unit in each district attorney's office that serves a municipality
27 with a population of more than 250,000, to be financed by amounts

1 provided by the commission [department].

2 (c) The executive commissioner [department] by rule may
3 define what constitutes a major fraudulent claim under Subsection
4 (b)(1).

5 Sec. 22.0255. ELECTRONIC BENEFITS TRANSFER CARD;
6 RETURNED-MAIL REDUCTION. (a) The commission [department] shall
7 develop and implement policies and procedures designed to improve
8 the commission's [department's] electronic benefits transfer cards
9 used for federal and state entitlement programs administered by the
10 commission [department].

11 (b) The commission [department] shall set an annual goal of
12 reducing the amount of returned mail it receives under the programs
13 described by Subsection (a) so that the percentage rate of returned
14 mail is within one percent of the percentage rate of returned mail
15 reported annually for the credit card and debit card industries.

16 SECTION 4.029. Sections 22.026 through 22.028, Human
17 Resources Code, are amended to read as follows:

18 Sec. 22.026. REDUCTION OF CLIENT FRAUD. The commission and
19 the department shall:

20 (1) ensure that errors attributed to client fraud are
21 appropriate; and

22 (2) take immediate and appropriate action to limit any
23 client fraud that occurs.

24 Sec. 22.027. FRAUD PREVENTION. (e) The commission, the
25 department, and the comptroller shall coordinate their efforts to
26 cross-train agency staff whose duties include fraud prevention and
27 detection to enable the staff to identify and report possible

1 fraudulent activity in programs, taxes, or funds administered by
2 each of those [the] other agencies [agency].

3 (f) A local law enforcement agency that seizes an electronic
4 benefits transfer (EBT) card issued by the commission [~~department~~]
5 to a recipient of an entitlement program administered by the
6 commission [~~department~~] shall immediately notify the commission
7 [~~department~~] of the seizure and return the card to the commission
8 [~~department~~]. The commission [~~department~~] shall send letters to
9 local law enforcement agencies or post materials in the buildings
10 in which those agencies are located to ensure that local law
11 enforcement officials are aware of this requirement.

12 Sec. 22.028. ELECTRONIC BENEFITS TRANSFER: MONITORING. (a)
13 The private electronic benefits transfer (EBT) operator with which
14 the commission [~~department~~] contracts to administer the EBT
15 system[~~–~~] shall establish procedures to maintain records that
16 monitor all debit transactions relating to EBT client accounts
17 under this section. The EBT operator shall deliver copies of the
18 records to the commission [~~department~~] and the comptroller not
19 later than the first day of each month. The commission [~~department~~]
20 shall immediately review the records and assess the propriety of
21 the debit transactions.

22 (b) After reviewing the records under Subsection (a), the
23 commission [~~department~~] shall take necessary or advisable action to
24 ensure compliance with EBT rules by the EBT operator, retailers,
25 and clients.

26 (c) No later than the first day of each month, the
27 commission [~~department~~] shall send the comptroller a report listing

1 the accounts on which enforcement actions or other steps were taken
2 by the commission [department] in response to the records received
3 from the EBT operator under this section, and the action taken by
4 the commission [department]. The comptroller shall promptly review
5 the report and, as appropriate, may solicit the advice of the
6 Medicaid and Public Assistance Fraud Oversight Task Force regarding
7 the results of the commission's [department's] enforcement actions.

8 SECTION 4.030. Sections 22.029(a) and (c), Human Resources
9 Code, are amended to read as follows:

10 (a) In order to enhance the state's ability to detect and
11 prevent fraud in the payment of claims under federal and state
12 entitlement programs, the commission [~~Health and Human Services~~
13 ~~Commission~~] shall implement a data matching project as described by
14 Subsection (b). The costs of developing and administering the data
15 matching project shall be paid entirely from amounts recovered by
16 participating agencies as a result of potential fraudulent
17 occurrences or administrative errors identified by the project.

18 (c) Each agency participating in a matching cycle shall
19 document actions taken to investigate and resolve fraudulent issues
20 noted on the list provided by the commission. The commission shall
21 compile the documentation furnished by participating agencies for
22 each matching cycle[, ~~and shall report the results of the project to~~
23 ~~the governor, lieutenant governor, speaker of the house of~~
24 ~~representatives, and Legislative Budget Board not later than~~
25 ~~December 1, 1996~~].

26 SECTION 4.031. Section 22.0292, Human Resources Code, is
27 amended to read as follows:

1 Sec. 22.0292. INFORMATION MATCHING SYSTEM RELATING TO
2 IMMIGRANTS AND FOREIGN VISITORS. (a) The commission [department]
3 shall, through the use of a computerized matching system, compare
4 commission [department] information relating to applicants for and
5 recipients of supplemental nutrition assistance program benefits
6 [~~food stamps~~] and financial assistance under Chapter 31 with
7 information obtained from the United States Department of State [~~of~~
8 ~~the United States~~] and the United States Department of Justice
9 relating to immigrants and visitors to the United States for the
10 purpose of preventing individuals from unlawfully receiving public
11 assistance benefits administered by the commission [department].

12 (b) The commission [department] may enter into an agreement
13 with the United States Department of State [~~of the United States~~]
14 and the United States Department of Justice as necessary to
15 implement this section.

16 (c) The commission [department] and federal agencies
17 sharing information under this section shall protect the
18 confidentiality of the shared information in compliance with all
19 existing state and federal privacy guidelines.

20 (d) The commission [department] shall submit to the
21 governor and the Legislative Budget Board an annual report on the
22 operation and success of the information matching system required
23 by this section. The report may be consolidated with any other
24 report relating to the same subject matter the commission
25 [department] is required to submit under other law.

26 SECTION 4.032. Sections 22.030 through 22.032, Human
27 Resources Code, are amended to read as follows:

1 Sec. 22.030. AGREEMENTS FOR PURCHASE OF SERVICES FOR
2 CHILDREN. (a) To ensure the maximum use of available federal
3 matching funds for child care services and other support services
4 under Section 31.010, the commission and any other agency providing
5 the services [~~Department of Human Services~~] shall enter into
6 agreements with the appropriate local community organizations to
7 receive donations to be used for the purchase of services for which
8 matching federal funds are available.

9 (b) An agency described under Subsection (a) [~~The~~
10 ~~Department of Human Services~~] shall cooperate with each local
11 community organization to develop guidelines for the use of that
12 community's donation to provide the services described in
13 Subsection (a) [~~of this section~~].

14 Sec. 22.031. UNANNOUNCED INSPECTIONS. The commission and
15 the department may make any inspection of a facility or program
16 under the agency's [department's] jurisdiction under this title
17 without announcing the inspection.

18 Sec. 22.032. USE OF EARNED FEDERAL FUNDS. Subject to the
19 General Appropriations Act, the commission [~~department~~] may use
20 earned federal funds derived from recovery of amounts paid or
21 benefits granted by the commission [~~department~~] as a result of
22 fraud to pay the costs of the commission's [~~department's~~]
23 activities relating to preventing fraud.

24 SECTION 4.033. Sections 22.035(a), (b), (e), (f), (g), (i),
25 (j), (k), and (l), Human Resources Code, are amended to read as
26 follows:

27 (a) A work group to be known as the Children's Policy

1 Council shall assist the department [Department of Aging and
2 ~~Disability Services~~, the commission [Health and Human Services
3 ~~Commission~~], the Department of State Health Services, the
4 Department of Assistive and Rehabilitative Services, and the
5 Department of Family and Protective Services in developing,
6 implementing, and administering family support policies for
7 children with disabilities relating to:

- 8 (1) long-term services and supports;
9 (2) health services; and
10 (3) mental health services.

11 (b) The executive commissioner [~~of the Health and Human
12 Services Commission~~] shall appoint the members of the work group,
13 which must include the following:

- 14 (1) a person who is younger than 22 years of age and is
15 a consumer of long-term care and health programs for children;
16 (2) an individual who is younger than 25 years of age
17 and who receives or has received mental health services;
18 (3) relatives of consumers of long-term care and
19 health programs for children 26 years of age or younger;
20 (4) a representative from an organization that is an
21 advocate for consumers of long-term care and health programs for
22 children;
23 (5) a person from a private entity that provides
24 long-term care and health programs for children;
25 (6) a person from a public entity that provides
26 long-term care and health programs for children;
27 (7) a person with expertise in the availability of

1 funding and the application of funding formulas for children's
2 long-term care and health services;

3 (8) a representative from a faith-based organization;

4 (9) a representative from a nonspecialized community
5 services organization; and

6 (10) a representative from a business that is not
7 related to providing services to persons with disabilities.

8 (e) The commission [~~Health and Human Services Commission~~] shall provide administrative support, including staff, to the work
9 group.

11 (f) A member of the work group serves at the will of the
12 executive commissioner [~~of the Health and Human Services~~
13 ~~Commission~~].

14 (g) The executive commissioner [~~of the Health and Human Services Commission~~] shall appoint a member of the work group to
15 serve as a presiding officer.

17 (i) A member of the work group receives no additional
18 compensation for serving on the work group. Consumers and
19 relatives of consumers serving on the work group shall be
20 reimbursed for travel and other expenses necessary for
21 participation as provided in the General Appropriations Act. Other
22 members of the work group may not be reimbursed for travel or other
23 expenses incurred while conducting the business of the work group.
24 Reimbursement under this subsection shall be paid equally out of
25 funds appropriated to the department [~~Department of Aging and~~
26 ~~Disability Services~~] and funds appropriated to the Department of
27 State Health Services.

1 (j) The work group may study and make recommendations in the
2 following areas:

3 (1) access of a child or a child's family to effective
4 case management services, including case management services with a
5 single case manager, parent case managers, or independent case
6 managers;

7 (2) the transition needs of children who reach an age
8 at which they are no longer eligible for services at the Department
9 of State Health Services, the Texas Education Agency, and other
10 applicable state agencies;

11 (3) the blending of funds, including case management
12 funding, for children needing long-term care, health services, and
13 mental health services;

14 (4) collaboration and coordination of children's
15 services between the department [Department of Aging and Disability
16 Services], the Department of State Health Services, the Department
17 of Assistive and Rehabilitative Services, the Department of Family
18 and Protective Services, and any other agency determined to be
19 applicable by the work group;

20 (5) budgeting and the use of funds appropriated for
21 children's long-term care services, health services, and mental
22 health services;

23 (6) services and supports for families providing care
24 for children with disabilities;

25 (7) effective permanency planning for children who
26 reside in institutions or who are at risk of placement in an
27 institution;

1 (8) barriers to enforcement of regulations regarding
2 institutions that serve children with disabilities; and

3 (9) the provision of services under the medical
4 assistance program to children younger than 23 years of age with
5 disabilities or special health care needs under a waiver granted
6 under Section 1915(c) of the federal Social Security Act (42 U.S.C.
7 Section 1396n(c)).

8 (k) Not later than September 1 of each even-numbered year,
9 the work group shall report on its findings and recommendations to
10 the legislature and the executive commissioner [~~of the Health and~~
11 ~~Human Services Commission~~].

12 (l) After evaluating and considering recommendations
13 reported under Subsection (k), the executive commissioner [~~of the~~
14 ~~Health and Human Services Commission~~] shall adopt rules to
15 implement guidelines for providing long-term care, health
16 services, and mental health services to children with disabilities.

17 SECTION 4.034. Section 22.036, Human Resources Code, is
18 amended to read as follows:

19 Sec. 22.036. PROGRAMS FOR [~~DEAF-BLIND MULTIHANDICAPPED~~]
20 INDIVIDUALS WHO ARE DEAF-BLIND WITH MULTIPLE DISABILITIES AND THEIR
21 PARENTS. (a) The department shall establish programs to serve
22 [~~deaf-blind multihandicapped~~] individuals who are deaf-blind with
23 multiple disabilities by helping them attain self-sufficiency and
24 independent living.

25 (b) The department shall establish a program of parental
26 counseling for the parents of [~~deaf-blind multihandicapped~~]
27 individuals who are deaf-blind with multiple disabilities. The

1 counseling program may be provided on an individual or group basis
2 and must include programs, activities, and services necessary to
3 foster greater understanding and to improve relationships among
4 professionals, parents, and [deaf-blind multihandicapped]
5 individuals who are deaf-blind with multiple disabilities.

6 (c) The department shall establish a summer outdoor
7 training program for [deaf-blind multihandicapped] individuals who
8 are deaf-blind with multiple disabilities. The outdoor training
9 program must be designed to help meet the unique needs of
10 [deaf-blind multihandicapped] individuals who are deaf-blind with
11 multiple disabilities for the purpose of broadening their
12 educational experiences and improving their ability to function
13 more independently.

14 (d) The executive commissioner [department] shall establish
15 regulations for implementing and administering the programs.

16 (e) The department may contract for services or goods with
17 private or public entities for purposes of this section.

18 (f) From information collected from the programs, the
19 department shall determine the need for related future services and
20 the most efficient and effective method of delivering the future
21 services.

22 SECTION 4.035. Section 22.039(a)(1), Human Resources Code,
23 is amended to read as follows:

24 (1) "Long-term care facility" means a nursing
25 institution, an assisted living facility, or an intermediate care
26 facility [~~for the mentally retarded~~] licensed under Chapter 242,
27 247, or 252, Health and Safety Code.

1 SECTION 4.036. Section 22.039(c), Human Resources Code, as
2 amended by Chapters 879 (S.B. 223) and 980 (H.B. 1720), Acts of the
3 82nd Legislature, Regular Session, 2011, is reenacted to read as
4 follows:

5 (c) The department shall semiannually provide training for
6 surveyors and providers on subjects that address the 10 most common
7 violations by long-term care facilities of federal or state law.
8 The department may charge providers a fee not to exceed \$50 per
9 person for the training.

10 SECTION 4.037. Sections 22.040 and 22.041, Human Resources
11 Code, are amended to read as follows:

12 Sec. 22.040. DETERMINATION OF ELIGIBILITY FOR COMMUNITY
13 CARE SERVICES FOR ELDERLY PERSONS OR PERSONS WITH DISABILITIES.
14 The executive commissioner [department] by rule shall develop and
15 the department shall implement a plan to assist elderly persons or
16 persons with disabilities requesting community care services in
17 receiving those services as quickly as possible when those services
18 become available. The plan must require the department to:

19 (1) forecast participant openings that will become
20 available in a community care program serving the elderly person or
21 person with a disability during the next fiscal quarter because of
22 program expansion or case closures;

23 (2) contact an individual on an interest list and
24 begin the program eligibility determination process at least 30
25 days before an opening is forecasted to become available in the
26 program; and

27 (3) ensure that an individual determined to be

1 eligible for services does not begin receiving services until after
2 the opening actually becomes available.

3 Sec. 22.041. THIRD-PARTY INFORMATION. Notwithstanding any
4 other provision of this code, the commission [department] may use
5 information obtained from a third party to verify the assets and
6 resources of a person for purposes of determining the person's
7 eligibility and need for medical assistance, financial assistance,
8 or nutritional assistance. Third-party information includes
9 information obtained from:

- 10 (1) a consumer reporting agency, as defined by Section
11 20.01, Business & Commerce Code;
12 (2) an appraisal district; or
13 (3) the Texas Department of Motor Vehicles vehicle
14 registration record database.

15 SECTION 4.038. Chapter 23, Human Resources Code, is amended
16 to read as follows:

17 CHAPTER 23. SUSPENSION OF DRIVER'S OR RECREATIONAL LICENSE FOR
18 FAILURE TO REIMBURSE COMMISSION [DEPARTMENT]

19 Sec. 23.001. DEFINITIONS. In this chapter:

- 20 (1) "License" means a license, certificate,
21 registration, permit, or other authorization that:
22 (A) is issued by a licensing authority;
23 (B) is subject before expiration to suspension,
24 revocation, forfeiture, or termination by an issuing licensing
25 authority; and
26 (C) a person must obtain to:
27 (i) operate a motor vehicle; or

(ii) engage in a recreational activity, including hunting and fishing, for which a license or permit is required.

7 Sec. 23.002. LICENSING AUTHORITIES SUBJECT TO CHAPTER. In
8 this chapter, "licensing authority" means:

9 (1) the Parks and Wildlife Department; and
10 (2) the Department of Public Safety of the State of
11 Texas.

12 Sec. 23.003. SUSPENSION OF LICENSE. The commission
13 [department] may issue an order suspending a license as provided by
14 this chapter of a person who, after notice:

15 (1) has failed to reimburse the commission
16 [department] for an amount in excess of \$250 granted in error to the
17 person under the supplemental nutrition assistance [food stamp]
18 program or the program of financial assistance under Chapter 31:

19 (2) has been provided an opportunity to make payments
20 toward the amount owed under a repayment schedule; and

21 (3) has failed to comply with the repayment schedule.

22 Sec. 23.004. INITIATION OF PROCEEDING. (a) The commission
23 [~~department~~] may initiate a proceeding to suspend a person's
24 license by filing a petition with the commission's appeals
25 [~~department's hearings~~] division.

26 (b) The proceeding shall be conducted by the commission's
27 appeals [~~department's hearings~~] division. The proceeding is a

1 contested case under Chapter 2001, Government Code, except that
2 Section 2001.054 does not apply.

3 (c) The executive commissioner or the executive
4 commissioner's designated representative shall render a final
5 decision or order in the proceeding. A reference to the commission
6 in this chapter with respect to a final decision or order in the
7 proceeding means the executive commissioner or the executive
8 commissioner's designated representative.

9 Sec. 23.005. CONTENTS OF PETITION. A petition under this
10 chapter must state that license suspension is authorized under
11 Section 23.003 and allege:

12 (1) the name and, if known, social security number of
13 the person;

14 (2) the type of license the person is believed to hold
15 and the name of the licensing authority; and

16 (3) the amount owed to the commission [~~department~~].

17 Sec. 23.006. NOTICE. (a) On initiating a proceeding under
18 Section 23.004, the commission [~~department~~] shall give the person
19 named in the petition:

20 (1) notice of the person's right to a hearing before
21 the commission's appeals [~~hearings~~] division [~~of the department~~];

22 (2) notice of the deadline for requesting a hearing;
23 and

24 (3) a form requesting a hearing.

25 (b) Notice under this section may be served as in civil
26 cases generally.

27 (c) The notice must state that an order suspending a license

1 shall be rendered on the 60th day after the date of service of the
2 notice unless by that date:

3 (1) the person pays the amount owed to the commission
4 ~~[department]~~;

5 (2) the person presents evidence of a payment history
6 satisfactory to the commission ~~[department]~~ in compliance with a
7 reasonable repayment schedule; or

8 (3) the person appears at a hearing before the
9 commission's appeals ~~[hearings]~~ division and shows that the request
10 for suspension should be denied or stayed.

11 Sec. 23.007. HEARING ON PETITION TO SUSPEND LICENSE. (a) A
12 request for a hearing and motion to stay suspension must be filed
13 with the commission ~~[department]~~ not later than the 20th day after
14 the date of service of the notice under Section 23.006.

15 (b) If a request for a hearing is filed, the commission's
16 appeals ~~[hearings]~~ division ~~[of the department]~~ shall:

17 (1) promptly schedule a hearing;

18 (2) notify the person and an appropriate
19 representative of the commission ~~[department]~~ of the date, time,
20 and location of the hearing; and

21 (3) stay suspension pending the hearing.

22 Sec. 23.008. ORDER SUSPENDING LICENSE. (a) On making the
23 findings required by Section 23.003, the commission ~~[department]~~
24 shall render an order suspending a license.

25 (b) The commission ~~[department]~~ may stay an order
26 suspending a license conditioned on the person's compliance with a
27 reasonable repayment schedule that is incorporated in the order.

1 An order suspending a license with a stay of the suspension may not
2 be served on the licensing authority unless the stay is revoked as
3 provided by this chapter.

4 (c) A final order suspending a license rendered by the
5 commission [department] shall be forwarded to the appropriate
6 licensing authority.

7 (d) If the commission [department] renders an order
8 suspending a license, the person may also be ordered not to engage
9 in the licensed activity.

10 (e) If the commission's appeals division [department] finds
11 that the petition for suspension should be denied, the petition
12 shall be dismissed without prejudice, and an order suspending a
13 license may not be rendered.

14 Sec. 23.009. DEFAULT ORDER. The commission [department]
15 shall consider the allegations of the petition for suspension to be
16 admitted and shall render an order suspending a license if the
17 person fails to:

- 18 (1) respond to a notice issued under Section 23.006;
19 (2) request a hearing; or
20 (3) appear at a hearing.

21 Sec. 23.010. REVIEW OF FINAL ADMINISTRATIVE ORDER. An
22 order issued by the commission [department] under this chapter is a
23 final agency decision and is subject to review as provided by
24 Chapter 2001, Government Code.

25 Sec. 23.011. ACTION BY LICENSING AUTHORITY. (a) On receipt
26 of a final order suspending a license, the licensing authority
27 shall immediately determine if the authority has issued a license

1 to the person named on the order and, if a license has been issued:

2 (1) record the suspension of the license in the

3 licensing authority's records;

4 (2) report the suspension as appropriate; and

5 (3) demand surrender of the suspended license if

6 required by law for other cases in which a license is suspended.

7 (b) A licensing authority shall implement the terms of a

8 final order suspending a license without additional review or

9 hearing. The authority may provide notice as appropriate to the

10 license holder or to others concerned with the license.

11 (c) A licensing authority may not modify, remand, reverse,

12 vacate, or stay an order suspending a license issued under this

13 chapter and may not review, vacate, or reconsider the terms of a

14 final order suspending a license.

15 (d) A person who is the subject of a final order suspending a

16 license is not entitled to a refund for any fee or deposit paid to

17 the licensing authority.

18 (e) A person who continues to engage in the licensed

19 activity after the implementation of the order suspending a license

20 by the licensing authority is liable for the same civil and criminal

21 penalties provided for engaging in the licensed activity without a

22 license or while a license is suspended that apply to any other

23 license holder of that licensing authority.

24 (f) A licensing authority is exempt from liability to a

25 license holder for any act authorized under this chapter performed

26 by the authority.

27 (g) Except as provided by this chapter, an order suspending

1 a license or dismissing a petition for the suspension of a license
2 does not affect the power of a licensing authority to grant, deny,
3 suspend, revoke, terminate, or renew a license.

4 (h) The denial or suspension of a driver's license under
5 this chapter is governed by this chapter and not by Subtitle B,
6 Title 7, Transportation Code.

7 Sec. 23.012. MOTION TO REVOKE STAY. (a) The commission
8 [~~department~~] may file a motion with the commission's appeals
9 [~~department's hearings~~] division to revoke the stay of an order
10 suspending a license if the person does not comply with the terms of
11 a reasonable repayment plan entered into by the person.

12 (b) Notice to the person of a motion to revoke stay under
13 this section may be given by personal service or by mail to the
14 address provided by the person, if any, in the order suspending a
15 license. The notice must include a notice of hearing before the
16 appeals [~~hearings~~] division. The notice must be provided to the
17 person not less than 10 days before the date of the hearing.

18 (c) A motion to revoke stay must allege the manner in which
19 the person failed to comply with the repayment plan.

20 (d) If the commission [~~department~~] finds that the person is
21 not in compliance with the terms of the repayment plan, the
22 commission [~~department~~] shall revoke the stay of the order
23 suspending a license and render a final order suspending a license.

24 Sec. 23.013. VACATING OR STAYING ORDER SUSPENDING [A]
25 LICENSE. (a) The commission [~~department~~] may render an order
26 vacating or staying an order suspending a license if the person has
27 paid all amounts owed to the commission [~~department~~] or has

1 established a satisfactory payment record.

2 (b) The commission [department] shall promptly deliver an
3 order vacating or staying an order suspending a license to the
4 appropriate licensing authority.

5 (c) On receipt of an order vacating or staying an order
6 suspending a license, the licensing authority shall promptly
7 reinstate and return the affected license to the person if the
8 person is otherwise qualified for the license.

9 (d) An order rendered under this section does not affect the
10 right of the commission [department] to any other remedy provided
11 by law, including the right to seek relief under this chapter. An
12 order rendered under this section does not affect the power of a
13 licensing authority to grant, deny, suspend, revoke, terminate, or
14 renew a license as otherwise provided by law.

15 Sec. 23.014. FEE BY LICENSING AUTHORITY. A licensing
16 authority may charge a fee to a person who is the subject of an order
17 suspending a license in an amount sufficient to recover the
18 administrative costs incurred by the authority under this chapter.

19 Sec. 23.015. COOPERATION BETWEEN LICENSING AUTHORITIES AND
20 COMMISSION [DEPARTMENT]. (a) The commission [department] may
21 request from each licensing authority the name, address, social
22 security number, license renewal date, and other identifying
23 information for each individual who holds, applies for, or renews a
24 license issued by the authority.

25 (b) A licensing authority shall provide the requested
26 information in the manner agreed to by the commission [department]
27 and the licensing authority.

1 (c) The commission [department] may enter into a
2 cooperative agreement with a licensing authority to administer this
3 chapter in a cost-effective manner.

4 (d) The commission [department] may adopt a reasonable
5 implementation schedule for the requirements of this section.

6 Sec. 23.016. RULES, FORMS, AND PROCEDURES. The executive
7 commissioner [department] by rule shall prescribe forms and
8 procedures for the implementation of this chapter.

9 SECTION 4.039. Section 31.001, Human Resources Code, is
10 amended to read as follows:

11 Sec. 31.001. TEMPORARY ASSISTANCE FOR NEEDY [AID TO]
12 FAMILIES [~~WITH DEPENDENT CHILDREN~~]. The commission [department]
13 shall provide financial assistance and services to families with
14 dependent children in accordance with the provisions of this
15 chapter. The commission [department] shall give first priority in
16 administering this chapter to assisting an adult recipient of or
17 unemployed applicant for the financial assistance and services in
18 finding and retaining a job.

19 SECTION 4.040. Section 31.002(b), Human Resources Code, is
20 amended to read as follows:

21 (b) In this chapter, the term "dependent child" also applies
22 to a child:

23 (1) who meets the specifications set forth in
24 Subsections (a)(1)-(4) [~~Subdivisions (1)-(4) of the preceding~~
25 ~~subsection~~];

26 (2) who has been removed from the home of a relative
27 specified in Subsection (a)(5) [~~Subdivision (5) of the preceding~~

1 subsection] as a result of a judicial determination that the
2 child's residence there is contrary to his or her welfare;

3 (3) whose placement and care are the responsibility of
4 the [department, the] Department of Family and Protective [and
5 Regulatory] Services[~~T~~] or an agency with which the [department or
6 the] Department of Family and Protective [and Regulatory] Services
7 has entered into an agreement for the care and supervision of the
8 child;

9 (4) who has been placed in a foster home or child-care
10 institution by the [department or the] Department of Family and
11 Protective [and Regulatory] Services; and

12 (5) for whom the state may receive federal funds for
13 the purpose of providing foster care in accordance with rules
14 promulgated by the executive commissioner [department].

15 SECTION 4.041. Section 31.0021(b), Human Resources Code, is
16 amended to read as follows:

17 (b) "Nonrecipient parent" does not include:

18 (1) a minor parent who is not the head of household;

19 (2) a person who is ineligible for financial
20 assistance because of the person's immigration status; or

21 (3) a parent who cares for a [disabled] family member
22 with a disability living in the home if the family member does not
23 attend school full-time and the need for the care is supported by
24 medical documentation.

25 SECTION 4.042. Section 31.003, Human Resources Code, is
26 amended to read as follows:

27 Sec. 31.003. AMOUNT OF FINANCIAL ASSISTANCE. (a) The

1 executive commissioner [department] shall adopt rules governing
2 the determination of the amount of financial assistance to be
3 granted for the support of a dependent child. The amount granted,
4 when combined with the income and other resources available for the
5 child's support, must be sufficient to provide the child with a
6 subsistence compatible with decency and health.

7 (b) In considering the amount of income or other resources
8 available to a child or a relative claiming financial assistance on
9 the child's behalf, the commission [department] shall also consider
10 reasonable expenses attributable to earning the income. The
11 commission [department] may permit all or part of the earned or
12 other income to be set aside for the future identifiable needs of
13 the child, subject to limitations prescribed by the executive
14 commissioner [department].

15 (c) The commission's [department's] agents employed in the
16 region or county in which the dependent child resides shall
17 determine the amount to be paid in accordance with the rules
18 promulgated by the executive commissioner [department].

19 SECTION 4.043. Sections 31.0031(a), (c), (d), (e), (f),
20 (g), and (h), Human Resources Code, are amended to read as follows:

21 (a) The commission [department] shall require each adult
22 recipient to sign a bill of responsibilities that defines the
23 responsibilities of the state and of the recipient and encourages
24 personal responsibility. The commission [department] shall
25 explain to the applicant the work requirements and time-limited
26 benefits in addition to the other provisions of the agreement
27 before the applicant signs the agreement. The commission

1 [department] shall provide each applicant with a copy of the signed
2 agreement. The agreement shall include pertinent case information,
3 including the case number and a listing of the state's benefits.

4 (c) The executive commissioner [department] shall adopt
5 rules governing sanctions and penalties under this section to or
6 for:

7 (1) a person who fails to cooperate with each
8 applicable requirement of the responsibility agreement prescribed
9 by this section; and

10 (2) the family of a person who fails to cooperate with
11 each applicable requirement of the responsibility agreement.

12 (d) The responsibility agreement shall require that:

13 (1) the parent of a dependent child cooperate with the
14 commission [department] and the Title IV-D agency if necessary to
15 establish the paternity of the dependent child and to establish or
16 enforce child support;

17 (2) if adequate and accessible providers of the
18 services are available in the geographic area and subject to the
19 availability of funds, each dependent child, as appropriate,
20 complete early and periodic screening, diagnosis, and treatment
21 checkups on schedule and receive the immunization series prescribed
22 by Section 161.004, Health and Safety Code, unless the child is
23 exempt under that section;

24 (3) each adult recipient, or teen parent recipient who
25 has completed the requirements regarding school attendance in
26 Subdivision (6), not voluntarily terminate paid employment of at
27 least 30 hours each week without good cause in accordance with rules

1 adopted by the executive commissioner [department];

2 (4) each adult recipient for whom a needs assessment
3 is conducted participate in an activity to enable that person to
4 become self-sufficient by:

5 (A) continuing the person's education or
6 becoming literate;

7 (B) entering a job placement or employment skills
8 training program;

9 (C) serving as a volunteer in the person's
10 community; or

11 (D) serving in a community work program or other
12 work program approved by the commission [department];

13 (5) each caretaker relative or parent receiving
14 assistance not use, sell, or possess marihuana or a controlled
15 substance in violation of Chapter 481, Health and Safety Code, or
16 abuse alcohol;

17 (6) each dependent child younger than 18 years of age
18 or teen parent younger than 19 years of age attend school regularly,
19 unless the child has a high school diploma or high school
20 equivalency certificate or is specifically exempted from school
21 attendance under Section 25.086, Education Code;

22 (7) each recipient comply with commission
23 [department] rules regarding proof of school attendance; and

24 (8) each recipient attend appropriate parenting
25 skills training classes, as determined by the needs assessment.

26 (e) In conjunction with the Texas Education Agency, the
27 executive commissioner [department] by rule shall ensure

1 compliance with the school attendance requirements of Subsection
2 (d)(6) by establishing criteria for:

3 (1) determining whether a child is regularly attending
4 school;

5 (2) exempting a child from school attendance in
6 accordance with Subchapter C, Chapter 25, Education Code; and

7 (3) determining when an absence is excused.

8 (f) The executive commissioner [department] by rule may
9 provide for exemptions from Subsection (d)(4) or for a teen parent
10 under Subsection (d)(6). The commission [department] may not
11 require participation in an activity under Subsection (d)(4) or for
12 a teen parent under Subsection (d)(6) if funding for support
13 services is unavailable.

14 (g) In this section:

15 (1) "Caretaker relative" means a person who is listed
16 under Section 31.002(a)(5) in whose home residence a dependent
17 child lives [as a relative eligible to receive assistance under 42
18 U.S.C. Section 602(a)].

19 (2) "Payee" means a person who resides in a household
20 with a dependent child and who is within the degree of relationship
21 with the child that is required of a caretaker relative but whose
22 needs are not included in determining the amount of financial
23 assistance provided for the person's household.

24 (h) The commission [department] shall require each payee to
25 sign a bill of responsibilities that defines the responsibilities
26 of the state and of the payee. The responsibility agreement must
27 require that a payee comply with the requirements of Subsections

1 (d)(1), (2), (5), (6), and (7).

2 SECTION 4.044. Section 31.0032, Human Resources Code, is
3 amended to read as follows:

4 Sec. 31.0032. PAYMENT OF ASSISTANCE FOR PERFORMANCE. (a)
5 Except as provided by Section 231.115, Family Code, if after an
6 investigation the commission [department] or the Title IV-D agency
7 determines that a person is not cooperating with a requirement of
8 the responsibility agreement required under Section 31.0031, the
9 commission [department] shall immediately apply a sanction
10 terminating the total amount of financial assistance provided under
11 this chapter to or for the person and the person's family.

12 (a-1) The commission [department] shall apply a sanction or
13 penalty imposed under Subsection (a) for a period ending when the
14 person demonstrates cooperation with the requirement of the
15 responsibility agreement for which the sanction was imposed or for
16 a one-month period, whichever is longer.

17 (b) The commission [department] shall immediately notify
18 the caretaker relative, second parent, or payee receiving the
19 financial assistance if the commission [department] will not make
20 the financial assistance payment for the period prescribed by
21 Subsection (a-1) because of a person's failure to cooperate with
22 the requirements of the responsibility agreement during a month.

23 (c) To the extent allowed by federal law, the commission
24 [~~Health and Human Services Commission or any health and human~~
25 ~~services agency, as defined by Section 531.001, Government Code,~~] may deny medical assistance for a person who is eligible for
26 financial assistance but to whom that assistance is not paid

1 because of the person's failure to cooperate. Medical assistance
2 to the person's family may not be denied for the person's failure to
3 cooperate. Medical assistance may not be denied to a person
4 receiving assistance under this chapter who is under the age of 19,
5 a pregnant adult, or any other person who may not be denied medical
6 assistance under federal law.

7 (d) This section does not prohibit the Texas Workforce
8 Commission, the commission [~~Health and Human Services Commission~~],
9 or any health and human services agency, as defined by Section
10 [531.001](#), Government Code, from providing child care or any other
11 related social or support services for an individual who is
12 eligible for financial assistance but to whom that assistance is
13 not paid because of the individual's failure to cooperate.

14 (e) The executive commissioner [~~department~~] by rule shall
15 establish procedures to determine whether a person has cooperated
16 with the requirements of the responsibility agreement.

17 SECTION 4.045. Sections [31.0033](#)(a), (b), (c), and (d),
18 Human Resources Code, are amended to read as follows:

19 (a) If the commission [~~department~~] or Title IV-D agency
20 determines that a person has failed to cooperate with the
21 requirements of the responsibility agreement under Section
22 [31.0031](#), the person determined to have failed to cooperate or, if
23 different, the person receiving the financial assistance may
24 request a hearing to show good cause for failure to cooperate not
25 later than the 13th day after the date the notice is sent under
26 Section [31.0032](#). If the person determined to have failed to
27 cooperate or, if different, the person receiving the financial

1 assistance requests a hearing to show good cause not later than the
2 13th day after the date on which the notice is sent under Section
3 31.0032, the commission [department] may not withhold or reduce the
4 payment of financial assistance until the commission [department]
5 determines whether the person had good cause for the person's
6 failure to cooperate. On a showing of good cause for failure to
7 cooperate, the person may receive a financial assistance payment
8 for the period in which the person failed to cooperate, but had good
9 cause for that failure to cooperate.

10 (b) The commission [department] shall promptly conduct a
11 hearing if a timely request is made under Subsection (a).

12 (c) If the commission [department] finds that good cause for
13 the person's failure to cooperate was not shown at a hearing, the
14 commission [department] may not make a financial assistance payment
15 in any amount to the person for the person or the person's family
16 for the period prescribed by Section 31.0032(a-1).

17 (d) The executive commissioner [department] by rule shall
18 establish criteria for good cause failure to cooperate and
19 guidelines for what constitutes a good faith effort on behalf of a
20 recipient under this section.

21 SECTION 4.046. Sections 31.0035 and 31.0036, Human
22 Resources Code, are amended to read as follows:

23 Sec. 31.0035. TRANSITIONAL CHILD-CARE SERVICES. (a) The
24 Texas Workforce Commission [department] shall provide necessary
25 transitional child-care services, in accordance with Texas
26 Workforce Commission [department] rules and federal law, to a
27 person who was receiving financial assistance under this chapter

1 but is no longer eligible to receive the assistance because:
2 (1) the person's household income has increased; or
3 (2) the person has exhausted the person's benefits
4 under Section 31.0065.

5 (b) Except as provided by Section 31.012(c), the Texas
6 Workforce Commission [department] may provide the child-care
7 services only until the earlier of:

8 (1) the end of the applicable period prescribed by
9 Section 31.0065 for the provision of transitional benefits; or
10 (2) the first anniversary of the date on which the
11 person becomes ineligible for financial assistance because of
12 increased household income.

13 (c) The Texas Workforce Commission [department] by rule
14 shall adopt a system of copayments [~~co-payments~~] in order to have a
15 person who receives child-care services under this section
16 contribute an amount toward the cost of the services according to
17 the person's ability to pay.

18 (d) The Texas Workforce Commission [department] by rule
19 shall provide for sanctions for a person who is financially able to
20 contribute the amount required by Subsection (c) but fails to pay.

21 Sec. 31.0036. DEPENDENT CHILD'S INCOME. The commission
22 [department] may not consider any income earned by a dependent
23 child who is attending school and whose income is derived from the
24 child's part-time employment for purposes of determining:

25 (1) the amount of financial assistance granted to an
26 individual under this chapter for the support of dependent
27 children; or

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(2) whether the family meets household income and resource requirements for eligibility for financial assistance under this chapter.

4 SECTION 4.047. Section 31.0038(a), Human Resources Code, is
5 amended to read as follows:

6 (a) Subject to the limitations prescribed by Subsection
7 (b), income earned by an individual who marries an individual
8 receiving financial assistance at the time of the marriage may not
9 be considered by the commission [department] during the six-month
10 period following the date of the marriage for purposes of
11 determining:

15 (2) whether the family meets household income and
16 resource requirements for financial assistance under this chapter.

17 SECTION 4.048. Sections 31.0039 and 31.004, Human Resources
18 Code, are amended to read as follows:

19 Sec. 31.0039. EXCLUSION OF ASSETS IN PREPAID TUITION
20 PROGRAMS AND HIGHER EDUCATION SAVINGS PLANS. For purposes of
21 determining the amount of financial assistance granted to an
22 individual under this chapter for the support of dependent children
23 or determining whether the family meets household income and
24 resource requirements for financial assistance under this chapter,
25 the commission [department] may not consider the right to assets
26 held in or the right to receive payments or benefits under:

27 (1) any fund or plan established under Subchapter G,

1 H, or I, Chapter 54, Education Code, including an interest in a
2 savings trust account, prepaid tuition contract, or related
3 matching account; or

4 (2) any qualified tuition program of any state that
5 meets the requirements of Section 529, Internal Revenue Code of
6 1986.

7 Sec. 31.004. FOSTER CARE. The Department of Family and
8 Protective [~~and Regulatory~~] Services may accept and spend funds
9 available from any source to provide foster care in facilities
10 approved by the Department of Family and Protective [~~and~~
11 ~~Regulatory~~] Services for dependent children who meet the
12 specifications set out in Section 31.002(b).

13 SECTION 4.049. Sections 31.0041(a), (c), and (d), Human
14 Resources Code, are amended to read as follows:

15 (a) To the extent funds are appropriated for this purpose,
16 the commission [~~department~~] may provide supplemental financial
17 assistance in addition to the amount of financial assistance
18 granted for the support of a dependent child under Section 31.003 to
19 a person who:

20 (1) is 45 years of age or older;

21 (2) is the grandparent of the dependent child, as
22 defined by Section 31.002, who lives at the person's residence;

23 (3) is the primary caretaker of the dependent child;

24 (4) has a family income that is at or below 200 percent
25 of the federal poverty level; and

26 (5) does not have resources that exceed the amount
27 allowed for financial assistance under this chapter.

1 (c) The commission [department] shall inform an applicant
2 for financial assistance under this chapter who meets the
3 eligibility requirements under Subsection (a) of the availability
4 of supplemental financial assistance.

5 (d) The commission [department] shall maintain complete
6 records and compile statistics regarding the number of households
7 that receive supplemental financial assistance under this section.

8 SECTION 4.050. Sections 31.005(a), (b), and (d), Human
9 Resources Code, are amended to read as follows:

10 (a) If after an investigation the commission [department]
11 determines that a family with a dependent child is needy and that
12 the child resides with the family, the commission [department]
13 shall provide financial assistance and services for the support of
14 the family.

15 (b) The commission [department] shall formulate policies
16 for studying and improving the child's home conditions and shall
17 plan services for the protection of the child and for the child's
18 health and educational needs.

19 (d) The commission [department] shall develop a plan for the
20 coordination of the services provided for dependent children under
21 this chapter and other child welfare services provided by the state
22 [~~for which the department is responsible~~].

23 SECTION 4.051. Sections 31.0051, 31.006, and 31.0065, Human
24 Resources Code, are amended to read as follows:

25 Sec. 31.0051. MINOR PARENT RESIDING WITH RELATIVES. If the
26 commission [department] determines based on documentation provided
27 that a minor caretaker who is receiving financial assistance and

1 services under this chapter on behalf of a dependent child benefits
2 from residing with an adult family member who is also receiving
3 assistance under this chapter, the commission [department] shall
4 provide assistance and services to both persons as if they were
5 living separately.

6 Sec. 31.006. WELFARE AND RELATED SERVICES. (a) The
7 commission [department] shall develop and implement a program of
8 welfare and related services for each dependent child which, in
9 light of the particular home conditions and other needs of the
10 child, will best promote the welfare of the child and his or her
11 family and will help to maintain and strengthen family life by
12 assisting the child's parents or relatives to attain and retain
13 their capabilities for maximum self-support and personal
14 independence consistent with the maintenance of continued parental
15 care and protection.

16 (b) The commission [department] shall coordinate the
17 services provided under the program with other services provided by
18 the commission [department] and by other public and private welfare
19 agencies, including other state agencies, for the care and
20 protection of children.

21 (c) The executive commissioner and the Texas Workforce
22 Commission [department] may promulgate rules which will enable the
23 Health and Human Services Commission and the Texas Workforce
24 Commission [~~is~~] to fully participate in work and training programs
25 authorized by federal law, to provide for all services required or
26 deemed advisable under the provisions of the program, and to
27 accept, transfer, and expend funds made available from public or

1 private sources for the purpose of carrying out the provisions of
2 this section.

3 Sec. 31.0065. TIME-LIMITED BENEFITS. (a) The commission
4 [department] may provide financial assistance under this chapter
5 only in accordance with the time limits specified by this section.
6 The executive commissioner [department] by rule may provide for
7 exceptions to these time limits if severe personal hardship or
8 community economic factors prevent the recipient from obtaining
9 employment or if the state is unable to provide support services.

10 (b) The commission [department] shall limit financial
11 assistance and transitional benefits in accordance with the
12 following schedule:

13 (1) financial assistance is limited to a cumulative
14 total of 12 months and transitional benefits are limited to 12
15 months if the person receiving financial assistance on behalf of a
16 dependent child has:

17 (A) a high school diploma, a high school
18 equivalency certificate, or a certificate or degree from a two-year
19 or four-year institution of higher education or technical or
20 vocational school; or

21 (B) recent work experience of 18 months or more;

22 (2) financial assistance is limited to a cumulative
23 total of 24 months and transitional benefits are limited to 12
24 months if the person receiving financial assistance on behalf of a
25 dependent child has:

26 (A) completed three years of high school; or

27 (B) recent work experience of not less than six

1 or more than 18 months; and

6 (A) completed less than three years of high
7 school; and

8 (B) less than six months of work experience.

9 (c) If the recipient has completed less than three years of
10 high school and has less than six months work experience, the
11 commission [department] shall perform an in-depth assessment of the
12 needs of that person and that person's family. If the recipient
13 cooperates with the commission's [department's] assessment, the
14 time period prescribed by Subsection (b)(3) begins on the first
15 anniversary of the date on which the commission [department]
16 completes the assessment, as determined by the commission
17 [department].

18 (d) The computation of time limits under Subsection (b)
19 begins when the adult or teen parent recipient receives
20 notification in accordance with the procedures under Section
21 31.012(b) of the availability of an opening in and eligibility for a
22 Temporary Assistance for Needy Families employment program
23 established under Part A, Subchapter IV, Social Security Act (42
24 U.S.C. Section 601 et seq.) [~~the job opportunity and basic skills~~
25 ~~(JOBS)~~ program Part F, Subchapter IV, Social Security Act (42
26 ~~U.S.C. Section 682)~~].

27 (e) In implementing the time-limited benefits program, the

1 commission [department]:

2 (1) shall provide that a participant in the program
3 may reapply with the commission [department] for financial
4 assistance on or after the fifth anniversary of the date on which
5 the participant is totally disqualified from receiving assistance
6 because of the application of Subsection (b); and

7 (2) shall establish the criteria for determining what
8 constitutes severe personal hardship under Subsection (a).

9 (f) If the commission [department] is imposing time-limited
10 benefits on an individual, the commission [department] shall
11 consider:

12 (1) the assessment of the individual's need that was
13 conducted by the commission [department], provided that if the
14 needs assessment indicates discrepancies between a client's
15 self-reported educational level and the client's functional
16 abilities, the time limits shall be based upon the functional
17 educational level; and

18 (2) the prevailing economic and employment conditions
19 in the area of the state where the individual resides.

20 SECTION 4.052. Section 31.0066(a), Human Resources Code, is
21 amended to read as follows:

22 (a) The executive commissioner and [department], the Texas
23 Workforce Commission[, and the Health and Human Services
24 Commission] shall jointly adopt rules prescribing circumstances
25 that constitute a hardship for purposes of exempting a recipient of
26 financial assistance from the application of time limits imposed by
27 federal law on the receipt of benefits.

1 SECTION 4.053. Sections 31.007, 31.008, and 31.0095, Human
2 Resources Code, are amended to read as follows:

3 Sec. 31.007. FINANCIAL ASSISTANCE TO INDIVIDUALS IN
4 INSTITUTIONS. A person who is in an institution is eligible to
5 receive financial assistance under this chapter if the person would
6 be eligible to receive the financial assistance if the person [he]
7 were not in an institution and if the payments are made in
8 accordance with the commission's [department's] rules promulgated
9 in conformity with federal law and rules.

10 Sec. 31.008. COUNSELING AND GUIDANCE SERVICES. (a) If the
11 commission [department] believes that financial assistance to a
12 family with a dependent child is not being, or may not be, used in
13 the best interest of the child, the commission [department] may
14 provide counseling and guidance services to the relative receiving
15 financial assistance with respect to the use of the funds and the
16 management of other funds in the child's best interest.

17 (b) The commission [department] may advise the relative
18 that continued failure to use the funds in the child's best interest
19 will result in the funds being paid to a substitute payee. If the
20 commission [department] determines that protective payments are
21 required to safeguard the best interest of the child, the
22 commission [department] may pay the funds to a substitute payee on a
23 temporary basis in accordance with the commission's [department's]
24 rules.

25 (c) If the situation in the home which made the protective
26 payments necessary does not improve, and if the commission
27 [department] determines that the relative with whom the child is

1 living is unable or does not have the capacity to use the funds for
2 the best interest of the child, then the commission, with the
3 assistance of other appropriate state agencies, [department] may
4 make arrangements with the family for other plans for the care of
5 the child. The other plans may include:

6 (1) removing the child to the home of another
7 relative;

8 (2) appointment of a guardian or legal representative
9 for the relative with whom the child is living;

10 (3) imposition of criminal or civil penalties if a
11 court determines that the relative is not using, or has not used,
12 the payments for the benefit of the child; or

13 (4) referral of the case to a court for the removal of
14 the child and the placement of the child in a foster home.

15 (d) The commission [department] may make payments on behalf
16 of a dependent child residing in a foster family home or a
17 child-care institution in accordance with the provisions of this
18 chapter and commission [~~the~~] rules [~~of the department~~].

19 Sec. 31.0095. NEEDS ASSESSMENT. The commission [~~Health and~~
20 ~~Human Services Commission~~] shall assist a recipient or a
21 nonrecipient parent in assessing the particular needs of that
22 person and the person's family upon notification of entry into a
23 Temporary Assistance for Needy Families employment program
24 established under Part A, Subchapter IV, Social Security Act (42
25 U.S.C. Section 601 et seq.). The Texas Workforce Commission and the
26 recipient or the nonrecipient parent shall develop an employability
27 plan to help the recipient or nonrecipient parent achieve

1 independence from public assistance granted to the recipient and
2 the recipient's family, or to the child of the nonrecipient parent,
3 as applicable.

4 SECTION 4.054. Sections [31.010](#)(b), (d), and (e), Human
5 Resources Code, are amended to read as follows:

6 (b) The Texas Workforce Commission [department] shall
7 consider the needs assessment and employability plan developed
8 under Section [31.0095](#) in determining the support services needed.

9 (d) The Texas Workforce Commission [department] by rule
10 shall provide for implementation of the support services.

11 (e) The Texas Workforce Commission [department] may
12 contract with other state agencies, community colleges, technical
13 schools, residence training facilities, or public or private
14 entities to provide support services under this section.

15 SECTION 4.055. The heading to Section [31.012](#), Human
16 Resources Code, is amended to read as follows:

17 Sec. 31.012. MANDATORY WORK OR PARTICIPATION IN EMPLOYMENT
18 ACTIVITIES THROUGH TEMPORARY ASSISTANCE FOR NEEDY FAMILIES
19 EMPLOYMENT [~~THE JOB OPPORTUNITIES AND BASIC SKILLS~~] PROGRAM.

20 SECTION 4.056. Sections [31.012](#)(a), (b), (c), (d), and (e),
21 Human Resources Code, are amended to read as follows:

22 (a) The Health and Human Services Commission [department]
23 shall require that, during any one-month period in which an adult is
24 receiving financial assistance under this chapter, the adult shall
25 during that period:

26 (1) work not less than 30 hours a week; or
27 (2) participate for not less than 20 hours a week in an

1 activity established under a Temporary Assistance for Needy
2 Families employment program established under Part A, Subchapter
3 IV, Social Security Act (42 U.S.C. Section 601 et seq.) [~~the job~~
4 ~~opportunities and basic skills (JOBS) training program under Part~~
5 ~~F, Subchapter IV, Social Security Act (42 U.S.C. Section 682)~~].

6 (b) The Texas Workforce Commission [~~department~~] by rule
7 shall establish criteria for good cause failure to cooperate and
8 for notification procedures regarding participation in work or
9 employment activities under this section.

10 (c) A person who is the caretaker of a [~~physically or~~
11 ~~mentally disabled~~] child with a physical disability or mental,
12 intellectual, or developmental disability who requires the
13 caretaker's presence is not required to participate in a program
14 under this section. A single person who is the caretaker of a child
15 is exempt until the caretaker's youngest child at the time the
16 caretaker first became eligible for assistance reaches the age of
17 one. Notwithstanding Sections 31.0035(b) and 32.0255(b), the
18 Health and Human Services Commission [~~department~~] shall provide to
19 a person who is exempt under this subsection and who voluntarily
20 participates in a program under Subsection (a)(2) six months of
21 transitional benefits in addition to the applicable limit
22 prescribed by Section 31.0065.

23 (d) A state program operated under this section shall be
24 administered by the division of workforce development of the Texas
25 Workforce Commission [~~when the program is transferred to that~~
26 ~~commission~~].

27 (e) The Texas Workforce Commission [~~department~~] shall allow

1 a person who is participating in work or employment activities
2 under this section to complete those activities if the person
3 becomes ineligible to receive financial assistance under this
4 chapter because the person receives child support in an amount that
5 makes the person ineligible for that assistance. The Texas
6 Workforce Commission [department] shall provide to the person
7 necessary child care services until the date on which the person
8 completes work or employment activities under this section.

9 SECTION 4.057. Section 31.0124, Human Resources Code, is
10 amended to read as follows:

11 Sec. 31.0124. REFERRAL TO EDUCATIONAL PROGRAMS. The Texas
12 Workforce Commission [department] shall determine whether a person
13 who registers to participate in a Temporary Assistance for Needy
14 Families employment program established under Part A, Subchapter
15 IV, Social Security Act (42 U.S.C. Section 601 et seq.) [the job
16 opportunities and basic skills training program] needs and is
17 eligible for adult education and literacy programs [services]
18 provided under Chapter 315, Labor [Section 11.2093, Education]
19 Code. If the person is eligible for the adult education and
20 literacy programs [services], the Texas Workforce Commission
21 [department] shall determine the person's needs and goals and refer
22 the person to the appropriate adult education and literacy program
23 [service] provided under Chapter 315, Labor [Section 11.2093,
24 Education] Code.

25 SECTION 4.058. Sections 31.0126(b), (c), and (e), Human
26 Resources Code, are amended to read as follows:

27 (b) The Texas Workforce Commission [department] shall

1 develop the programs prescribed by this section in accordance with
2 federal law as a part of a Temporary Assistance for Needy Families
3 employment program established under Part A, Subchapter IV, Social
4 Security Act (42 U.S.C. Section 601 et seq.) [~~the job opportunities~~
5 ~~and basic skills (JOBS) training program under Part F, Subchapter~~
6 ~~IV, Social Security Act (42 U.S.C. Section 682)~~].

7 (c) In adopting rules governing a program prescribed by this
8 section, the executive commissioner [~~of the Health and Human~~
9 ~~Services Commission~~] shall:

10 (1) establish the criteria for determining which
11 recipients and nonrecipient parents who are eligible to participate
12 in the Temporary Assistance for Needy Families employment programs
13 established under Part A, Subchapter IV, Social Security Act (42
14 U.S.C. Section 601 et seq.), may be required to participate in a
15 particular program; and

16 (2) ensure that a recipient or a nonrecipient parent
17 who is incapable of participating in a particular program is not
18 required to participate in that program.

19 (e) The Texas Workforce Commission [~~department~~] shall
20 submit a waiver application or a renewal waiver application that a
21 federal agency may require before a local workforce development
22 board can implement one or more of the programs prescribed by this
23 section in a workforce development area.

24 SECTION 4.059. Sections 31.0127(a), (b), (c), (d), (h), and
25 (i), Human Resources Code, are amended to read as follows:

26 (a) The Health and Human Services Commission shall [~~is the~~
27 ~~state agency designated to~~] coordinate with the Texas Workforce

1 Commission for the provision of [between the department and another
2 ~~state agency providing]~~ child care services, Temporary Assistance
3 for Needy Families employment [~~work~~] programs, and supplemental
4 nutrition assistance program employment and training [~~Food Stamp~~
5 ~~Employment and Training~~] services to an individual or family who
6 has been referred for programs and services by the Health and Human
7 Services Commission [~~department~~]. The purpose of this section is
8 to accomplish the following:

9 (1) increase the self-sufficiency of recipients of
10 Temporary Assistance for Needy Families and improve the delivery of
11 services to those recipients; and

12 (2) improve the effectiveness of job-training
13 programs funded under the Workforce Investment Act of 1998 [~~Job~~
14 ~~Training Partnership Act~~] (29 U.S.C. Section 2801 [~~1501~~] et seq.)
15 or a successor program in obtaining employment for individuals
16 receiving Temporary Assistance for Needy Families cash assistance.

17 (b) The Health and Human Services Commission shall require
18 the Texas Workforce Commission [~~a state agency providing program~~
19 ~~services described by Subsection (a)~~] to comply with Chapter 531,
20 Government Code, solely for:

21 (1) the promulgation of rules relating to the programs
22 described by Subsection (a);

23 (2) the expenditure of funds relating to the programs
24 described by Subsection (a), within the limitations established by
25 and subject to the General Appropriations Act and federal and other
26 law applicable to the use of the funds;

27 (3) data collection and reporting relating to the

1 programs described by Subsection (a); and

2 (4) evaluation of services relating to the programs
3 described by Subsection (a).

4 (c) The Health and Human Services Commission [department]
5 and the Texas Workforce Commission [~~a state agency providing~~
~~program services described by Subsection (a)~~] shall jointly develop
6 and adopt a memorandum of understanding[~~, subject to the approval~~
~~of the Health and Human Services Commission~~]. The memorandum of
7
8 understanding must:

9 (1) outline measures to be taken to increase the
10 number of individuals receiving Temporary Assistance for Needy
11 Families cash assistance who are using job-training programs funded
12 under the Workforce Investment Act of 1998 [~~Job Training~~
~~Partnership Act~~] (29 U.S.C. Section 2801 [~~1501~~] et seq.), or a
13 successor program; and

14 (2) identify specific measures to improve the delivery
15 of services to clients served by programs described by Subsection
16 (a).

17 (d) Not later than January 15 of each odd-numbered year, the
18 Health and Human Services Commission shall provide a report to the
19 governor, the lieutenant governor, and the speaker of the house of
20 representatives that:

21 (1) evaluates the efficiency and effectiveness of
22 client services in the Temporary Assistance for Needy Families
23 program;

24 (2) evaluates the status of the coordination among
25 agencies and compliance with this section;

1 (3) recommends measures to increase self-sufficiency
2 of recipients of Temporary Assistance for Needy Families cash
3 assistance and to improve the delivery of services to these
4 recipients; and

5 (4) evaluates the effectiveness of job-training
6 programs funded under the Workforce Investment Act of 1998 [~~Job~~
7 ~~Training Partnership Act~~] (29 U.S.C. Section 2801 [~~1501~~] et seq.)
8 or a successor program in obtaining employment outcomes for
9 recipients of Temporary Assistance for Needy Families cash
10 assistance.

11 (h) This section does not authorize the Health and Human
12 Services Commission to transfer programs to or from the commission
13 [~~department~~] and another agency serving clients of the Temporary
14 Assistance for Needy Families program or the federal supplemental
15 nutrition assistance [~~food stamp~~] program administered under
16 Chapter 33 without explicit legislative authorization.

17 (i) The executive commissioner may not promulgate rules
18 relating to eligibility for the [~~Health and Human Services~~
19 ~~Commission and any state agency providing~~] program services
20 described by Subsection (a) and the Texas Workforce Commission may
21 not promulgate rules in accordance with Subsection (b)(1) without
22 holding a public hearing.

23 SECTION 4.060. Sections 31.0128, 31.0129, and 31.0135,
24 Human Resources Code, are amended to read as follows:

25 Sec. 31.0128. COORDINATED INTERAGENCY PLAN. (a) The
26 commission [~~department~~] and the Texas Workforce Commission shall
27 jointly develop [~~and adopt~~] a memorandum of understanding

1 establishing [~~, subject to the approval of the Health and Human~~
2 ~~Services Commission.~~ The memorandum of understanding must
3 establish] guidelines for a coordinated interagency case
4 management plan to:

5 (1) identify each recipient of financial assistance
6 who has, in comparison to other recipients, higher levels of
7 barriers to employment; and

8 (2) provide coordinated services that address those
9 barriers to assist the recipient in finding and retaining
10 employment.

11 (b) The commission [~~department~~] and the Texas Workforce
12 Commission shall:

13 (1) jointly develop [~~and adopt~~] a memorandum of
14 understanding [~~, subject to the approval of the Health and Human~~
15 ~~Services Commission~~] that establishes a coordinated interagency
16 case management plan consistent with the guidelines established
17 under Subsection (a); and

18 (2) using existing resources, [~~by rule~~] implement in
19 accordance with agency rules the plan to the maximum extent
20 possible through local [~~department and commission~~] offices of the
21 agency in local workforce development areas in which a local
22 workforce development board is not established.

23 (c) The executive commissioner and the Texas Workforce
24 Commission [~~Each agency~~] by rule shall adopt the memoranda of
25 understanding required by this section and all revisions to the
26 memoranda.

27 (d) In a local workforce development area in which a local

1 workforce development board is established, the Texas Workforce
2 Commission shall require in the [~~commission's~~] contract between the
3 Texas Workforce Commission and [with] the board that the board, in
4 cooperation with local Health and Human Services Commission
5 [~~department~~] offices, develop and implement a coordinated
6 interagency case management plan consistent with the guidelines
7 established under Subsection (a).

8 (e) On the [~~department's~~] formulation of recommendations
9 and strategies by the Health and Human Services Commission under
10 Section 31.0129(b), the commission [~~department~~] and the Texas
11 Workforce Commission shall, as necessary, revise and update a
12 memorandum of understanding and coordinated interagency case
13 management plan under this section to include the recommendations
14 and strategies.

15 Sec. 31.0129. COORDINATED PLAN TO IMPROVE INTERAGENCY
16 TRANSITIONS. (a) The Health and Human Services Commission
17 [~~department~~], the Texas Workforce Commission, and representatives
18 of local workforce development boards shall conduct a survey of
19 best practices used to transition clients between local Health and
20 Human Services Commission [~~department~~] offices and workforce
21 centers.

22 (b) The Health and Human Services Commission [~~department~~]
23 shall:

24 (1) analyze information collected by a survey under
25 Subsection (a); and
26 (2) formulate recommendations and strategies to
27 improve practices used to transition clients between local

1 commission [department] offices and workforce centers.

2 (c) Using existing resources, the Health and Human Services
3 Commission [department] and local workforce development boards
4 shall adopt policies to implement the recommendations and
5 strategies contained in the revised and updated memorandum of
6 understanding under Section 31.0128.

7 Sec. 31.0135. PARENTING SKILLS TRAINING. (a) The
8 commission [department], in cooperation with the Texas Education
9 Agency, the Department of Family and Protective [~~and Regulatory~~]
10 Services, the Texas A&M AgriLife [~~Agricultural~~] Extension Service,
11 or any other public or private entity, shall develop a parenting
12 skills training program to assist a recipient of assistance under
13 this chapter, including a child who receives assistance on behalf
14 of a dependent child. The program shall include nutrition
15 education, budgeting and survival skills, and instruction on the
16 necessity of physical and emotional safety for children.

17 (b) The commission [department] shall require that a
18 caretaker relative or parent who is receiving assistance under this
19 chapter on behalf of a dependent child receive appropriate
20 parenting skills training as needed. The training must include one
21 or more components of the parenting skills training program that
22 the commission [department] determines will be useful to the
23 caretaker relative or parent.

24 (c) In this section, "caretaker relative" means a person who
25 is listed under Section 31.002(a)(5) in whose home residence a
26 dependent child lives [~~as a relative eligible to receive assistance~~
27 ~~under 42 U.S.C. Section 602(a)~~].

1 SECTION 4.061. Sections [31.015](#)(a), (c), (d), (e), and (f),
2 Human Resources Code, are amended to read as follows:

3 (a) Subject to available federal funding, the commission
4 ~~department~~ shall develop and implement a healthy marriage
5 development program for recipients of financial assistance under
6 this chapter.

7 (c) The commission ~~department~~ shall provide to a
8 recipient of financial assistance under this chapter additional
9 financial assistance of not more than \$20 for the recipient's
10 participation in a course offered through the healthy marriage
11 development program up to a maximum payment of \$60 a month.

12 (d) The commission ~~department~~ may provide the courses or
13 may contract with any person, including a community or faith-based
14 organization, for the provision of the courses. The commission
15 ~~department~~ must provide all participants with an option of
16 attending courses in a non-faith-based organization.

17 (e) The executive commissioner ~~department~~ shall develop
18 rules as necessary for the administration of the healthy marriage
19 development program.

20 (f) The commission ~~department~~ must ensure that the
21 courses provided by the commission ~~department~~ and courses
22 provided through contracts with other organizations will be
23 sensitive to the needs of individuals from different religions,
24 races, and genders.

25 SECTION 4.062. Sections [31.016](#), [31.017](#), and [31.018](#), Human
26 Resources Code, are amended to read as follows:

27 Sec. 31.016. SERVICE REFERRALS FOR CERTAIN RECIPIENTS. To

1 the extent practicable using existing revenue, the executive
2 commissioner [department], by rule, shall develop and the
3 commission shall implement a plan to:

4 (1) identify recipients of financial assistance that
5 are at risk of exhausting their benefits under Section 31.0065; and
6 (2) provide referrals for the recipient and the
7 recipient's family to appropriate preventive and support services,
8 including faith-based services.

9 Sec. 31.017. HEALTHY MARRIAGES AND STRONG FAMILIES GRANT
10 PROGRAM. (a) The commission [~~Health and Human Services~~
11 ~~Commission~~] may administer a grant program to provide grants in
12 amounts not to exceed \$50,000 to programs that provide marriage
13 education services and support the development of healthy marriages
14 or strengthening of families. Grant recipients may use grant money
15 to provide direct services to participants, develop a program,
16 enlarge program capacity, or pay other program expenses, including
17 provider training and technical assistance expenses.

18 (b) In selecting grant recipients, the commission [~~Health~~
19 ~~and Human Services Commission~~] shall give preference to applicants:

20 (1) whose programs will contribute to the geographic
21 diversity of program locations; or
22 (2) who operate small programs, but who seek to
23 maximize service delivery and build capacity.

24 (c) The commission [~~Health and Human Services Commission~~]
25 shall require that each grant recipient provide program services at
26 no cost to participants.

27 (d) The commission [~~Health and Human Services Commission~~]

1 may contract with private entities to provide marriage education
2 training and curriculum, technical assistance, and other support to
3 grant recipients. In selecting entities to provide these
4 services, the commission shall consider whether a prospective
5 provider has knowledge and understanding of the needs of grant
6 recipients operating programs in different areas of this state.

7 (e) The executive commissioner [~~of the Health and Human~~
8 ~~Services Commission~~] may adopt rules to implement this section.

9 Sec. 31.018. MARRIAGE AND FAMILY PROGRAM FUNDING. (a) To
10 the extent authorized by federal law, the commission [~~Health and~~
11 ~~Human Services Commission~~] shall spend a minimum of one percent of
12 money received under the federal Temporary Assistance for Needy
13 Families block grant during each state fiscal year to fund programs
14 that support the development of healthy marriages or the
15 strengthening of families, including the healthy marriage
16 development program under Section 31.015 and the healthy marriages
17 and strong families grant program under Section 31.017.

18 (b) Using not more than 10 percent of the money required to
19 be spent as provided by Subsection (a), the commission [~~Health and~~
20 ~~Human Services Commission~~], through a contract or agreement with a
21 public senior college or university, as defined by Section 61.003,
22 Education Code, shall establish a process for evaluating the best
23 practices and outcomes of programs funded under Subsection (a).

24 SECTION 4.063. Sections 31.031(a), (b), (c), (d), (e), and
25 (f), Human Resources Code, are amended to read as follows:

26 (a) The executive commissioner [~~department~~] by rule shall
27 prescribe the form for applications for assistance authorized by

1 this chapter and the manner of their submission.

2 (b) The commission [department] may require the applicant
3 to state the amount of property in which he or she has an interest,
4 the amount of income which he or she has at the time the application
5 is filed, and other information.

6 (c) The commission [department] shall require the applicant
7 to provide proof to the commission [department] that each person
8 who will receive assistance under this chapter is:

9 (1) a United States citizen or has a satisfactory
10 immigration status under Title IV, Personal Responsibility and Work
11 Opportunity Reconciliation Act of 1996 (8 U.S.C. Sections
12 1601-1646) [as defined in Title IV, Social Security Act (42 U.S.C.
13 Section 602(a)(33)), in effect as of the effective date of this
14 Act]; and

15 (2) a resident of this state.

16 (d) The commission [department] shall require the applicant
17 to provide proof to the commission [department] that each child
18 five years of age or younger, or a child who is not enrolled in
19 public school, for whom the applicant will receive assistance:

20 (1) has been immunized in accordance with Section
21 161.004, Health and Safety Code;

22 (2) is currently receiving an immunization series in
23 accordance with Section 161.004, Health and Safety Code, if the
24 child is of sufficient age; or

25 (3) is exempted under Section 161.004(d), Health and
26 Safety Code.

27 (e) An applicant who cannot provide the proof required by

1 Subsection (d) at the time of application shall provide the proof
2 not later than the 180th day after the date the commission
3 [~~department~~] determines the applicant is eligible for financial
4 assistance.

5 (f) The commission [~~department~~] shall provide the applicant
6 with information regarding immunization services available in the
7 applicant's residential area. If the applicant does not read or
8 comprehend English, the commission [~~department~~] shall provide the
9 information in a language that the applicant reads or comprehends.

10 SECTION 4.064. Sections 31.0315(d) and (e), Human Resources
11 Code, are amended to read as follows:

12 (d) The commission [~~department~~] may waive the requirements
13 of this section if it determines that there exists a reasonable
14 explanation why it is impossible to provide the information
15 required under Subsection (a), (b), or (c) or if it would not be in
16 the best interests of the child to provide the information. In
17 determining whether the best interests of the child warrant waiving
18 the information requirements of this section, the commission
19 [~~department~~] shall consider all relevant provisions of federal law
20 and regulations.

21 (e) The commission [~~department~~] shall forward to the
22 attorney general's office information received under this section.

23 SECTION 4.065. Section 31.032, Human Resources Code, is
24 amended to read as follows:

25 Sec. 31.032. INVESTIGATION AND DETERMINATION OF
26 ELIGIBILITY. (a) On receipt of an application for assistance
27 authorized by this chapter, the commission [~~department~~] shall

1 investigate and record the applicant's circumstances in order to
2 ascertain the facts supporting the application and to obtain other
3 information it may require.

4 (b) After completing its investigation, the commission
5 ~~[department]~~ shall determine whether the applicant is eligible for
6 the assistance, the type and amount of assistance, the date on which
7 the assistance shall begin, and the manner in which payments shall
8 be made.

9 (c) The commission ~~[department]~~ shall promptly notify the
10 applicant of its final action.

11 (d) In determining whether an applicant is eligible for
12 assistance, the commission ~~[department]~~ shall exclude from the
13 applicant's available resources:

14 (1) \$1,000 for the applicant's household, including a
15 household in which there is a person with a disability or a person
16 who is at least 60 years of age; and

17 (2) the fair market value of the applicant's ownership
18 interest in a motor vehicle, but not more than ~~[the amount~~
19 ~~determined according to the following schedule:~~

20 ~~[(A) \$4,550 on or after September 1, 1995, but~~
21 ~~before October 1, 1995;~~

22 ~~[(B) \$4,600 on or after October 1, 1995, but~~
23 ~~before October 1, 1996;~~

24 ~~[(C) \$5,000 on or after October 1, 1996, but~~
25 ~~before October 1, 1997; and~~

26 ~~[(D)] \$5,000 plus or minus an amount to be~~
27 determined annually beginning on October 1, 1997, to reflect

1 changes in the new car component of the Consumer Price Index for All
2 Urban Consumers published by the Bureau of Labor Statistics.

3 (e) If federal regulations governing the maximum allowable
4 resources under the supplemental nutrition assistance [~~food stamp~~]
5 program, 7 C.F.R. [~~CFR~~] Part 273, are revised, the executive
6 commissioner [~~department~~] shall adjust the standards that
7 determine available resources under Subsection (d) to reflect those
8 revisions.

9 SECTION 4.066. Sections 31.0322(a), (c), (d), (e), and (g),
10 Human Resources Code, are amended to read as follows:

11 (a) The executive commissioner [~~department~~], the Texas
12 Workforce Commission, and the Title IV-D agency by rule shall adopt
13 procedures under which requirements relating to financial
14 assistance and related services, including time limits, child
15 support enforcement, paternity establishment, work activity, and
16 residency, may be waived or modified for an individual who is a
17 victim of family violence if application of the requirements would:

18 (1) adversely affect the individual's ability to
19 attain financial independence;

20 (2) make it more difficult for the individual to
21 escape family violence; or

22 (3) place the individual at greater risk for
23 additional family violence.

24 (c) The commission [~~department~~], the Texas Workforce
25 Commission, and the Title IV-D agency may not deny an individual
26 access to education, training, employment, or other services
27 because the individual is a victim of family violence.

1 (d) The commission ~~[department]~~ shall coordinate the
2 development and implementation of procedures under this section in
3 collaboration with the Texas Workforce Commission, the Title IV-D
4 agency, and at least one statewide advocacy group for victims of
5 family violence.

6 (e) The commission ~~[department]~~, the Texas Workforce
7 Commission, the Title IV-D agency, and each local workforce
8 development board, using existing resources, shall provide not less
9 than four hours of training regarding family violence to each
10 employee or other person who on behalf of the commission
11 ~~[department]~~, Texas Workforce Commission ~~[commission]~~, agency, or
12 board:

13 (1) provides information relating to requirements
14 described by Subsection (a) and the availability of waivers or
15 modifications of those requirements to an individual seeking or
16 receiving financial assistance;

17 (2) recommends or grants waivers or modifications
18 authorized by this section of requirements described by Subsection
19 (a);

20 (3) recommends or imposes sanctions for
21 noncooperation or noncompliance with requirements described by
22 Subsection (a); or

23 (4) assesses employment readiness or provides
24 employment planning or employment retention services to an
25 individual receiving financial assistance.

26 (g) Before the application of a sanction or penalty based on
27 an individual's failure to cooperate with the commission

1 [department] or Title IV-D agency, as required by Section
2 31.0031(d)(1), or failure to comply with the work or participation
3 requirements imposed by Section 31.012, the agency recommending or
4 applying the sanction or penalty must make reasonable attempts to
5 contact the individual to determine the cause of the failure to
6 cooperate or comply. If the agency determines that family violence
7 contributed to the failure, the agency shall ensure that a person
8 trained in family violence issues in accordance with Subsection (e)
9 interviews the individual to identify the types of services
10 necessary to assist the individual in safely and successfully
11 entering the workforce.

12 SECTION 4.067. Sections 31.0324(b) and (c), Human Resources
13 Code, are amended to read as follows:

14 (b) The executive commissioner [department] by rule shall
15 develop and the commission shall implement a process that provides
16 for the grandparent of a child receiving financial assistance under
17 this chapter to serve as a protective payee to:

18 (1) receive and use the assistance on behalf of the
19 child; and

20 (2) apply for financial assistance and be interviewed
21 instead of the child's parent at any subsequent review of
22 eligibility required by the commission [department].

23 (c) The commission [department] shall[~~+~~

24 [~~(1)~~] limit the use of the process established by
25 Subsection (b) to situations in which the commission [department]
26 determines the parent is not using the assistance for the child's
27 needs as required by Section 31.0355(a),[~~+~~] and the executive

1 commissioner shall

2 [42] establish by rule the circumstances under which
3 the grandparent may be removed as a protective payee.

4 SECTION 4.068. Sections 31.0326, 31.033, 31.034, and
5 31.035, Human Resources Code, are amended to read as follows:

6 Sec. 31.0326. VERIFICATION OF IDENTITY AND PREVENTION OF
7 DUPLICATE PARTICIPATION. The commission [~~Health and Human~~
8 ~~Services Commission~~] shall use appropriate technology to:

9 (1) confirm the identity of applicants for benefits
10 under the financial assistance program; and

11 (2) prevent duplicate participation in the program by
12 a person.

13 Sec. 31.033. REINVESTIGATION AND REDETERMINATION OF
14 ELIGIBILITY. (a) The commission [~~department~~] may require periodic
15 reconsideration of continued eligibility for assistance.

16 (b) After reconsideration of continuing eligibility, the
17 commission [~~department~~] may change the amount of assistance or
18 withdraw it if the commission [~~department~~] finds that the
19 recipient's circumstances have altered sufficiently to warrant
20 that action.

21 (c) The commission [~~department~~] may cancel or suspend
22 assistance for a period of time if the commission [~~department~~]
23 finds that the recipient is currently ineligible to receive it.

24 (d) The commission [~~department~~] shall notify the recipient
25 immediately of its decision to change or withdraw assistance.

26 (e) A recipient of assistance must notify the commission
27 [~~department~~] immediately if he or she comes into possession of

1 income or resources in excess of the amount previously reported.

2 Sec. 31.034. APPEAL FROM LOCAL ELIGIBILITY OFFICES
3 [~~ADMINISTRATIVE UNITS~~]. (a) An applicant for or recipient of
4 financial assistance authorized by this chapter may appeal to the
5 commission [~~department~~] an action or failure to act by a local
6 eligibility office [~~administrative unit~~] relating to the financial
7 assistance. The commission [~~department~~] shall grant the applicant
8 or recipient an opportunity for a hearing after reasonable notice.

9 (b) An applicant or recipient, or his or her authorized
10 agent, may submit a written request for the information contained
11 in the [~~unit's~~] records of the local eligibility office on which the
12 action being appealed is based, and the local eligibility office
13 [~~unit~~] shall advise the person making the request of the
14 information within a reasonable time prior to the hearing.
15 Information not provided to the requesting party may not be
16 considered by the commission [~~department~~] at the hearing as a basis
17 for decision.

18 Sec. 31.035. METHOD OF PAYMENT. (a) The commission
19 [~~department~~] shall periodically furnish the comptroller with a list
20 of persons eligible for financial assistance under this chapter and
21 the amount to which each person is entitled.

22 (b) The comptroller shall draw payments [~~warrants~~] for the
23 specified amounts on the proper accounts [~~of the Texas Department~~
24 ~~of Human Services fund~~] and shall transmit the payments [~~warrants~~]
25 to the commission [~~commissioner~~]. The commission [~~commissioner~~]
26 shall supervise the delivery of the payments [~~warrants~~] to the
27 persons entitled to them.

1 SECTION 4.069. Sections 31.0355(a) and (c), Human Resources
2 Code, are amended to read as follows:

3 (a) Financial assistance granted to a person under this
4 chapter may be used only to purchase goods and services that are
5 considered essential and necessary for the welfare of the family,
6 including food, clothing, housing, utilities, child care, and
7 incidentals such as transportation and medicine or medical supplies
8 or equipment not covered by Medicaid. The executive commissioner
9 ~~[department]~~ by rule shall define what constitutes essential and
10 necessary goods and services for purposes of this subsection.

11 (c) The commission ~~[department]~~ shall encourage housing
12 authorities, utility companies, public transportation companies,
13 and other nonfood retailers to accept payment for goods and
14 services described by Subsection (a) through the state's electronic
15 benefits transfer (EBT) system.

16 SECTION 4.070. Sections 31.036, 31.037, 31.038, 31.039, and
17 31.042, Human Resources Code, are amended to read as follows:

18 Sec. 31.036. ELIGIBILITY OF PERSON LEAVING THE STATE. A
19 recipient of assistance who moves out of the state is no longer
20 eligible for the assistance. However, a recipient's temporary
21 absence from the state for reasons and for periods of time approved
22 by the commission ~~[department]~~ does not terminate the recipient's
23 eligibility for assistance.

24 Sec. 31.037. PAYMENT OF FINANCIAL ASSISTANCE FUNDS ON DEATH
25 OF RECIPIENT. (a) If a person dies during a month for which the
26 person is eligible for financial assistance and has not spent all of
27 that month's financial assistance payment ~~[endorsed or cashed the~~

1 ~~warrant issued for financial assistance during that month~~, the
2 commission [~~department~~] may pay financial assistance to the person
3 who was responsible for caring for the recipient at the time of his
4 or her death and who is responsible for paying the obligations
5 incurred by the recipient.

6 (b) The executive commissioner [~~department~~] shall adopt
7 rules prescribing the method of determining the person entitled to
8 receive the deceased recipient's financial assistance, the manner
9 of payment of the funds, and limitations on the payments.

10 (c) Payments to persons responsible for deceased recipients
11 under this section may be made only in the manner and to the extent
12 permissible under the laws and regulations governing the
13 disbursement of funds received through the United States Department
14 of Health and Human Services [~~, Education, and Welfare~~].

15 Sec. 31.038. CANCELLATION OF UNUSED BENEFITS [~~UNCASHED~~
16 WARRANTS]. The commission [~~department~~] may cancel [~~a~~] financial
17 assistance benefits [~~warrant~~] that have [~~has~~] not been spent
18 [~~cashed~~] within a reasonable period of time after issuance. The
19 cancellation must be performed in the manner required by rules of
20 the comptroller.

21 Sec. 31.039. ISSUANCE OF REPLACEMENT FINANCIAL ASSISTANCE
22 WARRANTS AND ELECTRONIC BENEFITS TRANSFER CARDS. (a) The
23 comptroller may issue a replacement financial assistance warrant to
24 a recipient who has failed to receive or has lost the original
25 warrant in accordance with Section 403.054, Government Code.

26 (b) The commission may issue a replacement electronic
27 benefits transfer card to a recipient who failed to receive or lost

1 the original card.

2 Sec. 31.042. PRORATION OF FINANCIAL ASSISTANCE. If at any
3 time state funds are not available to pay in full all financial
4 assistance authorized in this chapter, the executive commissioner
5 ~~[department]~~ may direct the proration of the financial assistance.

6 SECTION 4.071. Sections 31.043(a) and (b), Human Resources
7 Code, are amended to read as follows:

8 (a) To extend the period of supported employment for
9 families who receive financial assistance under this chapter, the
10 commission ~~[department]~~ may use a form of fill-the-gap budgeting or
11 another method under which the commission ~~[department]~~ disregards
12 earnings of family members who obtain employment while receiving
13 the assistance.

14 (b) The commission ~~[department]~~ may limit the percentage of
15 earnings disregarded, impose a time limit on how long the earnings
16 are disregarded, or gradually reduce the percentage of earnings
17 disregarded in order to remain within available funding.

18 SECTION 4.072. Section 31.044(b), Human Resources Code, is
19 amended to read as follows:

20 (b) The commission ~~[department]~~ shall close an account that
21 has not been used by the account holder during the preceding 12
22 months.

23 SECTION 4.073. Sections 32.003(1) and (4), Human Resources
24 Code, are amended to read as follows:

25 (1) "Health and human services agencies" has the
26 meaning assigned by Section 531.001, Government Code ~~["Board" means~~
27 ~~the Health and Human Services Commission or the governing body of an~~

1 agency operating part of the medical assistance program, as
2 appropriate].

3 (4) "Medical assistance" and "Medicaid" include
4 [includes] all of the health care and related services and benefits
5 authorized or provided under federal law for needy individuals of
6 this state.

7 SECTION 4.074. Section 32.021, Human Resources Code, is
8 amended by amending Subsections (a), (b), (c), (d), (e), (f), (h),
9 (l), (m), (o), (p), (q), and (r) and adding Subsection (a-1) to read
10 as follows:

11 (a) The commission [department] is the single state agency
12 designated to administer the medical assistance program provided in
13 this chapter in accordance with 42 U.S.C. Section 1396a(a)(5).
14 Subject to applicable federal law, the commission may delegate the
15 operation of a part of the medical assistance program to another
16 state agency. Notwithstanding any delegation, the commission
17 retains ultimate authority over the medical assistance program.

18 (a-1) To the extent the commission delegates the operation
19 of a part of the medical assistance program to another state agency,
20 or to the extent that state law assigns a function of the medical
21 assistance program to another health and human services agency
22 operating under the commission's oversight, a reference in this
23 chapter to the commission with respect to that part of the medical
24 assistance program means the state agency to which the operation of
25 that part is delegated or assigned.

26 (b) The commission [department] shall enter into agreements
27 with any federal agency designated by federal law to administer

1 medical assistance when the commission [department] determines the
2 agreements to be compatible with the state's participation in the
3 medical assistance program and within the limits of appropriated
4 funds. The commission [department] shall cooperate with federal
5 agencies designated by federal law to administer medical assistance
6 in any reasonable manner necessary to qualify for federal funds.

7 (c) The executive commissioner [department] shall establish
8 methods of administration and adopt necessary rules for the proper
9 and efficient operation of the medical assistance program.

10 (d) The commission [department] shall include in its
11 contracts for the delivery of medical assistance by nursing
12 facilities provisions for monetary penalties to be assessed for
13 violations as required by 42 U.S.C. Section 1396r, including
14 without limitation the Omnibus Budget Reconciliation Act (OBRA),
15 Pub. [P.] L. No. 100-203, Nursing Home Reform Amendments of 1987,
16 provided that the executive commissioner [department] shall:

17 (1) provide for an informal dispute resolution process
18 in the commission [~~Health and Human Services Commission~~] as
19 provided by Section 531.058, Government Code; and

20 (2) develop rules to adjudicate claims in contested
21 cases, including claims unresolved by the informal dispute
22 resolution process of the commission [~~Health and Human Services~~
23 ~~Commission~~].

24 (e) Rules governing the application of penalties shall
25 include the following:

26 (1) specific and objective criteria which describe the
27 scope and severity of a contract violation which results in a

1 recommendation for each specific penalty. Penalties must be
2 appropriate to the violation, and the most severe financial
3 penalties must be reserved for situations which create an immediate
4 and serious threat to the health and safety of residents;
5 "immediate and serious threat" means a situation in which there is a
6 high probability that serious harm or injury to residents
7 [~~patients~~] could occur at any time or already has occurred and may
8 well occur again if residents [~~patients~~] are not protected
9 effectively from the harm or if the threat is not removed;

10 (2) a system to ensure standard and consistent
11 application of penalties among surveyors and different areas of the
12 state;

13 (3) due process for nursing facilities providers,
14 including an appeals procedure consistent with Chapter 2001,
15 Government Code; and

16 (4) per diem and/or minimum penalties. The executive
17 commissioner [~~department~~] may by rule prescribe a minimum penalty
18 period; however, once a facility gives the Department of Aging and
19 Disability Services [~~department~~] notice that deficiencies have
20 been corrected, if surveyors are unable to revisit the facility
21 within five days and the deficiencies are later shown to be
22 corrected, the per diem penalties cease as of the day the facility
23 gave notice to the Department of Aging and Disability Services
24 [~~department~~] or on the last day of the minimum penalty period
25 established by the executive commissioner [~~department~~], whichever
26 is later.

27 (f) To encourage facilities to provide the best possible

1 care, the commission [department] shall develop an incentive
2 program to recognize facilities providing the highest quality care
3 to Medicaid residents.

4 (h) Medicaid nursing facilities shall also comply with
5 state licensure rules, which may be more stringent than the
6 requirements for certification. The Department of Aging and
7 Disability Services [department] shall use appropriate civil,
8 administrative, or criminal remedies authorized by state or federal
9 law with respect to a facility that is in violation of a
10 certification or licensing requirement.

11 (l) The commission [department] may not include as a
12 reimbursable item to a nursing facility an administrative or civil
13 penalty assessed against the facility under this chapter or under
14 Chapter 242, Health and Safety Code.

15 (m) Notwithstanding any provision of law to the contrary,
16 the commission [department] shall terminate a nursing facility's
17 provider agreement if the Department of Aging and Disability
18 Services [department] has imposed required Category 2 or Category 3
19 remedies on the facility three times within a 24-month period. The
20 executive commissioner [~~of the Health and Human Services~~
21 ~~Commission~~] by rule shall establish criteria under which the
22 requirement to terminate the provider agreement may be waived. In
23 this subsection, "Category 2 remedies" and "Category 3 remedies"
24 have the meanings assigned by 42 C.F.R. Section 488.408.

25 (o) In any circumstance in which a nursing facility would
26 otherwise be required to admit a resident transferred from another
27 facility, because of an emergency or otherwise, the nursing

1 facility may not admit a resident whose needs cannot be met through
2 service from the facility's staff or in cooperation with community
3 resources or other providers under contract. If a nursing facility
4 refuses to admit a resident under this subsection, the nursing
5 facility shall provide a written statement of the reasons for the
6 refusal to the Department of Aging and Disability Services
7 [department] within a period specified by [department] rule. A
8 nursing facility that fails to provide the written statement, or
9 that includes false or misleading information in the statement, is
10 subject to monetary penalties assessed in accordance with this
11 chapter.

12 (p) In order to increase the personal needs allowance under
13 Section 32.024(w) [32.024(v), as added by Chapter 1333, Acts of the
14 76th Legislature, Regular Session, 1999], the commission
15 [department] shall develop an early warning system to detect fraud
16 in the handling of the personal needs allowance and other funds of
17 residents of long-term care facilities.

18 (q) The commission [department] shall include in its
19 contracts for the delivery of medical assistance by nursing
20 facilities clearly defined minimum standards that relate directly
21 to the quality of care for residents of those facilities. [The
22 department shall consider the recommendations made by the nursing
23 facility quality assurance team under Section 32.060 in
24 establishing the standards.] The commission [department] shall
25 include in each contract:

26 (1) specific performance measures by which the
27 commission [department] may evaluate the extent to which the

1 nursing facility is meeting the standards; and

2 (2) provisions that allow the commission [department]
3 to terminate the contract if the nursing facility is not meeting the
4 standards.

5 (r) The commission [department] may not award a contract for
6 the delivery of medical assistance to a nursing facility that does
7 not meet the minimum standards that would be included in the
8 contract as required by Subsection (q). The commission
9 [department] shall terminate a contract for the delivery of medical
10 assistance by a nursing facility that does not meet or maintain the
11 minimum standards included in the contract in a manner consistent
12 with the terms of the contract.

13 SECTION 4.075. Sections 32.0211 and 32.0212, Human
14 Resources Code, are amended to read as follows:

15 Sec. 32.0211. RESTRICTIONS ON EXECUTIVE COMMISSIONERS,
16 FORMER MEMBERS OF A [THE] BOARD, COMMISSIONERS, AND THEIR BUSINESS
17 PARTNERS. (a) After service in the commission or a health and
18 human services agency, including an agency that formerly operated
19 part of the medical assistance program but that has been abolished,
20 [department] ends, a former executive commissioner, member of the
21 board, or [a former] commissioner of the applicable agency may not
22 knowingly represent a person before an agency or court:

23 (1) in a matter related to the medical assistance
24 program in which the agency the person served [department] or the
25 federal government has a direct interest and in which the executive
26 commissioner, board member, or commissioner participated
27 personally while employed with the agency [department]; or

1 (2) for two years after the date on which service ends
2 in a matter related to the medical assistance program if the
3 commission, the health and human services agency, [department] or
4 the federal government has a direct interest in the matter, the
5 matter was pending during the executive commissioner's or
6 commissioner's [his] last year of service to the applicable agency
7 [department], and the matter was one for which the executive
8 commissioner [board member] or commissioner had responsibility.

9 (b) Subsection (a) [of this section] does not apply to a
10 former executive commissioner, board member, or commissioner who
11 holds one of the following positions and is acting in the scope of
12 that position:

13 (1) employee or officer of federal, state, or local
14 government;

15 (2) employee of a nonprofit hospital or medical
16 research organization; or

17 (3) employee of an accredited degree-granting college
18 or university.

19 (c) The [A] current executive commissioner [board member]
20 or a current commissioner of a health and human services agency may
21 not knowingly participate in the course of the executive
22 commissioner's or commissioner's [his] service in a matter related
23 to the medical assistance program in which the agency the person
24 serves [department] or the federal government has a direct interest
25 and in which the executive commissioner or commissioner, or the
26 executive commissioner's or commissioner's spouse [he, his spouse],
27 minor child, or business partner, has a substantial financial

1 interest.

2 (d) A business partner of a current executive commissioner
3 [board member] or a current commissioner of a health and human
4 services agency may not knowingly represent a person before an
5 agency or court in a matter related to the medical assistance
6 program:

7 (1) in which the executive commissioner [board member]
8 or commissioner participates or has participated personally and
9 substantially; or

10 (2) that is under the official responsibility of the
11 executive commissioner [board member] or commissioner.

12 (e) A past [~~Past~~] or present executive commissioner, a past
13 board member of a health and human services agency, including an
14 abolished agency, [members] or a past or present commissioner of a
15 health and human services agency is [~~commissioners are~~] subject to
16 a civil penalty of \$5,000 for each violation of this section. A
17 partner of a current executive commissioner [board member] or
18 commissioner is subject to a civil penalty of \$2,500 for each
19 violation of this section. Each appearance before an agency or
20 court constitutes a separate offense.

21 (f) If it appears that this section has been violated, the
22 commission [~~department~~] may request the attorney general to conduct
23 a suit in the name of the State of Texas to enjoin the prohibited
24 activity and to recover the penalty provided for in this section.

25 Sec. 32.0212. DELIVERY OF MEDICAL ASSISTANCE.
26 Notwithstanding any other law and subject to Section 533.0025,
27 Government Code, the commission [~~department~~] shall provide medical

1 assistance for acute care services through the Medicaid managed
2 care system implemented under Chapter 533, Government Code, or
3 another Medicaid capitated managed care program.

4 SECTION 4.076. Sections [32.0213\(a\), \(c\), \(d\), and \(e\)](#),
5 Human Resources Code, are amended to read as follows:

6 (a) The executive commissioner [department] by rule shall
7 establish procedures for:

8 (1) controlling the number of Medicaid beds in nursing
9 facilities;

10 (2) decertification of unused Medicaid beds in nursing
11 facilities; and

12 (3) reallocation of nursing facility [~~home~~] beds
13 decertified under Subdivision (2) to other nursing facilities.

14 (c) The executive commissioner [department] may exempt a
15 nursing facility from the procedures established under this section
16 if the facility:

17 (1) is affiliated with a state-supported medical
18 school;

19 (2) is located on land owned or controlled by the
20 state-supported medical school; and

21 (3) serves as a teaching facility for physicians and
22 related health care professionals.

23 (d) The executive commissioner [~~of the Health and Human~~
24 ~~Services Commission~~] by rule may require an applicant for Medicaid
25 beds in a nursing facility under a Medicaid bed waiver application
26 to provide a performance bond in the amount of \$500,000 or other
27 financial security as determined by the Department of Aging and

1 Disability Services [department] to ensure that the applicant
2 provides the Medicaid beds granted to the applicant under the
3 waiver within the time frame required by the Department of Aging and
4 Disability Services [department]. A performance bond provided
5 under this subsection must:

6 (1) be executed by a corporate surety [entity] in
7 accordance with Subchapter A, Chapter 3503, Insurance Code;

8 (2) be in a form approved by the Department of Aging
9 and Disability Services [department]; and

10 (3) clearly and prominently display on the face of the
11 bond or on an attachment to the bond:

12 (A) the name, mailing address, physical address,
13 and telephone number, including the area code, of the surety
14 company to which any notice of claim should be sent; or

15 (B) the toll-free telephone number maintained by
16 the Texas Department of Insurance under Subchapter B, Chapter 521,
17 Insurance Code, and a statement that the address of the surety
18 company to which any notice of claim should be sent may be obtained
19 from the Texas Department of Insurance by calling the toll-free
20 telephone number.

21 (e) The executive commissioner [department] may not require
22 an applicant for Medicaid beds in a nursing facility to obtain a
23 performance bond from a specific insurance or surety agency, agent,
24 or broker.

25 SECTION 4.077. Section 32.0214(a), Human Resources Code, is
26 amended to read as follows:

27 (a) If the commission [department] determines that it is

1 cost-effective and feasible and subject to Subsection (b), the
2 commission [department] shall require each recipient of medical
3 assistance to designate a primary care provider with whom the
4 recipient will have a continuous, ongoing professional
5 relationship and who will provide and coordinate the recipient's
6 initial and primary care, maintain the continuity of care provided
7 to the recipient, and initiate any referrals to other health care
8 providers.

9 SECTION 4.078. Sections 32.0215(a), (b), (d), and (e),
10 Human Resources Code, are amended to read as follows:

11 (a) The commission [department] may include in a contract
12 for the delivery of medical assistance by a home or community care
13 provider a provision for monetary penalties to be assessed for a
14 contract violation or any violation of home or community care
15 requirements, as required by 42 U.S.C. Section 1396t(j).

16 (b) The executive commissioner [department] shall adopt
17 [develop] rules governing the application of civil money penalties,
18 including rules prescribing:

19 (1) criteria that describe when and how a civil money
20 penalty may be assessed and the amount of the penalty;

21 (2) a system to ensure standard and consistent
22 application of the penalties throughout the state; and

23 (3) an administrative appeals process to adjudicate
24 claims in contested cases in accordance with Chapter 2001,
25 Government Code.

26 (d) A penalty must be appropriate to the violation. The
27 commission [department] may assess incrementally more severe

1 penalties for repeated or uncorrected violations.

2 (e) The commission [department] shall review a penalized
3 provider within 10 working days after the provider notifies the
4 Department of Aging and Disability Services [department] that the
5 deficiency that caused the imposition of the penalty has been
6 corrected. If the commission [department] is unable to review the
7 provider within that 10-working-day period, the penalty ceases on
8 the earlier of the last day of the minimum penalty period or the
9 date the provider gives notice to the Department of Aging and
10 Disability Services [department].

11 SECTION 4.079. Sections 32.022, 32.023, and 32.0231, Human
12 Resources Code, are amended to read as follows:

13 Sec. 32.022. MEDICAL AND HOSPITAL CARE ADVISORY COMMITTEES.

14 (a) The executive [board, on the recommendation of the]
15 commissioner[~~r~~] shall appoint a medical care advisory committee to
16 advise the executive commissioner [board] and the commission
17 [department] in developing and maintaining the medical assistance
18 program and in making immediate and long-range plans for reaching
19 the program's goal of providing access to high quality,
20 comprehensive medical and health care services to medically
21 indigent persons in the state. To ensure that qualified applicants
22 receive services, the committee shall consider changes in the
23 process the commission [department] uses to determine eligibility.

24 (b) The executive commissioner [board] shall appoint the
25 committee in compliance with the requirements of the federal agency
26 administering medical assistance. The appointments shall provide
27 for a balanced representation of the general public, providers,

1 consumers, and other persons, state agencies, or groups with
2 knowledge of and interest in the committee's field of work.

3 (c) The executive commissioner [department] shall adopt
4 rules for membership on the committee to provide for efficiency of
5 operation, rotation, stability, and continuity.

6 (d) The executive [board, on the recommendation of the]
7 commissioner[~~r~~] may appoint regional and local medical care
8 advisory committees and other advisory committees as considered
9 necessary.

10 (e) The executive [board, on the recommendation of the]
11 commissioner[~~r~~] shall appoint a hospital payment advisory
12 committee. The committee shall advise the executive commissioner
13 [board] and the commission [department] on necessary changes in
14 hospital payment methodologies for inpatient hospital prospective
15 payments and on adjustments for disproportionate share hospitals
16 that will ensure reasonable, adequate, and equitable payments to
17 hospital providers and that will address the essential role of
18 rural hospitals. The executive commissioner [board] shall appoint
19 to the committee persons with knowledge of and an interest in
20 hospital payment issues.

21 Sec. 32.023. COOPERATION WITH OTHER STATE AGENCIES. (a)
22 The commission's [department's] plan for administering medical
23 assistance must include procedures for using health services
24 administered by other state agencies pursuant to cooperative
25 arrangements.

26 (b) The commission [department] may enter into agreements
27 with appropriate state agencies that will enable the commission

1 [department] to implement Title XIX of the federal Social Security
2 Act (42 U.S.C. Section 1396 et seq.) to provide medical assistance
3 for individuals in institutions or in alternate care arrangements.
4 The agreements must comply with federal law and rules. The
5 commission [department] may make medical assistance payments in
6 accordance with the agreements. The agreements are not subject to
7 Chapter 771, Government Code [~~the Interagency Cooperation Act~~
8 (~~Article 4413(32), Vernon's Texas Civil Statutes~~)].

9 (c) State agencies responsible for the administration or
10 supervision of facilities to which medical assistance payments may
11 be made under federal law shall enter into the agreements with the
12 commission [department] and maintain compliance with the
13 agreements so that the commission [department] may receive federal
14 matching funds to support the medical assistance program.

15 (d) The commission [department] may pay medical assistance
16 to other facilities as required under federal law and rules.

17 Sec. 32.0231. ANNOUNCEMENT OF FUNDING OR PROGRAM CHANGE.

18 (a) The executive commissioner [department] shall publish notice
19 in the Texas Register of:

20 (1) any attempt to obtain a waiver of federal
21 regulations in the medical assistance program;

22 (2) any attempt to obtain or the receipt of funding
23 under Title XIX of the federal Social Security Act (42 U.S.C.
24 Section 1396 [~~301~~] et seq.) for a pilot program; and

25 (3) any amendment to the state medical assistance
26 plan.

27 (b) The notice must include the name and telephone number of

1 a commission [department] employee who can provide information
2 relating to the matter for which notice was published under this
3 section.

4 (c) The commission [department] shall provide to any
5 requestor information relating to a matter for which notice was
6 published, including the effect and cost of the change, any
7 possible cost savings, the criteria for receiving services, and the
8 number of people to be served.

9 SECTION 4.080. Sections 32.024(a), (b), (c), (c-1), (d),
10 (e), (f), (g), (h), (l), (n), (o), (p), (q), (r), (s), (t), (t-1),
11 (u), (v), (w), (x), (y), (z), (z-1), (aa), (bb), (cc), (ff), (gg),
12 (ii), and (jj), Human Resources Code, are amended to read as
13 follows:

14 (a) The commission [department] shall provide medical
15 assistance to all persons who receive financial assistance from the
16 state under Chapter 31 [~~of this code~~] and to other related groups of
17 persons if the provision of medical assistance to those persons is
18 required by federal law and rules as a condition for obtaining
19 federal matching funds for the support of the medical assistance
20 program.

21 (b) The commission [department] may provide medical
22 assistance to other persons who are financially unable to meet the
23 cost of medical services if federal matching funds are available
24 for that purpose. The executive commissioner [department] shall
25 adopt rules governing the eligibility of those persons for the
26 services.

27 (c) The executive commissioner [department] shall establish

1 standards governing the amount, duration, and scope of services
2 provided under the medical assistance program. The standards may
3 not be lower than the minimum standards required by federal law and
4 rule as a condition for obtaining federal matching funds for
5 support of the program[~~, and may not be lower than the standards in~~
6 ~~effect on August 27, 1967. Standards or payments for the vendor~~
7 ~~drug program may not be lower than those in effect on January 1,~~
8 ~~1973].~~.

9 (c-1) The commission [department] shall ensure that money
10 spent for purposes of the demonstration project for women's health
11 care services under former Section 32.0248[~~, Human Resources Code,~~]
12 or a similar successor program is not used to perform or promote
13 elective abortions, or to contract with entities that perform or
14 promote elective abortions or affiliate with entities that perform
15 or promote elective abortions.

16 (d) The executive commissioner [department] may establish
17 standards that increase the amount, duration, and scope of the
18 services provided only if federal matching funds are available for
19 the optional services and payments and if the executive
20 commissioner [department] determines that the increase is feasible
21 and within the limits of appropriated funds. The executive
22 commissioner [department] may establish and maintain priorities
23 for the provision of the optional medical services.

24 (e) The commission [department] may not authorize the
25 provision of any service to any person under the program unless
26 federal matching funds are available to pay the cost of the service.

27 (f) The executive commissioner [department] shall set the

1 income eligibility cap for persons qualifying for nursing facility
2 [home] care at an amount that is not less than \$1,104 and that does
3 not exceed the highest income for which federal matching funds are
4 payable. The executive commissioner [department] shall set the cap
5 at a higher amount than the minimum provided by this subsection if
6 appropriations made by the legislature for a fiscal year will
7 finance benefits at the higher cap for at least the same number of
8 recipients of the benefits during that year as were served during
9 the preceding fiscal year, as estimated by the commission
10 [department]. In setting an income eligibility cap under this
11 subsection, the executive commissioner [department] shall consider
12 the cost of the adjustment required by Subsection (g) [~~of this~~
13 ~~section~~].

14 (g) During a fiscal year for which the cap described by
15 Subsection (f) [~~of this section~~] has been set, the executive
16 commissioner [department] shall adjust the cap in accordance with
17 any percentage change in the amount of benefits being paid to social
18 security recipients during the year.

19 (h) Subject to the amount of the cap set as provided by
20 Subsections (f) and (g) [~~of this section~~], and to the extent
21 permitted by federal law, the income eligibility cap for the
22 community care for aged and disabled persons program shall be the
23 same as the income eligibility cap for nursing facility [home]
24 care. The executive commissioner [department] shall ensure that
25 the eligibility requirements for persons receiving other services
26 under the medical assistance program are not affected.

27 (l) The executive commissioner [department] shall set the

1 income eligibility cap for medical assistance for pregnant women
2 and infants up to age one at not less than 130 percent of the federal
3 poverty guidelines.

4 (n) The executive commissioner, [department] in the [~~its~~]
5 adoption of rules and standards governing the scope of hospital and
6 long-term services, shall authorize the providing of respite care
7 by hospitals.

8 (o) The executive commissioner [department], in the [~~its~~]
9 rules and standards governing the scope of hospital and long-term
10 services, shall establish a swing bed program in accordance with
11 federal regulations to provide reimbursement for skilled nursing
12 patients who are served in hospital settings provided that the
13 length of stay is limited to 30 days per year and the hospital is
14 located in a county with a population of 100,000 or less. If the
15 swing beds are used for more than one 30-day length of stay per
16 year, per patient, the hospital must comply with the minimum
17 licensing standards [~~Minimum Licensing Standards~~] as mandated by
18 Chapter 242, Health and Safety Code, and the Medicaid standards for
19 nursing facility [~~home~~] certification, as promulgated by the
20 executive commissioner [department].

21 (p) The commission [department] shall provide home
22 respiratory therapy services for ventilator-dependent persons to
23 the extent permitted by federal law.

24 (q) The commission [department] shall provide physical
25 therapy services.

26 (r) The commission [department], from funds otherwise
27 appropriated to the commission [department] for the early and

1 periodic screening, diagnosis, and treatment program, shall
2 provide to a child who is 14 years of age or younger, permanent
3 molar sealants as dental service under that program as follows:

4 (1) sealant shall be applied only to the occlusal
5 buccal and lingual pits and fissures of a permanent molar within
6 four years of its eruption;

7 (2) teeth to be sealed must be free of proximal caries
8 and free of previous restorations on the surface to be sealed;

9 (3) if a second molar is the prime tooth to be sealed,
10 a non-restored first molar may be sealed at the same sitting, if the
11 fee for the first molar sealing is no more than half the usual
12 sealant fee;

13 (4) the sealing of premolars and primary molars will
14 not be reimbursed; and

15 (5) replacement sealants will not be reimbursed.

16 (s) The executive commissioner [department], in the [its]
17 rules governing the early and periodic screening, diagnosis, and
18 treatment program, shall:

19 (1) revise the periodicity schedule to allow for
20 periodic visits at least as often as the frequency recommended by
21 the American Academy of Pediatrics and allow for interperiodic
22 screens without prior approval when there are indications that it
23 is medically necessary; and

24 (2) require, as a condition for eligibility for
25 reimbursement under the program for the cost of services provided
26 at a visit or screening, that a child younger than 15 years of age be
27 accompanied at the visit or screening by:

5 (t) The executive commissioner [department] by rule shall
6 require a physician, nursing facility, health care provider, or
7 other responsible party to obtain authorization from the commission
8 [department] or a person authorized to act on behalf of the
9 commission [department] on the same day or the next business day
10 following the day of transport when an ambulance is used to
11 transport a recipient of medical assistance under this chapter in
12 circumstances not involving an emergency and the request is for the
13 authorization of the provision of transportation for only one day.
14 If the request is for authorization of the provision of
15 transportation on more than one day, the executive commissioner
16 [department] by rule shall require a physician, nursing facility,
17 health care provider, or other responsible party to obtain a single
18 authorization before an ambulance is used to transport a recipient
19 of medical assistance under this chapter in circumstances not
20 involving an emergency. The rules must provide that:

1 (3) a request for authorization must be immediately
2 granted and must be effective for a period of not more than 180 days
3 from the date of issuance if the request includes a written
4 statement from a physician that:

5 (A) states that alternative means of
6 transporting the recipient are contraindicated; and

7 (B) is dated not earlier than the 60th day before
8 the date on which the request for authorization is made;

9 (4) a person denied payment for ambulance services
10 rendered is entitled to payment from the nursing facility, health
11 care provider, or other responsible party that requested the
12 services if:

13 (A) payment under the medical assistance program
14 is denied because of lack of prior authorization; and

15 (B) the person provides the nursing facility,
16 health care provider, or other responsible party with a copy of the
17 bill for which payment was denied;

18 (5) a person denied payment for services rendered
19 because of failure to obtain prior authorization or because a
20 request for prior authorization was denied is entitled to appeal
21 the denial of payment to the commission [department]; and

22 (6) the commission [department] or a person authorized
23 to act on behalf of the commission [department] must be available to
24 evaluate requests for authorization under this subsection not less
25 than 12 hours each day, excluding weekends and state holidays.

26 (t-1) The executive commissioner [department], in the [its]
27 rules governing the medical transportation program, may not

1 prohibit a recipient of medical assistance from receiving
2 transportation services through the program to obtain renal
3 dialysis treatment on the basis that the recipient resides in a
4 nursing facility.

5 (u) The executive commissioner [department] by rule shall
6 require a health care provider who arranges for durable medical
7 equipment for a child who receives medical assistance under this
8 chapter to:

9 (1) ensure that the child receives the equipment
10 prescribed, the equipment fits properly, if applicable, and the
11 child or the child's parent or guardian, as appropriate considering
12 the age of the child, receives instruction regarding the
13 equipment's use; and

14 (2) maintain a record of compliance with the
15 requirements of Subdivision (1) in an appropriate location.

16 (v) The executive commissioner [department] by rule shall
17 provide a screening test for hearing loss in accordance with
18 Chapter 47, Health and Safety Code, and any necessary diagnostic
19 follow-up care related to the screening test to a child younger than
20 30 days old who receives medical assistance.

21 (w) The executive commissioner [department] shall set a
22 personal needs allowance of not less than \$60 a month for a resident
23 of a convalescent or nursing facility [home] or related institution
24 licensed under Chapter 242, Health and Safety Code, assisted living
25 [personal care] facility, ICF-IID [ICF-MR] facility, or other
26 similar long-term care facility who receives medical
27 assistance. The commission [department] may send the personal

1 needs allowance directly to a resident who receives Supplemental
2 Security Income (SSI) (42 U.S.C. Section 1381 et seq.). This
3 subsection does not apply to a resident who is participating in a
4 medical assistance waiver program administered by the commission
5 ~~[department]~~.

6 (x) The commission ~~[department]~~ shall provide dental
7 services annually to a resident of a nursing facility who is a
8 recipient of medical assistance under this chapter. The dental
9 services must include:

- 10 (1) a dental examination by a licensed dentist;
11 (2) a prophylaxis by a licensed dentist or licensed
12 dental hygienist, if practical considering the health of the
13 resident; and
14 (3) diagnostic dental x-rays, if possible.

15 (y) The commission ~~[department]~~ shall provide medical
16 assistance to a person in need of treatment for breast or cervical
17 cancer who is eligible for that assistance under the Breast and
18 Cervical Cancer Prevention and Treatment Act of 2000 (Pub. L.
19 No. 106-354) for a continuous period during which the person
20 requires that treatment. The executive commissioner ~~[department]~~
21 shall simplify the provider enrollment process for a provider of
22 that medical assistance and shall adopt rules to provide for
23 certification of presumptive eligibility of a person for that
24 assistance. In determining a person's eligibility for medical
25 assistance under this subsection, the executive commissioner
26 ~~[department]~~, to the extent allowed by federal law, may not require
27 a personal interview.

1 (z) In the executive commissioner's [~~its~~] rules and
2 standards governing the vendor drug program, the executive
3 commissioner [~~department~~], to the extent allowed by federal law and
4 if the executive commissioner [~~department~~] determines the policy to
5 be cost-effective, may ensure that a recipient of prescription drug
6 benefits under the medical assistance program does not, unless
7 authorized by the commission [~~department~~] in consultation with the
8 recipient's attending physician or advanced practice nurse,
9 receive under the medical assistance program:

10 (1) more than four different outpatient brand-name
11 prescription drugs during a month; or
12 (2) more than a 34-day supply of a brand-name
13 prescription drug at any one time.

14 (z-1) Subsection (z) does not affect any other limit on
15 prescription medications otherwise prescribed by commission
16 [~~department~~] rule.

17 (aa) The commission [~~department~~] shall incorporate
18 physician-oriented instruction on the appropriate procedures for
19 authorizing ambulance service into current medical education
20 courses.

21 (bb) The commission [~~department~~] may not provide an
22 erectile dysfunction medication under the Medicaid vendor drug
23 program to a person required to register as a sex offender under
24 Chapter 62, Code of Criminal Procedure, to the maximum extent
25 federal law allows the commission [~~department~~] to deny that
26 medication.

27 (cc) In this subsection, "deaf" and "hard of hearing" have

1 the meanings assigned by Section [81.001](#). Subject to the
2 availability of funds, the commission [department] shall provide
3 interpreter services as requested during the receipt of medical
4 assistance under this chapter to:

5 (1) a person receiving that assistance who is deaf or
6 hard of hearing; or

7 (2) a parent or guardian of a person receiving that
8 assistance if the parent or guardian is deaf or hard of hearing.

9 (ff) The executive commissioner [department] shall
10 establish a separate provider type for prosthetic and orthotic
11 providers for purposes of enrollment as a provider of and
12 reimbursement under the medical assistance program. The executive
13 commissioner [department] may not classify prosthetic and orthotic
14 providers under the durable medical equipment provider type.

15 (gg) Notwithstanding any other law, including Sections
16 [843.312](#) and [1301.052](#), Insurance Code, the commission [department]
17 shall ensure that advanced practice registered nurses and physician
18 assistants may be selected by and assigned to recipients of medical
19 assistance as the primary care providers of those recipients. The
20 commission [department] must require that advanced practice
21 registered nurses and physician assistants be treated in the same
22 manner as primary care physicians with regard to:

23 (1) selection and assignment as primary care
24 providers; and

25 (2) inclusion as primary care providers in any
26 directory of providers of medical assistance maintained by the
27 commission [department].

1 (ii) The commission [department] shall provide medical
2 assistance reimbursement to a pharmacist who is licensed to
3 practice pharmacy in this state, is authorized to administer
4 immunizations in accordance with rules adopted by the Texas State
5 Board of Pharmacy, and administers an immunization to a recipient
6 of medical assistance to the same extent the commission
7 [department] provides reimbursement to a physician or other health
8 care provider participating in the medical assistance program for
9 the administration of that immunization.

10 (jj) The executive commissioner [department] shall
11 establish a separate provider type for prescribed pediatric
12 extended care centers licensed under Chapter 248A, Health and
13 Safety Code, for purposes of enrollment as a provider for and
14 reimbursement under the medical assistance program.

15 SECTION 4.081. Section 32.024(i), Human Resources Code, as
16 amended by Chapters 198 (H.B. 2292) and 1251 (S.B. 1862), Acts of
17 the 78th Legislature, Regular Session, 2003, is reenacted and
18 amended to read as follows:

19 (i) [Subject to appropriated state funds, the] The
20 executive commissioner [department] in adopting [its adoption of]
21 rules may establish a medically needy program that serves pregnant
22 women, children, and caretakers who have high medical expenses,
23 subject to the availability of appropriated funds.

24 SECTION 4.082. Sections 32.0241, 32.0242, and 32.0243,
25 Human Resources Code, are amended to read as follows:

26 Sec. 32.0241. REVIEW OF WAIVER REQUEST. The commission
27 [department] shall, at least biennially, review the feasibility of

1 requesting a waiver for the elderly under Section 1915(c), federal
2 Social Security Act (42 U.S.C. Section 1396n), if the reimbursement
3 rates for nursing facilities [homes] under the medical assistance
4 program have increased since the preceding review.

5 Sec. 32.0242. VERIFICATION OF CERTAIN INFORMATION. To the
6 extent possible, the commission [~~department~~] shall verify an
7 applicant's residential address at the time the application for
8 medical assistance is filed.

9 Sec. 32.0243. PERIODIC REVIEW OF ELIGIBILITY FOR CERTAIN
10 RECIPIENTS. (a) The commission [~~department~~], in cooperation with
11 the United States Social Security Administration, shall
12 periodically review the eligibility of a recipient of medical
13 assistance who is eligible on the basis of the recipient's
14 eligibility for Supplemental Security Income (SSI) benefits under
15 42 U.S.C. Section 1381 et seq., as amended.

16 (b) In reviewing the eligibility of a recipient as required
17 by Subsection (a), the commission [~~department~~] shall ensure that
18 only recipients who reside in this state and who continue to be
19 eligible for Supplemental Security Income (SSI) benefits under 42
20 U.S.C. Section 1381 et seq., as amended, remain eligible for
21 medical assistance.

22 SECTION 4.083. The heading to Section **32.0244**, Human
23 Resources Code, is amended to read as follows:

24 Sec. 32.0244. NURSING FACILITY [~~HOME~~] BEDS IN CERTAIN
25 COUNTIES.

26 SECTION 4.084. Sections **32.0244**(a), (c), and (d), Human
27 Resources Code, are amended to read as follows:

1 (a) At the request of the commissioners court of a county in
2 which not more than two nursing facilities are certified to
3 participate in the state Medicaid program, and subject to
4 Subsection (d), the commission [department] may contract for
5 additional nursing facility [~~home~~] beds under the state Medicaid
6 program in the county without regard to the occupancy rate of
7 available Medicaid beds.

8 (c) A commissioners court shall determine whether to
9 proceed with a request after considering all comments and proposals
10 received in response to the notices provided under Subsection (b).
11 If the commissioners court proceeds with the request, the court may
12 recommend that the commission [department] contract with a specific
13 nursing facility that submitted a proposal. In determining whether
14 to proceed with the request and whether to recommend a specific
15 nursing facility, the commissioners court shall consider:

16 (1) the demographic and economic needs of the county;
17 (2) the quality of existing nursing facility services
18 under the state Medicaid program in the county;
19 (3) the quality of the proposals submitted; and
20 (4) the degree of community support for additional
21 nursing facility services.

22 (d) The commission [department] may not contract under this
23 section for more than 120 additional nursing facility [~~home~~] beds
24 per county per year and may not exceed 500 additional nursing
25 facility [~~home~~] beds statewide in a calendar year.

26 SECTION 4.085. Section 32.0245, Human Resources Code, is
27 amended to read as follows:

1 Sec. 32.0245. NURSING FACILITY [~~HOME~~] BEDS FOR CERTAIN
2 FACILITIES TREATING ALZHEIMER'S DISEASE. The commission
3 [~~department~~] shall waive for a nursing facility a restriction
4 imposed by state law on the authority to contract under the state
5 Medicaid program for nursing facility [~~home~~] beds based on the
6 percentage of beds that are occupied in a geographical area if the
7 facility:

8 (1) is affiliated with a medical school operated by
9 the state;

10 (2) is participating in a research program for the
11 care and treatment of persons with Alzheimer's disease; and

12 (3) is designed to separate and treat Alzheimer's
13 disease by stage or functional level.

14 SECTION 4.086. Section 32.02451, Human Resources Code, is
15 amended to read as follows:

16 Sec. 32.02451. ADDITIONAL PERSONAL NEEDS ALLOWANCE FOR
17 GUARDIANSHIP EXPENSES OF CERTAIN RECIPIENTS. (a) In this section,
18 "applied income" has the meaning assigned by Section 1155.201,
19 Estates [~~670, Texas Probate~~] Code.

20 (b) To the extent allowed by federal law, the commission
21 [~~department~~], in computing the applied income of a recipient of
22 medical assistance, shall deduct in the manner provided by this
23 section an additional personal needs allowance from the earned and
24 unearned income of the recipient or, if applicable, the recipient
25 and the recipient's spouse, for compensation and costs ordered to
26 be deducted under Section 1155.202, Estates [~~670, Texas Probate~~]
27 Code. Subject to Subsection (f), a deduction ordered by the court

1 under Section 1155.202, Estates [670, ~~Texas Probate~~] Code, is
2 effective beginning on the later of:

- 3 (1) the month in which the order is signed; or
4 (2) the first month of medical assistance eligibility
5 for which the recipient is subject to a copayment.

6 (c) The commission [~~department~~] shall compute the applied
7 income of a recipient of medical assistance as follows:

8 (1) the commission [~~department~~] shall deduct from the
9 earned and unearned income the personal needs allowance authorized
10 by Section 32.024(w) before making any other deduction;

11 (2) if after the deduction under Subdivision (1) the
12 recipient has remaining income, the commission [~~department~~] shall
13 deduct the lesser of the following:

14 (A) the amount of the remaining income; or
15 (B) the amount of the additional personal needs
16 allowance for compensation and costs ordered to be deducted under
17 Section 1155.202, Estates [670, ~~Texas Probate~~] Code; and

18 (3) if after the deductions under Subdivisions (1) and
19 (2) the recipient has remaining income, the commission [~~department~~]
20 shall deduct any other authorized allowances.

21 (d) The amount of income remaining, if any, after the
22 commission [~~department~~] makes the deductions as provided by
23 Subsection (c) is the amount of the applied income of the recipient
24 of medical assistance.

25 (e) The executive commissioner [~~of the Health and Human~~
26 ~~Services Commission~~] shall adopt rules providing a procedure by
27 which a recipient of medical assistance for whom amounts are

1 ordered deducted under Section 1155.202, Estates [~~670, Texas Probate~~] Code, may submit to the commission [~~department~~] a copy of
2 the court order issued under that section to receive a deduction of
3 those amounts from the recipient's income as provided by this
4 section.

5 (f) The commission [~~department~~] may not allow a deduction
6 for the additional personal needs allowance for compensation and
7 costs ordered to be deducted under Section 1155.202, Estates [~~670, Texas Probate~~] Code, if the order is issued after the recipient of
8 medical assistance dies.

9 SECTION 4.087. Sections 32.0247(b), (c), (d), and (e),
10 Human Resources Code, are amended to read as follows:

11 (b) The commission [~~department~~] shall provide medical
12 assistance, in accordance with commission [~~department~~] rules, to an
13 independent foster care adolescent who:

14 (1) is not otherwise eligible for medical assistance;
15 and

16 (2) is not covered by a health benefits plan offering
17 adequate benefits, as determined by the commission [~~Health and Human Services Commission~~].

18 (c) To the extent allowed by federal law, the executive
19 commissioner [~~The department~~] shall by rule establish a specific
20 set of income, assets, or resources allowable for recipients under
21 this section. The income level shall not be less than 200 percent
22 or more than 400 percent of the federal poverty level. Allowable
23 asset or resource levels shall not be less than:
24

25 (1) the levels allowed for individuals who are in
26

1 foster care; and

2 (2) the levels allowed for a person under 19 years of
3 age who is eligible for the medical assistance program.

4 (d) In setting allowable income, asset, or resource levels,
5 the executive commissioner [department] shall, to the extent
6 allowed by federal law, exclude:

7 (1) any financial benefit used for the purpose of
8 educational or vocational training, such as scholarships, student
9 loans, or grants;

10 (2) any financial benefit used for the purpose of
11 housing; and

12 (3) any grants or subsidies obtained as a result of the
13 Foster Care Independence Act of 1999 (Pub. L. No. 106-169).

14 (e) The Department of Family and Protective [and
15 ~~Regulatory~~] Services shall certify the income, assets, or resources
16 of each individual on the date the individual exits substitute
17 care. An individual qualifying for medical assistance as
18 established by this section shall remain eligible for 12 calendar
19 months after certification and after each recertification.

20 SECTION 4.088. Section 32.02471(b), Human Resources Code,
21 is amended to read as follows:

22 (b) The commission [department] shall provide medical
23 assistance to a person who:

24 (1) is 21 years of age or older but younger than 23
25 years of age;

26 (2) would be eligible to receive assistance as an
27 independent foster care adolescent under Section 32.0247 if the

1 person were younger than 21 years of age; and

8 SECTION 4.089. Section 32.025, Human Resources Code, is
9 amended to read as follows:

Sec. 32.025. APPLICATION FOR MEDICAL ASSISTANCE. (a) A
recipient of benefits under Chapter 31 [~~of this code~~] or
supplemental security income from the federal government is
automatically eligible for medical assistance, and an application for
benefits under these programs constitutes an application for
medical assistance.

16 (b) The executive commissioner [department] shall prescribe
17 application forms for persons who are not recipients of benefits
18 under Chapter 31 [~~of this code~~] or supplemental security income
19 from the federal government and shall adopt rules for processing
20 the applications.

21 (c) The commission [department] shall inform applicants for
22 nursing facility [home] care of any community services which might
23 be available under the community care for the aged and disabled
24 program.

25 (d) The executive commissioner [department] shall adopt an
26 application form and procedures for a request for medical
27 assistance provided to a child under 19 years of age. To the extent

1 allowed by federal law and except as otherwise provided by this
2 section, the application form and procedures must be the same as the
3 form and procedures adopted under Section 62.103, Health and Safety
4 Code. The executive commissioner [department] shall coordinate the
5 form and procedures adopted under this subsection with the form and
6 procedures adopted under Section 62.103, Health and Safety Code, to
7 ensure that there is a single consolidated application for a child
8 under 19 years of age to seek medical assistance or to request
9 coverage under the state child health plan under Chapter 62, Health
10 and Safety Code.

11 (e) The executive commissioner [department] shall permit an
12 application requesting medical assistance for a child under 19
13 years of age to be conducted by mail instead of through a personal
14 appearance at an [a department] office, unless the executive
15 commissioner [department] determines that the information needed
16 to verify eligibility cannot be obtained in that manner. The
17 executive commissioner [department] by rule may develop procedures
18 requiring an application for a child described by this subsection
19 to be conducted through a personal interview with a commission
20 [department] representative only if the executive commissioner
21 [department] determines that information needed to verify
22 eligibility cannot be obtained in any other manner.

23 (f) The executive commissioner by rule may develop
24 procedures by which:

25 (1) any office of a health and human services agency
26 may accept an application requesting medical assistance for a child
27 under 19 years of age; and

1 (2) the commission [department] may contract with
2 hospital districts, hospitals, including state-owned teaching
3 hospitals, federally qualified health centers, and county health
4 departments to accept applications requesting medical assistance
5 for a child under 19 years of age.

6 SECTION 4.090. Sections [32.0251](#), [32.0255](#), [32.026](#), [32.0261](#),
7 and [32.02611](#), Human Resources Code, are amended to read as follows:

8 Sec. 32.0251. ELIGIBILITY NOTIFICATION AND REVIEW FOR
9 CERTAIN CHILDREN. (a) The executive commissioner [department]
10 shall establish and the commission shall implement procedures under
11 which the commission [department] automatically reviews a child's
12 eligibility for medical assistance if:

13 (1) the child originally establishes eligibility for
14 medical assistance on the basis of receipt of financial assistance
15 under Chapter 31, as provided by Section [32.025\(a\)](#); and

16 (2) that receipt of financial assistance under Chapter
17 31 ceases.

18 (b) If the review required by this section indicates that
19 the child may be eligible for medical assistance on a basis other
20 than receipt of financial assistance under Chapter 31, the
21 commission [department] may provide for provisional eligibility
22 for medical assistance for the child pending a recertification
23 review. The provisional eligibility period authorized by this
24 subsection may not exceed one month.

25 (c) In addition to the review required by this section, the
26 commission [department] shall also promote continued medical
27 assistance for a child described by Subsection (a) through:

1 (1) revising client education and notification
2 policies relating to a child's eligibility for medical assistance;
3 and

4 (2) providing specific notification of a child's
5 potential eligibility for medical assistance to the child's parent
6 or other caretaker at the time the parent or caretaker is notified
7 of:

8 (A) a scheduled eligibility recertification
9 review; or

10 (B) the termination of financial assistance.

11 Sec. 32.0255. TRANSITIONAL MEDICAL ASSISTANCE. (a) The
12 commission [~~state~~] shall provide transitional medical assistance,
13 in accordance with state rules and federal law, to a person who was
14 receiving financial assistance under Chapter 31 but is no longer
15 eligible to receive the assistance because:

16 (1) the person's household income has increased; or

17 (2) the person has exhausted the person's benefits
18 under Section 31.0065.

19 (b) Except as provided by Section 31.012(c), the commission
20 [~~state~~] may provide the medical assistance only until the earlier
21 of:

22 (1) the end of the applicable period prescribed by
23 Section 31.0065 for the provision of transitional benefits; or

24 (2) the first anniversary of the date on which the
25 person becomes ineligible for financial assistance because of
26 increased household income.

27 Sec. 32.026. CERTIFICATION OF ELIGIBILITY AND NEED FOR

1 MEDICAL ASSISTANCE. (a) The executive commissioner [department]
2 shall promulgate rules for determining and certifying a person's
3 eligibility and need for medical assistance.

4 (b) The executive commissioner [department] shall
5 promulgate rules to provide for determination and certification of
6 presumptive eligibility for any pregnant woman who applies for
7 Medicaid and who meets the basic eligibility requirements under
8 Title XIX of the federal Social Security Act (42 U.S.C. Section 1396
9 et seq.).

10 (c) Medical assistance payments may not be made on a
11 person's behalf until the person's eligibility and need for medical
12 assistance have been certified in accordance with commission [the
13 ~~department's~~] rules.

14 (d) In adopting rules under this section, the executive
15 commissioner [department] shall ensure, to the extent allowed by
16 federal law, that documentation and verification procedures used in
17 determining and certifying the eligibility and need for medical
18 assistance of a child under 19 years of age, including the
19 documentation and verification procedures used to evaluate the
20 assets and resources of the child, the child's parents, or the
21 child's other caretaker for that purpose, if applicable, are the
22 same as the documentation and verification procedures used to
23 determine and certify a child's eligibility for coverage under
24 Chapter 62, Health and Safety Code, except that the documentation
25 and verification procedures adopted in accordance with this
26 subsection may not be more stringent than the documentation and
27 verification procedures existing on January 1, 2001, for

1 determination and certification of a child's eligibility for
2 coverage under Chapter 62, Health and Safety Code.

3 (d-1) In adopting rules under this section, the executive
4 commissioner [of the Health and Human Services Commission] shall,
5 to the extent allowed by federal law, develop and implement an
6 expedited process for determining eligibility for and enrollment in
7 the medical assistance program for an active duty member of the
8 United States armed forces, reserves, or National Guard or of the
9 state military forces, or the spouse or dependent of that person.

10 (e) The executive commissioner [department] shall permit a
11 recertification review of the eligibility and need for medical
12 assistance of a child under 19 years of age to be conducted by
13 telephone or mail instead of through a personal appearance at an [~~a~~
14 ~~department~~] office, unless the commission [department] determines
15 that the information needed to verify eligibility cannot be
16 obtained in that manner. The executive commissioner [department]
17 by rule may develop procedures to determine whether there is a need
18 for a recertification review of a child described by this
19 subsection to be conducted through a personal interview with a
20 commission [department] representative. Procedures developed
21 under this subsection shall be based on objective, risk-based
22 factors and conditions and shall focus on a targeted group of
23 recertification reviews for which there is a high probability that
24 eligibility will not be recertified.

25 (f) In adopting rules under this section, the executive
26 commissioner [department] shall ensure, to the extent allowed by
27 federal law, that forms and procedures used in conducting a

1 recertification review of the eligibility and need for medical
2 assistance of a child under 19 years of age, including
3 documentation and verification procedures, are the same as the
4 forms and procedures used to determine and certify a child's
5 renewal of coverage under Chapter 62, Health and Safety Code.

6 (g) Notwithstanding any other provision of this code, the
7 commission [department] may use information obtained from a third
8 party to verify the assets and resources of a person for purposes of
9 determining the person's eligibility and need for medical
10 assistance to the extent that verification is applicable under
11 federal law. Third-party information includes information
12 obtained from:

13 (1) a consumer reporting agency, as defined by Section
14 20.01, Business & Commerce Code;
15 (2) an appraisal district; or
16 (3) the Texas Department of Motor Vehicles vehicle
17 registration record database.

18 Sec. 32.0261. CONTINUOUS ELIGIBILITY. The executive
19 commissioner [department] shall adopt rules in accordance with 42
20 U.S.C. Section 1396a(e)(12), as amended, to provide for a period of
21 continuous eligibility for a child under 19 years of age who is
22 determined to be eligible for medical assistance under this
23 chapter. The rules shall provide that the child remains eligible
24 for medical assistance, without additional review by the commission
25 [department] and regardless of changes in the child's resources or
26 income, until the earlier of:

27 (1) the end of the six-month period following the date

1 on which the child's eligibility was determined; or
2 (2) the child's 19th birthday.

3 Sec. 32.02611. EXCLUSION OF ASSETS IN PREPAID TUITION
4 PROGRAMS AND HIGHER EDUCATION SAVINGS PLANS. (a) Except
5 as provided by Subsection (b), in determining eligibility and need
6 for medical assistance, the commission [department] may not
7 consider as assets or resources, to the extent applicable under
8 federal law, a right to assets held in or a right to receive
9 payments or benefits under:

25 (c) Notwithstanding Subsection (b), the commission
26 [redacted] shall seek a federal waiver authorizing the commission
27 [redacted] to exclude, for purposes of determining the

1 eligibility of an applicant described by that subsection and to the
2 extent included under federal law, the right to assets held in or a
3 right to receive payments or benefits under any fund, plan, or
4 tuition program described by Subsection (a) if the fund, plan, or
5 tuition program was established before the 21st birthday of the
6 beneficiary of the fund, plan, or tuition program.

7 SECTION 4.091. Sections 32.02613(a), (l), (m), and (o),
8 Human Resources Code, are amended to read as follows:

9 (a) For purposes of this section, "long-term care services
10 and support" includes home health care, assisted living, and
11 nursing facility [~~home~~] services.

12 (l) The commission [~~department~~] shall educate applicants
13 for long-term care services and support under the medical
14 assistance program about options for life insurance policies,
15 including options that do not allow a life insurance policy to be
16 considered as an asset or resource in determining eligibility for
17 medical assistance.

18 (m) The executive commissioner [~~of the Health and Human~~
19 Services Commission], in consultation with the commissioner of
20 insurance, shall adopt rules necessary to implement this section.

21 The rules must ensure that:

22 (1) proceeds from a life settlement contract are used
23 to reimburse a provider of long-term care services and support or
24 the state to offset the cost of medical assistance long-term care
25 services and support;

26 (2) eligibility and need for medical assistance are
27 determined without considering the balance of proceeds from a life

1 settlement contract as provided in this section; and

(3) payments to a provider of long-term care services and support and applied income payments are made in accordance with this chapter.

5 (o) Notwithstanding the provisions of this section, the
6 commission [department] may not implement a provision of this
7 section if the commission determines that implementation of the
8 provision is not cost-effective or feasible.

9 SECTION 4.092. Sections 32.0262 and 32.0263, Human
10 Resources Code, are amended to read as follows:

Sec. 32.0262. ELIGIBILITY TRANSITION. (a) The executive
commissioner [department] shall develop procedures to ensure that
all necessary information regarding a child who will be denied
continued medical assistance under this chapter because of an
increase in income, assets, or resources but who is eligible for
enrollment in the child health plan under Chapter 62, Health and
Safety Code, is promptly transmitted to the child health plan in
accordance with the standards established under Section [62.104\(d\)](#),
Health and Safety Code.

20 (b) The executive commissioner [department] shall develop
21 procedures to ensure that the parent or caretaker of a child who
22 will be denied continued medical assistance under this chapter
23 because of a failure to keep an appointment, including an
24 appointment for recertification of eligibility, a failure to
25 provide information, or for another procedural reason, is promptly
26 contacted and informed of:

27 (1) the need to recertify eligibility for continued

1 medical assistance under this chapter; and

2 (2) the availability of medical coverage under the
3 child health plan under Chapter 62, Health and Safety Code.

4 (c) The commission [department] shall develop materials
5 under this section in consultation with [~~the Health and Human~~
6 ~~Services Commission and~~] the appropriate agencies administering
7 all or part of the child health plan under Chapter 62, Health and
8 Safety Code.

9 (d) The executive commissioner [department] by rule shall
10 adopt procedures to assist a family whose child loses eligibility
11 for medical assistance under this chapter in making a transition to
12 the child health plan under Chapter 62, Health and Safety Code, with
13 no interruption in coverage.

14 Sec. 32.0263. HEALTH CARE ORIENTATION. (a) The commission
15 [~~department~~] shall require that the parent or guardian of a child
16 under 19 years of age who originally establishes eligibility for
17 medical assistance must:

18 (1) attend an in-person counseling session with a
19 commission [department] representative not later than the 31st day
20 after the date the child originally establishes eligibility; or

21 (2) accompany the child to an appointment with a
22 health care provider for a comprehensive health care orientation
23 not later than the 61st day after the date the child originally
24 establishes eligibility.

25 (b) The executive commissioner by rule shall develop
26 procedures to verify that:

27 (1) the parent or guardian of the child who originally

1 establishes eligibility complies with the requirement of
2 Subsection (a)(2), if applicable; and

3 (2) the child is provided a comprehensive health care
4 orientation at the appointment with the health care provider.

5 SECTION 4.093. Sections 32.027(a), (d), (f), (h), (i), and
6 (l), Human Resources Code, are amended to read as follows:

7 (a) Except as provided by Subsections (f) and[~~–~~] (g), [and
8 (~~h~~)] a recipient of medical assistance authorized in this chapter
9 may select any provider authorized by the commission [~~department~~]
10 to provide medical assistance.

11 (d) The commission [~~department~~] shall permit a recipient of
12 medical assistance under this chapter to receive services relating
13 to physical therapy from any person authorized to practice physical
14 therapy under Chapter 453, Occupations Code.

15 (f) The executive commissioner [~~of the Health and Human~~
16 ~~Services Commission~~] by rule may develop a system of selective
17 contracting with health care providers for the provision of
18 nonemergency inpatient hospital services to a recipient of medical
19 assistance under this chapter. In implementing this subsection,
20 the executive commissioner shall:

21 (1) seek input from consumer representatives and from
22 representatives of hospitals licensed under Chapter 241, Health and
23 Safety Code, and from organizations representing those hospitals;
24 and

25 (2) ensure that providers selected under the system
26 meet the needs of a recipient of medical assistance under this
27 chapter.

1 (h) A proposal or bid submitted by a hospital and any work
2 papers, cost reports, or other financial data used to prepare the
3 proposal or bid shall be confidential and not subject to required
4 disclosure by the commission [department] or the hospital under any
5 other statute until the executed contracts have been awarded.

6 (i) In its establishment of provider criteria for
7 hospitals, home health providers, or hospice providers, the
8 commission [department] shall accept licensure by the Department of
9 Aging and Disability Services or the Department of State Health
10 Services, as appropriate, [~~Texas Department of Health~~] or
11 certification by the Medicare program, Title XVIII of the Social
12 Security Act (42 U.S.C. Section 1395 et seq.).

13 (1) Subject to appropriations, the commission [department]
14 shall assure that a recipient of medical assistance under this
15 chapter may select a licensed psychologist, a licensed marriage and
16 family therapist, as defined by Section 502.002, Occupations Code,
17 a licensed professional counselor, as defined by Section 503.002,
18 Occupations Code, or a licensed master social worker, as defined by
19 Section 505.002, Occupations Code, to perform any health care
20 service or procedure covered under the medical assistance program
21 if the selected person is authorized by law to perform the service
22 or procedure. This subsection shall be liberally construed.

23 SECTION 4.094. Section 32.027(j), Human Resources Code, as
24 added by Chapter 812 (H.B. 803), Acts of the 77th Legislature,
25 Regular Session, 2001, is amended to read as follows:

26 (j) The commission [department] shall assure that a
27 recipient of medical assistance under this chapter may select a

1 nurse first assistant, as defined by Section 301.354 [~~301.1525~~],
2 Occupations Code, to perform any health care service or procedure
3 covered under the medical assistance program if:

4 (1) the selected nurse first assistant is authorized
5 by law to perform the service or procedure; and

6 (2) the physician requests that the service or
7 procedure be performed by the nurse first assistant.

8 SECTION 4.095. Subsection (j), Section 32.027, Human
9 Resources Code, as added by Chapter 1014 (H.B. 1183), Acts of the
10 77th Legislature, Regular Session, 2001, is redesignated as
11 Subsection (k), Section 32.027, Human Resources Code, and amended
12 to read as follows:

13 (k) [→] The commission [~~department~~] shall assure that a
14 recipient of medical assistance under this chapter may select a
15 surgical assistant licensed under Chapter 206, Occupations Code, to
16 perform any health care service or procedure covered under the
17 medical assistance program if:

18 (1) the selected surgical assistant is authorized by
19 law to perform the service or procedure; and

20 (2) the physician requests that the service or
21 procedure be performed by the surgical assistant.

22 SECTION 4.096. Sections 32.028(a), (d), (e), (f), (g), (h),
23 (i), (j), (l), and (n), Human Resources Code, are amended to read as
24 follows:

25 (a) The executive commissioner [~~department~~] shall adopt
26 reasonable rules and standards governing the determination of fees,
27 charges, and rates for medical assistance payments.

1 (d) The executive commissioner [department] in the [its]
2 adoption of reasonable rules and standards governing the
3 determination of rates paid for inpatient hospital services on a
4 prospective payment basis shall:

5 (1) assure that the payment rates are reasonable and
6 adequate to meet the costs incurred by the hospital in rendering
7 services to Medicaid recipients;

8 (2) assure that the prospective payment methodology
9 for hospital services sets the hospital-specific standardized
10 amount at a minimum level of \$1,600; and

11 (3) assure that the adjustment in payment rates for
12 hospital services furnished by disproportionate share hospitals
13 takes into account the essential role of rural hospitals in
14 providing access to hospital services to medically indigent persons
15 in rural areas of the state.

16 (e) The executive commissioner [department] in the [its]
17 adoption of reasonable rules and standards governing the
18 determination of rates paid for services provided by a federally
19 qualified health center, as defined by 42 U.S.C. Section
20 1396d(1)(2)(B), shall assure that a center is reimbursed for 100
21 percent of reasonable costs incurred by the center in rendering
22 services to Medicaid recipients.

23 (f) The executive commissioner [department] in the [its]
24 adoption of reasonable rules and standards governing the
25 determination of rates paid for services provided by a rural health
26 clinic, as defined by 42 U.S.C. Section 1396d(1)(1), shall assure
27 that a clinic is reimbursed for 100 percent of reasonable costs

1 incurred by the clinic in rendering services to Medicaid
2 recipients.

3 (g) Subject to Subsection (i), the executive commissioner
4 [~~Health and Human Services Commission~~] shall ensure that the rules
5 governing the determination of rates paid for nursing facility
6 [~~home~~] services improve the quality of care by:

7 (1) providing a program offering incentives for
8 increasing direct care staff and direct care wages and benefits,
9 but only to the extent that appropriated funds are available after
10 money is allocated to base rate reimbursements as determined by the
11 commission's [~~Health and Human Services Commission's~~] nursing
12 facility rate setting methodologies; and

13 (2) if appropriated funds are available after money is
14 allocated for payment of incentive-based rates under Subdivision
15 (1), providing incentives that incorporate the use of a quality of
16 care index, a customer satisfaction index, and a resolved
17 complaints index developed by the commission.

18 (h) The executive commissioner [~~Health and Human Services~~
19 ~~Commission~~] shall ensure that the rules governing the determination
20 of rates paid for nursing facility [~~home~~] services provide for the
21 rate component derived from reported liability insurance costs to
22 be paid only to those facilities [~~homes~~] that purchase liability
23 insurance acceptable to the commission.

24 (i) The executive commissioner [~~Health and Human Services~~
25 ~~Commission~~] shall ensure that rules governing the incentives
26 program described by Subsection (g)(1):

27 (1) provide that participation in the program by a

1 nursing facility [home] is voluntary;

2 (2) do not impose on a nursing facility [home] not

3 participating in the program a minimum spending requirement for

4 direct care staff wages and benefits;

5 (3) do not set a base rate for a nursing facility

6 [home] participating in the program that is more than the base rate

7 for a nursing facility [home] not participating in the program; and

8 (4) establish a funding process to provide incentives

9 for increasing direct care staff and direct care wages and benefits

10 in accordance with appropriations provided.

11 (j) The executive commissioner [~~Health and Human Services~~

12 ~~Commission~~] shall adopt rules governing the determination of the

13 amount of reimbursement or credit for restocking drugs under

14 Section 562.1085, Occupations Code, that recognize the costs of

15 processing the drugs, including the cost of:

16 (1) reporting the drug's prescription number and date

17 of original issue;

18 (2) verifying whether the drug's expiration date or

19 the drug's recommended shelf life exceeds 120 days;

20 (3) determining the source of payment; and

21 (4) preparing credit records.

22 (l) The executive commissioner [~~commission~~] shall establish

23 a task force to develop the rules necessary to implement

24 Subsections (j) and (k). The task force must include

25 representatives of nursing facilities and pharmacists.

26 (n) The executive commissioner [~~commission~~] shall ensure

27 that rules governing the determination of rates paid for nursing

1 facility [home] services provide for the reporting of all revenue
2 and costs, without regard to whether a cost is an allowable cost for
3 reimbursement under the medical assistance program, except:
4 (1) as provided by Subsection (h); and
5 (2) a penalty imposed under this chapter or Chapter
6 242, Health and Safety Code.

7 SECTION 4.097. Sections 32.0281(a), (b), (c), and (e),
8 Human Resources Code, are amended to read as follows:

9 (a) The executive commissioner [~~department~~] shall by rule
10 describe the process used to determine payment rates for medical
11 assistance and shall notify providers, consumers, the Legislative
12 Budget Board, and the Governor's Office of Budget, Planning, and
13 Policy [~~governor's office for budget and planning~~] of that process.

14 (b) The executive commissioner [~~department~~] shall adopt
15 rules relating to payment rates that include:

16 (1) a description of the process used to determine
17 payment rates;

18 (2) a description of each cost of living index used in
19 calculating inflation rates and the procedure for determining the
20 level of inflation used in the executive commissioner's
21 [~~department's~~] calculations;

22 (3) the criteria for desk audits;

23 (4) the procedure for notifying providers of
24 exclusions and adjustments to reported expenses, if notification is
25 requested; and

26 (5) a method of adjusting rates if new legislation,
27 regulations, or economic factors affect costs.

1 (c) The commission [department] shall include in the Title
2 XIX State Medicaid Plan submitted to the federal government for
3 approval the procedures for making available to the public the data
4 and methodology used in establishing payment rates.

5 (e) An interested party may appeal an action taken by the
6 commission [department] under this section, and an appeal of such
7 action shall be governed by the procedures for a contested case
8 hearing under Chapter 2001, Government Code. The filing of an
9 appeal under this section shall not stay the implementation of
10 payment rates adopted by the executive commissioner [department] in
11 accordance with commission [its] rules.

12 SECTION 4.098. Section 32.0282, Human Resources Code, is
13 amended to read as follows:

14 Sec. 32.0282. PUBLIC HEARING ON RATES. (a) The commission
15 [department] shall hold a public hearing to allow interested
16 persons to present comments relating to proposed payment rates for
17 medical assistance.

18 (b) The commission [department] shall provide notice of
19 each hearing to the public.

20 SECTION 4.099. Section 32.0284(a), Human Resources Code, is
21 amended to read as follows:

22 (a) In this section, "supplemental" [+]
23 [+(1)] "Commission" means the Health and Human Services
24 Commission.

25 [+(2)] "Supplemental] hospital payment program" means:
26 (1) [(A)] the disproportionate share hospitals
27 supplemental payment program administered according to 42 U.S.C.

1 Section 1396r-4; and

2 (2) [B] the uncompensated care payment program
3 established under the Texas Health Care Transformation and Quality
4 Improvement Program waiver issued under Section 1115 of the federal
5 Social Security Act (42 U.S.C. Section 1315).

6 SECTION 4.100. Section 32.029, Human Resources Code, is
7 amended to read as follows:

8 Sec. 32.029. METHODS OF PAYMENT. (a) The commission
9 [~~department~~] may prescribe a method of payment for medical
10 assistance claims by establishing a direct vendor payment program
11 that is administered by the commission [~~department~~], or by an
12 insurance plan, a hospital or medical service plan, or any other
13 health service plan authorized to do business in the state, or by a
14 combination of those plans.

15 (b) The commission [~~department~~] may use any fiscal
16 intermediary, method of payment, or combination of methods it finds
17 most satisfactory and economical. The commission [~~department~~] may
18 make whatever changes it finds necessary from time to time to
19 administer the program in an economical and equitable manner
20 consistent with simplicity of administration and the best interest
21 of the recipients of medical assistance.

22 (c) If the commission [~~department~~] elects to make direct
23 vendor payments, the payments shall be made by vouchers and
24 warrants drawn by the comptroller on the proper account. The
25 commission [~~department~~] shall furnish the comptroller with a list
26 of those vendors entitled to payments and the amounts to which each
27 is entitled. When the warrants are drawn, they must be delivered to

1 the commission [department], which shall supervise the delivery to
2 vendors.

3 (d) If at any time state funds are not available to fully pay
4 all claims for medical assistance, the executive commissioner
5 [~~board~~] shall prorate the claims.

6 (e) The commission [department] or its designee must notify
7 providers of health care services in clear and concise language of
8 the status of their claims on any claim not paid or denied within 30
9 days of receipt by the payor.

10 SECTION 4.101. Sections 32.0291(a) and (b), Human Resources
11 Code, are amended to read as follows:

12 (a) Notwithstanding any other law, the commission
13 [department] may:

14 (1) perform a prepayment review of a claim for
15 reimbursement under the medical assistance program to determine
16 whether the claim involves fraud or abuse; and

17 (2) as necessary to perform that review, withhold
18 payment of the claim for not more than five working days without
19 notice to the person submitting the claim.

20 (b) Subject to Section 531.102, Government Code, and
21 notwithstanding any other law, the commission [department] may
22 impose a payment hold on future claims submitted by a provider.

23 SECTION 4.102. Sections 32.031(a), (b), (d), and (e), Human
24 Resources Code, are amended to read as follows:

25 (a) The commission [department] may accept federal funds
26 for the support of the medical assistance program and may expend the
27 funds in the manner prescribed by this chapter or other laws. The

1 expenditures must be made in accordance with appropriate agreements
2 between the state and the federal government.

3 (b) The commission [~~department~~] may administer and expend
4 state funds appropriated for the program in accordance with
5 commission [~~its~~] rules and the provisions of this chapter.

6 (d) The executive commissioner [~~board~~] is empowered and
7 authorized to pursue the use of local funds as part of the state
8 share under the Medicaid program as provided by federal law and
9 regulation.

10 (e) Public hospitals, including hospitals owned, operated,
11 or leased by a governmental entity, including a municipality,
12 county, hospital district, or this state, and specifically
13 including a state teaching hospital, may transfer funds to the
14 commission [~~department~~] for use as the state share under the
15 Medicaid disproportionate share program.

16 SECTION 4.103. Section 32.0311, Human Resources Code, is
17 amended to read as follows:

18 Sec. 32.0311. DRUG REIMBURSEMENT UNDER CERTAIN PROGRAMS.
19 The commission [~~department~~] shall require a recipient of medical
20 assistance to exhaust drug benefits available under the medical
21 assistance program before reimbursing the recipient, pharmacist,
22 or other health care provider for drugs purchased by or on behalf of
23 the recipient under the Kidney Health Care Program or the Children
24 with Special Health Care Needs [~~Chronically Ill and Disabled~~
25 ~~Children's~~] Services Program.

26 SECTION 4.104. Section 32.0312, Human Resources Code, is
27 amended to read as follows:

1 Sec. 32.0312. REIMBURSEMENT FOR SERVICES ASSOCIATED WITH
2 PREVENTABLE ADVERSE EVENTS. The executive commissioner [~~of the~~
3 ~~Health and Human Services Commission~~] shall adopt rules regarding
4 the denial or reduction of reimbursement under the medical
5 assistance program for preventable adverse events that occur in a
6 hospital setting. In adopting the rules, the executive
7 commissioner:

8 (1) shall ensure that the commission imposes the same
9 reimbursement denials or reductions for preventable adverse events
10 as the Medicare program imposes for the same types of health
11 care-associated adverse conditions and the same types of health
12 care providers and facilities under a policy adopted by the federal
13 Centers for Medicare and Medicaid Services;

14 (2) shall consult an advisory committee on health care
15 quality, if established by the executive commissioner, to obtain
16 the advice of that committee regarding denial or reduction of
17 reimbursement claims for any other preventable adverse events that
18 cause patient death or serious disability in health care settings,
19 including events on the list of adverse events identified by the
20 National Quality Forum; and

21 (3) may allow the commission to impose reimbursement
22 denials or reductions for preventable adverse events described by
23 Subdivision (2).

24 SECTION 4.105. Sections 32.0313 and 32.0314, Human
25 Resources Code, are amended to read as follows:

26 Sec. 32.0313. INDUCED DELIVERIES OR CESAREAN SECTIONS
27 BEFORE 39TH WEEK. (a) The commission [~~department~~] shall achieve

1 cost savings with improved outcomes by adopting and implementing
2 quality initiatives that are evidence-based, tested, and fully
3 consistent with established standards of clinical care and that are
4 designed to reduce the number of elective or nonmedically indicated
5 induced deliveries or cesarean sections performed at a hospital on
6 a medical assistance recipient before the 39th week of gestation.

7 (b) The commission [department] shall coordinate with
8 physicians, hospitals, managed care organizations, and the
9 commission's [department's] billing contractor for the medical
10 assistance program to develop a process for collecting information
11 regarding the number of induced deliveries and cesarean sections
12 described by Subsection (a) that occur during prescribed periods.

13 Sec. 32.0314. REIMBURSEMENT FOR DURABLE MEDICAL EQUIPMENT
14 AND SUPPLIES. The executive commissioner [~~of the Health and Human~~
15 ~~Services Commission~~] shall adopt rules requiring the electronic
16 submission of any claim for reimbursement for durable medical
17 equipment and supplies under the medical assistance program.

18 SECTION 4.106. Sections 32.0315 and 32.032, Human Resources
19 Code, are amended to read as follows:

20 Sec. 32.0315. FUNDS FOR GRADUATE MEDICAL EDUCATION. (a)
21 Subject to appropriated state funds, the executive commissioner
22 [department] shall establish procedures and formulas for the
23 allocation of federal medical assistance funds that are directed to
24 be used to support graduate medical education in connection with
25 the medical assistance program.

26 (b) The executive commissioner [department] shall allocate
27 the funds in the manner the executive commissioner [department]

1 determines most effectively and equitably achieves the purposes for
2 which those federal funds are received, consistent with the needs
3 of this state for graduate medical education and the training of
4 resident physicians in accredited residency programs in
5 appropriate fields and specialties, taking into account other money
6 available to support graduate medical education. In determining
7 the needs of this state for graduate medical education, the
8 executive commissioner [department] shall give primary emphasis to
9 graduate medical education in primary care specialties and shall
10 also recognize the growth in residency training slots since 1997 in
11 the Lower Rio Grande Valley and other health care shortage areas of
12 this state.

13 (c) The executive commissioner [department] shall consult
14 with the Texas Higher Education Coordinating Board before adopting
15 or revising a formula under this section. At the request of the
16 executive commissioner [department], the coordinating board shall
17 provide the executive commissioner [department] with any
18 information the board possesses to assist the executive
19 commissioner [department] in administering this section.

20 Sec. 32.032. PREVENTION AND DETECTION OF FRAUD AND ABUSE.
21 The executive commissioner [department] shall adopt reasonable
22 rules for minimizing the opportunity for fraud and abuse, for
23 establishing and maintaining methods for detecting and identifying
24 situations in which a question of fraud or abuse in the program may
25 exist, and for referring cases where fraud or abuse appears to exist
26 to the appropriate law enforcement agencies for prosecution.

27 SECTION 4.107. Sections 32.0321(a), (b), (c), and (d),

1 Human Resources Code, are amended to read as follows:

2 (a) The executive commissioner [department] by rule may
3 require each provider of medical assistance in a provider type that
4 has demonstrated significant potential for fraud or abuse to file
5 with the commission [department] a surety bond in a reasonable
6 amount. The executive commissioner [department] by rule shall
7 require a provider of medical assistance to file with the
8 commission [department] a surety bond in a reasonable amount if the
9 commission [department] identifies a pattern of suspected fraud or
10 abuse involving criminal conduct relating to the provider's
11 services under the medical assistance program that indicates the
12 need for protection against potential future acts of fraud or
13 abuse.

14 (b) The bond under Subsection (a) must be payable to the
15 commission [department] to compensate the commission [department]
16 for damages resulting from or penalties or fines imposed in
17 connection with an act of fraud or abuse committed by the provider
18 under the medical assistance program.

19 (c) Subject to Subsection (d) or (e), the executive
20 commissioner [department] by rule may require each provider of
21 medical assistance that establishes a resident's trust fund account
22 to post a surety bond to secure the account. The bond must be
23 payable to the commission [department] to compensate residents of
24 the bonded provider for trust funds that are lost, stolen, or
25 otherwise unaccounted for if the provider does not repay any
26 deficiency in a resident's trust fund account to the person legally
27 entitled to receive the funds.

1 (d) The executive commissioner [department] may not require
2 the amount of a surety bond posted for a single facility provider
3 under Subsection (c) to exceed the average of the total average
4 monthly balance of all the provider's resident trust fund accounts
5 for the 12-month period preceding the bond issuance or renewal
6 date.

7 SECTION 4.108. Section 32.0322, Human Resources Code, is
8 amended to read as follows:

9 Sec. 32.0322. CRIMINAL HISTORY RECORD INFORMATION;
10 ENROLLMENT OF PROVIDERS. (a) The commission [department] or the
11 office of inspector general established under Chapter 531,
12 Government Code, may obtain from any law enforcement or criminal
13 justice agency the criminal history record information that relates
14 to a provider under the medical assistance program or a person
15 applying to enroll as a provider under the medical assistance
16 program.

17 (a-1) The criminal history record information the
18 commission [department] and the office of inspector general are
19 authorized to obtain under Subsection (a) includes criminal history
20 record information relating to:

21 (1) a person with a direct or indirect ownership or
22 control interest, as defined by 42 C.F.R. Section 455.101, in a
23 provider of five percent or more; and

24 (2) a person whose information is required to be
25 disclosed in accordance with 42 C.F.R. Part 1001.

26 (b) Subject to Subsections (b-1) and (e), the executive
27 commissioner [~~of the Health and Human Services Commission~~] by rule

1 shall establish criteria for the commission [department] or the
2 commission's office of inspector general to suspend a provider's
3 billing privileges under the medical assistance program, revoke a
4 provider's enrollment under the program, or deny a person's
5 application to enroll as a provider under the program based on:

6 (1) the results of a criminal history check;
7 (2) any exclusion or debarment of the provider from
8 participation in a state or federally funded health care program;

9 (3) the provider's failure to bill for medical
10 assistance or refer clients for medical assistance within a
11 12-month period; or

12 (4) any of the provider screening or enrollment
13 provisions contained in 42 C.F.R. Part 455, Subpart E.

14 (b-1) In adopting rules under this section, the executive
15 commissioner [~~of the Health and Human Services Commission~~] shall
16 require revocation of a provider's enrollment or denial of a
17 person's application for enrollment as a provider under the medical
18 assistance program if the person has been excluded or debarred from
19 participation in a state or federally funded health care program as
20 a result of:

21 (1) a criminal conviction or finding of civil or
22 administrative liability for committing a fraudulent act, theft,
23 embezzlement, or other financial misconduct under a state or
24 federally funded health care program; or

25 (2) a criminal conviction for committing an act under
26 a state or federally funded health care program that caused bodily
27 injury to:

4 (c) As a condition of eligibility to participate as a
5 provider in the medical assistance program, the executive
6 commissioner [of the Health and Human Services Commission] by rule
7 shall:

8 (1) require a provider or a person applying to enroll
9 as a provider to disclose:

10 (A) all persons described by Subsection
11 (a-1)(1);

12 (B) any managing employees of the provider; and

13 (C) an agent or subcontractor of the provider if:

20 (2) require disclosure by persons applying for
21 enrollment as providers and provide for screening of applicants for
22 enrollment in conformity and compliance with the requirements of 42
23 C.F.R. Part 455, Subparts B and E.

24 (d) In adopting rules under this section, the executive
25 commissioner [of the Health and Human Services Commission] shall
26 adopt rules as authorized by and in conformity with 42 C.F.R.
27 Section 455.470 for the imposition of a temporary moratorium on

1 enrollment of new providers, or to impose numerical caps or other
2 limits on the enrollment of providers, that the commission
3 [~~department~~] or the commission's office of inspector general[~~, in~~
4 ~~consultation with the department,~~] determines have a significant
5 potential for fraud, waste, or abuse.

6 (e) The commission [~~department~~] may reinstate a provider's
7 enrollment under the medical assistance program or grant a person's
8 previously denied application to enroll as a provider, including a
9 person described by Subsection (b-1), if the commission
10 [~~department~~] finds:

11 (1) good cause to determine that it is in the best
12 interest of the medical assistance program; and

13 (2) the person has not committed an act that would
14 require revocation of a provider's enrollment or denial of a
15 person's application to enroll since the person's enrollment was
16 revoked or application was denied, as appropriate.

17 (f) The commission [~~department~~] must support a
18 determination made under Subsection (e) with written findings of
19 good cause for the determination.

20 SECTION 4.109. Sections 32.033(b), (d), (e), (f), (g), and
21 (h), Human Resources Code, are amended to read as follows:

22 (b) A person who applies for or receives medical assistance
23 shall inform the commission [~~department~~], at the time of
24 application or at any time during eligibility and receipt of
25 services, of any unsettled tort claim which may affect medical
26 needs and of any private accident or sickness insurance coverage
27 that is or may become available. A recipient shall inform the

1 commission [department] of any injury requiring medical attention
2 that is caused by the act or failure to act of some other person. An
3 applicant or a recipient shall inform the commission [department]
4 as required by this subsection within 60 days of the date the person
5 learns of his or her insurance coverage, tort claim, or potential
6 cause of action. An applicant or [a] recipient who knowingly and
7 intentionally fails to disclose the information required by this
8 subsection commits a Class C misdemeanor.

9 (d) A separate and distinct cause of action in favor of the
10 state is hereby created, and the commission [department] may,
11 without written consent, take direct civil action in any court of
12 competent jurisdiction. A suit brought under this section need not
13 be ancillary to or dependent upon any other action.

14 (e) The commission's [department's] right of recovery is
15 limited to the amount of the cost of medical care services paid by
16 the commission [department]. Other subrogation rights granted
17 under this section are limited to the cost of the services provided.

18 (f) The executive commissioner may waive the commission's
19 [department's] right of recovery in whole or in part when the
20 executive commissioner finds that enforcement would tend to defeat
21 the purpose of public assistance.

22 (g) The commission [department] may designate an agent to
23 collect funds the commission [department] has a right to recover
24 from third parties under this section. The commission [department]
25 shall use any funds collected to pay costs of administering the
26 medical assistance program.

27 (h) The executive commissioner [department] may adopt rules

1 for the enforcement of the commission's [~~its~~] right of recovery.

2 SECTION 4.110. Sections 32.034(a) and (b), Human Resources
3 Code, are amended to read as follows:

4 (a) The commission [~~department~~] has authority to adjudicate
5 claims of contested cases in accordance with Chapter 2001,
6 Government Code. When the commission [~~department~~] intends to
7 cancel its contract or impose monetary penalties under a contract
8 with a person providing medical assistance, the commission
9 [~~department~~] shall give reasonable notice and an opportunity for
10 hearing if one is requested. The executive commissioner
11 [~~department~~] shall adopt rules consistent with Chapter 2001,
12 Government Code, to implement this section, and hearings under this
13 section are contested cases under that act.

14 (b) The commission [~~department~~] may not terminate a
15 contract during the pendency of a hearing under this section. The
16 commission [~~department~~] may withhold payments during the pendency
17 of a hearing, but the commission [~~department~~] shall pay the
18 withheld payments and resume contract payments if the final
19 determination is favorable to the contractor. The commission's
20 [~~department's~~] authority to withhold payments shall be established
21 by contract.

22 SECTION 4.111. Section 32.035, Human Resources Code, is
23 amended to read as follows:

24 Sec. 32.035. APPEALS. The provisions of Section 31.034 [~~of~~
25 ~~this code~~] governing the right of appeal of an applicant for or
26 recipient of financial assistance authorized under Chapter 31 [~~of~~
27 ~~this code~~] also apply to applicants for medical assistance

1 authorized in this chapter.

2 SECTION 4.112. Sections 32.038 and 32.0381, Human Resources
3 Code, are amended to read as follows:

4 Sec. 32.038. COLLECTION OF INSURANCE PAYMENTS. (a) The
5 commission [department] may receive directly from an insurance
6 company any payments to which the commission [department] is
7 entitled under Section 1204.153, Insurance Code.

8 (b) The executive commissioner [department] shall adopt
9 rules to implement this section, including rules establishing
10 procedures relating to:

11 (1) notification to the commission [department] that a
12 child receiving benefits under Chapter 31 or this chapter [Chapter
13 32 of this code] is covered by an insurance policy under which the
14 commission [department] is eligible to receive direct payments;

15 (2) claims made by the commission [department] to
16 receive payments under Subsection (a) [of this section];

17 (3) notification to the commission [department] of any
18 change in the status of the child or the parent; and

19 (4) notification to the insurance company that the
20 commission [department] is to receive payments under Subsection (a)
21 [of this section].

22 (c) Commission [Department] rules relating to the notice
23 prescribed by Subsection (b)(4) [of this section] must require the
24 notice to be attached to the claim for insurance benefits when the
25 claim is first submitted to the insurance company.

26 Sec. 32.0381. ICF-IID [ICF-MR] PAYMENT RATES. (a) The
27 executive commissioner [board] shall set the payment rates for

1 ICF-IID [~~ICF-MR~~] facilities at least annually.

2 (b) The executive commissioner [~~board~~] shall adopt by rule
3 the methodology used by the executive commissioner [~~department~~] in
4 setting payment rates for ICF-IID [~~ICF-MR~~] facilities. The
5 methodology shall clearly define the procedures and methods used in
6 projecting the costs of economic and efficient facilities and the
7 procedures and methods used in setting payment rates that
8 reasonably reimburse facilities at each level of care and in each
9 class of providers, including size categories.

10 (c) The executive commissioner [~~board~~] shall ensure that
11 the methodology used in projecting costs and setting payment rates
12 and its implementation is the same for state-operated ICF-IID
13 [~~ICF-MR~~] facilities and for private ICF-IID [~~ICF-MR~~] facilities.
14 Methods used to project costs, including those involving the
15 handling of gifts, grants, and donations, upper limits on facility
16 and administrative costs, occupancy adjustments, and in assessing
17 the cost impact of new or revised requirements, must be the same for
18 state-operated and private facilities.

19 (d) To the extent allowed by federal law, any differences in
20 methodology or its implementation between state-operated
21 facilities and private facilities must be stated explicitly in the
22 rule, must be related to actual differences in the nature of the
23 expenses incurred by the class of providers, including size
24 categories, and must not favor state-operated facilities in setting
25 payment rates. When the proposed rule or amendments to the rule are
26 published for public comment, the executive commissioner must
27 certify that any differences in methodology between classes of

1 providers, including size categories, are necessitated by cost
2 structure and will not favor state-operated facilities in the
3 setting of payment rates.

4 SECTION 4.113. Section 32.039(a)(1), Human Resources Code,
5 is amended to read as follows:

6 (1) "Claim" means an application for payment of health
7 care services under Title XIX of the federal Social Security Act 42
U.S.C. Section 1396 et seq.) that is submitted by a person who is
9 under a contract or provider agreement with the commission
10 [~~department~~].

11 SECTION 4.114. Sections 32.039(b), (b-1), (c), (d), (e),
12 (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r),
13 (u), (v), (w), and (x), Human Resources Code, are amended to read as
14 follows:

15 (b) A person commits a violation if the person:

16 (1) presents or causes to be presented to the
17 commission [~~department~~] a claim that contains a statement or
18 representation the person knows or should know to be false;

19 (1-a) engages in conduct that violates Section
20 102.001, Occupations Code;

21 (1-b) solicits or receives, directly or indirectly,
22 overtly or covertly any remuneration, including any kickback,
23 bribe, or rebate, in cash or in kind for referring an individual to
24 a person for the furnishing of, or for arranging the furnishing of,
25 any item or service for which payment may be made, in whole or in
26 part, under the medical assistance program, provided that this
27 subdivision does not prohibit the referral of a patient to another

1 practitioner within a multispecialty group or university medical
2 services research and development plan (practice plan) for
3 medically necessary services;

4 (1-c) solicits or receives, directly or indirectly,
5 overtly or covertly any remuneration, including any kickback,
6 bribe, or rebate, in cash or in kind for purchasing, leasing, or
7 ordering, or arranging for or recommending the purchasing, leasing,
8 or ordering of, any good, facility, service, or item for which
9 payment may be made, in whole or in part, under the medical
10 assistance program;

11 (1-d) offers or pays, directly or indirectly, overtly
12 or covertly any remuneration, including any kickback, bribe, or
13 rebate, in cash or in kind to induce a person to refer an individual
14 to another person for the furnishing of, or for arranging the
15 furnishing of, any item or service for which payment may be made, in
16 whole or in part, under the medical assistance program, provided
17 that this subdivision does not prohibit the referral of a patient to
18 another practitioner within a multispecialty group or university
19 medical services research and development plan (practice plan) for
20 medically necessary services;

21 (1-e) offers or pays, directly or indirectly, overtly
22 or covertly any remuneration, including any kickback, bribe, or
23 rebate, in cash or in kind to induce a person to purchase, lease, or
24 order, or arrange for or recommend the purchase, lease, or order of,
25 any good, facility, service, or item for which payment may be made,
26 in whole or in part, under the medical assistance program;

27 (1-f) provides, offers, or receives an inducement in a

1 manner or for a purpose not otherwise prohibited by this section or
2 Section 102.001, Occupations Code, to or from a person, including a
3 recipient, provider, employee or agent of a provider, third-party
4 vendor, or public servant, for the purpose of influencing or being
5 influenced in a decision regarding:

6 (A) selection of a provider or receipt of a good
7 or service under the medical assistance program;

8 (B) the use of goods or services provided under
9 the medical assistance program; or

10 (C) the inclusion or exclusion of goods or
11 services available under the medical assistance program;

12 (2) is a managed care organization that contracts with
13 the commission [~~department~~] to provide or arrange to provide health
14 care benefits or services to individuals eligible for medical
15 assistance and:

16 (A) fails to provide to an individual a health
17 care benefit or service that the organization is required to
18 provide under the contract with the commission [~~department~~];

19 (B) fails to provide to the commission
20 [~~department~~] information required to be provided by law, commission
21 [~~department~~] rule, or contractual provision;

22 (C) engages in a fraudulent activity in
23 connection with the enrollment in the organization's managed care
24 plan of an individual eligible for medical assistance or in
25 connection with marketing the organization's services to an
26 individual eligible for medical assistance; or

27 (D) engages in actions that indicate a pattern

1 of:

2 (i) wrongful denial of payment for a health
3 care benefit or service that the organization is required to
4 provide under the contract with the commission [department]; or

5 (ii) wrongful delay of at least 45 days or a
6 longer period specified in the contract with the commission
7 [department], not to exceed 60 days, in making payment for a health
8 care benefit or service that the organization is required to
9 provide under the contract with the commission [department]; or

10 (3) fails to maintain documentation to support a claim
11 for payment in accordance with the requirements specified by
12 commission [department] rule or medical assistance program policy
13 or engages in any other conduct that a commission [department] rule
14 has defined as a violation of the medical assistance program.

15 (b-1) A person who commits a violation described by
16 Subsection (b)(3) is liable to the commission [department] for
17 either the amount paid in response to the claim for payment or the
18 payment of an administrative penalty in an amount not to exceed \$500
19 for each violation, as determined by the commission [department].

20 (c) A person who commits a violation under Subsection (b) is
21 liable to the commission [department] for:

22 (1) the amount paid, if any, as a result of the
23 violation and interest on that amount determined at the rate
24 provided by law for legal judgments and accruing from the date on
25 which the payment was made; and

26 (2) payment of an administrative penalty of an amount
27 not to exceed twice the amount paid, if any, as a result of the

1 violation, plus an amount:

(A) not less than \$5,000 or more than \$15,000 for each violation that results in injury to an elderly person, as defined by Section 48.002(a)(1) [~~48.002(1)~~], a [disabled] person with a disability, as defined by Section 48.002(a)(8)(A) [~~48.002(8)(A)~~], or a person younger than 18 years of age; or

9 (d) Unless the provider submitted information to the
10 commission [department] for use in preparing a voucher that the
11 provider knew or should have known was false or failed to correct
12 information that the provider knew or should have known was false
13 when provided an opportunity to do so, this section does not apply
14 to a claim based on the voucher if the commission [department]
15 calculated and printed the amount of the claim on the voucher and
16 then submitted the voucher to the provider for the provider's
17 signature. In addition, the provider's signature on the voucher
18 does not constitute fraud. The executive commissioner [department]
19 shall adopt rules that establish a grace period during which errors
20 contained in a voucher prepared by the commission [department] may
21 be corrected without penalty to the provider.

22 (e) In determining the amount of the penalty to be assessed
23 under Subsection (c)(2), the commission [department] shall
24 consider:

1 (3) the amount necessary to deter the person from
2 committing future violations.

3 (f) If after an examination of the facts the commission
4 ~~[department]~~ concludes that the person committed a violation, the
5 commission ~~[department]~~ may issue a preliminary report stating the
6 facts on which it based its conclusion, recommending that an
7 administrative penalty under this section be imposed and
8 recommending the amount of the proposed penalty.

9 (g) The commission ~~[department]~~ shall give written notice
10 of the report to the person charged with committing the violation.
11 The notice must include a brief summary of the facts, a statement of
12 the amount of the recommended penalty, and a statement of the
13 person's right to an informal review of the alleged violation, the
14 amount of the penalty, or both the alleged violation and the amount
15 of the penalty.

16 (h) Not later than the 10th day after the date on which the
17 person charged with committing the violation receives the notice,
18 the person may either give the commission ~~[department]~~ written
19 consent to the report, including the recommended penalty, or make a
20 written request for an informal review by the commission
21 ~~[department]~~.

22 (i) If the person charged with committing the violation
23 consents to the penalty recommended by the commission ~~[department]~~
24 or fails to timely request an informal review, the commission
25 ~~[department]~~ shall assess the penalty. The commission ~~[department]~~
26 shall give the person written notice of its action. The person
27 shall pay the penalty not later than the 30th day after the date on

1 which the person receives the notice.

2 (j) If the person charged with committing the violation
3 requests an informal review as provided by Subsection (h), the
4 commission [department] shall conduct the review. The commission
5 [department] shall give the person written notice of the results of
6 the review.

7 (k) Not later than the 10th day after the date on which the
8 person charged with committing the violation receives the notice
9 prescribed by Subsection (j), the person may make to the commission
10 [department] a written request for a hearing. The hearing must be
11 conducted in accordance with Chapter 2001, Government Code.

12 (l) If, after informal review, a person who has been ordered
13 to pay a penalty fails to request a formal hearing in a timely
14 manner, the commission [department] shall assess the penalty. The
15 commission [department] shall give the person written notice of its
16 action. The person shall pay the penalty not later than the 30th
17 day after the date on which the person receives the notice.

18 (m) Within 30 days after the date on which the commission's
19 [board's] order issued after a hearing under Subsection (k) becomes
20 final as provided by Section 2001.144, Government Code, the person
21 shall:

22 (1) pay the amount of the penalty;

23 (2) pay the amount of the penalty and file a petition
24 for judicial review contesting the occurrence of the violation, the
25 amount of the penalty, or both the occurrence of the violation and
26 the amount of the penalty; or

27 (3) without paying the amount of the penalty, file a

1 petition for judicial review contesting the occurrence of the
2 violation, the amount of the penalty, or both the occurrence of the
3 violation and the amount of the penalty.

4 (n) A person who acts under Subsection (m)(3) within the
5 30-day period may:

6 (1) stay enforcement of the penalty by:

7 (A) paying the amount of the penalty to the court
8 for placement in an escrow account; or

9 (B) giving to the court a supersedeas bond that
10 is approved by the court for the amount of the penalty and that is
11 effective until all judicial review of the commission's
12 [~~department's~~] order is final; or

13 (2) request the court to stay enforcement of the
14 penalty by:

15 (A) filing with the court a sworn affidavit of
16 the person stating that the person is financially unable to pay the
17 amount of the penalty and is financially unable to give the
18 supersedeas bond; and

19 (B) giving a copy of the affidavit to the
20 executive commissioner by certified mail.

21 (o) If the executive commissioner receives a copy of an
22 affidavit under Subsection (n)(2), the executive commissioner may
23 file with the court, within five days after the date the copy is
24 received, a contest to the affidavit. The court shall hold a
25 hearing on the facts alleged in the affidavit as soon as practicable
26 and shall stay the enforcement of the penalty on finding that the
27 alleged facts are true. The person who files an affidavit has the

1 burden of proving that the person is financially unable to pay the
2 amount of the penalty and to give a supersedeas bond.

3 (p) If the person charged does not pay the amount of the
4 penalty and the enforcement of the penalty is not stayed, the
5 commission [department] may forward the matter to the attorney
6 general for enforcement of the penalty and interest as provided by
7 law for legal judgments. An action to enforce a penalty order under
8 this section must be initiated in a court of competent jurisdiction
9 in Travis County or in the county in which the violation was
10 committed.

11 (q) Judicial review of a commission [department] order or
12 review under this section assessing a penalty is under the
13 substantial evidence rule. A suit may be initiated by filing a
14 petition with a district court in Travis County, as provided by
15 Subchapter G, Chapter 2001, Government Code.

16 (r) If a penalty is reduced or not assessed, the commission
17 [department] shall remit to the person the appropriate amount plus
18 accrued interest if the penalty has been paid or shall execute a
19 release of the bond if a supersedeas bond has been posted. The
20 accrued interest on amounts remitted by the commission [department]
21 under this subsection shall be paid at a rate equal to the rate
22 provided by law for legal judgments and shall be paid for the period
23 beginning on the date the penalty is paid to the commission
24 [department] under this section and ending on the date the penalty
25 is remitted.

26 (u) Except as provided by Subsection (w), a person found
27 liable for a violation under Subsection (c) that resulted in injury

1 to an elderly person, as defined by Section [48.002\(a\)\(1\)](#), a
2 [disabled] person with a disability, as defined by Section
3 [48.002\(a\)\(8\)\(A\)](#), or a person younger than 18 years of age may not
4 provide or arrange to provide health care services under the
5 medical assistance program for a period of 10 years. The executive
6 commissioner [~~department~~] by rule may provide for a period of
7 ineligibility longer than 10 years. The period of ineligibility
8 begins on the date on which the determination that the person is
9 liable becomes final.

10 (v) Except as provided by Subsection (w), a person found
11 liable for a violation under Subsection (c) that did not result in
12 injury to an elderly person, as defined by Section [48.002\(a\)\(1\)](#), a
13 [disabled] person with a disability, as defined by Section
14 [48.002\(a\)\(8\)\(A\)](#), or a person younger than 18 years of age may not
15 provide or arrange to provide health care services under the
16 medical assistance program for a period of three years. The
17 executive commissioner [~~department~~] by rule may provide for a
18 period of ineligibility longer than three years. The period of
19 ineligibility begins on the date on which the determination that
20 the person is liable becomes final.

21 (w) The executive commissioner [~~department~~] by rule may
22 prescribe criteria under which a person described by Subsection (u)
23 or (v) is not prohibited from providing or arranging to provide
24 health care services under the medical assistance program. The
25 criteria may include consideration of:

- 26 (1) the person's knowledge of the violation;
27 (2) the likelihood that education provided to the

1 person would be sufficient to prevent future violations;

(x) Subsections (b)(1-b) through (1-f) do not prohibit a person from engaging in:

10 (A) conducting a marketing campaign;

13 (C) providing complimentary refreshments at an
14 informational meeting promoting the person's goods or services;

19 C.F.R. Section 1001.952).

21 (g), and (i), Human Resources Code, are amended to read as follows:

22 (b) The state's Medicaid third-party recovery division

23 shall identify state medical assistance recipients who have

24 third-party health coverage or insurance as provided by this

25 subsection. The commission [department] may:

26 (1) provide to an insurer Medicaid data tapes that
27 identify medical assistance recipients and request that the insurer

1 identify each enrollee, beneficiary, subscriber, or policyholder
2 of the insurer whose name also appears on the Medicaid data tape; or
3 (2) request that an insurer provide to the commission
4 [department] identifying information for each enrollee,
5 beneficiary, subscriber, or policyholder of the insurer.

6 (b-1) An insurer from which the commission [department]
7 requests information under Subsection (b) shall provide that
8 information, except that the insurer is only required to provide
9 the commission [department] with the information maintained under
10 Subsection (a) by the insurer or made available to the insurer from
11 the plan. A plan administrator is subject to Subsection (b) and
12 shall provide information under that subsection to the extent the
13 information is made available to the plan administrator from the
14 insurer or plan.

15 (d) An insurer shall provide the information required under
16 Subsection (b)(1) only if the commission [department] certifies
17 that the identified individuals are applicants for or recipients of
18 services under Medicaid or are legally responsible for an applicant
19 for or recipient of Medicaid services.

20 (e) The commission [department] shall enter into an
21 agreement to reimburse an insurer or plan administrator for
22 necessary and reasonable costs incurred in providing information
23 requested under Subsection (b)(1), not to exceed \$5,000 for each
24 data match made under that subdivision. If the commission
25 [department] makes a data match using information provided under
26 Subsection (b)(2), the commission [department] shall reimburse the
27 insurer or plan administrator for reasonable administrative

1 expenses incurred in providing the information. The reimbursement
2 for information under Subsection (b)(2) may not exceed \$5,000 for
3 initially producing information with respect to a person, or \$200
4 for each subsequent production of information with respect to the
5 person. The commission [department] may enter into an agreement
6 with an insurer or plan administrator that provides procedures for
7 requesting and providing information under this section. An
8 agreement under this subsection may not be inconsistent with any
9 law relating to the confidentiality or privacy of personal
10 information or medical records. The procedures agreed to under
11 this subsection must state the time and manner the procedures take
12 effect.

13 (f) Information required to be furnished to the commission
14 [department] under this section is limited to information necessary
15 to determine whether health benefits have been or should have been
16 claimed and paid under a health insurance policy or plan for medical
17 care or services received by an individual for whom Medicaid
18 coverage would otherwise be available.

19 (g) Information regarding an individual certified to an
20 insurer as an applicant for or recipient of medical assistance may
21 only be used to identify the records or information requested and
22 may not violate the confidentiality of the applicant or recipient.
23 The commission [department] shall establish guidelines not later
24 than the date on which the procedures agreed to under Subsection (e)
25 take effect.

26 (i) In this section:

27 (1) "Insurer" means a group hospital service [health

1 services] corporation, a health maintenance organization, a
2 self-funded or self-insured welfare or benefit plan or program to
3 the extent the regulation of the plan or program is not preempted by
4 federal law, and any other entity that provides health coverage in
5 this state through an employer, union, trade association, or other
6 organization or other source.

7 (2) "Plan administrator" means a third-party
8 administrator, prescription drug payer or administrator, pharmacy
9 benefit manager, or dental payer or administrator.

10 SECTION 4.116. Sections 32.0421(a) and (c), Human Resources
11 Code, are amended to read as follows:

12 (a) The commission [department] may impose an
13 administrative penalty on a person who does not comply with a
14 request for information made under Section 32.042(b).

15 (c) The enforcement of the penalty may be stayed during the
16 time the order is under judicial review if the person pays the
17 penalty to the clerk of the court or files a supersedeas bond with
18 the court in the amount of the penalty. A person who cannot afford
19 to pay the penalty or file the bond may stay the enforcement by
20 filing an affidavit in the manner required by the Texas Rules of
21 Civil Procedure for a party who cannot afford to file security for
22 costs, subject to the right of the commission [department] to
23 contest the affidavit as provided by those rules.

24 SECTION 4.117. Sections 32.0422(a), (j-1), and (k), Human
25 Resources Code, are amended to read as follows:

26 (a) In this section, "group" [+

27 [+] "Commission" means the Health and Human Services

1 Commission.

2 [(2) "Executive commissioner" means the executive
3 ~~commissioner of the Health and Human Services Commission.~~

4 [(3) "Group" health benefit plan" means a plan
5 described by Section [1207.001](#), Insurance Code.

6 (j-1) An individual described by Subsection (e-1) who
7 enrolls in a group health benefit plan is not ineligible for home
8 and community-based services provided under a Section 1915(c)
9 waiver program or another federal home and community-based services
10 waiver program solely based on the individual's enrollment in the
11 group health benefit plan, and the individual may receive those
12 services if the individual is otherwise eligible for the
13 program. The individual is otherwise limited to the health
14 benefits coverage provided under the health benefit plan in which
15 the individual is enrolled, and the individual may not receive any
16 benefits or services under the medical assistance program other
17 than the premium payment as provided by Subsection (f-1) and, if
18 applicable, waiver program services described by this subsection.

19 (k) The commission may not require or permit an individual
20 who is enrolled in a group health benefit plan under this section to
21 participate in the Medicaid managed care program under Chapter 533,
22 Government Code[~~or a Medicaid managed care demonstration project~~
23 under Section [32.041](#).] .

24 SECTION 4.118. Sections [32.0424](#)(a), (c), and (d), Human
25 Resources Code, are amended to read as follows:

26 (a) A third-party health insurer is required to provide to
27 the commission [~~department~~], on the commission's [~~department's~~]

1 request, information in a form prescribed by the executive
2 commissioner [department] necessary to determine:

3 (1) the period during which an individual entitled to
4 medical assistance, the individual's spouse, or the individual's
5 dependents may be, or may have been, covered by coverage issued by
6 the health insurer;

7 (2) the nature of the coverage; and

8 (3) the name, address, and identifying number of the
9 health plan under which the person may be, or may have been,
10 covered.

11 (c) A third-party health insurer shall respond to any
12 inquiry by the commission [department] regarding a claim for
13 payment for any health care item or service reimbursed by the
14 commission [department] under the medical assistance program not
15 later than the third anniversary of the date the health care item or
16 service was provided.

17 (d) A third-party health insurer may not deny a claim
18 submitted by the commission [department] or the commission's
19 [department's] designee for which payment was made under the
20 medical assistance program solely on the basis of the date of
21 submission of the claim, the type or format of the claim form, or a
22 failure to present proper documentation at the point of service
23 that is the basis of the claim, if:

24 (1) the claim is submitted by the commission
25 [department] or the commission's [department's] designee not later
26 than the third anniversary of the date the item or service was
27 provided; and

(2) any action by the commission [department] or the
commission's [department's] designee to enforce the state's rights
with respect to the claim is commenced not later than the sixth
anniversary of the date the commission [department] or the
commission's [department's] designee submits the claim.

6 SECTION 4.119. Section 32.04242, Human Resources Code, is
7 amended to read as follows:

Sec. 32.04242. PAYOR OF LAST RESORT. The executive
commissioner [of the Health and Human Services Commission] shall
adopt rules to ensure, to the extent allowed by federal law, that
the Medicaid program:

12 (1) is the payor of last resort; and

16 SECTION 4.120. Section 32.0425(a)(1), Human Resources
17 Code, is amended to read as follows:

20 (A) holds a certification as an assistive
21 technology professional or a rehabilitation engineering
22 technologist issued by, and is in good standing with, the
23 Rehabilitation Engineering and Assistive Technology Society of
24 North America, provided that the requirements for that
25 certification are at least as stringent as the requirements in
26 effect on January 1, 2009; or

27 (B) is otherwise qualified to conduct the

1 professional activities of a person who holds a certification
2 described by Paragraph (A), as determined by rules adopted by the
3 executive commissioner [~~of the Health and Human Services~~
4 ~~Commission~~].

5 SECTION 4.121. Sections [32.0425](#)(b) and (c), Human Resources
6 Code, are amended to read as follows:

7 (b) The commission [~~department~~] may provide medical
8 assistance reimbursement for the provision of, or the performance
9 of a major modification to, a wheeled mobility system only if:

10 (1) the system is delivered to a recipient by a medical
11 assistance provider that is, or directly employs or contracts with,
12 a qualified rehabilitation professional and that professional was
13 present and involved in any clinical assessment of the recipient
14 that is required for obtaining the system; and

15 (2) at the time the wheeled mobility system is
16 delivered to the recipient, the qualified rehabilitation
17 professional:

18 (A) is present for and directs a fitting to
19 ensure that the system is appropriate for the recipient; and

20 (B) verifies that the system functions relative
21 to the recipient.

22 (c) The executive commissioner [~~of the Health and Human~~
23 ~~Services Commission~~] shall adopt rules specifying:

24 (1) the scope, including any required components, of
25 the fitting and verification of functionality required by
26 Subsection (b);

27 (2) documentation of the fitting and verification of

1 functionality that must be submitted as part of a claim for
2 reimbursement for the provision or modification of a wheeled
3 mobility system; and

4 (3) the appropriate reimbursement methodology for
5 compensating the evaluation and final fitting services provided by
6 qualified rehabilitation professionals involved in the provision
7 or modification of wheeled mobility systems.

8 SECTION 4.122. Sections 32.043(b) and (d), Human Resources
9 Code, are amended to read as follows:

10 (b) The public hospital shall acquire goods or services by
11 any procurement method approved by the commission [Health and Human
12 Services Commission] that provides the best value to the public
13 hospital. The public hospital shall document that it considered
14 all relevant factors under Subsection (c) in making the
15 acquisition.

16 (d) The state auditor or the commission [department] may
17 audit the public hospital's acquisitions of goods and services to
18 the extent that state money or federal money appropriated by the
19 state is used to acquire the goods and services.

20 SECTION 4.123. Section 32.044(d), Human Resources Code, is
21 amended to read as follows:

22 (d) The executive commissioner [department] with the
23 assistance of [the Health and Human Services Commission and] the
24 comptroller shall adopt rules under this section that allow the
25 public or private hospital to make purchases through group
26 purchasing programs except when the commission [department] has
27 reason to believe that a better value is available through another

1 procurement method.

2 SECTION 4.124. Sections 32.045, 32.046, 32.0461, 32.0462,
3 32.0463, 32.047, 32.048, and 32.049, Human Resources Code, are
4 amended to read as follows:

5 Sec. 32.045. ENHANCED REIMBURSEMENT. The commission
6 [~~department~~] shall develop a procedure for:

7 (1) identifying each service provided under the
8 medical assistance program for which the state is eligible to
9 receive enhanced reimbursement of costs from the federal
10 government; and

11 (2) ensuring that the state seeks the highest level of
12 federal reimbursement available for each service provided.

13 Sec. 32.046. SANCTIONS AND PENALTIES RELATED TO THE
14 PROVISION OF PHARMACY PRODUCTS. (a) The executive commissioner
15 [~~of the Health and Human Services Commission~~] shall adopt rules
16 governing sanctions and penalties that apply to a provider who
17 participates in the vendor drug program or is enrolled as a network
18 pharmacy provider of a managed care organization contracting with
19 the commission under Chapter 533, Government Code, or its
20 subcontractor and who submits an improper claim for reimbursement
21 under the program.

22 (b) The commission [~~department~~] shall notify each provider
23 in the vendor drug program that the provider is subject to sanctions
24 and penalties for submitting an improper claim.

25 Sec. 32.0461. VENDOR DRUG PROGRAM; COMPETITIVE BIDDING.
26 (a) In consultation and coordination with the State Council on
27 Competitive Government, the commission [~~Texas Department of~~

1 ~~Health]~~ shall seek competitive bids for the claims processing
2 function of the vendor drug program. [~~The department and the Texas~~
3 ~~Department of Human Services may submit a bid proposal under this~~
4 ~~section in the same manner as a private entity.~~]

5 (b) The commission [~~Texas Department of Health~~] shall
6 require any person seeking to contract for services under this
7 section to comply with competitive bidding procedures adopted by
8 the executive commissioner [~~that department~~].

9 (c) The commission [~~Texas Department of Health~~] may award a
10 contract under this section to another person only if the
11 department and the State Council on Competitive Government
12 determine that the provision of services under that contract would
13 be more cost-effective and the time to process claims under the
14 contract would be the same as or faster than having employees of the
15 commission [~~department~~] continue to process claims.

16 Sec. 32.0462. VENDOR DRUG PROGRAM; PRICING STANDARD. (a)
17 Notwithstanding any other provision of state law, the commission
18 [~~department~~] shall:

19 (1) consider a nationally recognized, unbiased
20 pricing standard for prescription drugs in determining
21 reimbursement amounts under the vendor drug program; and

22 (2) update reimbursement amounts under the vendor drug
23 program at least weekly.

24 (b) The executive commissioner shall adopt rules
25 implementing this section. In adopting rules, the executive
26 commissioner shall ensure that implementation of this section does
27 not adversely affect the amount of federal funds available to the

1 state for providing benefits under the vendor drug program.

2 Sec. 32.0463. MEDICATIONS AND MEDICAL SUPPLIES. The
3 executive commissioner [department] may adopt rules establishing
4 procedures for the purchase and distribution of medically
5 necessary, over-the-counter medications and medical supplies under
6 the medical assistance program that were previously being provided
7 by prescription if the executive commissioner [department]
8 determines it is more cost-effective than obtaining those
9 medications and medical supplies through a prescription.

10 Sec. 32.047. PROHIBITION OF CERTAIN HEALTH CARE SERVICE
11 PROVIDERS. (a) A person is permanently prohibited from providing
12 or arranging to provide health care services under the medical
13 assistance program if:

14 (1) the person is convicted of an offense arising from
15 a fraudulent act under the program; and

16 (2) the person's fraudulent act results in injury to an
17 elderly person, as defined by Section 48.002(a)(1), a [disabled]
18 person with a disability, as defined by Section 48.002(a)(8)(A), or
19 a person younger than 18 years of age.

20 (b) The executive commissioner [~~of the Health and Human~~
21 ~~Services Commission~~] shall adopt rules for prohibiting a person
22 from participating in the medical assistance program as a health
23 care provider for a reasonable period, as determined by the
24 executive commissioner, if the person:

25 (1) fails to repay overpayments under the program; or

26 (2) owns, controls, manages, or is otherwise
27 affiliated with and has financial, managerial, or administrative

1 influence over a provider who has been suspended or prohibited from
2 participating in the program.

3 Sec. 32.048. MANAGED CARE INFORMATION AND TRAINING PLAN.

4 (a) Subject to the availability of funds, the commission
5 ~~[department]~~ shall develop a comprehensive plan to provide
6 information and training about the requirements of a managed care
7 plan to recipients of medical assistance, providers of medical
8 assistance, local health and human services agencies, and other
9 interested parties in each service area in which the commission
10 provides ~~[department plans to provide]~~ medical assistance through a
11 managed care plan.

12 (b) The commission ~~[department]~~ shall include in the
13 comprehensive plan:

14 (1) ~~[180 days of initial information and training in a~~
15 ~~service area beginning not later than the 90th day before the date~~
16 ~~on which the department plans to begin to provide medical~~
17 ~~assistance through a managed care plan in that service area,~~

18 ~~(+2)~~ additional information and training at regular
19 intervals determined by the commission ~~[department]~~; and

20 (2) ~~(+3)~~ performance measures to evaluate the
21 effectiveness of the information and training.

22 (c) In developing the comprehensive plan, the commission
23 ~~[department]~~ shall consult with the Medicaid medical care advisory
24 committee.

25 Sec. 32.049. MANAGED CARE CONTRACT COMPLIANCE. (a) The
26 commission ~~[department]~~ shall review each managed care
27 organization that has contracted with the commission ~~[department]~~

1 to provide medical assistance to medical assistance recipients
2 through a managed care plan issued by the organization to determine
3 whether the organization is prepared to meet its contractual
4 obligations.

5 (b) (1) The commission ~~[department]~~ shall require each
6 managed care organization that has contracted with the commission
7 ~~[department]~~ to submit an implementation plan not later than the
8 90th day before the date on which the managed care organization
9 ~~[department]~~ plans to begin to provide medical assistance through a
10 managed care plan in a service area. The implementation plan must
11 include:

12 (A) specific staffing patterns by function for
13 all operations, including enrollment, information systems, member
14 services, quality improvement, claims management, case management,
15 and provider and enrollee training; and

16 (B) specific time frames for demonstrating
17 preparedness for implementation before the date on which the
18 managed care organization ~~[department]~~ plans to begin to provide
19 medical assistance through a managed care plan in a service area.

20 (2) The commission ~~[department]~~ shall respond within
21 10 working days if the implementation plan does not adequately meet
22 preparedness guidelines.

23 (3) The commission ~~[department]~~ shall require each
24 managed care organization that has contracted with the commission
25 ~~[department]~~ to submit status reports on the implementation plan
26 not later than the 60th day and the 30th day before the date on which
27 the managed care organization ~~[department]~~ plans to begin to

1 provide medical assistance through a managed care plan in a service
2 area and every 30th day after the managed care organization
3 [department] begins to provide medical assistance through a managed
4 care plan in a service area until the 180th day of operations.

5 (c) The commission [department] shall conduct a compliance
6 and readiness review of each managed care organization that
7 contracts with the state not later than the 15th day before the date
8 on which the [department plans to begin the enrollment] process of
9 enrolling recipients in a managed care plan issued by the managed
10 care organization is to begin in a service area and again not later
11 than the 15th day before the date on which the managed care
12 organization [department] plans to begin to provide medical
13 assistance through a managed care plan in that [a] service area.
14 The review shall include an on-site inspection and tests of service
15 authorization and claims payment systems, complaint processing
16 systems, and any other process or system required by the contract.

17 (d) The commission [department] may delay enrollment of
18 medical assistance recipients in a managed care plan if the review
19 reveals that the managed care organization is not prepared to meet
20 its contractual obligations.

21 SECTION 4.125. Sections 32.050(a), (b), (d), and (e), Human
22 Resources Code, are amended to read as follows:

23 (a) At least annually the commission [department] shall
24 identify each individual receiving medical assistance under the
25 medical assistance program who is eligible to receive similar
26 assistance under the Medicare program.

27 (b) The commission [department] shall analyze claims

1 submitted for payment for a service provided under the medical
2 assistance program to an individual identified under Subsection (a)
3 to ensure that payment is sought first under the Medicare program to
4 the extent allowed by law.

5 (d) Except as provided by Subsection (e), a nursing
6 facility, a home health services provider, or any other similar
7 long-term care services provider that is Medicare-certified and
8 provides care to individuals who are eligible for Medicare must:

9 (1) seek reimbursement from Medicare before billing
10 the medical assistance program for services provided to an
11 individual identified under Subsection (a); and

12 (2) as directed by the commission [department], appeal
13 Medicare claim denials for payment services provided to an
14 individual identified under Subsection (a).

15 (e) A home health services provider is not required to seek
16 reimbursement from Medicare before billing the medical assistance
17 program for services provided to a person who is eligible for
18 Medicare and who:

19 (1) has been determined as not being homebound; or
20 (2) meets other criteria determined by the executive
21 commissioner [department].

22 SECTION 4.126. Section 32.051, Human Resources Code, is
23 amended to read as follows:

24 Sec. 32.051. MISDIRECTED BILLING. To the extent authorized
25 by federal law, the commission [department] shall develop a
26 procedure for the state to:

27 (1) match claims for payment for medical assistance

1 provided under the medical assistance program against data
2 available from other entities, including the United States
3 Department of Veterans Affairs [~~Administration~~] and nursing
4 facilities, to determine alternative responsibility for payment of
5 the claims; and

6 (2) ensure that the appropriate entity bears the cost
7 of a claim.

8 SECTION 4.127. Sections 32.052(c) and (d), Human Resources
9 Code, are amended to read as follows:

10 (c) In developing and providing services subject to this
11 section, the commission [~~department~~] shall:

12 (1) fully assess a child at the time the child applies
13 for assistance to determine all appropriate services for the child
14 under the medical assistance program, including both waiver and
15 nonwaiver services;

16 (2) ensure that permanency planning is implemented to
17 identify and establish the family support necessary to maintain a
18 child's permanent living arrangement with a family;

19 (3) implement a transition and referral process to
20 prevent breaks in services when a child is leaving a medical
21 assistance waiver program or moving between service delivery
22 systems due to a change in the child's disability status or needs,
23 aging out of the current delivery system, or moving between
24 geographic areas within the state;

25 (4) identify and provide core services addressing a
26 child's developmental needs and the needs of the child's family to
27 strengthen and maintain the child's family;

1 (5) provide for comprehensive coordination and use of
2 available services and resources in a manner that ensures support
3 for families in keeping their children at home;

4 (6) ensure that eligibility requirements, assessments
5 for service needs, and other components of service delivery are
6 designed to be fair and equitable for all families, including
7 families with parents who work outside the home; and

8 (7) provide for a broad array of service options and a
9 reasonable choice of service providers.

10 (d) To ensure that services subject to this section are cost
11 neutral and not duplicative of other services provided under the
12 medical assistance program, the commission [department] shall
13 coordinate the provision of services subject to this section with
14 services provided under the Texas Health Steps Comprehensive Care
15 Program.

16 SECTION 4.128. Sections 32.053(a), (b), (c), (e), (f), (h),
17 and (i), Human Resources Code, are amended to read as follows:

18 (a) The commission [department], as an integral part of the
19 medical assistance program, shall develop and implement a program
20 of all-inclusive care for the elderly (PACE) in accordance with
21 Section 4802 of the Balanced Budget Act of 1997 (Pub. L. No.
22 105-33), as amended. The commission [department] shall provide
23 medical assistance to a participant in the PACE program in the
24 manner and to the extent authorized by federal law.

25 (b) The executive commissioner [~~of the Health and Human~~
26 ~~Services Commission~~] shall adopt rules as necessary to implement
27 this section. In adopting rules, the executive commissioner shall:

1 (1) use the Bienvivir Senior Health Services of El
2 Paso initiative as a model for the program;

3 (2) ensure that a person is not required to hold a
4 certificate of authority as a health maintenance organization under
5 Chapter 843, Insurance Code, to provide services under the PACE
6 program;

7 (3) ensure that participation in the PACE program is
8 available as an alternative to enrollment in a Medicaid managed
9 care plan under Chapter 533, Government Code, for eligible
10 recipients, including recipients eligible for assistance under
11 both the medical assistance and Medicare programs;

12 (4) ensure that managed care organizations that
13 contract under Chapter 533, Government Code, consider the
14 availability of the PACE program when considering whether to refer
15 a recipient to a nursing facility [~~home~~] or other long-term care
16 facility; and

17 (5) establish protocols for the referral of eligible
18 persons to the PACE program.

19 (c) The commission [~~department~~] may not contract with a
20 person to provide services under the PACE program unless the
21 person:

22 (1) purchases reinsurance in an amount determined by
23 the commission [~~department~~] that is sufficient to ensure the
24 person's continued solvency; or

25 (2) has the financial resources sufficient to cover
26 expenses in the event of the person's insolvency.

27 (e) The Department of Aging and Disability Services and area

1 agencies on aging shall develop and implement a coordinated plan to
2 promote PACE program sites operating under this section. The
3 executive commissioner [department] shall adopt policies and
4 procedures, including operating guidelines, to ensure that
5 caseworkers and any other appropriate department staff discuss the
6 benefits of participating in the PACE program with long-term care
7 clients.

8 (f) The commission [department] shall consider the PACE
9 program as a community-based service option under any "Money
10 Follows the Person" demonstration project or other initiative that
11 is designed to eliminate barriers or mechanisms that prevent or
12 restrict the flexible use of funds under the medical assistance
13 program to enable a recipient to receive long-term services or
14 supports in a setting of the recipient's choice.

15 (h) The executive commissioner [commission] shall adopt a
16 standard reimbursement methodology for the payment of all PACE
17 organizations for purposes of encouraging a natural increase in the
18 number of PACE program sites throughout the state.

19 (i) To the extent allowed by the General Appropriations Act,
20 the commission [~~Health and Human Services Commission~~] may transfer
21 general revenue funds appropriated to the commission for the
22 medical assistance program to the Department of Aging and
23 Disability Services to provide PACE services in PACE program
24 service areas to eligible recipients whose medical assistance
25 benefits would otherwise be delivered as home and community-based
26 services through the STAR + PLUS Medicaid managed care program and
27 whose personal incomes are at or below the level of income required

1 to receive Supplemental Security Income (SSI) benefits under 42
2 U.S.C. Section 1381 et seq.

3 SECTION 4.129. Sections 32.054(c), (d), and (e), Human
4 Resources Code, are amended to read as follows:

5 (c) In providing dental services under the medical
6 assistance program, the commission [department] shall:

7 (1) ensure that a stainless steel crown is not used as
8 a preventive measure;

9 (2) require a dentist participating in the medical
10 assistance program to document, through x-rays or other methods
11 established by commission [department] rule, the dental necessity
12 for a stainless steel crown before the crown is applied;

13 (3) require a dentist participating in the medical
14 assistance program to comply with a minimum standard of
15 documentation and recordkeeping for each of the dentist's patients,
16 regardless of whether the patient's costs are paid privately or
17 through the medical assistance program;

18 (4) replace the 15-point system used for determining
19 the dental necessity for hospitalization and general anesthesia
20 with a more objective and comprehensive system developed by the
21 commission [department]; and

22 (5) take all necessary action to eliminate unlawful
23 acts described by Section 36.002 in the provision of dental
24 services under the medical assistance program, including:

25 (A) aggressively investigating and prosecuting
26 any dentist who abuses the system for reimbursement under the
27 medical assistance program; and

5 (d) In setting reimbursement rates for dental services
6 under the medical assistance program, the executive commissioner
7 [department] shall:

12 [(2) eliminate the nutritional consultation fee and
13 redistribute amounts made available through elimination of that fee
14 to other commonly billed dental services for which adequate
15 accountability measures exist;

16 [(-3)] provide for reimbursement of a behavior
17 management fee only if:

24 (B) the dentist includes in the patient's records
25 and on the claim form for reimbursement a narrative description of:

(i) the specific behavior problem demonstrated by the patient that required the use of behavior

1 management techniques;

2 (ii) the dentist's initial efforts to
3 manage the patient's behavior through routine behavior management
4 techniques; and

5 (iii) the dentist's extraordinary behavior
6 management techniques subsequently required to manage the
7 patient's behavior; and

8 (2) [+] redistribute amounts made available through
9 limitation of the behavior management fee under Subdivision (1)
10 [-] to other commonly billed dental services for which adequate
11 accountability measures exist.

12 (e) The commission [department] shall develop the minimum
13 standard described by Subsection (c)(3) in cooperation with the
14 State Board of Dental Examiners.

15 SECTION 4.130. Sections 32.055(a) and (c), Human Resources
16 Code, are amended to read as follows:

17 (a) The commission [department] shall develop and implement
18 a catastrophic case management system to be used in providing
19 medical assistance to persons with catastrophic health problems.

20 (c) The commission [department] shall identify the services
21 to be provided by a case manager assigned under the system. The
22 services must include assessment of the recipient's needs and
23 coordination of all available medical services and payment options.

24 The services may include other support services such as:

25 (1) assistance with making arrangements to receive
26 care from medical facilities;

27 (2) assistance with travel and lodging in connection

1 with receipt of medical care;

(3) education of the recipient and the recipient's family members regarding the nature of the recipient's health problems;

(4) referral to appropriate support groups; and

(5) any other service likely to result in better care provided in a cost-effective manner.

8 SECTION 4.131. Sections 32.0551 and 32.056, Human Resources
9 Code, are amended to read as follows:

10 Sec. 32.0551. OPTIMIZATION OF CASE MANAGEMENT SYSTEMS. The
11 commission [Health and Human Services Commission] shall:

12 (1) create and coordinate staffing and other
13 administrative efficiencies for case management initiatives across
14 the commission and health and human services agencies[, as defined
15 by Section 531.001, Government Code]; and

20 Sec. 32.056. COMPLIANCE WITH TEXAS HEALTH STEPS
21 COMPREHENSIVE CARE PROGRAM. The executive commissioner by rule
22 shall develop procedures to ensure that recipients of medical
23 assistance who are eligible for Texas Health Steps Comprehensive
24 Care Program comply with the regimen of care prescribed by the
25 [Texas Health Steps] program.

26 SECTION 4.132. Sections 32.057(a), (b), (c), (d), (e), and
27 (f), Human Resources Code, are amended to read as follows:

1 (a) The commission [department] shall request contract
2 proposals from providers of disease management programs to provide
3 program services to recipients of medical assistance who:

4 (1) have a disease or other chronic health condition,
5 such as heart disease, hemophilia, chronic kidney disease and its
6 medical complications, diabetes, respiratory illness, end-stage
7 renal disease, HIV infection, or AIDS, that the commission
8 [department] determines is a disease or condition that needs
9 disease management; and

10 (2) are not eligible to receive those services under a
11 Medicaid managed care plan.

12 (b) The commission [department] may contract with a public
13 or private entity to:

14 (1) write the requests for proposals;
15 (2) determine how savings will be measured;
16 (3) identify populations that need disease
17 management;

18 (4) develop appropriate contracts; and
19 (5) assist the commission [department] in:
20 (A) developing the content of disease management
21 programs; and
22 (B) obtaining funding for those programs.

23 (c) The executive commissioner [~~of the Health and Human~~
24 ~~Services Commission,~~] by rule[~~r~~] shall prescribe the minimum
25 requirements a provider of a disease management program must meet
26 to be eligible to receive a contract under this section. The
27 provider must, at a minimum, be required to:

1 (1) use disease management approaches that are based
2 on evidence-supported models, standards of care in the medical
3 community, and clinical outcomes; and

4 (2) ensure that a recipient's primary care physician
5 and other appropriate specialty physicians, or registered nurses,
6 advanced practice nurses, or physician assistants specified and
7 directed or supervised in accordance with applicable law by the
8 recipient's primary care physician or other appropriate specialty
9 physicians, become directly involved in the disease management
10 program through which the recipient receives services.

11 (d) The commission [department] may not award a contract for
12 a disease management program under this section unless the contract
13 includes a written guarantee of state savings on expenditures for
14 the group of medical assistance recipients covered by the program.

15 (e) The commission [department] may enter into a contract
16 under this section with a comprehensive hemophilia diagnostic
17 treatment center that receives funding through a maternal and child
18 health services block grant under Section 501(a)(2), Social
19 Security Act (42 U.S.C. Section 701(a)(2) [Section 701]), and the
20 center shall be considered a disease management provider.

21 (f) Directly or through a provider of a disease management
22 program that enters into a contract with the commission
23 [department] under this section, the commission [department]
24 shall, as appropriate and to the extent possible without cost to the
25 state:

26 (1) identify recipients of medical assistance under
27 this chapter or, at the discretion of the commission [department],

1 enrollees in the child health plan under Chapter 62, Health and
2 Safety Code, who are eligible to participate in federally funded
3 disease management research programs operated by research-based
4 disease management providers; and

5 (2) assist and refer eligible persons identified by
6 the commission [department] under Subdivision (1) to participate in
7 the research programs described by Subdivision (1).

8 SECTION 4.133. Sections 32.058(a) and (g), Human Resources
9 Code, are amended to read as follows:

10 (a) In this section:

11 (1) "Department" means the Department of Aging and
12 Disability Services.

13 (2) "Medical [, "medical"] assistance waiver program"
14 means a program operated [administered] by the Department of Aging
15 and Disability Services, other than the Texas home living waiver
16 program, that provides services under a waiver granted in
17 accordance with 42 U.S.C. Section 1396n(c).

18 (g) The executive commissioner [~~of the Health and Human~~
19 ~~Services Commission~~] may adopt rules to implement Subsections (d),
20 (e), and (f).

21 SECTION 4.134. Section 32.059, Human Resources Code, is
22 amended to read as follows:

23 Sec. 32.059. USE OF RESPIRATORY THERAPISTS FOR RESPIRATORY
24 THERAPY SERVICES. The executive commissioner [department] by rule
25 shall require that respiratory therapy services for
26 ventilator-dependent persons furnished as part of a plan of care
27 under this chapter be provided by a respiratory care practitioner

1 [therapist] authorized to practice respiratory care under Chapter
2 604, Occupations Code, when:

3 (1) respiratory therapy is determined by the
4 recipient's treating physician to be the most effective method of
5 treatment; and

6 (2) the use of a respiratory care practitioner
7 [therapist] is practicable and cost-neutral or cost-effective.

8 SECTION 4.135. Section 32.061, Human Resources Code, is
9 amended to read as follows:

10 Sec. 32.061. COMMUNITY ATTENDANT SERVICES PROGRAM. (a)
11 Any home and community-based services that the commission
12 [department] provides under Section 1929, Social Security Act (42
13 U.S.C. Section 1396t) and its subsequent amendments to functionally
14 disabled individuals who have income that exceeds the limit
15 established by federal law for Supplemental Security Income (SSI)
16 (42 U.S.C. Section 1381 et seq.) and its subsequent amendments
17 shall be provided through the community attendant services program.

18 (b) In determining an applicant's eligibility for home and
19 community-based services described by Subsection (a), the
20 commission [department] shall exclude \$20 of unearned or earned
21 income from the applicant's monthly income.

22 SECTION 4.136. Sections 32.062(a) and (c), Human Resources
23 Code, are amended to read as follows:

24 (a) The following are not admissible as evidence in a civil
25 action:

26 (1) any finding by the Department of Aging and
27 Disability Services [department] that an institution licensed

1 under Chapter 242, Health and Safety Code, has violated a standard
2 for participation in the medical assistance program under this
3 chapter; or

4 (2) the fact of the assessment of a monetary penalty
5 against an institution under Section [32.021](#) or the payment of the
6 penalty by an institution[; or]

7 [~~(3) any information exchanged between the department~~
8 ~~and a nursing facility under Section [531.912](#), Government Code~~].

9 (c) Notwithstanding any other provision of this section,
10 evidence described by Subsection (a) is admissible as evidence in a
11 civil action only if:

12 (1) the evidence relates to a material violation of
13 this chapter or a rule adopted under this chapter or assessment of a
14 monetary penalty with respect to:

15 (A) the particular incident and the particular
16 individual whose personal injury is the basis of the claim being
17 brought in the civil action; or

18 (B) a finding by the Department of Aging and
19 Disability Services [department] that directly involves
20 substantially similar conduct that occurred at the institution
21 within a period of one year before the particular incident that is
22 the basis of the claim being brought in the civil action; [and]

23 (2) the evidence of a material violation has been
24 affirmed by the entry of a final adjudicated and unappealable order
25 of the Department of Aging and Disability Services [department]
26 after formal appeal; and

27 (3) the record is otherwise admissible under the Texas

1 Rules of Evidence.

2 SECTION 4.137. Section 32.063, Human Resources Code, is
3 amended to read as follows:

4 Sec. 32.063. THIRD-PARTY BILLING VENDORS. (a) A
5 third-party billing vendor may not submit a claim with the
6 commission [department] for reimbursement on behalf of a provider
7 of medical services under the medical assistance program unless the
8 vendor has entered into a contract with the commission [department]
9 authorizing that activity.

10 (b) To the extent practical, the contract shall contain
11 provisions comparable to the provisions contained in contracts
12 between the commission [department] and providers of medical
13 services, with an emphasis on provisions designed to prevent fraud
14 or abuse under the medical assistance program. At a minimum, the
15 contract must require the third-party billing vendor to:

16 (1) provide documentation of the vendor's authority to
17 bill on behalf of each provider for whom the vendor submits claims;

18 (2) submit a claim in a manner that permits the
19 commission [department] to identify and verify the vendor, any
20 computer or telephone line used in submitting the claim, any
21 relevant user password used in submitting the claim, and any
22 provider number referenced in the claim; and

23 (3) subject to any confidentiality requirements
24 imposed by federal law, provide the commission [department], the
25 office of the attorney general, or authorized representatives with:

26 (A) access to any records maintained by the
27 vendor, including original records and records maintained by the

1 vendor on behalf of a provider, relevant to an audit or
2 investigation of the vendor's services or another function of the
3 commission [department] or office of the attorney general relating
4 to the vendor; and

5 (B) if requested, copies of any records described
6 by Paragraph (A) at no charge to the commission [department], the
7 office of the attorney general, or authorized representatives.

8 (c) On receipt of a claim submitted by a third-party billing
9 vendor, the commission [redacted] shall send a remittance notice
10 directly to the provider referenced in the claim. The notice must:

16 (d) The commission [department] shall take all action
17 necessary, including any modifications of the commission's
18 [department's] claims processing system, to enable the commission
19 [department] to identify and verify a third-party billing vendor
20 submitting a claim for reimbursement under the medical assistance
21 program, including identification and verification of any computer
22 or telephone line used in submitting the claim, any relevant user
23 password used in submitting the claim, and any provider number
24 referenced in the claim.

25 (e) The commission [department] shall audit each
26 third-party billing vendor subject to this section at least
27 annually to prevent fraud and abuse under the medical assistance

1 program.

2 SECTION 4.138. Section 32.064(a), Human Resources Code, is
3 amended to read as follows:

4 (a) To the extent permitted under Title XIX, Social Security
5 Act (42 U.S.C. Section 1396 et seq.), as amended, and any other
6 applicable law or regulations, the executive commissioner [~~Health~~
7 ~~and Human Services Commission~~] shall adopt provisions requiring
8 recipients of medical assistance to share the cost of medical
9 assistance, including provisions requiring recipients to pay:

10 (1) an enrollment fee;

11 (2) a deductible; or

12 (3) coinsurance or a portion of the plan premium, if
13 the recipients receive medical assistance under the Medicaid
14 managed care program under Chapter 533, Government Code[, or a
15 ~~Medicaid managed care demonstration project under Section 32.041~~].

16 SECTION 4.139. Section 32.0641, Human Resources Code, is
17 amended to read as follows:

18 Sec. 32.0641. RECIPIENT ACCOUNTABILITY PROVISIONS;
19 COST-SHARING REQUIREMENT TO IMPROVE APPROPRIATE UTILIZATION OF
20 SERVICES. (a) To the extent permitted under and in a manner that is
21 consistent with Title XIX, Social Security Act (42 U.S.C. Section
22 1396 et seq.) and any other applicable law or regulation or under a
23 federal waiver or other authorization, the executive commissioner
24 [~~of the Health and Human Services Commission~~] shall adopt, after
25 consulting with the Medicaid and CHIP Quality-Based Payment
26 Advisory Committee established under Section 536.002, Government
27 Code, cost-sharing provisions that encourage personal

1 accountability and appropriate utilization of health care
2 services, including a cost-sharing provision applicable to a
3 recipient who chooses to receive a nonemergency medical service
4 through a hospital emergency room.

5 (b) The commission [department] may not seek a federal
6 waiver or other authorization under this section that would:

7 (1) prevent a Medicaid recipient who has a condition
8 requiring emergency medical services from receiving care through a
9 hospital emergency room; or

10 (2) waive any provision under Section 1867, Social
11 Security Act (42 U.S.C. Section 1395dd).

12 SECTION 4.140. Section 32.067(b), Human Resources Code, is
13 amended to read as follows:

14 (b) The commission [department] shall assure that any
15 agency licensed to provide home health services under Chapter 142,
16 Health and Safety Code, and not only a certified agency licensed
17 under that chapter, may provide home health services to individuals
18 enrolled in the Texas Health Steps Comprehensive Care Program.

19 SECTION 4.141. Section 32.068(c), Human Resources Code, is
20 amended to read as follows:

21 (c) The executive commissioner [~~of the Health and Human~~
22 ~~Services Commission~~] shall adopt rules necessary to implement this
23 section. The executive commissioner may by rule adopt limited
24 exceptions to the requirements of this section.

25 SECTION 4.142. Section 32.069, Human Resources Code, is
26 amended to read as follows:

27 Sec. 32.069. CHRONIC KIDNEY DISEASE MANAGEMENT INITIATIVE.

1 A provider of disease management programs under Section 32.057
2 [~~32.059, as added by Chapter 208, Acts of the 78th Legislature,~~
3 ~~Regular Session, 2003,~~] shall develop a program to provide
4 screening for and diagnosis and treatment of chronic kidney disease
5 and its medical complications under the medical assistance program.
6 The program must use generally recognized clinical practice
7 guidelines and laboratory assessments that identify chronic kidney
8 disease on the basis of impaired kidney function or the presence of
9 kidney damage.

10 SECTION 4.143. Section 32.070, Human Resources Code, is
11 amended to read as follows:

12 Sec. 32.070. AUDITS OF PROVIDERS. (a) In this section,
13 "provider" means an individual, firm, partnership, corporation,
14 agency, association, institution, or other entity that is or was
15 approved by the commission [~~department~~] to provide medical
16 assistance under contract or provider agreement with the commission
17 [~~department~~].

18 (b) The executive commissioner [~~of the Health and Human~~
19 ~~Services Commission~~] shall adopt rules governing the audit of
20 providers in the medical assistance program.

21 (c) The rules must:

22 (1) provide that the agency conducting the audit must
23 notify the provider, and the provider's corporate headquarters, if
24 the provider is a pharmacy that is incorporated, of the impending
25 audit not later than the seventh day before the date the field audit
26 portion of the audit begins;

27 (2) limit the period covered by an audit to three

1 years;

2 (3) provide that the agency conducting the audit must
3 accommodate the provider's schedule to the greatest extent possible
4 when scheduling the field audit portion of the audit;

5 (4) require the agency conducting the audit to conduct
6 an entrance interview before beginning the field audit portion of
7 the audit;

8 (5) provide that each provider must be audited under
9 the same standards and parameters as other providers of the same
10 type;

11 (6) provide that the audit must be conducted in
12 accordance with generally accepted government auditing standards
13 issued by the Comptroller General of the United States or other
14 appropriate standards;

15 (7) require the agency conducting the audit to conduct
16 an exit interview at the close of the field audit portion of the
17 audit with the provider to review the agency's initial findings;

18 (8) provide that, at the exit interview, the agency
19 conducting the audit shall:

20 (A) allow the provider to:

21 (i) respond to questions by the agency;

22 (ii) comment, if the provider desires, on
23 the initial findings of the agency; and

24 (iii) correct a questioned cost by
25 providing additional supporting documentation that meets the
26 auditing standards required by Subdivision (6) if there is no
27 indication that the error or omission that resulted in the

1 questioned cost demonstrates intent to commit fraud; and
2 (B) provide to the provider a preliminary audit
3 report and a copy of any document used to support a proposed
4 adjustment to the provider's cost report;

27 (A) a provider may obtain an early review of an

1 audit report or an unfavorable audit finding without the need to
2 obtain legal counsel; and

3 (B) a recommendation to revise or dismiss an
4 unfavorable audit finding that is found to be unsubstantiated may
5 be made by the review panel to the agency, provided that the
6 recommendation is not binding on the agency.

7 (d) This section does not apply to a computerized audit
8 conducted using the Medicaid Fraud Detection [Audit] System or an
9 audit or investigation of fraud and abuse conducted by the Medicaid
10 fraud control unit of the office of the attorney general, the office
11 of the state auditor, the office of the inspector general, or the
12 Office of Inspector General in the United States Department of
13 Health and Human Services.

14 SECTION 4.144. Sections 32.071(a), (c), (d), (e), (f), and
15 (g), Human Resources Code, are amended to read as follows:

16 (a) The commission [department] shall develop and implement
17 a comprehensive medical assistance education campaign for
18 recipients and providers to ensure that care is provided in such a
19 way as to improve patient outcomes and maximize cost-effectiveness.
20 The commission [department] shall ensure that educational
21 information developed under this section is demographically
22 relevant and appropriate for each recipient or provider to whom the
23 information is provided.

24 (c) The commission [department] shall evaluate whether
25 certain risk groups may disproportionately increase their
26 appropriate use of the health care system as a result of targeted
27 elements of an education campaign. If the commission [department]

1 determines that certain risk groups will respond with more
2 appropriate use of the system, the commission [department] shall
3 develop and implement the appropriate targeted educational
4 elements.

5 (d) The commission [department] shall develop a system for
6 reviewing recipient prescription drug use and educating providers
7 with respect to that drug use in a manner that emphasizes reducing
8 inappropriate prescription drug use and the possibility of adverse
9 drug interactions.

10 (e) The commission [department] shall coordinate the
11 medical assistance education campaign with area health education
12 centers, federally qualified health centers, as defined by 42
13 U.S.C. Section 1396d(1)(2)(B), and other stakeholders who use
14 public funds to educate recipients and providers about the health
15 care system in this state. The commission [department] shall make
16 every effort to maximize state funds by working through these
17 partners to maximize receipt of additional federal funding for
18 administrative and other costs.

19 (f) The commission [department] shall coordinate with other
20 state and local agencies to ensure that community-based health
21 workers, health educators, state eligibility determination
22 employees who work in hospitals and other provider locations, and
23 promoters are used in the medical assistance education campaign, as
24 appropriate.

25 (g) The commission [department] shall ensure that all state
26 agencies that work with recipients, all administrative persons who
27 provide eligibility determination and enrollment services, and all

1 service providers use the same curriculum for recipient and
2 provider education, as appropriate.

3 SECTION 4.145. Section 32.072(b), Human Resources Code, is
4 amended to read as follows:

5 (b) The commission [department] may require an
6 ophthalmologist or therapeutic optometrist selected as provided by
7 this section by a recipient of medical assistance who is otherwise
8 required to have a primary care physician or other gatekeeper or
9 health care coordinator to forward to the recipient's physician,
10 gatekeeper, or health care coordinator information concerning the
11 eye health care services provided to the recipient.

12 SECTION 4.146. Sections 32.073(b) and (c), Human Resources
13 Code, are amended to read as follows:

14 (b) The commission [~~Health and Human Services Commission~~] shall ensure that any health information technology used by the
15 commission or any entity acting on behalf of the commission in the
16 medical assistance program conforms to standards required under
17 federal law.

19 (c) Not later than the second anniversary of the date
20 national standards for electronic prior authorization of benefits
21 are adopted, the commission [~~Health and Human Services Commission~~] shall require a health benefit plan issuer participating in the
22 medical assistance program or the agent of the health benefit plan
23 issuer that manages or administers prescription drug benefits to
24 exchange prior authorization requests electronically with a
25 prescribing provider participating in the medical assistance
26 program who has electronic prescribing capability and who initiates

1 a request electronically.

2 SECTION 4.147. Section 32.074(b), Human Resources Code, is
3 amended to read as follows:

4 (b) The commission [department] shall ensure that each
5 Medicaid recipient enrolled in a home and community-based services
6 waiver program that includes a personal emergency response system
7 as a service has access to a personal emergency response system, if
8 necessary, without regard to the recipient's access to a landline
9 telephone.

10 SECTION 4.148. Section 32.075(c), Human Resources Code, is
11 amended to read as follows:

12 (c) The commission [department] shall provide employment
13 assistance and supported employment to participants in the waiver
14 programs identified in Subsection (b).

15 SECTION 4.149. Section 32.201(1), Human Resources Code, is
16 amended to read as follows:

17 (1) "Electronic health record" means electronically
18 originated and maintained health and claims information regarding
19 the health status of an individual that may be derived from multiple
20 sources and includes the following core functionalities:

21 (A) a patient health and claims information or
22 data entry function to aid with medical diagnosis, nursing
23 assessment, medication lists, allergy recognition, demographics,
24 clinical narratives, and test results;

25 (B) a results management function that may
26 include computerized laboratory test results, diagnostic imaging
27 reports, interventional radiology reports, and automated displays

1 of past and present medical or laboratory test results;

2 (C) a computerized physician order entry of

3 medication, care orders, and ancillary services;

4 (D) clinical decision support that may include

5 electronic reminders and prompts to improve prevention, diagnosis,

6 and management; and

7 (E) electronic communication and connectivity

8 that allows online communication:

9 (i) among physicians and health care

10 providers; and

11 (ii) among the commission [Health and Human

12 Services Commission], the operating agencies, and participating

13 providers.

14 SECTION 4.150. Sections 32.202(a) and (b), Human Resources

15 Code, are amended to read as follows:

16 (a) To the extent allowed by federal law, the executive

17 commissioner may adopt rules allowing the commission [Health and

18 Human Services Commission] to permit, facilitate, and implement the

19 use of health information technology for the medical assistance

20 program to allow for electronic communication among the commission,

21 the operating agencies, and participating providers for:

22 (1) eligibility, enrollment, verification procedures,

23 and prior authorization for health care services or procedures

24 covered by the medical assistance program, as determined by the

25 executive commissioner, including diagnostic imaging;

26 (2) the update of practice information by

27 participating providers;

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(3) the exchange of recipient health care information, including electronic prescribing and electronic health records;

10 (b) If the executive commissioner determines that a need
11 exists for the use of health information technology in the medical
12 assistance program and that the technology is cost-effective, the
13 commission [Health and Human Services Commission] may, for the
14 purposes prescribed by Subsection (a):

20 [(A) the technologies used in the pilot program
21 ~~implemented under Section 531.1063, Government Code; and~~
22 [(B)] the health passport developed under
23 Section 266.006, Family Code.

24 SECTION 4.151. Section 32.252, Human Resources Code, is
25 amended to read as follows:

26 Sec. 32.252. PARTNERSHIP FOR LONG-TERM CARE PROGRAM. The
27 partnership for long-term care program is administered as part of

1 the medical assistance program by the commission [department] with
2 the assistance of the Texas Department of Insurance. The program
3 must be consistent with provisions governing the expansion of a
4 state long-term care partnership program established under the
5 federal Deficit Reduction Act of 2005 (Pub. L. No. 109-171).

6 SECTION 4.152. Sections 32.253(b) and (c), Human Resources
7 Code, are amended to read as follows:

8 (b) The commission [department] may not consider the
9 resources of an individual who has used all or part of the
10 individual's benefits under an approved plan to the extent those
11 resources are the subject of a dollar-for-dollar asset disregard in
12 determining:

13 (1) eligibility for medical assistance under the
14 medical assistance program;

15 (2) the amount of medical assistance provided; or

16 (3) any subsequent recovery by this state from the
17 individual's estate for medical assistance provided to the
18 individual.

19 (c) The commission [department] may not provide to an
20 individual eligible for medical assistance under this section those
21 medical assistance services covered under the medical assistance
22 program that are also covered by the individual's benefits under
23 the approved plan until the individual has fully exhausted the
24 individual's benefits under the plan.

25 SECTION 4.153. Sections 32.254 and 32.255, Human Resources
26 Code, are amended to read as follows:

27 Sec. 32.254. RECIPROCAL AGREEMENTS. The commission

1 [department] may enter into reciprocal agreements with other states
2 to extend asset protection to a resident of this state who purchased
3 a long-term care benefit plan in another state that has a
4 substantially similar asset disregard program.

5 Sec. 32.255. TRAINING; INFORMATION AND TECHNICAL
6 ASSISTANCE. The commission [~~Health and Human Services Commission~~]
7 shall provide information and technical assistance to the Texas
8 Department of Insurance regarding that department's role in
9 ensuring that each individual who sells a long-term care benefit
10 plan under the partnership for long-term care program receives
11 training and demonstrates evidence of an understanding of these
12 plans as required by Section [1651.105](#), Insurance Code. The
13 training must satisfy the training requirements imposed under the
14 provisions governing the expansion of a state long-term care
15 partnership program established under the federal Deficit
16 Reduction Act of 2005 (Pub. L. No. 109-171).

17 SECTION 4.154. Sections [33.0005](#) and [33.0006](#), Human
18 Resources Code, are amended to read as follows:

19 Sec. 33.0005. DEFINITIONS. In this chapter:

20 (1) "Commissioner" means the commissioner of
21 agriculture.

22 (1-a) "Department" means the Department of
23 Agriculture[~~and~~]

24 [~~(A) with respect to the food stamp program, the~~
25 ~~Health and Human Services Commission, and~~

26 [~~(B) with respect to any other nutritional~~
27 ~~assistance program or special nutrition program listed in~~

1 ~~Subdivision (3), the Health and Human Services Commission or the~~
2 ~~agency of this state that operates the program, as applicable].~~.

3 (2) "Executive commissioner" means the executive
4 commissioner of the Health and Human Services Commission[~~, or the~~
~~chief administrative officer of an agency of this state operating a~~
~~nutritional assistance program, as applicable].~~.

7 (3) "Supplemental nutrition assistance program" and
8 "SNAP" mean the program operated pursuant to 7 U.S.C. Section 2011
9 et seq. [~~Nutritional assistance program~~ or "~~special nutrition~~
10 ~~program~~" includes the following programs authorized by federal law
11 that provide nutritional assistance to needy individuals in this
12 state:.

13 [(A) ~~the food stamp program;~~
14 [(B) ~~the child and adult care food program;~~
15 [(C) ~~the summer food service program;~~
16 [(D) ~~the food distribution program;~~
17 [(E) ~~the emergency food assistance program; and~~
18 [(F) ~~the commodity supplemental food program.~~]

19 Sec. 33.0006. OPERATION OF SNAP [~~FOOD STAMP PROGRAM~~]. The
20 commission [~~Health and Human Services Commission~~] operates the
21 supplemental nutrition assistance [~~food stamp~~] program.

22 SECTION 4.155. Section 33.002, Human Resources Code, is
23 amended to read as follows:

24 Sec. 33.002. DISTRIBUTION OF COMMODITIES AND SNAP BENEFITS
25 [~~FOOD STAMPS~~]. (a) The department is responsible for the
26 distribution of commodities and the commission is responsible for
27 the distribution of supplemental nutrition assistance program

1 benefits [~~food stamps~~] allocated respectively to the department and
2 the commission by the federal government.

3 (b) The department and commission may enter into agreements
4 with federal agencies that are required as a prerequisite to the
5 allocation of the commodities or supplemental nutrition assistance
6 program benefits [~~food stamps~~]. The department and commission may
7 enter into agreements with eleemosynary institutions, schools, and
8 other eligible agencies and recipients of the commodities and
9 supplemental nutrition assistance program benefits [~~food stamps~~].
10 The department [~~administering the distribution of federal surplus~~
11 commodities and other resources] may cooperate with a municipality
12 or county as necessary to properly administer the [~~that~~]
13 distribution of federal surplus commodities and other resources for
14 which the department is responsible.

15 (c) The department and the executive commissioner, as
16 applicable, shall establish policies and rules that will ensure the
17 widest and most efficient distribution of the commodities and
18 supplemental nutrition assistance program benefits [~~food stamps~~]
19 to those eligible to receive them.

20 (d) The commission [~~department~~] shall continually monitor
21 the expedited issuance of supplemental nutrition assistance
22 program [~~food stamp~~] benefits to ensure that each region in the
23 state complies with federal regulations and that those households
24 eligible for expedited issuance are identified, processed, and
25 certified within the timeframes prescribed within the federal
26 regulations.

27 (e) The commission [~~department~~] shall screen all applicants

1 for expedited issuance of supplemental nutrition assistance
2 program benefits on a priority basis within one working day.
3 Applicants who meet the federal criteria for expedited issuance and
4 have an immediate need for food assistance shall receive those
5 benefits [either a manual Authorization-to-Purchase card or the
6 immediate issuance of food stamp coupons] within one working day.

7 (f) The commission [department] shall conspicuously post in
8 each local supplemental nutrition assistance program benefits
9 [food stamp] office a notice of the availability of and procedure
10 for applying for expedited issuance.

11 (g) The commission [department] may, within federal limits,
12 modify the one-day screening and service delivery requirements
13 prescribed by Subsection (e) if the commission [department]
14 determines that the modification is necessary to reduce fraud in
15 the supplemental nutrition assistance [food stamp] program.

16 SECTION 4.156. Sections 33.0021(a) and (c), Human Resources
17 Code, are amended to read as follows:

18 (a) The commission [department] shall develop general
19 informational materials that contain eligibility guidelines for
20 supplemental nutrition assistance program benefits under this
21 chapter and that clearly and simply explain the process for
22 applying for benefits, as well as indicate the availability of
23 expedited benefits [food stamps], the existence of toll-free
24 telephone hotlines, and the existence of a procedure in each region
25 to handle complaints. These informational materials shall be
26 nonpromotional in nature.

27 (c) The commission [department] shall distribute the

1 materials to community action agencies, legal services offices, and
2 emergency food programs and other programs likely to have contact
3 with potential applicants.

4 SECTION 4.157. Section 33.0023, Human Resources Code, is
5 amended to read as follows:

6 Sec. 33.0023. SNAP [FOOD STAMP] INFORMATION MATCHING
7 SYSTEM. (a) To detect and prevent fraud in the supplemental
8 nutrition assistance [food stamp] program, the commission
9 [~~department~~], through the use of a computerized matching system,
10 shall compare at least semiannually commission [~~department~~]
11 information relating to supplemental nutrition assistance program
12 benefits [food stamp] transactions and redemptions by benefits
13 recipients [~~of food stamps~~] and retailers with information obtained
14 from the comptroller and other appropriate state agencies relating
15 to those recipients and retailers.

16 (b) The commission [~~department~~], the comptroller, and the
17 appropriate agencies shall take all necessary measures to protect
18 the confidentiality of information provided under this section, in
19 compliance with all existing state and federal privacy guidelines.

20 (c) In this section, "retailer" means a business approved
21 for participation in the supplemental nutrition assistance [food
22 stamp] program.

23 SECTION 4.158. Section 33.003(a), Human Resources Code, is
24 amended to read as follows:

25 (a) The department may establish distribution districts and
26 employ distributing agents or may make other arrangements necessary
27 to provide for the efficient distribution of commodities [~~and food~~

1 stamps].

2 SECTION 4.159. Section 33.004, Human Resources Code, is
3 amended to read as follows:

4 Sec. 33.004. COMMODITY DISTRIBUTION PROGRAM ADVISORY
5 BOARDS. (a) The department may establish state or district-level
6 advisory boards to facilitate the operations of the commodity
7 distribution program [~~or food stamp programs~~].

8 (b) The advisory boards shall be of the size, membership,
9 and experience that the [~~executive~~] commissioner determines to be
10 essential for the accomplishment of the purposes of this chapter
11 and not in conflict with or duplicative of other laws on this
12 subject.

13 SECTION 4.160. Section 33.006, Human Resources Code, is
14 amended to read as follows:

15 Sec. 33.006. HANDLING CHARGES. (a) The department may
16 assess reasonable handling charges against the recipients of
17 commodities [~~or food stamps~~] to cover the cost of distribution. The
18 total operation must be conducted on a nonprofit basis.

19 (b) The department shall make the assessments at the times
20 and in the amounts that it considers necessary for the proper
21 administration of the commodity distribution program [~~programs~~].
22 However, the assessments must be uniform in each distribution
23 district and may not exceed \$1 per recipient per year.

24 SECTION 4.161. Section 33.008, Human Resources Code, is
25 amended to read as follows:

26 Sec. 33.008. SALE OF USED COMMODITY CONTAINERS. The
27 department may sell used commodity containers. Proceeds from the

1 sales in each distribution district shall be deposited in the
2 general revenue [~~commodity distribution~~] fund [~~and used for the~~
3 ~~commodity distribution program~~].

4 SECTION 4.162. Section 33.011, Human Resources Code, is
5 amended to read as follows:

6 Sec. 33.011. PROHIBITED ACTIVITIES; PENALTIES. (a) A
7 person commits an offense if the person knowingly uses, alters, or
8 transfers a supplemental nutrition assistance program electronic
9 [~~food stamp~~] benefit transfer card [~~permits~~] in any manner not
10 authorized by law. An offense under this subsection is a Class A
11 misdemeanor if the value of the supplemental nutrition assistance
12 program electronic [~~food stamp~~] benefit transfer card [~~permits~~] is
13 less than \$200 and a felony of the third degree if the value [~~of the~~
14 ~~food stamp benefit permits~~] is \$200 or more.

15 (b) A person commits an offense if the person knowingly
16 possesses a supplemental nutrition assistance program electronic
17 [~~food stamp~~] benefit transfer card [~~permits~~] when not authorized by
18 law to possess the card [~~them~~], knowingly redeems supplemental
19 nutrition assistance program benefits [~~food stamp benefit permits~~]
20 when not authorized by law to redeem them, or knowingly redeems
21 supplemental nutrition assistance program benefits [~~food stamp~~
22 ~~benefit permits~~] for purposes not authorized by law. An offense
23 under this subsection is a Class A misdemeanor if the value of the
24 supplemental nutrition assistance program electronic benefit
25 transfer card possessed, or the program benefits redeemed, [~~food~~
26 ~~stamp benefit permits~~] is less than \$200 and a felony of the third
27 degree if the value of the supplemental nutrition assistance

1 program electronic benefit transfer card possessed, or the program
2 benefits redeemed, [food stamp benefit permits] is \$200 or more.

3 [(c) A person commits an offense if the person knowingly
4 possesses blank authorizations to participate in the food stamp
5 program when not authorized by law to possess them. An offense
6 under this subsection is a felony of the third degree.]

7 (d) When cash, exchange value, or supplemental nutrition
8 assistance program electronic [food stamp] benefit transfer cards
9 [u~~p~~ermits] of various values are obtained in violation of this
10 section pursuant to one scheme or continuing course of conduct,
11 whether from the same or several sources, the conduct may be
12 considered as one offense and the values aggregated in determining
13 the grade of the offense.

14 (e) The commission [~~department~~] may contract with county
15 commissioners courts to provide funds to pay for professional and
16 support services necessary for the enforcement of any criminal
17 offense that involves illegally obtaining, possessing, or misusing
18 supplemental nutrition assistance program benefits [food stamps].

19 (f) For the purposes of Subsections (a) and (b), the value
20 of a supplemental nutrition assistance program electronic [food
21 ~~stamp~~] benefit transfer card [~~permits~~] is the cash or exchange
22 value obtained in violation of this section.

23 (g) In this section, "supplemental nutrition assistance
24 program benefits [food stamp benefit permits]" includes [+
25 [(1) ~~food stamp coupons;~~
26 [(2)] electronic benefit transfer (EBT) cards[+, and
27 [(3) ~~authorizations to participate in the food stamp~~

1 program].

2 SECTION 4.163. Sections 33.012, 33.013, 33.015, 33.022,
3 33.023, 33.0231, and 33.025, Human Resources Code, are amended to
4 read as follows:

5 Sec. 33.012. CHEMICAL DEPENDENCY TREATMENT PROGRAM AS
6 REPRESENTATIVE. The commission [department] shall provide an
7 individual's supplemental nutrition assistance program [~~food~~
8 ~~stamp~~] allotment to the residential chemical dependency treatment
9 program in which the person resides to the extent allowed under
10 Section 8(f), Food Stamp Act of 1977 (7 U.S.C. Section 2017(e)), if
11 the individual designates the program as the individual's
12 authorized representative.

13 Sec. 33.013. INFORMATION AND REFERRAL SERVICES. (a) Each
14 local supplemental nutrition assistance program benefits [~~food~~
15 ~~stamp~~] office shall compile and maintain a current list of
16 emergency food providers in the area served by the local
17 supplemental nutrition assistance program benefits [~~food stamp~~]
18 office and refer individuals who need food to local programs that
19 may be able to provide assistance.

20 (b) The commission [department] shall establish regional or
21 statewide toll-free telephone hotlines to provide emergency food
22 information and to refer needy individuals to local programs that
23 may be able to provide assistance. The commission [department]
24 shall publish the telephone number for referrals in the emergency
25 telephone numbers section of local telephone books. The commission
26 [department] shall display this telephone number in all of its
27 offices.

1 (c) Where emergency food programs do not exist, the
2 commission [~~department office~~] shall assist community groups in
3 establishing emergency food assistance programs.

4 (d) The commission [~~department~~] may establish other local,
5 regional, or statewide programs to provide emergency food
6 information and referral services where needed and where none
7 presently exist.

8 Sec. 33.015. INITIAL ESTABLISHMENT AND RECERTIFICATION OF
9 ELIGIBILITY FOR CERTAIN PERSONS. (a) In administering the
10 supplemental nutrition assistance [~~food stamp~~] program, the
11 commission [~~department~~] shall, except as provided by Subsection
12 (c), allow a person to comply with initial eligibility
13 requirements, including any initial interview, and with subsequent
14 periodic eligibility recertification requirements by telephone
15 instead of through a personal appearance at commission [~~department~~]
16 offices if:

17 (1) the person and each member of the person's
18 household:

19 (A) have no earned income; and
20 (B) are elderly or persons with disabilities
21 [~~disabled~~]; or

22 (2) the person is subject to a hardship, as determined
23 by commission rule [~~the department~~].

24 (b) For purposes of rules under Subsection (a)(2), a
25 hardship includes a situation in which a person is prevented from
26 personally appearing at commission [~~department~~] offices because
27 the person is:

1 (1) subject to a work or training schedule;
2 (2) subject to transportation difficulties;
3 (3) subject to other difficulties arising from the
4 person's residency in a rural area;
5 (4) subject to prolonged severe weather;
6 (5) ill; or
7 (6) needed to care for a member of the person's
8 household.

9 (c) The commission [department] may require a person
10 described by Subsection (a) to personally appear at commission
11 [department] offices to establish initial eligibility or to comply
12 with periodic eligibility recertification requirements if the
13 commission [department] considers a personal appearance necessary
14 to:

15 (1) protect the integrity of the supplemental
16 nutrition assistance [~~food stamp~~] program; or
17 (2) prevent an adverse determination regarding the
18 person's eligibility that would be less likely to occur if the
19 person made a personal appearance.

20 (d) A person described by Subsection (a) may elect to
21 personally appear at commission [department] offices to establish
22 initial eligibility or to comply with periodic eligibility
23 recertification requirements.

24 (e) The commission [department] shall require a person
25 exempted under this section from making a personal appearance at
26 commission [department] offices to provide verification of the
27 person's entitlement to the exemption on initial eligibility

1 certification and on each subsequent periodic eligibility
2 recertification. If the person does not provide verification and
3 the commission [department] considers the verification necessary
4 to protect the integrity of the supplemental nutrition assistance
5 [~~food stamp~~] program, the commission [department] shall initiate a
6 fraud referral to the commission's [department's] office of
7 inspector general.

8 Sec. 33.022. APPLICATION ASSISTANCE. (a) On request of an
9 applicant for supplemental nutrition assistance program benefits,
10 the commission [department] shall assist the applicant in filling
11 out forms and completing the application process.

12 (b) The commission [department] shall inform each applicant
13 of the availability of assistance.

14 Sec. 33.023. INFORMATION VERIFICATION. (a) The commission
15 [department] shall develop and implement for expedited issuance a
16 uniform procedure for verifying information required of an
17 applicant for supplemental nutrition assistance program benefits.

18 (b) In developing the uniform procedure, the commission
19 [department] shall attempt to minimize the cost and complexity of
20 the procedure to the applicant.

21 (c) The commission [department] shall not require an
22 applicant [applicants] for expedited service to verify more
23 eligibility items than the minimum necessary to conform to the
24 federal regulations and shall assist the applicant in obtaining
25 materials needed to verify an application. The commission
26 [department] shall not deny or delay determination of eligibility
27 due to lack of verification of items that may be postponed if they

1 cannot be verified within the timeframes prescribed by the federal
2 regulations.

3 (d) The commission [~~department~~] shall post a notice in each
4 of its offices indicating to whom an applicant for or client of the
5 supplemental nutrition assistance program can talk to resolve
6 problems or complaints. This notice should indicate persons
7 available to handle problems in local, regional, and state offices.
8 Notification of the existence of each office and complaint
9 procedures shall be posted in each supplemental nutrition
10 assistance program benefits [~~food stamp~~] office and in materials
11 made available to applicants regarding the application process.

12 Sec. 33.0231. VERIFICATION OF IDENTITY AND PREVENTION OF
13 DUPLICATE PARTICIPATION IN SNAP. The commission [~~department~~] shall
14 use appropriate technology to:

15 (1) confirm the identity of applicants for benefits
16 under the supplemental nutrition assistance program; and
17 (2) prevent duplicate participation in the program by
18 a person.

19 Sec. 33.025. NUTRITION EDUCATION AND OUTREACH FOR THOSE
20 ELIGIBLE FOR SNAP BENEFITS [~~FOOD STAMPS~~]. (a) The commission
21 [~~department~~] shall develop and implement a plan of operation to
22 provide nutrition education and outreach to persons eligible for
23 supplemental nutrition assistance program benefits [~~food stamps~~].

24 (b) The plan of operation for education and outreach shall:
25 (1) ensure that low-income consumers are provided with
26 informational materials that include but are not limited to
27 information on:

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- (A) food budgeting for low-income consumers;

(B) purchasing and preparing low-cost nutritional meals;

(C) basic nutrition and healthy foods;

(D) the availability of supplemental nutrition assistance program benefits [~~food stamps~~];

(E) the eligibility requirements for supplemental nutrition assistance program benefits [~~food stamps~~];

and

(F) the application procedures for receiving supplemental nutrition assistance program benefits [~~food stamps~~];

(2) identify a target population for the informational activities, which may include:

(A) recipients of the Special Supplemental Nutrition [~~Food~~] Program for Women, Infants and Children;

(B) families which have children who are eligible for the free or reduced-priced meals programs;

(C) recipients of commodity surplus foods;

(D) senior citizens attending nutrition sites and participating in nutritional activities;

(E) clients of emergency food pantries;

(F) farm workers or migrants; and

(G) others who may benefit from the information including but not limited to senior citizens, persons with disabilities, and working poor families;

(3) identify geographical areas, if any, which specifically will be targeted; and

1 (4) ensure that all informational activities are
2 multilingual and available in accessible alternative formats.

3 (c) The commission [department] shall submit the plan of
4 operation to the Food and Nutrition Service of the United States
5 Department of Agriculture for approval, making the commission
6 [department] eligible for reimbursement for 50 percent of the cost
7 of the informational activities.

8 (d) The commission [department] shall cooperate with other
9 state agencies that currently operate nutrition education
10 programs.

11 (e) The commission [department] shall enlist the assistance
12 of pro bono public relations firms where available.

13 SECTION 4.164. Section 33.026(c), Human Resources Code, is
14 amended to read as follows:

15 (c) The department may, with respect to [department's
16 ~~advisory committee on~~] the federal Child and Adult Care Food
17 Program [may]:

18 (1) conduct public hearings in accordance with
19 department procedures;

20 (2) refer issues relating to the program to the
21 commissioner [board] for discussion; and

22 (3) recommend modifications to the department's
23 training programs for sponsoring organizations and other persons
24 participating in the program.

25 SECTION 4.165. Section 33.0271(h), Human Resources Code, is
26 amended to read as follows:

27 (h) The department [~~executive commissioner~~] by rule may

1 establish procedures that would allow an entity that had the
2 entity's application to participate in the Child and Adult Care
3 Food Program denied or authority to participate in the program
4 revoked under Subsection (g) to appeal the department's
5 determination under that subsection.

6 SECTION 4.166. Section 33.028, Human Resources Code, is
7 amended to read as follows:

8 Sec. 33.028. GRANT PROGRAMS FOR NUTRITION EDUCATION. (a)
9 The department [Department of Agriculture] shall develop a program
10 under which the department awards grants to:

11 (1) participants in the Child and Adult Care Food
12 Program, the Head Start program, or other early childhood education
13 programs to operate nutrition education programs for children who
14 are at least three years of age but younger than five years of age;
15 and

16 (2) community and faith-based initiatives that
17 provide recreational, social, volunteer, leadership, mentoring, or
18 developmental programs to incorporate nutrition education into
19 programs provided for children younger than 19 years of age.

20 (b) The department [Department of Agriculture] may solicit
21 and accept gifts, grants, and donations from any public or private
22 source for the purposes of this section.

23 (c) The department [Department of Agriculture] may adopt
24 rules as necessary to administer the grant programs established
25 under this section.

26 SECTION 4.167. Sections 34.002(a) and (d), Human Resources
27 Code, are amended to read as follows:

1 (a) The Health and Human Services Commission[~~, the~~
2 ~~department,~~] and the Texas Workforce Commission, with the
3 participation of local workforce development boards, shall jointly
4 develop and implement a state program of temporary assistance and
5 related support services that is distinct from the financial
6 assistance program authorized by Chapter 31.

7 (d) If federal law is enacted that imposes work
8 participation rate requirements on two-parent families for
9 purposes of the financial assistance program under Chapter 31 that
10 are substantively identical to those that federal law imposes on
11 one-parent families for purposes of that program, the Health and
12 Human Services Commission [~~department~~] may, on the effective date
13 of the federal law relating to the work participation rate
14 requirements for two-parent families, provide for establishment of
15 that recipient's eligibility for financial assistance under
16 Chapter 31 instead of under this chapter in a manner that avoids
17 disruption of benefits for which the recipient is eligible.

18 SECTION 4.168. Sections 34.003(a) and (c), Human Resources
19 Code, are amended to read as follows:

20 (a) The executive commissioner [~~Health and Human Services~~
21 ~~Commission, the department,~~] and the Texas Workforce Commission
22 shall adopt all rules necessary for implementation of the state
23 program, including rules regarding eligibility, work requirements,
24 work exemptions, time limits, and related support services.

25 (c) The Health and Human Services Commission[~~, the~~
26 ~~department,~~] and the Texas Workforce Commission shall form an
27 interagency work group to develop the rules required under this

1 section. The interagency work group shall provide for
2 participation in development of the rules by representatives of
3 local workforce development boards.

4 SECTION 4.169. Section 34.004, Human Resources Code, is
5 amended to read as follows:

6 Sec. 34.004. PROCEDURES APPLICABLE TO PERSONS RESIDING IN
7 MINIMUM SERVICE COUNTIES. The Health and Human Services
8 Commission[~~, the department,~~] and the Texas Workforce Commission
9 shall develop and implement procedures to:

10 (1) determine the date on which a person's eligibility
11 for temporary assistance and related support services based on
12 residency in a minimum service county, as defined by the Texas
13 Workforce Commission, will cease as a result of the county's
14 reclassification; and

15 (2) provide for establishment of that person's
16 eligibility for financial assistance and related support services
17 under Chapter 31 in a manner that avoids disruption of benefits for
18 which the person is eligible.

19 SECTION 4.170. Section 34.006, Human Resources Code, is
20 amended to read as follows:

21 Sec. 34.006. STUDY. The Texas Workforce Commission, in
22 collaboration with local workforce development boards and the
23 appropriate standing committees of the senate and house of
24 representatives, shall:

25 (1) study methods to improve the delivery of workforce
26 services to persons residing in minimum service counties, as
27 defined by the Texas Workforce Commission [~~commission~~]; and

1 (2) develop recommendations to improve the delivery of
2 services described by Subdivision (1).

3 SECTION 4.171. Section 35.001(3), Human Resources Code, is
4 amended to read as follows:

5 (3) "Department" means the [Texas] Department of Aging
6 and Disability [Human] Services.

7 SECTION 4.172. Section 35.002, Human Resources Code, is
8 amended to read as follows:

9 Sec. 35.002. ADOPTION OF RULES AND IMPLEMENTATION OF
10 PROGRAM. The executive commissioner [~~department~~] shall adopt rules
11 to implement and administer this chapter, including:

12 (1) procedures and guidelines for determining
13 eligibility standards relating to financial qualifications and the
14 need for services and for determining eligibility criteria for
15 selecting clients to receive assistance;

16 (2) standards and procedures for approving qualified
17 programs and support services;

18 (3) procedures for conducting a periodic review of
19 clients;

20 (4) procedures and guidelines for determining when
21 assistance duplicates other support programs or results in
22 excessive support to a client;

23 (5) reasonable payment rates for qualified programs
24 and support services under this chapter; and

25 (6) a copayment system in accordance with Section
26 35.007 [~~of this code~~].

27 SECTION 4.173. Sections 35.003(a), (b), (c), and (f), Human

1 Resources Code, are amended to read as follows:

2 (a) The department's rules must provide that an applicant
3 for assistance is eligible to receive assistance if the applicant
4 resides in this state and meets the department's eligibility
5 criteria for income and need [~~and is not eligible for services under~~
6 ~~Subchapter A, Chapter 535, Health and Safety Code~~]. A family or a
7 person with a disability living independently may apply for
8 assistance.

9 (b) The department shall determine in accordance with
10 department rules eligibility for support services from the results
11 of current evaluations, program plans, and medical reports. Those
12 documents shall be provided to the department on request. The
13 department, if it considers necessary, shall provide any additional
14 evaluations.

15 (c) The department shall determine the applicant's needs
16 and the support services for which the applicant is eligible in
17 accordance with department rules and after consulting with the
18 applicant.

19 (f) If requested by the applicant, the commission's appeals
20 division [~~department~~] shall hold a hearing on the denial of an
21 application.

22 SECTION 4.174. Section 35.004(b), Human Resources Code, is
23 amended to read as follows:

24 (b) The executive commissioner [~~department~~] by rule may add
25 services and programs for which the department may provide
26 assistance.

27 SECTION 4.175. Sections 35.005(a) and (b), Human Resources

1 Code, are amended to read as follows:

2 (a) The department may grant assistance of not more than
3 \$3,600 a year to a client and make periodic distributions or a
4 lump-sum distribution according to the client's needs. The
5 commissioner of aging and disability services or the commissioner's
6 designee may grant additional amounts on consideration of an
7 individual client's needs.

8 (b) In addition to the assistance authorized by Subsection
9 (a) ~~[of this section]~~, the department may award to a client a
10 one-time ~~[onetime]~~ grant of assistance of not more than \$3,600 for
11 architectural renovation or other capital expenditure to improve or
12 facilitate the care, treatment, therapy, general living
13 conditions, or access of a person with a disability. The
14 commissioner of aging and disability services or the commissioner's
15 designee may grant additional amounts on consideration of an
16 individual client's needs.

17 SECTION 4.176. Section 35.007, Human Resources Code, is
18 amended to read as follows:

19 Sec. 35.007. COPAYMENT SYSTEM. In accordance with
20 department rules, the ~~[The]~~ department shall establish a copayment
21 system with each client using a scale for payments determined
22 according to the client's need for financial assistance to acquire
23 the necessary support services and the client's ability to pay for
24 those services.

25 SECTION 4.177. Section 35.008(a), Human Resources Code, is
26 amended to read as follows:

27 (a) The executive commissioner ~~[department]~~ by rule shall

1 establish a reasonable charge for each authorized support service.

2 SECTION 4.178. Section 35.009, Human Resources Code, is
3 amended to read as follows:

4 Sec. 35.009. CLIENT RESPONSIBILITY FOR PAYMENT. Each
5 client shall pay:

6 (1) the client's copayment;

7 (2) the amount of charges in excess of the amount
8 determined by the executive commissioner [department] to be
9 reasonable; and

10 (3) the amount of charges incurred in excess of the
11 maximum amount of assistance authorized by this chapter to be
12 provided by the department.

13 SECTION 4.179. Section 36.001(3), Human Resources Code, is
14 amended to read as follows:

15 (3) "Fiscal agent" means:

16 (A) a person who, through a contractual
17 relationship with a [the Texas Department of Human Services, the
18 Texas Department of Health, or another] state agency, receives,
19 processes, and pays a claim under the Medicaid program; or

20 (B) the designated agent of a person described by
21 Paragraph (A).

22 SECTION 4.180. Section 36.002, Human Resources Code, is
23 amended to read as follows:

24 Sec. 36.002. UNLAWFUL ACTS. A person commits an unlawful
25 act if the person:

26 (1) knowingly makes or causes to be made a false
27 statement or misrepresentation of a material fact to permit a

1 person to receive a benefit or payment under the Medicaid program
2 that is not authorized or that is greater than the benefit or
3 payment that is authorized;

4 (2) knowingly conceals or fails to disclose
5 information that permits a person to receive a benefit or payment
6 under the Medicaid program that is not authorized or that is greater
7 than the benefit or payment that is authorized;

8 (3) knowingly applies for and receives a benefit or
9 payment on behalf of another person under the Medicaid program and
10 converts any part of the benefit or payment to a use other than for
11 the benefit of the person on whose behalf it was received;

12 (4) knowingly makes, causes to be made, induces, or
13 seeks to induce the making of a false statement or
14 misrepresentation of material fact concerning:

15 (A) the conditions or operation of a facility in
16 order that the facility may qualify for certification or
17 recertification required by the Medicaid program, including
18 certification or recertification as:

19 (i) a hospital;

20 (ii) a nursing facility or skilled nursing
21 facility;

22 (iii) a hospice;

23 (iv) an ICF-IID [~~intermediate care facility~~
24 ~~for the mentally retarded~~];

25 (v) an assisted living facility; or

26 (vi) a home health agency; or

27 (B) information required to be provided by a

1 federal or state law, rule, regulation, or provider agreement
2 pertaining to the Medicaid program;

3 (5) except as authorized under the Medicaid program,
4 knowingly pays, charges, solicits, accepts, or receives, in
5 addition to an amount paid under the Medicaid program, a gift,
6 money, a donation, or other consideration as a condition to the
7 provision of a service or product or the continued provision of a
8 service or product if the cost of the service or product is paid
9 for, in whole or in part, under the Medicaid program;

10 (6) knowingly presents or causes to be presented a
11 claim for payment under the Medicaid program for a product provided
12 or a service rendered by a person who:

13 (A) is not licensed to provide the product or
14 render the service, if a license is required; or

15 (B) is not licensed in the manner claimed;

16 (7) knowingly makes or causes to be made a claim under
17 the Medicaid program for:

18 (A) a service or product that has not been
19 approved or acquiesced in by a treating physician or health care
20 practitioner;

21 (B) a service or product that is substantially
22 inadequate or inappropriate when compared to generally recognized
23 standards within the particular discipline or within the health
24 care industry; or

25 (C) a product that has been adulterated, debased,
26 mislabeled, or that is otherwise inappropriate;

27 (8) makes a claim under the Medicaid program and

1 knowingly fails to indicate the type of license and the
2 identification number of the licensed health care provider who
3 actually provided the service;

4 (9) conspires to commit a violation of Subdivision
5 (1), (2), (3), (4), (5), (6), (7), (8), (10), (11), (12), or (13);

6 (10) is a managed care organization that contracts
7 with the commission [~~Health and Human Services Commission~~] or other
8 state agency to provide or arrange to provide health care benefits
9 or services to individuals eligible under the Medicaid program and
10 knowingly:

11 (A) fails to provide to an individual a health
12 care benefit or service that the organization is required to
13 provide under the contract;

14 (B) fails to provide to the commission or
15 appropriate state agency information required to be provided by
16 law, commission or agency rule, or contractual provision; or

17 (C) engages in a fraudulent activity in
18 connection with the enrollment of an individual eligible under the
19 Medicaid program in the organization's managed care plan or in
20 connection with marketing the organization's services to an
21 individual eligible under the Medicaid program;

22 (11) knowingly obstructs an investigation by the
23 attorney general of an alleged unlawful act under this section;

24 (12) knowingly makes, uses, or causes the making or
25 use of a false record or statement material to an obligation to pay
26 or transmit money or property to this state under the Medicaid
27 program, or knowingly conceals or knowingly and improperly avoids

1 or decreases an obligation to pay or transmit money or property to
2 this state under the Medicaid program; or

3 (13) knowingly engages in conduct that constitutes a
4 violation under Section 32.039(b).

5 SECTION 4.181. Section 36.003(a), Human Resources Code, is
6 amended to read as follows:

7 (a) A state agency, including the commission [~~Health and~~
8 ~~Human Services Commission~~], the [~~Texas~~] Department of State Health
9 [Human] Services, the [~~Texas~~] Department of Aging and Disability
10 Services [~~Health, the Texas Department of Mental Health and Mental~~
11 ~~Retardation~~, and [~~or~~] the Department of Family and Protective [~~and~~
12 ~~Regulatory~~] Services, shall provide the attorney general access to
13 all documentary materials of persons and Medicaid recipients under
14 the Medicaid program to which that agency has access. Documentary
15 material provided under this subsection is provided to permit
16 investigation of an alleged unlawful act or for use or potential use
17 in an administrative or judicial proceeding.

18 SECTION 4.182. Sections 36.005(a), (b), and (b-2), Human
19 Resources Code, are amended to read as follows:

20 (a) A health and human services agency, as defined by
21 Section 531.001, Government Code:

22 (1) shall suspend or revoke:
23 (A) a provider agreement between the agency and a
24 person, other than a person who operates a nursing facility or an
25 ICF-IID [~~ICF-MR facility~~], found liable under Section 36.052; and
26 (B) a permit, license, or certification granted
27 by the agency to a person, other than a person who operates a

1 nursing facility or an ICF-IID [~~ICF-MR facility~~], found liable
2 under Section 36.052; and

3 (2) may suspend or revoke:

4 (A) a provider agreement between the agency and a
5 person who operates a nursing facility or an ICF-IID [~~ICF-MR~~
6 ~~facility~~] and who is found liable under Section 36.052; or

7 (B) a permit, license, or certification granted
8 by the agency to a person who operates a nursing facility or an
9 ICF-IID [~~ICF-MR facility~~] and who is found liable under Section
10 36.052.

11 (b) A provider found liable under Section 36.052 for an
12 unlawful act may not, for a period of 10 years, provide or arrange
13 to provide health care services under the Medicaid program or
14 supply or sell, directly or indirectly, a product to or under the
15 Medicaid program. The executive commissioner [~~of the Health and~~
16 ~~Human Services Commission~~] may by rule:

17 (1) provide for a period of ineligibility longer than
18 10 years; or

19 (2) grant a provider a full or partial exemption from
20 the period of ineligibility required by this subsection if the
21 executive commissioner finds that enforcement of the full period of
22 ineligibility is harmful to the Medicaid program or a beneficiary
23 of the program.

24 (b-2) Subsections (b) and (b-1) do not apply to a provider
25 who operates a nursing facility or an ICF-IID [~~ICF-MR facility~~].

26 SECTION 4.183. Section 36.052(a), Human Resources Code, is
27 amended to read as follows:

1 (a) Except as provided by Subsection (c), a person who
2 commits an unlawful act is liable to the state for:

3 (1) the amount of any payment or the value of any
4 monetary or in-kind benefit provided under the Medicaid program,
5 directly or indirectly, as a result of the unlawful act, including
6 any payment made to a third party;

7 (2) interest on the amount of the payment or the value
8 of the benefit described by Subdivision (1) at the prejudgment
9 interest rate in effect on the day the payment or benefit was
10 received or paid, for the period from the date the benefit was
11 received or paid to the date that the state recovers the amount of
12 the payment or value of the benefit;

13 (3) a civil penalty of:

14 (A) not less than \$5,500 or the minimum amount
15 imposed as provided by 31 U.S.C. Section 3729(a), if that amount
16 exceeds \$5,500, and not more than \$15,000 or the maximum amount
17 imposed as provided by 31 U.S.C. Section 3729(a), if that amount
18 exceeds \$15,000, for each unlawful act committed by the person that
19 results in injury to an elderly person, as defined by Section
20 **48.002(a)(1)**, a ~~disabled~~ person with a disability, as defined by
21 Section **48.002(a)(8)(A)**, or a person younger than 18 years of age;
22 or

23 (B) not less than \$5,500 or the minimum amount
24 imposed as provided by 31 U.S.C. Section 3729(a), if that amount
25 exceeds \$5,500, and not more than \$11,000 or the maximum amount
26 imposed as provided by 31 U.S.C. Section 3729(a), if that amount
27 exceeds \$11,000, for each unlawful act committed by the person that

1 does not result in injury to a person described by Paragraph (A);
2 and

3 (4) two times the amount of the payment or the value of
4 the benefit described by Subdivision (1).

5 SECTION 4.184. Section 36.110(a-1), Human Resources Code,
6 is amended to read as follows:

7 (a-1) If the state does not proceed with an action under
8 this subchapter, the person bringing the action is entitled, except
9 as provided by Subsection (b), to receive at least 25 percent but
10 not more than 30 percent of the proceeds of the action. The
11 entitlement of a person under this subsection is not affected by any
12 subsequent intervention in the action by the state in accordance
13 with Section 36.104(b-1) [36.104(b)].

14 SECTION 4.185. Sections 40.002(a), (b), and (c), Human
15 Resources Code, are amended to read as follows:

16 (a) The Department of Family and Protective Services is
17 composed of the council, the commissioner, an administrative staff,
18 and other [officers and] employees necessary to efficiently carry
19 out the purposes of this chapter.

20 (b) Notwithstanding any other law, the department shall:

21 (1) provide protective services for children and
22 elderly persons and [disabled] persons with disabilities,
23 including investigations of alleged abuse, neglect, or
24 exploitation in facilities of the Department of State Health
25 Services and the [Texas] Department of Aging [Mental Health] and
26 Disability Services [Mental Retardation] or the [its] successor
27 agency for either of those agencies;

1 (2) provide family support and family preservation
2 services that respect the fundamental right of parents to control
3 the education and upbringing of their children;

4 (3) license, register, and enforce regulations
5 applicable to child-care facilities, child-care administrators,
6 and child-placing agency administrators; and

7 (4) implement and manage programs intended to provide
8 early intervention or prevent at-risk behaviors that lead to child
9 abuse, delinquency, running away, truancy, and dropping out of
10 school.

11 (c) The department is the state agency designated to
12 cooperate with the federal government in the administration of
13 programs under:

14 (1) Parts B and E, Title IV, federal Social Security
15 Act (42 U.S.C. Sections 620 et seq. and 670 et seq.); [and]

16 (2) the Child Abuse Prevention and Treatment Act (42
17 U.S.C. Section 5101 et seq.); and

18 (3) other federal law for which the department has
19 administrative responsibility.

20 SECTION 4.186. Sections 40.0041(a), (d), and (f), Human
21 Resources Code, are amended to read as follows:

22 (a) The executive commissioner by rule [department] shall
23 develop and implement a uniform process for receiving and resolving
24 complaints against the department throughout the state. The
25 process shall include:

26 (1) statewide procedures through which the public,
27 consumers, and service recipients are informed:

5 (B) of the department's procedures for resolving
6 a complaint, including the right to appeal a decision made at the
7 local level;

(2) development and statewide distribution of a form or telephone system that may be used to make a complaint;

14 (4) a requirement that the department provide status
15 information at least quarterly to a person with a pending complaint
16 against the department, unless the information would jeopardize an
17 undercover investigation.

18 (d) The executive commissioner [~~executive director~~] shall
19 develop a consistent, statewide process for addressing an appeal by
20 a person dissatisfied with the resolution of a complaint at the
21 regional level. The process shall include an opportunity for
22 appeal of a complaint without the participation of the department's
23 ombudsman office.

24 (f) The department shall periodically prepare and deliver
25 reports to the executive commissioner [board] and the commissioner
26 [~~executive director~~] regarding the number, type, and resolution of
27 complaints made in the state against the department.

1 SECTION 4.187. Sections 40.005(a), (b), and (c), Human
2 Resources Code, are amended to read as follows:

3 (a) The executive commissioner [department] shall establish
4 and the department shall enforce rules governing the custody, use,
5 and preservation of the department's records, papers, files, and
6 communications.

7 (b) The executive commissioner [department] shall prescribe
8 safeguards to govern the use or disclosure of information relating
9 to a recipient of a department service or to an investigation the
10 department conducts in performing its duties and responsibilities.
11 The safeguards must be consistent with the purposes of the
12 department's programs and must comply with applicable state and
13 federal law and department rules.

14 (c) Notwithstanding any other provision of law, the
15 executive commissioner [department] by rule may prescribe a process
16 by which an administrative law judge may disclose requested
17 confidential information that the department possesses. The rules
18 must provide that the information may be disclosed by the
19 administrative law judge only if the administrative law judge:

20 (1) provides notice to the department and any
21 interested party; and

22 (2) determines after an in camera review of the
23 information that disclosure is essential to the administration of
24 justice and will not endanger the life or safety of any individual.

25 SECTION 4.188. Section 40.027(c), Human Resources Code, is
26 amended to read as follows:

27 (c) Subject to the control of the executive commissioner,

1 the commissioner shall:

2 (1) act as the department's chief administrative
3 officer;

4 (2) in accordance with the procedures prescribed by
5 Section 531.00551, Government Code, assist the executive
6 commissioner in the development and implementation of policies and
7 guidelines needed for the administration of the department's
8 functions;

9 (3) in accordance with the procedures adopted by the
10 executive commissioner under Section 531.00551, Government Code,
11 assist the executive commissioner in the development of rules
12 relating to the matters within the department's jurisdiction,
13 including the delivery of services to persons and the rights and
14 duties of persons who are served or regulated by the department; and

15 (4) serve as a liaison between the department and
16 commission.

17 SECTION 4.189. Section 40.0315, Human Resources Code, is
18 amended to read as follows:

19 Sec. 40.0315. INVESTIGATION UNIT FOR ADULT PROTECTIVE
20 SERVICES. (a) The adult protective services division of the
21 department shall maintain an investigation unit to investigate
22 allegations of abuse, neglect, and exploitation of elderly persons
23 and [disabled] persons with disabilities reported to the division.

24 (b) An investigator in the unit shall determine whether an
25 elderly person or [disabled] person with a disability who is the
26 subject of a report made under Section 48.051(a) may have suffered
27 from abuse, neglect, or exploitation as a result of the criminal

1 conduct of another person. If the investigator determines that
2 criminal conduct may have occurred, the investigator shall
3 immediately notify:

4 (1) the commission's office of inspector general if
5 the [disabled] person with a disability who is the subject of the
6 report resides in a state supported living center or the ICF-IID
7 [ICF-MR] component of the Rio Grande State Center; and

8 (2) the appropriate law enforcement agency, unless the
9 law enforcement agency reported the alleged abuse, neglect, or
10 exploitation to the department.

11 SECTION 4.190. Sections 40.032(a), (b), (c), (d), (e), and
12 (f), Human Resources Code, are amended to read as follows:

13 (a) The department [~~executive director~~] may employ
14 personnel necessary to administer the department's duties.

15 (b) The department [~~executive director or the executive~~
16 ~~director's designated representative~~] shall develop an
17 intradepartmental career ladder program that addresses
18 opportunities for mobility and advancement for employees within the
19 department. The program shall require the intradepartmental
20 posting of all positions concurrently with any public posting.

21 (c) The department [~~executive director or the executive~~
22 ~~director's designated representative~~] shall develop a system of
23 annual performance evaluations based on measurable job tasks. All
24 merit pay for department employees must be based on the system
25 established under this subsection.

26 (d) The department [~~executive director or the executive~~
27 ~~director's designated representative~~] shall provide [~~to members of~~

1 ~~the board and~~] to the department's employees, as often as is
2 necessary, information regarding their qualifications for office
3 or employment under this chapter and their responsibilities under
4 applicable laws relating to standards of conduct for state officers
5 or employees.

6 (e) The ~~department [executive director or the executive~~
7 ~~director's designated representative]~~ shall prepare and maintain a
8 written policy statement to ensure implementation of a program of
9 equal employment opportunity under which all personnel
10 transactions are made without regard to race, color, disability,
11 sex, religion, age, or national origin. The policy statement must
12 include:

13 (1) personnel policies, including policies relating
14 to recruitment, evaluation, selection, appointment, training, and
15 promotion of personnel, that comply with Chapter 21, Labor Code;

16 (2) a comprehensive analysis of the department's
17 workforce that meets federal and state laws, rules, and regulations
18 and instructions adopted under those laws, rules, and regulations;

19 (3) procedures by which a determination can be made
20 about the extent of underuse in the department's workforce of all
21 persons for whom federal or state laws, rules, and regulations and
22 instructions adopted under those laws, rules, and regulations
23 encourage a more equitable balance; and

24 (4) reasonable methods to appropriately address those
25 areas of underuse.

26 (f) The policy statement required under Subsection (e)
27 shall:

1 (1) be filed with the governor's office;
2 (2) cover an annual period;
3 (3) be updated at least annually; and
4 (4) be reviewed by the Texas Workforce Commission
5 civil rights division [~~on Human Rights~~] for compliance with
6 Subsection (e)(1).

7 SECTION 4.191. Section 40.0321(d), Human Resources Code, is
8 amended to read as follows:

9 (d) The department may [~~shall~~] not require a salary
10 supplement as a condition for creating or maintaining a position in
11 the region.

12 SECTION 4.192. Section 40.0322(a), Human Resources Code, is
13 amended to read as follows:

14 (a) In hiring department employees whose duties include
15 providing services as part of, or relating to, the provision of
16 adult protective services directly to an elderly person or
17 [~~disabled~~] person with a disability, the commissioner shall ensure
18 that the department hires, as often as possible, persons with
19 professional credentials related to adult protective services,
20 including persons who are licensed master social workers, as
21 defined by Section 505.002, Occupations Code, or licensed
22 professional counselors.

23 SECTION 4.193. Section 40.0323, Human Resources Code, is
24 amended to read as follows:

25 Sec. 40.0323. COORDINATION REGARDING RECRUITMENT FOR AND
26 CURRICULUM OF CERTAIN CERTIFICATE OR DEGREE PROGRAMS. Subject to
27 the availability of funds, the department and the Texas Higher

1 Education Coordinating Board jointly shall develop strategies to:

2 (1) promote certificate or degree programs in the

3 fields of social work and psychology to individuals enrolled in or

4 admitted to institutions of higher education in this state; and

5 (2) ensure that persons receiving a certificate or

6 degree, including a graduate degree, in social work or psychology

7 from an institution of higher education in this state have the

8 knowledge and skills regarding protective services that are

9 provided directly to elderly persons or [disabled] persons with

10 disabilities and necessary for successful employment by the adult

11 protective services division of the department.

12 SECTION 4.194. Section 40.033(a), Human Resources Code, is

13 amended to read as follows:

14 (a) Subject to rules adopted by the executive commissioner,

15 the [The] department may establish a merit system for its

16 employees.

17 SECTION 4.195. Sections 40.035(a), (b), and (d), Human

18 Resources Code, are amended to read as follows:

19 (a) The department shall develop and implement a training

20 program that each newly hired or assigned department employee must

21 complete before:

22 (1) initiating an investigation of a report of alleged

23 abuse, neglect, or exploitation of an elderly person or [disabled]

24 person with a disability under Chapter 48; or

25 (2) providing protective services to elderly persons

26 or [disabled] persons with disabilities under that chapter.

27 (b) The training program must:

1 (1) provide the person with appropriate comprehensive
2 information regarding:

3 (A) the incidence and types of reports of abuse,
4 neglect, and exploitation of elderly persons or [disabled] persons
5 with disabilities that are received by the department, including
6 information concerning false reports; and

7 (B) the use and proper implementation of:

8 (i) the risk assessment criteria developed
9 under Section 48.004;

10 (ii) the criteria used by caseworkers to
11 determine whether elderly persons or [disabled] persons with
12 disabilities lack capacity to consent to receive protective
13 services; and

14 (iii) the legal procedures available under
15 Chapter 48 for the protection of elderly persons or [disabled]
16 persons with disabilities, including the procedures for obtaining a
17 court order for emergency protective services under Section 48.208;

18 (2) include best practices for management of a case
19 from the intake process to the provision of protective services,
20 including criteria that specify the circumstances under which an
21 employee should:

22 (A) consult a supervisor regarding a case; or

23 (B) refer an elderly person or [disabled] person
24 with a disability to an appropriate public agency or community
25 service provider for guardianship or other long-term services after
26 the delivery of protective services to that person has been
27 completed;

1 (3) provide appropriate specialized training in any
2 necessary topics, including:

3 (A) investigation of suspected identity theft
4 and other forms of financial exploitation and suspected
5 self-neglect; and

6 (B) establishment and maintenance of working
7 relationships with community organizations and other local
8 providers who provide services to elderly persons and [~~disabled~~]
9 persons with disabilities;

10 (4) include on-the-job training, which must require
11 another department caseworker with more experience to accompany and
12 train the caseworker in the field;

13 (5) provide for the development of individualized
14 training plans;

15 (6) include training in working with law enforcement
16 agencies and the court system when legal intervention is sought for
17 investigations or emergency orders;

18 (7) to the maximum extent possible, include nationally
19 recognized best practices in addition to the best practices
20 required under Subdivision (2); and

21 (8) include testing, progress reports, or other
22 evaluations to assess the performance of trainees.

23 (d) The department shall develop and implement appropriate
24 continuing education programs for employees of the adult protective
25 services division who have completed initial training under this
26 section. The continuing education programs must include nationally
27 recognized best practices to the maximum extent possible and must

1 be designed to provide an annual update regarding changes in:
2 (1) adult protective services division policies and
3 procedures; and
4 (2) applicable law, including statutory changes
5 affecting the adult protective services division or elderly persons
6 or [disabled] persons with disabilities served by the division.

7 SECTION 4.196. Section 40.0505, Human Resources Code, is
8 amended to read as follows:

9 Sec. 40.0505. POWERS AND DUTIES OF COMMISSIONER; EFFECT OF
10 CONFLICT WITH OTHER LAW [~~OF HEALTH AND HUMAN SERVICES~~]. [~~The~~
11 ~~commissioner of health and human services has the powers and duties~~
12 ~~relating to the board and executive director as provided by Section~~
13 ~~531.0055, Government Code.~~] To the extent a power or duty given to
14 the commissioner [~~board or executive director~~] by this chapter or
15 another law conflicts with Section 531.0055, Government Code,
16 Section 531.0055 controls.

17 SECTION 4.197. Subchapter C, Chapter 40, Human Resources
18 Code, is amended by adding Sections 40.0506 and 40.0507 to read as
19 follows:

20 Sec. 40.0506. MANAGEMENT AND DIRECTION BY EXECUTIVE
21 COMMISSIONER. The department's powers and duties prescribed by
22 this chapter and other law, including enforcement activities and
23 functions, are subject to the executive commissioner's oversight
24 under Chapter 531, Government Code, to manage and direct the
25 operations of the department.

26 Sec. 40.0507. CONTRACTING AND AUDITING AUTHORITY;
27 DELEGATION. (a) The executive commissioner, as authorized by

1 Section 531.0055, Government Code, may delegate to the department
2 the executive commissioner's authority under that section for
3 contracting and auditing relating to the department's powers,
4 duties, functions, and activities.

5 (b) If the executive commissioner does not make a delegation
6 under Subsection (a), a reference in law to the department with
7 respect to the department's contracting or auditing authority means
8 the executive commissioner. If the executive commissioner makes a
9 delegation under Subsection (a), a reference in law to the
10 department's contracting or auditing authority means the authority
11 the executive commissioner has delegated to the department.

12 (c) If the executive commissioner revokes all or part of a
13 delegation made under Subsection (a), a reference in law to the
14 department with respect to a function for which the delegation was
15 revoked means the executive commissioner or another entity to which
16 the executive commissioner delegates that authority.

17 (d) It is the legislature's intent that the executive
18 commissioner retain the authority over and responsibility for
19 contracting and auditing at each health and human services agency
20 as provided by Section 531.0055, Government Code. A statute that
21 becomes law on or after January 1, 2015, that references the
22 contracting or auditing authority of the department does not give
23 the department direct contracting or auditing authority unless the
24 statute expressly provides that the contracting or auditing
25 authority:

26 (1) is given directly to the department; and
27 (2) is an exception to the exclusive contracting and

1 auditing authority given to the executive commissioner under
2 Section 531.0055, Government Code.

3 SECTION 4.198. Sections 40.0521(a) and (b), Human Resources
4 Code, are amended to read as follows:

5 (a) The executive commissioner [department] shall adopt and
6 the department shall implement rules that require an investigating
7 employee to document indications of domestic violence, including
8 elder, spousal, and child abuse. The department may develop forms
9 to facilitate the documentation process.

10 (b) The executive commissioner [department] by rule shall
11 require that written information, printed in English and Spanish,
12 concerning community services that are available to victims of
13 domestic violence be distributed to those victims. The department
14 may coordinate its efforts under this subsection with local law
15 enforcement agencies already providing that information.

16 SECTION 4.199. Section 40.0523, Human Resources Code, is
17 amended to read as follows:

18 Sec. 40.0523. INFANT MORTALITY PREVENTION EDUCATION
19 PROGRAM. (a) The department [~~and the Children's Trust Fund of~~
20 ~~Texas Council jointly~~] shall develop and implement a statewide
21 education program designed to prevent infant mortality. [~~The~~
22 ~~department and the council shall develop and mutually agree to a~~
23 ~~memorandum of understanding to clearly define the responsibilities~~
24 ~~of the department and the council under this section.~~]

25 (b) In developing and implementing the program, the
26 department [~~and the Children's Trust Fund of Texas Council~~] shall
27 request the assistance of individuals, governmental entities,

1 private organizations, and other entities with specific knowledge
2 of infant mortality prevention.

3 (c) The executive commissioner [board and the Children's
4 Trust Fund of Texas Council] shall adopt rules to implement this
5 section.

6 SECTION 4.200. Section 40.0524(b), Human Resources Code, is
7 amended to read as follows:

8 (b) Members of a multidisciplinary team may exchange
9 information relating to a report of child abuse or neglect as
10 necessary to facilitate a thorough investigation of the report.
11 The executive commissioner [department] may adopt rules governing
12 the exchange of information between team members.

13 SECTION 4.201. Sections 40.0527(a) and (c), Human Resources
14 Code, are amended to read as follows:

15 (a) Subject to the availability of funds, the executive
16 commissioner by rule shall develop and the department shall
17 implement a statewide public awareness campaign designed to educate
18 the public regarding the abuse, neglect, and exploitation of
19 elderly persons and [disabled] persons with disabilities.

20 (c) A public awareness strategy implemented for the program
21 must include:

22 (1) the provision of information on the incidence and
23 types of reports of abuse, neglect, and exploitation of elderly
24 persons or [disabled] persons with disabilities; and

25 (2) practices that can reduce the incidences of abuse,
26 neglect, and exploitation of elderly persons or [disabled] persons
27 with disabilities in this state.

1 SECTION 4.202. Section 40.059, Human Resources Code, is
2 amended to read as follows:

3 Sec. 40.059. FEES. The executive commissioner by rule
4 ~~[department]~~ may set and the department may collect [charge]
5 appropriate fees in the administration and delivery of services.

6 SECTION 4.203. Section 40.060, Human Resources Code, is
7 amended to read as follows:

8 Sec. 40.060. INDEMNIFICATION FOR LEGAL EXPENSES. If a
9 present or former employee of the department who is or was involved
10 in activities relating to the protection of children or elderly
11 persons or ~~disabled~~ persons with disabilities is criminally
12 prosecuted for conduct involving the person's misfeasance or
13 nonfeasance in the course and scope of the person's employment and
14 is found not guilty after a trial or appeal or if the complaint or
15 indictment is dismissed without a plea of guilty or nolo contendere
16 being entered, the department may indemnify the person or the
17 person's estate for the reasonable attorney's fees incurred in
18 defense of the prosecution up to a maximum of \$10,000.

19 SECTION 4.204. Section 40.062, Human Resources Code, is
20 amended to read as follows:

21 Sec. 40.062. EXEMPTION FROM CERTAIN COSTS AND FEES. The
22 department is not required to pay any cost or fee otherwise imposed
23 for court proceedings or other services, including a:

24 (1) filing fee or fee for issuance or service of
25 process imposed by Section 110.002, Family Code, or by Section
26 51.317, 51.318(b)(2), or 51.319, Government Code;
27 (2) transfer fee imposed by Section 110.002 or

1 110.005, Family Code;

2 (3) court reporter fee imposed by Section 51.601,

3 Government Code;

4 (4) judicial fund fee imposed by Section [~~Sections~~

5 ~~51.701 and~~] 51.702, Government Code;

6 (5) judge's fee imposed by Section 25.0008 or 25.0029,

7 Government Code;

8 (6) cost or security fee imposed by Section 53.051,

9 53.052, 1053.051, [~~12~~] or 1053.052, Estates [~~622, Probate~~] Code; or

10 (7) fee imposed by a county officer under Section

11 118.011 or 118.052, Local Government Code.

12 SECTION 4.205. Section 40.065(b), Human Resources Code, is

13 amended to read as follows:

14 (b) The department shall develop and implement a

15 communication plan to ensure statewide public and government

16 awareness of child abuse or neglect investigated by the department.

17 The plan shall include information detailing the procedure followed

18 by the department during the investigation and the responsibilities

19 of the department in child abuse cases. In implementing the plan,

20 the department shall establish a process for expediting the

21 reporting of child abuse or neglect to the department. The

22 executive commissioner [~~department~~] shall adopt rules to implement

23 this subsection.

24 SECTION 4.206. Section 40.066(b), Human Resources Code, is

25 amended to read as follows:

26 (b) The memorandum of understanding shall require the chief

27 administrative law judge, the department, and the commissioner

1 [executive director] to cooperate in connection with a contested
2 case hearing and may authorize the State Office of Administrative
3 Hearings to perform any administrative act, including the giving of
4 notice, that is required to be performed by the department or
5 commissioner [executive director].

6 SECTION 4.207. Section 40.068(c), Human Resources Code, is
7 amended to read as follows:

8 (c) The department shall spend funds in a guardianship of a
9 client's estate in compliance with Title 3, Estates Code [Chapter
10 XIII, Texas Probate Code].

11 SECTION 4.208. Sections 40.101(2) and (3), Human Resources
12 Code, are amended to read as follows:

13 (2) "Primary prevention" means services and
14 activities available to the community at large or to families to
15 prevent child abuse and neglect before it occurs. The term includes
16 infant mortality prevention education programs.

17 (3) "Operating fund" means the Department of Family
18 and Protective [and Regulatory] Services child abuse and neglect
19 prevention operating fund account.

20 SECTION 4.209. Sections 40.105(a) and (e), Human Resources
21 Code, are amended to read as follows:

22 (a) The child abuse and neglect prevention trust fund
23 account is an account in the general revenue fund. Money in the
24 trust fund is dedicated to child abuse and neglect primary
25 prevention programs.

26 (e) All marriage license fees and other fees collected for
27 and deposited in the trust fund and interest earned on the trust

1 fund balance shall be appropriated each biennium only to the
2 operating fund for primary child abuse and neglect prevention
3 programs.

4 SECTION 4.210. Section 40.106(a), Human Resources Code, is
5 amended to read as follows:

6 (a) The [Department of Protective and Regulatory Services
7 child abuse and neglect prevention] operating fund [~~account~~] is an
8 account in the general revenue fund.

9 SECTION 4.211. Sections 42.041(d) and (e), Human Resources
10 Code, are amended to read as follows:

11 (d) A facility exempt from the provisions of Subsection (a)
12 [~~of this section~~] that desires to receive or participate in federal
13 or state funding shall be required to comply with all other
14 provisions of this chapter and with all regulations promulgated
15 under this chapter.

16 (e) The exemptions provided by Subsection (b) [~~of this~~
17 ~~section~~] do not affect the authority of local, regional, or state
18 health department officials, the state fire marshal, or local fire
19 prevention officials to inspect child-care facilities.

20 SECTION 4.212. Sections 42.042(a), (b), (e), (f), (g),
21 (g-1), (h), (i), (l), (n), and (p), Human Resources Code, are
22 amended to read as follows:

23 (a) The executive commissioner [~~department~~] shall adopt
24 [~~make~~] rules to carry out the provisions of this chapter.

25 (b) The department shall conduct a comprehensive review of
26 all rules and standards at least every six years. For purposes of
27 this subsection, the six-year period begins on the latest of the

1 date of:

2 (1) the conclusion of the review of the rules and
3 standards;

4 (2) a decision by the department not to revise the
5 rules and standards;

6 (3) a decision by the executive commissioner [board]
7 not to revise the rules and standards; or

8 (4) executive commissioner [board] action adopting
9 new standards.

10 (e) The executive commissioner [department] shall
11 promulgate minimum standards that apply to licensed child-care
12 facilities and to registered family homes covered by this chapter
13 and that will:

14 (1) promote the health, safety, and welfare of
15 children attending a facility or registered family home;

16 (2) promote safe, comfortable, and healthy physical
17 facilities and registered family homes for children;

18 (3) ensure adequate supervision of children by
19 capable, qualified, and healthy personnel;

20 (4) ensure adequate and healthy food service where
21 food service is offered;

22 (5) prohibit racial discrimination by child-care
23 facilities and registered family homes;

24 (6) require procedures for parental and guardian
25 consultation in the formulation of children's educational and
26 therapeutic programs;

27 (7) prevent the breakdown of foster care and adoptive

1 placement; and

2 (8) ensure that a child-care facility or registered
3 family home:

4 (A) follows the directions of a child's physician
5 or other health care provider in providing specialized medical
6 assistance required by the child; and

7 (B) maintains for a reasonable time a copy of any
8 directions from the physician or provider that the parent provides
9 to the facility or home.

10 (f) In promulgating minimum standards for the provision of
11 child-care services, the executive commissioner [department] shall
12 recognize the various categories of services, including services
13 for specialized care, the various categories of children and their
14 particular needs, and the differences in the organization and
15 operation of child-care facilities and general residential
16 operations. Standards for general residential operations must
17 require an intake study before a child is placed in an operation.
18 The intake study may be conducted at a community mental health and
19 intellectual disability [~~mental retardation~~] center.

20 (g) In promulgating minimum standards the executive
21 commissioner [department] may recognize and treat differently the
22 types of services provided by the following:

23 (1) registered family homes;

24 (2) child-care facilities, including general
25 residential operations, foster group homes, foster homes, group
26 day-care homes, and day-care centers;

27 (3) child-placing agencies;

5 (g-1) The executive commissioner in adopting [REDACTED]
6 ~~determining~~] and the department in enforcing minimum standards for
7 a school-age program[~~, the department~~] shall consider commonly
8 accepted training methods for the development of a skill, talent,
9 ability, expertise, or proficiency that are implemented with the
10 consent of the parent or guardian of the participant and that are
11 fundamental to the core purpose of the program.

12 (h) The executive commissioner [department] shall
13 promulgate minimum standards for child-placing agencies.

14 (i) Before the executive commissioner adopts [adopting]
15 minimum standards, the department shall:

20 (A) a department official designated by the
21 commissioner to facilitate the work group's activities;

22 (B) a person with demonstrated expertise or
23 knowledge regarding the different types and classifications of
24 child-care facilities, homes, agencies, or programs that will be
25 covered by the proposed standards;

26 (C) a parent with experience related to one of
27 the different types or classifications of child-care facilities,

1 homes, agencies, or programs that will be covered by the proposed
2 standards; and

3 (D) a representative of a nonprofit entity
4 licensed under this chapter; and

5 (2) send a copy of the proposed standards to each
6 licensee covered by the proposed standards at least 60 days before
7 the standards take effect to provide the licensee an opportunity to
8 review and to send written suggestions to the department.

9 (1) In promulgating minimum standards for the regulation of
10 family homes that register with the department, the executive
11 commissioner [~~department~~] must address the minimum qualifications,
12 education, and training required of a person who operates a family
13 home registered with the department.

14 (n) Not later than the 60th day before the date the
15 executive commissioner [~~board~~] adopts a revision to the minimum
16 standards for child-care facilities, the executive commissioner
17 [~~department~~] shall present the revision to the appropriate
18 legislative oversight committees that have jurisdiction over
19 child-care facilities for review and comment.

20 (p) The executive commissioner [~~department~~] by rule shall
21 prescribe minimum training standards for an employee of a regulated
22 child-care facility, including the time required for completing the
23 training. The executive commissioner [~~department~~] may not require
24 an employee to repeat required training if the employee has
25 completed the training within the time prescribed by department
26 rule. The department's local offices shall make available at the
27 local office locations a copy of the rules regarding minimum

1 training standards, information enabling the owner or operator of a
2 regulated facility to apply for training funds from other agencies
3 to lower facility costs, and any other materials the department may
4 develop to assist the owner or operator or other entity in providing
5 the training.

6 SECTION 4.213. Sections [42.0421](#)(a), (b), (c), (e), (f), and
7 (h), Human Resources Code, are amended to read as follow:

8 (a) The minimum training standards prescribed by the
9 executive commissioner ~~[department]~~ under Section [42.042](#)(p) for an
10 employee, director, or operator of a day-care center, group
11 day-care home, or registered family home must include:

12 (1) 24 hours of initial training that must be
13 completed not later than the 90th day after the employee's first day
14 of employment for an employee of a day-care center who has no
15 previous training or less than two years of employment experience
16 in a regulated child-care facility, eight hours of which must be
17 completed before the employee is given responsibility for a group
18 of children;

19 (2) 24 hours of annual training for each employee of a
20 day-care center or group day-care home, excluding the director,
21 which must include at least six hours of training in one or more of
22 the following areas:

23 (A) child growth and development;
24 (B) guidance and discipline;
25 (C) age-appropriate curriculum; and
26 (D) teacher-child interaction; and
27 (3) 30 hours of annual training for each director of a

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1 day-care center or group day-care home, or operator of a registered
2 family home, which must include at least six hours of training in
3 one or more of the following areas:

8 (b) The minimum training standards prescribed by the
9 executive commissioner [department] under Section 42.042(p) must
10 require an employee of a licensed day-care center or group day-care
11 home who provides care for children younger than 24 months of age to
12 receive special training regarding the care of those children. The
13 special training must be included as a component of the initial
14 training required by Subsection (a)(1) and as a one-hour component
15 of the annual training required by Subsections (a)(2) and (a)(3).

16 The special training must include information on:

20 (c) The executive commissioner [department] by rule shall
21 require an operator of a registered family home who provides care
22 for a child younger than 24 months of age to complete one hour of
23 annual training on:

27 (e) In addition to other training required by this section,

1 the executive commissioner [department] by rule shall require an
2 owner, operator, or employee of a day-care center, group day-care
3 home, registered family home, general residential operation
4 [~~child-care institution~~], foster group home, or agency foster group
5 home who transports a child under the care of the facility whose
6 chronological or developmental age is younger than nine years of
7 age to complete at least two hours of annual training on
8 transportation safety.

9 (f) The training required by this section must be
10 appropriately targeted and relevant to the age of the children who
11 will receive care from the individual receiving training and must
12 be provided by a person who:

13 (1) is a training provider registered with the Texas
14 Early Childhood Professional [~~Care and Education Career~~]
15 Development System's Texas Trainer Registry that is maintained by
16 the Texas Head Start State Collaboration Office;

17 (2) is an instructor at a public or private secondary
18 school, an institution of higher education, as defined by Section
19 **61.003**, Education Code, or a private college or university
20 accredited by a recognized accrediting agency who teaches early
21 childhood development or another relevant course, as determined by
22 rules adopted by the commissioner of education and the commissioner
23 of higher education;

24 (3) is an employee of a state agency with relevant
25 expertise;

26 (4) is a physician, psychologist, licensed
27 professional counselor, social worker, or registered nurse;

1 (5) holds a generally recognized credential or
2 possesses documented knowledge relevant to the training the person
3 will provide;

4 (6) is a registered family home care provider or
5 director of a day-care center or group day-care home in good
6 standing with the department, if applicable, and who:

7 (A) has demonstrated core knowledge in child
8 development and caregiving; and

9 (B) is only providing training at the home or
10 center in which the provider or director and the person receiving
11 training are employed; or

12 (7) has at least two years of experience working in
13 child development, a child development program, early childhood
14 education, a childhood education program, or a Head Start or Early
15 Head Start program and:

16 (A) has been awarded a Child Development
17 Associate (CDA) credential; or

18 (B) holds at least an associate's degree in child
19 development, early childhood education, or a related field.

20 (h) In adopting the minimum training standards under
21 Section 42.042(p), the executive commissioner [department] may not
22 require more training hours than the number of hours prescribed by
23 Subsection (a) for a day-care center, group day-care home, or [a]
24 registered family home.

25 SECTION 4.214. Section 42.0422, Human Resources Code, is
26 amended to read as follows:

27 Sec. 42.0422. RESTRAINT AND SECLUSION. A person providing

1 services to a resident of a general residential operation,
2 including a state-operated facility that is a residential treatment
3 center or a general residential operation serving children with
4 intellectual disabilities [~~mental retardation~~], shall comply with
5 Chapter 322, Health and Safety Code, and the rules adopted under
6 that chapter.

7 SECTION 4.215. Section 42.0423(h), Human Resources Code, is
8 amended to read as follows:

9 (h) The executive commissioner [~~of the Health and Human~~
10 ~~Services Commission~~] shall adopt rules and forms necessary to
11 implement this section.

12 SECTION 4.216. Section 42.0424(d), Human Resources Code, is
13 amended to read as follows:

14 (d) The executive commissioner [~~department~~] shall adopt
15 rules to implement this section.

16 SECTION 4.217. Sections 42.0425(a) and (b), Human Resources
17 Code, are amended to read as follows:

18 (a) The executive commissioner [~~department~~] by rule shall
19 regulate assessment services provided by child-care facilities or
20 child-placing agencies. A child-care facility or child-placing
21 agency may not provide assessment services unless specifically
22 authorized by [~~the~~] department rule.

23 (b) The executive commissioner [~~department~~] by rule shall
24 establish minimum standards for assessment services. The standards
25 must provide that consideration is given to the individual needs of
26 a child, the appropriate place for provision of services, and the
27 factors listed in Section 42.042(e).

1 SECTION 4.218. Sections **42.043**(a), (c), and (f), Human
2 Resources Code, are amended to read as follows:

3 (a) The executive commissioner [~~department~~] shall adopt
4 [~~make~~] rules for the immunization of children in facilities
5 regulated under this chapter.

6 (c) The executive commissioner [~~Texas Department of~~
7 ~~Health~~] shall adopt [~~make~~] rules for the provisional admission of
8 children to facilities regulated under this chapter and may modify
9 or delete any of the immunizations listed in Subsection (b) [~~of this~~
10 ~~section~~] or require additional immunizations as a requirement for
11 admission to a facility.

12 (f) The [~~Texas~~] Department of State Health Services shall
13 provide the immunizations required by this section to children in
14 areas where there is no local provision of these services.

15 SECTION 4.219. Section **42.0431**, Human Resources Code, is
16 amended to read as follows:

17 Sec. 42.0431. ENFORCEMENT OF SCREENING REQUIREMENTS
18 RELATING TO VISION, HEARING, AND OTHER SPECIAL SENSES AND
19 COMMUNICATION DISORDERS. (a) The executive commissioner
20 [~~department~~], after consultation with the [~~Texas~~] Department of
21 State Health Services, shall adopt rules necessary to ensure that
22 children receiving care at a day-care center or group day-care home
23 licensed under this chapter are screened for vision, hearing, and
24 any other special senses or communication disorders in compliance
25 with rules adopted [~~by the Texas Board of Health~~] under Section
26 **36.004**, Health and Safety Code.

27 (b) Each day-care center or group day-care home licensed

1 under this chapter shall maintain individual screening records for
2 children attending the facility who are required to be screened,
3 and the department may inspect those records at any reasonable
4 time. The department shall coordinate the monitoring inspections
5 in compliance with protocol agreements adopted between the
6 department and the [Texas] Department of State Health Services
7 pursuant to Section 42.0442.

8 SECTION 4.220. Section 42.0442(b), Human Resources Code, is
9 amended to read as follows:

10 (b) The department shall form an interagency task force with
11 the [Texas] Department of State Health Services, the [Texas]
12 Department of Aging and Disability [Human] Services, and the Texas
13 Workforce Commission to develop an inspection protocol that will
14 coordinate inspections by those agencies. The protocol must assign
15 the required items for inspection by each agency and facilitate the
16 sharing of inspection data and compliance history.

17 SECTION 4.221. Section 42.04425(b), Human Resources Code,
18 is amended to read as follows:

19 (b) The department shall make the data collected by the
20 department available to another state agency or political
21 subdivision of the state for the purpose of administering programs
22 or enforcing laws within the jurisdiction of that agency or
23 subdivision. If feasible using available information systems, the
24 department shall make the data directly available to the [Texas]
25 Department of State Health Services, the [Texas] Department of
26 Aging and Disability [Human] Services, and the Texas Workforce
27 Commission through electronic information systems. The

1 department, the [Texas] Department of State Health Services, the
2 [Texas] Department of Aging and Disability [Human] Services, and
3 the Texas Workforce Commission shall jointly plan the development
4 of child-care inspection databases that, to the extent feasible,
5 are similar in their design and architecture to promote the sharing
6 of data.

7 SECTION 4.222. Section 42.0443(e), Human Resources Code, is
8 amended to read as follows:

9 (e) The executive commissioner [department] shall adopt
10 rules necessary to implement this section.

11 SECTION 4.223. Section 42.0445(b), Human Resources Code, is
12 amended to read as follows:

13 (b) The executive commissioner [department] may adopt rules
14 to implement this section.

15 SECTION 4.224. Section 42.045(c), Human Resources Code, is
16 amended to read as follows:

17 (c) If a child-placing agency terminates operation as a
18 child-placing agency, it shall, after giving notice to the
19 department, transfer its files and records concerning adopted
20 children, their biological families, and their adoptive families to
21 the vital statistics unit of the Department of State Health
22 Services [Bureau of Vital Statistics] or, after giving notice to
23 the vital statistics unit [Bureau of Vital Statistics], to a
24 facility licensed by the department to place children for adoption.

25 SECTION 4.225. Section 42.048(b), Human Resources Code, is
26 amended to read as follows:

27 (b) When issuing a license, the department may impose

1 restrictions on a facility, including [~~but not limited to~~] the
2 number of children to be served and the type of children to be
3 served.

4 SECTION 4.226. Section 42.050(a), Human Resources Code, is
5 amended to read as follows:

6 (a) A license holder may apply for a new license in
7 compliance with the requirements of this chapter and department
8 [~~the~~] rules [~~promulgated by the department~~].

9 SECTION 4.227. Sections 42.052(g) and (i), Human Resources
10 Code, are amended to read as follows:

11 (g) The certification requirements of this section do not
12 apply to a Texas Juvenile Justice Department [~~Youth Commission~~
13 ~~facility, a Texas Juvenile Probation Commission~~] facility, or a
14 facility providing services solely for the Texas Juvenile Justice
15 Department [~~Youth Commission~~].

16 (i) The department shall provide to a listed family home a
17 copy of the listing. A listing must contain a provision that
18 states: "THIS HOME IS A LISTED FAMILY HOME. IT IS NOT LICENSED OR
19 REGISTERED WITH THE DEPARTMENT OF FAMILY AND PROTECTIVE [~~AND~~
20 ~~REGULATORY~~] SERVICES. IT HAS NOT BEEN INSPECTED AND WILL NOT BE
21 INSPECTED." The operator of a listed home is not required to
22 display the listing in a prominent place at the home but shall make
23 the listing available for examination. The executive commissioner
24 [~~department~~] by rule shall provide for a sufficient period to allow
25 operators of family homes to comply with the listing requirement of
26 this section.

27 SECTION 4.228. Section 42.0522, Human Resources Code, is

1 amended to read as follows:

2 Sec. 42.0522. PUBLIC ADVERTISING OF FAMILY HOMES. (a) A
3 family home may not place a public advertisement that uses the title
4 "registered family home" or any variation of that phrase unless the
5 home is registered under this chapter. Any public advertisement
6 for a registered family home that uses the title "registered family
7 home" must contain a provision in bold type stating: "THIS HOME IS
8 REGISTERED WITH THE DEPARTMENT OF FAMILY AND PROTECTIVE [~~AND~~
9 ~~REGULATORY~~] SERVICES BUT IS NOT LICENSED OR REGULARLY INSPECTED."

10 (b) A family home may not place a public advertisement that
11 uses the title "listed family home" or any variation of that phrase
12 unless the home is listed as provided by this chapter. Any public
13 advertisement for a listed family home that uses the title "listed
14 family home" must contain a provision in bold type stating: "THIS
15 HOME IS A LISTED FAMILY HOME. IT IS NOT LICENSED OR REGISTERED WITH
16 THE DEPARTMENT OF FAMILY AND PROTECTIVE [~~AND REGULATORY~~] SERVICES.
17 IT HAS NOT BEEN INSPECTED AND WILL NOT BE INSPECTED."

18 SECTION 4.229. Section 42.053(d), Human Resources Code, is
19 amended to read as follows:

20 (d) The department shall revoke or suspend the license of a
21 child-placing agency if an agency foster home or agency foster
22 group home operated by the licensed agency fails to comply with
23 Subsection (c) [~~of this section~~].

24 SECTION 4.230. Section 42.0535(e), Human Resources Code, is
25 amended to read as follows:

26 (e) The executive commissioner [~~department,~~] by rule[~~,~~]
27 shall develop a process by which a child-placing agency shall

1 report to the department:

2 (1) the name of any verified foster home or foster
3 group home that has been closed for any reason, including a
4 voluntary closure;

5 (2) information regarding the reasons for the closure
6 of the foster home or foster group home; and

7 (3) the name and other contact information of a person
8 who may be contacted by another child-placing agency to obtain the
9 records relating to the closed foster home or foster group home that
10 are required to be maintained and made available under this
11 section.

12 SECTION 4.231. Section 42.054(g), Human Resources Code, is
13 amended to read as follows:

14 (g) The provisions of Subsections (b) through (f) [~~of this~~
15 ~~section~~] do not apply to:

16 (1) licensed foster homes and licensed foster group
17 homes;

18 (2) nonprofit facilities regulated under this chapter
19 that provided 24-hour care for children in the managing
20 conservatorship of the department during the 12-month period
21 immediately preceding the anniversary date of the facility's
22 license;

23 (3) facilities operated by a nonprofit corporation or
24 foundation that provides 24-hour residential care and does not
25 charge for the care provided; or

26 (4) a family home listed under Section 42.0523 in
27 which the relative child-care provider cares for the child in the

1 child's own home.

2 SECTION 4.232. Section 42.055(b), Human Resources Code, is
3 amended to read as follows:

4 (b) The executive commissioner [department] by rule shall
5 determine the design, size, and wording of the sign.

6 SECTION 4.233. Section 42.056(c), Human Resources Code, is
7 amended to read as follows:

8 (c) The executive commissioner [department] by rule shall
9 require a child-care facility, child-placing agency, or registered
10 family home to pay to the department a fee in an amount not to exceed
11 the administrative costs the department incurs in conducting a
12 background and criminal history check under this section.

13 SECTION 4.234. Section 42.058, Human Resources Code, is
14 amended to read as follows:

15 Sec. 42.058. COMPETITIVE BIDDING OR ADVERTISING RULES. (a)
16 The executive commissioner [board] may not adopt rules restricting
17 competitive bidding or advertising by a license holder or
18 registration holder except to prohibit false, misleading, or
19 deceptive practices or to prevent a violation of this chapter.

20 (b) Rules [In its rules] to prohibit false, misleading, or
21 deceptive practices[, the board] may not include a rule that:

22 (1) restricts the use of any medium for advertising;

23 (2) restricts the use of a license holder's or
24 registration holder's personal appearance or voice in an
25 advertisement;

26 (3) relates to the size or duration of an
27 advertisement by the license holder or registration holder; or

1 (4) restricts the license holder's or registration
2 holder's advertisement under a trade name.

3 SECTION 4.235. Section 42.060(c), Human Resources Code, is
4 amended to read as follows:

5 (c) The executive commissioner [department] by rule shall
6 prescribe requirements regarding the placement, installation, and
7 number of carbon monoxide detectors and maintenance procedures for
8 those detectors.

9 SECTION 4.236. Section 42.0705, Human Resources Code, is
10 amended to read as follows:

11 Sec. 42.0705. RANGE OF PENALTIES. The department shall
12 revoke or suspend a license or registration, place on probation a
13 person whose license or registration has been suspended, or
14 reprimand a license holder or registration holder for a violation
15 of this chapter or a department rule [~~of the board~~]. If a license
16 or registration suspension is probated, the department may require
17 the license holder or registration holder to:

18 (1) report regularly to the department on matters that
19 are the basis of the probation;

20 (2) limit services to the areas prescribed by the
21 department;

22 (3) continue or review professional education until
23 the license holder or registration holder attains a degree of skill
24 satisfactory to the department in those areas that are the basis of
25 the probation; or

26 (4) take corrective action relating to the violation
27 on which the probation is based.

1 SECTION 4.237. Sections 42.072(a), (b), (d), (e), and (f),
2 Human Resources Code, are amended to read as follows:

3 (a) The department may suspend, deny, revoke, or refuse to
4 renew the license, listing, registration, or certification of
5 approval of a facility or family home that does not comply with the
6 requirements of this chapter, department [~~the~~] standards and rules
7 [~~of the department~~], or the specific terms of the license, listing,
8 registration, or certification. The department may revoke the
9 probation of a person whose license, listing, or registration is
10 suspended if the person violates a term of the conditions of
11 probation.

12 (b) If the department proposes to take an action under
13 Subsection (a), the person is entitled to a hearing conducted by the
14 State Office of Administrative Hearings. Proceedings for a
15 disciplinary action are governed by the administrative procedure
16 law, Chapter 2001, Government Code. An action under this section,
17 including a revocation of a person's license, is a contested case as
18 defined by Chapter 2001, Government Code, and is subject to
19 judicial review under the substantial evidence rule in accordance
20 with that chapter. Rules of practice adopted by the executive
21 commissioner [~~board~~] under Section 2001.004, Government Code,
22 applicable to the proceedings for a disciplinary action may not
23 conflict with rules adopted by the State Office of Administrative
24 Hearings.

25 (d) The executive commissioner [~~department~~] by rule may
26 provide for denial of an application or renewal for a licensed
27 facility or for listing or registering a family home or may revoke a

1 facility's license or a family home's listing or registration based
2 on findings of background or criminal history as a result of a
3 background or criminal history check.

4 (e) A person may continue to operate a facility or family
5 home during an appeal of a license, listing, or registration
6 revocation unless the operation of the facility or family home
7 poses a risk to the health or safety of children. The executive
8 commissioner shall by rule establish the criteria for determining
9 whether the operation of a facility or family home poses a risk to
10 the health or safety of children. The department shall notify the
11 facility or family home of the criteria the department used to
12 determine that the operation of the facility or family home poses a
13 risk to health or safety and that the facility or family home may
14 not operate. A person who has been notified by the department that
15 the facility or home may not operate under this section may seek
16 injunctive relief from a district court in Travis County or in the
17 county in which the facility or home is located to allow operation
18 during the pendency of an appeal. The court may grant injunctive
19 relief against the department's [agency's] action only if the court
20 finds that the child-care operation does not pose a health or safety
21 risk to children. A court granting injunctive relief under this
22 subsection shall have no other jurisdiction over an appeal of final
23 department [agency] action unless conferred by Chapter 2001,
24 Government Code.

25 (f) The department shall deny an application or renewal for
26 listing or registering a family home or shall revoke a family home's
27 listing or registration if the results of a background or criminal

1 history check conducted by the department under Section 42.056 show
2 that a person has been convicted of an offense under Title 5[~~T~~] or
3 6, Penal Code, or Chapter 43, Penal Code.

4 SECTION 4.238. Section 42.077(b), Human Resources Code, is
5 amended to read as follows:

6 (b) If a person who operates a facility or family home that
7 has had its license, listing, or registration revoked or suspended
8 later applies for a new license, listing, or registration to
9 operate the same facility or family home, the department shall
10 charge the person an application fee set by the executive
11 commissioner by rule in an amount necessary to reimburse the
12 department for the cost of the notice relating to that facility or
13 family home.

14 SECTION 4.239. Section 42.078(d), Human Resources Code, is
15 amended to read as follows:

16 (d) Monetary penalties may [~~shall~~] not be assessed for
17 violations that are the result of clerical errors.

18 SECTION 4.240. Section 42.152(b), Human Resources Code, is
19 amended to read as follows:

20 (b) A small employer is not required to obtain a permit to
21 operate an employer-based day-care facility under this subchapter
22 if the employer holds a license to operate a child-care facility
23 that is issued by the department under Subchapter C. An employer
24 that holds that license must comply with the applicable provisions
25 of Subchapter C, the applicable department rules [~~of the~~
26 ~~department~~], and any specific terms of the license.

27 SECTION 4.241. Section 42.153(c), Human Resources Code, is

1 amended to read as follows:

2 (c) The department may charge an applicant an
3 administrative fee set by the executive commissioner by rule in a
4 reasonable amount that is sufficient to cover the costs of the
5 department in processing the application.

6 SECTION 4.242. Section 42.159(e), Human Resources Code, is
7 amended to read as follows:

8 (e) The department shall require the small employer to pay
9 to the department a fee set by the executive commissioner by rule in
10 an amount not to exceed the administrative costs the department
11 incurs in conducting a background and criminal history check under
12 this section.

13 SECTION 4.243. Section 42.162(c), Human Resources Code, is
14 amended to read as follows:

15 (c) The department may charge a small employer issued a
16 permit under this subchapter a reasonable fee set by the executive
17 commissioner by rule for the cost of services provided by the
18 department in formulating, monitoring, and implementing a
19 corrective action plan under this section.

20 SECTION 4.244. Section 42.202(b), Human Resources Code, is
21 amended to read as follows:

22 (b) A shelter is not required to obtain a permit to provide
23 shelter care under this subchapter if the shelter holds a license to
24 operate a child-care facility that is issued by the department
25 under Subchapter C. A shelter that holds that license must comply
26 with the applicable provisions of Subchapter C, the applicable
27 department rules [of the department], and any specific terms of the

1 license.

2 SECTION 4.245. Section 42.203(c), Human Resources Code, is
3 amended to read as follows:

4 (c) The department may charge an applicant an
5 administrative fee set by the executive commissioner by rule in a
6 reasonable amount that is sufficient to cover the costs of the
7 department in processing the application.

8 SECTION 4.246. Section 42.206(e), Human Resources Code, is
9 amended to read as follows:

10 (e) The department shall require the shelter to pay to the
11 department a fee set by the executive commissioner by rule in an
12 amount not to exceed the administrative costs the department incurs
13 in conducting a background and criminal history check under this
14 section.

15 SECTION 4.247. Section 42.209(c), Human Resources Code, is
16 amended to read as follows:

17 (c) The department may charge a shelter issued a permit
18 under this subchapter a reasonable fee set by the executive
19 commissioner by rule for the cost of services provided by the
20 department in formulating, monitoring, and implementing a
21 corrective action plan under this section.

22 SECTION 4.248. Section 43.005, Human Resources Code, is
23 amended to read as follows:

24 Sec. 43.005. RULES. The executive commissioner [board] may
25 adopt [make] rules to administer the provisions of this chapter.

26 SECTION 4.249. Section 43.0055, Human Resources Code, is
27 amended to read as follows:

1 Sec. 43.0055. COMPETITIVE BIDDING OR ADVERTISING RULES.

2 (a) The executive commissioner [~~department~~] may not adopt rules
3 restricting competitive bidding or advertising by a license holder
4 except to prohibit false, misleading, or deceptive practices.

5 (b) Rules [~~In its rules~~] to prohibit false, misleading, or
6 deceptive practices[, ~~the department~~] may not include a rule that:

7 (1) restricts the use of any medium for advertising;

8 (2) restricts the use of a license holder's personal
9 appearance or voice in an advertisement;

10 (3) relates to the size or duration of an
11 advertisement by the license holder; or

12 (4) restricts the license holder's advertisement under
13 a trade name.

14 SECTION 4.250. Section 43.006, Human Resources Code, is
15 amended to read as follows:

16 Sec. 43.006. FEES. The executive commissioner by rule
17 [~~board~~] may set and the department may collect [~~charge~~] fees for
18 administering an examination and issuing an initial license,
19 renewal license, or provisional license in amounts necessary to
20 cover the costs of administering this chapter.

21 SECTION 4.251. Section 43.009(b), Human Resources Code, is
22 amended to read as follows:

23 (b) The department [~~board~~] shall recognize, prepare, or
24 administer continuing education programs for license holders. The
25 continuing education requirement may be fulfilled by studies in the
26 areas of legal aspects of child care, concepts related to the field
27 of social work, or other subjects approved by the department.

1 SECTION 4.252. Chapter 44, Human Resources Code, is amended
2 to read as follows:

3 CHAPTER 44. ADMINISTRATION OF FEDERAL AND STATE DAY-CARE PROGRAMS

4 SUBCHAPTER A. FEDERALLY ESTABLISHED DAY-CARE PROGRAMS

5 Sec. 44.001. DESIGNATED AGENCY. The Texas Workforce
6 Commission is the state agency designated to administer a day-care
7 program established by federal law and financed partially or
8 totally by federal funds.

9 Sec. 44.002. ADMINISTRATIVE RULES. (a) The Texas
10 Workforce Commission shall promulgate rules to carry out the
11 administrative provisions of the program consistent with federal
12 law and regulations.

13 (b) The rules must include procedures to allow operators of
14 day-care centers to review and comment on proposed rules and
15 policies.

16 Sec. 44.003. ADMINISTRATION OF FEDERAL-LOCAL PROGRAM. (a)
17 If the program is to be funded through political subdivisions of the
18 state or local agencies approved by the Texas Workforce Commission
19 [~~commission~~] matching federal grants, the Texas Workforce
20 Commission [~~commission~~] shall promulgate procedures for effective
21 delivery of services consistent with this section and with federal
22 law and regulations.

23 (b) If the services are provided through contracting with
24 operators of day-care programs on request from political
25 subdivisions or local agencies, the Texas Workforce Commission
26 [~~commission~~] may not promulgate standards for selection of the type
27 of programs more restrictive than required by federal law or

1 regulations.

2 (c) The executive director of the Texas Workforce
3 Commission [commission] shall establish an accounting system
4 consistent with federal law and regulations which will provide that
5 an operator of a day-care program contracting with the Texas
6 Workforce Commission [commission]:

18 (d) The executive director of the Texas Workforce
19 Commission [commission] shall establish procedures for hearing
20 complaints by operators of day-care programs contracting with the
21 Texas Workforce Commission [commission] relating to the failure of
22 the Texas Workforce Commission [commission] to comply with
23 Subsection (c).

SUBCHAPTER B. DAY-CARE CENTERS

25 Sec. 44.031. ESTABLISHMENT. (a) The Texas Workforce
26 Commission [commission] may establish day-care centers for all
27 children who qualify for services under Section 44.032. Where in

1 the opinion of the executive director of the Texas Workforce
2 Commission [~~commission~~] it appears feasible for the furtherance of
3 the objectives of this legislation, the Texas Workforce Commission
4 [~~commission~~] may establish cooperative agreements with other state
5 agencies.

6 (b) The Texas Workforce Commission [~~commission~~] is not
7 required to establish a day-care center or to provide services
8 under this subchapter unless funds are appropriated for that
9 purpose.

10 Sec. 44.032. ELIGIBILITY. (a) Except as provided by
11 Subsection (b), to be eligible for admission to a day-care center
12 authorized under this subchapter, a child must be at least six weeks
13 of age and:

14 (1) the child must be eligible for state assistance
15 under the aid to families with dependent children program and the
16 child's caretaker must be employed, enrolled in a job training
17 program authorized by the Texas Workforce Commission, registered to
18 work by the Texas Workforce Commission [~~that commission~~], or
19 permanently and totally disabled; or

20 (2) the child must be from a family eligible under
21 federal law or regulations to participate in a partially or totally
22 federally funded welfare or social services program.

23 (b) Additional children of the same age group may also be
24 admitted to a center under additional standards established by the
25 Texas Workforce Commission [~~commission~~].

26 (c) To reduce rapid turnover of children in care and to
27 ensure maximum stability for the child to the extent possible

1 within federal guidelines, once a child meets the initial
2 eligibility standards and is enrolled in a child-care program, the
3 child remains eligible for not less than one year after the date of
4 enrollment.

5 Sec. 44.033. FEES. (a) A fee for services rendered by the
6 day-care center may not be charged for a child who is eligible for
7 state assistance under the aid to families with dependent children
8 program.

9 (b) A fee that is scaled to family income for services
10 rendered by the day-care program may be charged for a child who is
11 not eligible for state assistance under the aid to families with
12 dependent children program.

13 Sec. 44.034. STANDARDS; RECOMMENDATIONS. (a) If the Texas
14 Workforce Commission establishes day-care centers under this
15 subchapter, the department shall prescribe standards of operation
16 and performance for the centers that will ensure proper nutrition,
17 social adjustment, health services, and appropriate growth and
18 development for children admitted.

19 (b) The executive director of the Texas Workforce
20 Commission [~~commission~~] shall prescribe procedures for receiving
21 recommendations relating to the operation of the centers from
22 parents, guardians, or custodians of children admitted to the
23 centers, operators of the centers, and other interested persons.

24 Sec. 44.035. CONTRACTS. (a) The executive director of the
25 Texas Workforce Commission may contract for services authorized
26 under this subchapter with an individual, organization,
27 association, or corporation meeting the standards established

1 under Section **44.034** and the standards for child-care facilities
2 licensed by the department [Department of Protective and Regulatory
3 Services].

4 (b) The fees paid to the center under the contract may not
5 exceed the amount it would cost the state to provide the same
6 services.

7 (c) The executive director of the Texas Workforce
8 Commission [~~commission~~] shall terminate a contract with a day-care
9 center that fails to maintain the department's standards.

10 (d) When the executive director of the Texas Workforce
11 Commission [~~commission~~] intends to cancel a contract with a
12 day-care center, the executive director shall give the center
13 reasonable notice and an opportunity for a hearing if one is
14 requested. The Texas Workforce Commission [~~commission~~] shall adopt
15 rules consistent with Chapter 2001, Government Code, to implement
16 this section. Hearings under this section are contested cases
17 under that chapter.

18 Sec. 44.036. ANNUAL EVALUATION OF DAY-CARE CENTERS. If the
19 Texas Workforce Commission [~~commission~~] establishes day-care
20 centers or provides services under this subchapter, the Texas
21 Workforce Commission [~~commission~~], with the assistance of the
22 department, shall evaluate the performance of the centers each
23 state fiscal year. This evaluation shall be sent to the governor
24 and to the Legislative Budget Board not later than the 100th day
25 after the last day of the state fiscal year covered by the
26 evaluation.

27 SECTION 4.253. The heading to Chapter 48, Human Resources

1 Code, is amended to read as follows:

2 CHAPTER 48. INVESTIGATIONS AND PROTECTIVE SERVICES FOR ELDERLY

3 PERSONS AND [DISABLED] PERSONS WITH DISABILITIES

4 SECTION 4.254. Section 48.001, Human Resources Code, is
5 amended to read as follows:

6 Sec. 48.001. PURPOSE. The purpose of this chapter is to
7 provide for the authority to investigate the abuse, neglect, or
8 exploitation of an elderly [or disabled] person or person with a
9 disability and to provide protective services to that person.

10 SECTION 4.255. Sections 48.002(a)(2), (3), (5), (6), and
11 (8), Human Resources Code, are amended to read as follows:

12 (2) "Abuse" means:

13 (A) the negligent or wilful infliction of injury,
14 unreasonable confinement, intimidation, or cruel punishment with
15 resulting physical or emotional harm or pain to an elderly [or
16 disabled] person or person with a disability by the person's
17 caretaker, family member, or other individual who has an ongoing
18 relationship with the person; or

19 (B) sexual abuse of an elderly [or disabled]
20 person or person with a disability, including any involuntary or
21 nonconsensual sexual conduct that would constitute an offense under
22 Section 21.08, Penal Code (indecent exposure) or Chapter 22, Penal
23 Code (assaultive offenses), committed by the person's caretaker,
24 family member, or other individual who has an ongoing relationship
25 with the person.

26 (3) "Exploitation" means the illegal or improper act
27 or process of a caretaker, family member, or other individual who

1 has an ongoing relationship with an elderly [or disabled] person or
2 person with a disability that involves using, or attempting to use,
3 the resources of the elderly [or disabled] person or person with a
4 disability, including the person's social security number or other
5 identifying information, for monetary or personal benefit, profit,
6 or gain without the informed consent of the [elderly or disabled]
7 person.

8 (5) "Protective services" means the services
9 furnished by the department or by another [~~a~~] protective services
10 agency to an elderly [or disabled] person or person with a
11 disability who has been determined to be in a state of abuse,
12 neglect, or exploitation or to a relative or caretaker of an elderly
13 [or disabled] person or person with a disability if the department
14 determines the services are necessary to prevent the elderly [or
15 disabled] person or person with a disability from returning to a
16 state of abuse, neglect, or exploitation. These services may
17 include social casework, case management, and arranging for
18 psychiatric and health evaluation, home care, day care, social
19 services, health care, respite services, and other services
20 consistent with this chapter. The term does not include the
21 services of the department or another protective services agency in
22 conducting an investigation regarding alleged abuse, neglect, or
23 exploitation of an elderly [or disabled] person or person with a
24 disability.

25 (6) "Protective services agency" means a public or
26 private agency, corporation, board, or organization that provides
27 protective services to elderly [or disabled] persons or persons

1 with disabilities in the state of abuse, neglect, or exploitation.

2 (8) "Person with a disability" [Disabled person] means
3 a person with a mental, physical, or intellectual or developmental
4 disability that substantially impairs the person's ability to
5 provide adequately for the person's care or protection and who is:

6 (A) 18 years of age or older; or

7 (B) under 18 years of age and who has had the
8 disabilities of minority removed.

9 SECTION 4.256. Section 48.002(b), Human Resources Code, is
10 amended to read as follows:

11 (b) The definitions of "abuse," "neglect," and
12 "exploitation" adopted by the executive commissioner [department]
13 as prescribed by Section 48.251 apply to an investigation of abuse,
14 neglect, or exploitation under Subchapter [in a facility subject to
15 Subchapters] F or [and] H.

16 SECTION 4.257. Section 48.004, Human Resources Code, is
17 amended to read as follows:

18 Sec. 48.004. RISK ASSESSMENT. The executive commissioner
19 by rule shall develop and maintain risk assessment criteria for use
20 by department personnel in determining whether an elderly [or
21 disabled] person or person with a disability is in imminent risk of
22 abuse, neglect, or exploitation or in a state of abuse, neglect, or
23 exploitation and needs protective services. The criteria must:

24 (1) provide for a comprehensive assessment of the
25 person's:

26 (A) environmental, physical, medical, mental
27 health, and financial condition;

5 SECTION 4.258. Section 48.007, Human Resources Code, is
6 amended to read as follows:

7 Sec. 48.007. MEMORANDUM OF UNDERSTANDING REGARDING CERTAIN
8 ABUSE, NEGLECT, OR EXPLOITATION INVESTIGATIONS. The commission
9 [~~Health and Human Services Commission~~], the department, the
10 Department of Aging and Disability Services, the office of
11 independent ombudsman for state supported living centers, and the
12 commission's [~~Health and Human Services Commission's~~] office of
13 inspector general shall enter into a memorandum of understanding
14 regarding investigations of alleged abuse, neglect, or
15 exploitation of residents or clients of state supported living
16 centers or the ICF-IID [~~ICF-MR~~] component of the Rio Grande State
17 Center that delineates the responsibilities of each agency and
18 office under this chapter, Chapter 261, Family Code, and Chapter
19 555, Health and Safety Code, and amend the memorandum of
20 understanding as necessary to reflect changes in those
21 responsibilities. During the negotiation of the memorandum of
22 understanding, the agencies and offices shall jointly determine
23 whether the forensic training received by relevant staff of the
24 Department of Family and Protective Services is adequate.
25 Specifically, the agencies and offices shall assess and, if
26 necessary, develop a plan to enhance the ability of department
27 staff to identify and report incidences that constitute a potential

1 criminal offense. The commission [~~Health and Human Services~~
2 ~~Commission~~] is the final arbiter of any dispute regarding the
3 memorandum of understanding under this section.

4 SECTION 4.259. Sections 48.051(a), (b), and (d), Human
5 Resources Code, are amended to read as follows:

6 (a) Except as prescribed by Subsection (b), a person having
7 cause to believe that an elderly [~~or disabled~~] person or person with
8 a disability is in the state of abuse, neglect, or exploitation,
9 including a [~~disabled~~] person with a disability who is receiving
10 services as described by Section 48.252, shall report the
11 information required by Subsection (d) immediately to the
12 department.

13 (b) If a person has cause to believe that an elderly [~~or~~
14 ~~disabled~~] person or person with a disability, other than a
15 [~~disabled~~] person with a disability receiving services as described
16 by Section 48.252, has been abused, neglected, or exploited in a
17 facility operated, licensed, certified, or registered by a state
18 agency, the person shall report the information to the state agency
19 that operates, licenses, certifies, or registers the facility for
20 investigation by that agency.

21 (d) The report may be made orally or in writing. It shall
22 include:

23 (1) the name, age, and address of the elderly [~~or~~
24 ~~disabled~~] person or person with a disability;

25 (2) the name and address of any person responsible for
26 the care of the elderly person or person with a disability [~~disabled~~
27 person's care];

1 (3) the nature and extent of the condition of the
2 elderly person or person with a disability [~~disabled person's~~
3 ~~condition~~];
4 (4) the basis of the reporter's knowledge; and
5 (5) any other relevant information.

6 SECTION 4.260. Section 48.052(a), Human Resources Code, is
7 amended to read as follows:

8 (a) A person commits an offense if the person has cause to
9 believe that an elderly [~~or disabled~~] person or person with a
10 disability has been abused, neglected, or exploited or is in the
11 state of abuse, neglect, or exploitation and knowingly fails to
12 report in accordance with this chapter. An offense under this
13 subsection is a Class A misdemeanor, except that the offense is a
14 state jail felony if it is shown on the trial of the offense that the
15 abused, neglected, or exploited [~~disabled~~] person is [~~was~~] a person
16 with an intellectual disability [~~mental retardation~~] who resided in
17 a state supported living center, the ICF-IID [~~ICF-MR~~] component of
18 the Rio Grande State Center, or a facility licensed under Chapter
19 252, Health and Safety Code, and the actor knew that the [~~disabled~~]
20 person had suffered serious bodily injury as a result of the abuse,
21 neglect, or exploitation.

22 SECTION 4.261. Section 48.101(f), Human Resources Code, is
23 amended to read as follows:

24 (f) The department or investigating state agency may
25 establish procedures to exchange with another state agency or
26 governmental entity information that is necessary for the
27 department, state agency, or entity to properly execute its

1 respective duties and responsibilities to provide services to
2 elderly [or disabled] persons or persons with disabilities under
3 this chapter or other law. An exchange of information under this
4 subsection does not affect whether the information is subject to
5 disclosure under Chapter 552, Government Code.

6 SECTION 4.262. Sections [48.102\(a\)](#) and (d), Human Resources
7 Code, are amended to read as follows:

8 (a) The department shall send a written report of the
9 department's investigation of alleged abuse, neglect, or
10 exploitation of an [a disabled] adult with a disability at a school,
11 as appropriate, to the Texas Education Agency, the agency
12 responsible for teacher certification, the local school board or
13 the school's governing body, and the school principal or director,
14 unless the principal or director is alleged to have committed the
15 abuse, neglect, or exploitation. The entity to which the report is
16 sent shall take appropriate action.

17 (d) The executive commissioner [~~department~~] shall adopt
18 rules necessary to implement this section.

19 SECTION 4.263. Section [48.103\(a\)](#), Human Resources Code, is
20 amended to read as follows:

21 (a) On determining after an investigation that an elderly
22 [or disabled] person or person with a disability has been abused,
23 exploited, or neglected by an employee of a home and community
24 support services agency licensed under Chapter 142, Health and
25 Safety Code, the department shall:

26 (1) notify the state agency responsible for licensing
27 the home and community support services agency of the department's

1 determination;

2 (2) notify any health and human services agency, as
3 defined by Section 531.001, Government Code, that contracts with
4 the home and community support services agency for the delivery of
5 health care services of the department's determination; and

6 (3) provide to the licensing state agency and any
7 contracting health and human services agency access to the
8 department's records or documents relating to the department's
9 investigation.

10 SECTION 4.264. Sections 48.151(b) and (c), Human Resources
11 Code, are amended to read as follows:

12 (b) The executive commissioner [department] shall adopt
13 rules for conducting investigations under this chapter.

14 (c) The executive commissioner [department] by rule may
15 assign priorities and prescribe investigative procedures for
16 conducting investigations according to the degree of severity and
17 immediacy of the alleged harm to the individual. Notwithstanding
18 Subsection (a), the [department's] priorities and procedures may
19 provide that an investigation is not required to be initiated
20 within 24 hours in all cases.

21 SECTION 4.265. Section 48.152(a), Human Resources Code, is
22 amended to read as follows:

23 (a) An investigation by the department or a state agency
24 shall include an interview with the elderly [or disabled] person or
25 person with a disability, if appropriate, and with persons thought
26 to have knowledge of the circumstances. If the elderly [or
27 disabled] person or person with a disability refuses to be

1 interviewed or cannot be interviewed because of a physical or
2 mental impairment, the department shall continue the investigation
3 by interviewing other persons thought to have knowledge relevant to
4 the investigation.

5 SECTION 4.266. Section 48.1522, Human Resources Code, is
6 amended to read as follows:

7 Sec. 48.1522. REPORTS OF CRIMINAL CONDUCT TO LAW
8 ENFORCEMENT AGENCY. (a) Except as provided by Subsection (b), if
9 during the course of the department's or another state agency's
10 investigation of reported abuse, neglect, or exploitation a
11 caseworker of the department or other state agency, as applicable,
12 or the caseworker's supervisor has cause to believe that the
13 elderly [or disabled] person or person with a disability has been
14 abused, neglected, or exploited by another person in a manner that
15 constitutes a criminal offense under any law, including Section
16 22.04, Penal Code, the caseworker or supervisor shall:

17 (1) immediately notify an appropriate law enforcement
18 agency, unless the law enforcement agency reported the alleged
19 abuse, neglect, or exploitation to the department; and

20 (2) provide the law enforcement agency with a copy of
21 the investigation report of the department or other state agency,
22 as applicable, in a timely manner.

23 (b) If during the course of the department's investigation
24 of reported abuse, neglect, or exploitation a caseworker of the
25 department or the caseworker's supervisor has cause to believe that
26 a [disabled] person with a disability who is a resident or client of
27 a state supported living center or the ICF-IID [ICF-MR] component

1 of the Rio Grande State Center has been abused, neglected, or
2 exploited by another person in a manner that constitutes a criminal
3 offense under any law, including Section [22.04](#), Penal Code, in
4 addition to the report to the appropriate law enforcement agency
5 required by Subsection (a), the caseworker shall immediately notify
6 the commission's office of inspector general and promptly provide
7 the commission's office of inspector general with a copy of the
8 department's investigation report.

9 SECTION 4.267. Section [48.153\(a\)](#), Human Resources Code, is
10 amended to read as follows:

11 (a) To implement an investigation of reported abuse,
12 neglect, or exploitation, the probate court, or the county court
13 when no probate court exists, may authorize entry of the place of
14 residence of the elderly ~~[or disabled]~~ person or person with a
15 disability.

16 SECTION 4.268. Section [48.154\(a\)](#), Human Resources Code, is
17 amended to read as follows:

18 (a) The department or another state agency, as appropriate,
19 shall have access to any records or documents, including
20 client-identifying information, financial records, and medical and
21 psychological records, necessary to the performance of the
22 department's or state agency's duties under this chapter. The
23 duties include but are not limited to the investigation of abuse,
24 neglect, or exploitation or the provisions of services to an
25 elderly ~~[or disabled]~~ person or person with a disability. A person,
26 agency, or institution that has a record or document that the
27 department or state agency needs to perform its duties under this

1 chapter shall, without unnecessary delay, make the record or
2 document available to the department or state agency that requested
3 the record or document.

4 SECTION 4.269. Section 48.155, Human Resources Code, is
5 amended to read as follows:

6 Sec. 48.155. INTERFERENCE WITH INVESTIGATION OR SERVICES
7 PROHIBITED. (a) A person, including a guardian and
8 notwithstanding Section 1151.001 [675], Estates [~~Texas Probate~~]
9 Code, may not interfere with:

10 (1) an investigation by the department or by another
11 [~~a~~] protective services agency of alleged abuse, neglect, or
12 exploitation of an elderly [~~or disabled~~] person or person with a
13 disability; or

14 (2) the provision of protective services to an elderly
15 [~~or disabled~~] person or person with a disability.

16 (b) The department or another [~~a~~] protective services
17 agency may petition the appropriate court to enjoin any
18 interference with:

19 (1) an investigation of alleged abuse, neglect, or
20 exploitation; or

21 (2) the provision of protective services such as
22 removal of the elderly [~~or disabled~~] person or person with a
23 disability to safer surroundings or safeguarding the person's
24 resources from exploitation.

25 SECTION 4.270. Section 48.201, Human Resources Code, is
26 amended to read as follows:

27 Sec. 48.201. APPLICATION OF SUBCHAPTER. Except as

1 otherwise provided, this subchapter does not apply to an [a Texas
2 ~~Department of Mental Health and Mental Retardation~~] investigation
3 under Subchapter F or H.

4 SECTION 4.271. Section 48.202, Human Resources Code, is
5 amended to read as follows:

6 Sec. 48.202. SERVICE DETERMINATION BY DEPARTMENT OR AGENCY.

7 (a) In an investigation the department or state agency, as
8 appropriate, shall determine:

9 (1) whether the person needs protective services from
10 the department;

11 (2) what services are needed;

12 (3) whether services are available from the
13 department, from the state agency, or in the community and how they
14 can be provided;

15 (4) whether the person, acting alone, would be capable
16 of obtaining needed services and could bear the cost or would be
17 eligible for services from the department or state agency;

18 (5) whether a caretaker would be willing to provide
19 services or would agree to their provision;

20 (6) whether the elderly [or disabled] person or person
21 with a disability desires the services;

22 (7) whether the person needs legal intervention to
23 resolve the person's abuse, neglect, or exploitation and, if so,
24 what type of intervention is needed; and

25 (8) other pertinent data.

26 (b) If the department or state agency, as appropriate,
27 determines under Subsection (a)(1) that a person needs protective

1 services, the department or agency shall, in determining how those
2 services can be provided as required by Subsection (a)(3),
3 determine whether the person may be [~~is~~] eligible for
4 community-based long-term [~~care~~] services and supports and whether
5 those services and supports are available. If the person is
6 eligible for those services and supports, but the services and
7 supports are not immediately available, the department or state
8 agency shall ensure that the person is placed on an appropriate
9 waiting list for the services and supports and that the person's
10 abuse, neglect, or exploitation is resolved before the department
11 closes the case.

12 SECTION 4.272. Section 48.203, Human Resources Code, is
13 amended to read as follows:

14 Sec. 48.203. VOLUNTARY PROTECTIVE SERVICES. (a) An
15 elderly [~~or disabled~~] person or person with a disability may
16 receive voluntary protective services if the person requests or
17 consents to receive those services.

18 (b) The elderly [~~or disabled~~] person or person with a
19 disability who receives protective services shall participate in
20 all decisions regarding the person's [his or her] welfare, if able
21 to do so.

22 (c) The least restrictive alternatives should be made
23 available to the elderly [~~or disabled~~] person or person with a
24 disability who receives protective services.

25 (d) Except as provided by Section 48.208, if an elderly [~~or~~
26 ~~disabled~~] person or person with a disability withdraws from or
27 refuses consent to voluntary protective services, the services may

1 not be provided.

2 SECTION 4.273. Section 48.204, Human Resources Code, is
3 amended to read as follows:

4 Sec. 48.204. AGENCY POWERS. A protective services agency
5 may furnish protective services to an elderly [or disabled] person
6 or person with a disability with the person's consent or to a
7 relative or caretaker of the [~~an elderly or disabled~~] person on
8 behalf of the [~~elderly or disabled~~] person with the relative's or
9 caregiver's consent or, if the elderly [or disabled] person or
10 person with a disability lacks the capacity to consent, without
11 that person's consent as provided by this chapter.

12 SECTION 4.274. Sections 48.205(b) and (d), Human Resources
13 Code, are amended to read as follows:

14 (b) The department shall use existing resources and
15 services of public and private agencies in providing protective
16 services. If the department does not have existing resources to
17 provide direct protective services to elderly [or disabled] persons
18 or persons with disabilities, the department, subject to the
19 availability of funds, shall contract with protective services
20 agencies for the provision of those services, especially to
21 [~~elderly or disabled~~] persons residing in rural or remote areas of
22 this state or not previously served by the department.

23 (d) The responsibilities prescribed by this chapter are
24 exclusive of those designated to other state or federal agencies
25 authorized or required by law to provide protective services to
26 elderly [or disabled] persons or persons with disabilities
27 determined to be in the state of abuse, neglect, or exploitation.

1 SECTION 4.275. Section 48.206, Human Resources Code, is
2 amended to read as follows:

3 Sec. 48.206. COST OF SERVICES. If the elderly [or disabled]
4 person or person with a disability receiving the protective
5 services is determined to be financially able to contribute to the
6 payments for those services, the provider shall receive a
7 reasonable reimbursement from the person's assets.

8 SECTION 4.276. Sections 48.208(b), (c), (c-1), (c-2),
9 (c-3), (c-4), (c-5), (d), (d-1), (e-1), (f), (g), and (h), Human
10 Resources Code, are amended to read as follows:

11 (b) If the department determines that an elderly [or
12 disabled] person or person with a disability is suffering from
13 abuse, neglect, or exploitation presenting a threat to life or
14 physical safety, that the person lacks capacity to consent to
15 receive protective services, and that no consent can be obtained,
16 the department may petition the probate or statutory or
17 constitutional county court that has probate jurisdiction in the
18 county in which the [elderly or disabled] person resides for an
19 emergency order authorizing protective services.

20 (c) The petition shall be verified and shall include:

21 (1) the name, age, and address of the elderly [or
22 disabled] person or person with a disability who needs protective
23 services;

24 (2) the nature of the abuse, neglect, or exploitation;

25 (3) the services needed; and

26 (4) a medical report signed by a physician stating
27 that the person is suffering from abuse, neglect, or exploitation

1 presenting a threat to life or physical safety and stating that the
2 person is physically or mentally incapable of consenting to
3 services unless the court finds that an immediate danger to the
4 person's health or safety [~~of the elderly or disabled person~~]
5 exists and there is not sufficient time to obtain the medical
6 report.

7 (c-1) Notwithstanding Subsection (c)(4), in lieu of a
8 medical report described by Subsection (c)(4), the petition may
9 include an assessment of the [~~elderly or disabled person's~~] health
10 status of the elderly person or person with a disability as
11 described by Subsection (c-2) or psychological status as described
12 by Subsection (c-3), or a medical opinion of the [~~elderly or~~
13 ~~disabled~~] person's health status as described by Subsection (c-4),
14 if the department determines, after making a good faith effort,
15 that a physician from whom the department may obtain the medical
16 report is unavailable. The department shall ensure that the person
17 who performs an assessment of the [~~elderly or disabled person's~~]
18 health or psychological status of the elderly person or person with
19 a disability has training and experience in performing the
20 applicable assessment.

21 (c-2) Except as provided by Subsection (c-4), an assessment
22 of the [~~elderly or disabled person's~~] health status of the elderly
23 person or person with a disability must be performed by a physician
24 assistant or advanced practice nurse. The person performing the
25 assessment shall sign a report stating:

26 (1) that the elderly [~~or disabled~~] person or person
27 with a disability is reported to be suffering from abuse, neglect,

1 or exploitation, which may present a threat to the person's life or
2 physical safety;

3 (2) whether the elderly [or disabled] person or person
4 with a disability has provided the person's medical history to the
5 physician assistant or advanced practice nurse, as applicable; and

6 (3) that in the professional opinion of the physician
7 assistant or advanced practice nurse, as applicable, the issuance
8 of an emergency order authorizing protective services without the
9 [elderly or disabled person's] consent of the elderly person or
10 person with a disability is necessary under the circumstances.

11 (c-3) An assessment of the [elderly or disabled person's]
12 psychological status of the elderly person or person with a
13 disability must be performed by a licensed professional counselor,
14 licensed psychologist, or master social worker who has training and
15 expertise in issues related to abuse, neglect, and exploitation.

16 The person performing the assessment shall sign a report stating:

17 (1) that the elderly [or disabled] person or person
18 with a disability is reported to be suffering from abuse, neglect,
19 or exploitation, which may present a threat to the person's life or
20 physical safety; and

21 (2) that in the professional opinion of the licensed
22 professional counselor, licensed psychologist, or master social
23 worker, as applicable, the issuance of an emergency order
24 authorizing protective services without the [elderly or disabled
25 person's] consent of the elderly person or person with a disability
26 is necessary under the circumstances.

27 (c-4) A registered nurse may perform a nursing assessment of

1 the [elderly or disabled person's] health status of the elderly
2 person or person with a disability. If the registered nurse, based
3 on the registered nurse's professional nursing judgment,
4 determines that the [elderly or disabled] person is likely to be
5 suffering from abuse, neglect, or exploitation, which may present a
6 threat to the person's life or physical safety, the registered
7 nurse shall report that assessment to a physician. After the
8 registered nurse reports the assessment, the physician shall sign a
9 written opinion stating whether:

10 (1) the elderly [or disabled] person or person with a
11 disability is reported to be suffering from abuse, neglect, or
12 exploitation, which may present a threat to the person's life or
13 physical safety; and

14 (2) the issuance of an emergency order authorizing
15 protective services without the [elderly or disabled person's]
16 consent of the elderly person or person with a disability is
17 necessary under the circumstances.

18 (c-5) The physician may use the registered nurse's
19 assessment of the [elderly or disabled person's] health status of
20 the elderly person or person with a disability as the basis of the
21 physician's professional opinion under Subsection (c-4).

22 (d) On finding that there is reasonable cause to believe
23 that abuse, neglect, or exploitation presents a threat to life or
24 physical safety for the elderly [or disabled] person or person with
25 a disability and that the [elderly or disabled] person lacks
26 capacity to consent to services, the court may:

27 (1) order removal of the [elderly or disabled] person

1 to safer surroundings;

2 (2) order medical services; and

3 (3) order other available services necessary to remove

4 conditions creating the threat to life or physical safety,

5 including the services of law enforcement officers or emergency

6 medical services personnel.

7 (d-1) If the court renders an order that is based on a

8 petition including an assessment under Subsection (c-2) or (c-3) or

9 a medical opinion under Subsection (c-4), the court shall order

10 that the elderly [or disabled] person or person with a disability be

11 examined by a physician not later than 72 hours after the time the

12 provision of protective services begins. After performing the

13 examination, the physician shall sign and submit to the court a

14 medical report stating the physician's opinion whether the [elderly

15 ~~or disabled~~] person is:

16 (1) suffering from abuse, neglect, or exploitation

17 presenting a threat to life or physical safety; and

18 (2) physically or mentally incapable of consenting to

19 services.

20 (e-1) An emergency order that was rendered based on a

21 petition that included an assessment under Subsection (c-2) or

22 (c-3) or a medical opinion under Subsection (c-4) immediately

23 terminates if the medical report issued under Subsection (d-1)

24 states the physician's opinion that the elderly [or disabled]

25 person or person with a disability:

26 (1) is not suffering from abuse, neglect, or

27 exploitation presenting a threat to life or physical safety; or

1 (2) is physically or mentally capable of consenting to
2 services.

3 (f) Any medical facility, emergency medical services
4 provider, or physician who provides treatment to or who transports
5 an elderly [or disabled] person or person with a disability
6 pursuant to an emergency order under Subsection (d) or an emergency
7 authorization under Subsection (h) is not liable for any damages
8 arising from the treatment or transportation, except those damages
9 resulting from the negligence of the facility, provider, or
10 physician.

11 (g) The court shall appoint an attorney ad litem to
12 represent the elderly [or disabled] person or person with a
13 disability in any proceeding brought by the department under this
14 section. A reasonable fee, as determined by the court, shall be
15 paid to the attorney ad litem from the general fund of the county.

16 (h) If the department cannot obtain an emergency order under
17 this section because the court is closed on a Saturday, Sunday, or
18 legal holiday or after 5 p.m., the department may remove or
19 authorize an appropriate transportation service, including an
20 emergency medical services provider, to remove the elderly [or
21 disabled] person or person with a disability to safer surroundings,
22 authorize medical treatment, or authorize or provide other
23 available services necessary to remove conditions creating the
24 threat to life or physical safety. The department must obtain an
25 emergency order under this section not later than 4 p.m. on the
26 first succeeding business day after the date on which protective
27 services are provided. If the department does not obtain an

1 emergency order, the department shall cease providing protective
2 services and, if necessary, make arrangements for the immediate
3 return of the person to the place from which the person was removed,
4 to the person's place of residence in the state, or to another
5 suitable place.

6 SECTION 4.277. Sections [48.209\(a\)](#) and (d), Human Resources
7 Code, are amended to read as follows:

8 (a) The department shall refer an individual to the
9 Department of Aging and Disability Services for guardianship
10 services under Subchapter E, Chapter 161, if the individual is:

11 (1) a minor in the conservatorship of the department
12 who:

13 (A) is 16 years of age or older; and

14 (B) the department has reason to believe will,
15 because of a physical or mental condition, be substantially unable
16 to provide for the individual's own food, clothing, or shelter, to
17 care for the individual's own physical health, or to manage the
18 individual's own financial affairs when the individual becomes an
19 adult; or

20 (2) an elderly [~~or disabled~~] person or person with a
21 disability who:

22 (A) has been found by the department to be in a
23 state of abuse, neglect, or exploitation; and

24 (B) the department has reason to believe is an
25 incapacitated person as defined by Section 1002.017(2)
26 [~~601(14)(B)~~], Estates [~~Texas Probate~~] Code.

27 (d) Nothing in this section shall prohibit the department

1 from also making a referral of an individual to a court having
2 probate jurisdiction in the county where the individual is
3 domiciled or found, if the court has requested the department to
4 notify the court of any individuals who may be appropriate for a
5 court-initiated guardianship proceeding under Chapter 1102
6 [~~Section 683~~], Estates [Texas Probate] Code. In making a referral
7 under this subsection and if requested by the court, the department
8 shall, to the extent allowed by law, provide the court with all
9 relevant information in the department's records relating to the
10 individual. The court, as part of this process, may not require the
11 department to:

12 (1) perform the duties of a guardian ad litem or court
13 investigator as prescribed by Chapter 1102 [~~Section 683~~], Estates
14 [~~Texas Probate~~] Code; or

15 (2) gather additional information not contained in the
16 department's records.

17 SECTION 4.278. Section 48.211, Human Resources Code, is
18 amended to read as follows:

19 Sec. 48.211. REPORT TO GUARDIANSHIP COURT. If the elderly
20 [~~or disabled~~] person or person with a disability has a guardian, a
21 written notification of the findings of the investigation shall be
22 sent to the court to which the guardian is accountable.

23 SECTION 4.279. The heading to Subchapter F, Chapter 48,
24 Human Resources Code, is amended to read as follows:

1 SUBCHAPTER F. INVESTIGATIONS IN CERTAIN FACILITIES, COMMUNITY
2 CENTERS, AND LOCAL MENTAL HEALTH AND INTELLECTUAL AND DEVELOPMENTAL
3 DISABILITY [~~MENTAL RETARDATION~~] AUTHORITIES

4 SECTION 4.280. Section 48.251, Human Resources Code, is
5 amended to read as follows:

6 Sec. 48.251. DEFINITIONS. The executive commissioner
7 [~~department~~] by rule shall adopt definitions of "abuse," "neglect,"
8 and "exploitation" to govern investigations [~~an investigation~~]
9 under this subchapter and Subchapter H.

10 SECTION 4.281. Section 48.252, Human Resources Code, is
11 amended to read as follows:

12 Sec. 48.252. INVESTIGATION OF REPORTS IN CERTAIN FACILITIES
13 AND IN COMMUNITY CENTERS. (a) The department shall receive and
14 investigate reports of the abuse, neglect, or exploitation of an
15 individual with a disability receiving services:

16 (1) in:

17 (A) a mental health facility operated by the
18 Department of State Health Services; or

19 (B) a facility licensed under Chapter 252, Health
20 and Safety Code;

21 (2) in or from a community center, a local mental
22 health authority, or a local intellectual and developmental
23 disability [~~mental retardation~~] authority; or

24 (3) through a program providing services to that
25 person by contract with a mental health facility operated by the
26 Department of State Health Services, a community center, a local
27 mental health authority, or a local intellectual and developmental

1 disability [~~mental retardation~~] authority.

2 (b) The department shall receive and shall investigate
3 reports of the abuse, neglect, or exploitation of an individual
4 with a disability receiving services:

5 (1) in a state supported living center or the ICF-IID
6 [~~ICF-MR~~] component of the Rio Grande State Center; or

7 (2) through a program providing services to that
8 person by contract with a state supported living center or the
9 ICF-IID [~~ICF-MR~~] component of the Rio Grande State Center.

10 (c) The executive commissioner [~~department~~] by rule shall
11 define who is "an individual with a disability receiving services."

12 (d) In this section, "community center," "local mental
13 health authority," and "local intellectual and developmental
14 disability [~~mental retardation~~] authority" have the meanings
15 assigned by Section [531.002](#), Health and Safety Code.

16 SECTION 4.282. Section [48.254](#), Human Resources Code, is
17 amended to read as follows:

18 Sec. 48.254. FORWARDING OF CERTAIN REPORTS. In accordance
19 with department rules, the department shall forward a copy of the
20 initial intake report and a copy of the completed investigation
21 report relating to alleged or suspected abuse, neglect, or
22 exploitation to the appropriate facility, community center, local
23 mental health authority, local intellectual and developmental
24 disability [~~mental retardation~~] authority, or program providing
25 mental health or intellectual disability [~~mental retardation~~]
26 services under contract with the facility, community center, or
27 authority.

1 SECTION 4.283. Sections 48.255(a), (b), (c), (d), (e), and
2 (f), Human Resources Code, are amended to read as follows:

3 (a) The department, the Department of Aging and Disability
4 Services, and the Department of State Health Services shall develop
5 [joint] rules to facilitate investigations in state mental health
6 facilities and state supported living centers.

7 (b) The executive commissioner [~~department, the Department~~
~~of Aging and Disability Services, and the Department of State~~
~~Health Services~~] by rule [~~joint rules~~] shall establish procedures
10 for resolving disagreements between the department and the
11 Department of Aging and Disability Services or the Department of
12 State Health Services concerning the department's investigation
13 findings.

14 (c) The department, the Department of Aging and Disability
15 Services, and the Department of State Health Services shall develop
16 and propose to the executive commissioner [~~joint~~] rules to
17 facilitate investigations in community centers, local mental
18 health authorities, and local intellectual and developmental
19 disability [~~mental retardation~~] authorities.

20 (d) A confirmed investigation finding by the department may
21 not be changed by a superintendent of a state mental health
22 facility, by a director of a state supported living center, by a
23 director of a community center, or by a local mental health
24 authority or local intellectual and developmental disability
25 [~~mental retardation~~] authority.

26 (e) The executive commissioner [~~department~~] shall provide
27 by rule for an appeals process by the alleged victim of abuse,

1 neglect, or exploitation under this section.

2 (f) The executive commissioner [department] by rule may
3 assign priorities to an investigation conducted by the department
4 under this section. The primary criterion used by the executive
5 commissioner [department] in assigning a priority must be the risk
6 that a delay in the investigation will impede the collection of
7 evidence.

8 SECTION 4.284. Section 48.256(a), Human Resources Code, is
9 amended to read as follows:

10 (a) The department, the Department of Aging and Disability
11 Services, and the Department of State Health Services shall, at the
12 direction of the executive commissioner, jointly develop and
13 implement a single system to track reports and investigations under
14 this subchapter.

15 SECTION 4.285. Sections 48.301(a), (b), (c), (e), (f), and
16 (g), Human Resources Code, are amended to read as follows:

17 (a) If the department receives a report of suspected abuse,
18 neglect, or exploitation of an elderly [or disabled] person or
19 person with a disability, other than a [disabled] person with a
20 disability who is receiving services as described by Section
21 48.252, in a facility operated, licensed, certified, or registered
22 by a state agency, the department shall refer the report to that
23 agency.

24 (b) A state agency that receives a report under this section
25 shall make a thorough investigation promptly after receiving a
26 report that an elderly [or disabled] person or person with a
27 disability has been or may be abused, neglected, or exploited in a

1 facility operated, licensed, certified, or registered by the
2 agency. The primary purpose of the investigation is the protection
3 of the elderly [or disabled] person or person with a disability.

4 (c) Each state agency that may receive reports under this
5 section, or the person responsible for adopting rules for that
6 state agency, shall adopt rules relating to the investigation and
7 resolution of reports received under this section.

8 (e) A state agency that receives a complaint relating to an
9 investigation conducted under this section shall refer the
10 complaint to its governing board, if applicable, or other person or
11 entity designated to receive such complaints for review and
12 appropriate action.

13 (f) The executive commissioner [~~Health and Human Services~~
14 ~~Commission~~] by rule shall adopt minimum standards for the
15 investigation of suspected abuse, neglect, or exploitation of an
16 elderly [or disabled] person or person with a disability under this
17 section.

18 (g) A rule or policy adopted by or for a state agency [~~or~~
19 ~~institution~~] under Subsection (c) must be consistent with the
20 minimum standards adopted by the executive commissioner [~~Health and~~
21 ~~Human Services Commission~~].

22 SECTION 4.286. Section 48.302, Human Resources Code, is
23 amended to read as follows:

24 Sec. 48.302. APPROVAL OF RULES. The executive commissioner
25 [~~Health and Human Services Commission~~] shall review and approve the
26 rules required by Section 48.301(c) to ensure that all agencies
27 implement appropriate standards for the conduct of investigations

1 and that uniformity exists among agencies in the investigation and
2 resolution of reports.

3 SECTION 4.287. Section 48.303(a), Human Resources Code, is
4 amended to read as follows:

5 (a) The department shall enter into [~~adopt~~] a memorandum of
6 understanding with each state agency that operates, licenses,
7 certifies, or registers a facility in which elderly [~~or disabled~~]
8 persons or persons with disabilities are located that clarifies
9 each agency's responsibility under this chapter.

10 SECTION 4.288. Section 48.304, Human Resources Code, is
11 amended to read as follows:

12 Sec. 48.304. STATISTICS. (a) A [~~Each~~] state agency[~~, other~~
13 ~~than the Texas Department of Mental Health and Mental Retardation,~~]
14 that operates, licenses, certifies, or registers a facility in
15 which elderly [~~or disabled~~] persons or persons with disabilities
16 are located shall compile and maintain statistics on the incidence
17 of abuse, neglect, or exploitation of elderly [~~or disabled~~] persons
18 or persons with disabilities that occurs in the facilities. A state
19 agency is not required to compile and maintain statistics on the
20 incidence of abuse, neglect, or exploitation of an individual with
21 a disability described under Section 48.252.

22 (b) The agency shall make the statistics available to the
23 commission [~~Health and Human Services Commission~~] on request.

24 SECTION 4.289. Section 48.402, Human Resources Code, is
25 amended to read as follows:

26 Sec. 48.402. RULES RELATING TO REPORTABLE CONDUCT. The
27 executive commissioner [~~department~~] may adopt rules to further

1 define reportable conduct.

2 SECTION 4.290. Section 51.0021, Human Resources Code, is
3 amended to read as follows:

4 Sec. 51.0021. FAMILY VIOLENCE SERVICES PLAN. (a) The
5 commission [~~department~~] shall develop and maintain a plan for
6 delivering family violence services in this state.

7 (b) In developing the plan under this section, the
8 commission [~~department~~] shall consider the geographic distribution
9 of services and the need for services, including the need for
10 increasing services for underserved populations.

11 SECTION 4.291. Section 51.003, Human Resources Code, is
12 amended to read as follows:

13 Sec. 51.003. CONTRACTS. (a) The commission [~~department~~]
14 shall contract for services with family violence centers with
15 consideration given to the plan for family violence services under
16 Section 51.0021. These contracts are to expand existing family
17 violence center services and may not result in reducing financial
18 support a family violence center receives from another source. The
19 contracts shall not provide for more than 75 percent of the cost of
20 the family violence center program. The commission [~~department~~]
21 shall develop a declining scale of state financial support for
22 family violence centers, declining over a six-year period from the
23 initiation of each individual contract, with no more than 50
24 percent of a family violence center program's funding to be
25 provided by the state after the sixth year. The balance each year
26 shall be provided from other sources. The executive commissioner
27 [~~department~~] may adopt rules which will allow exceptions to the

1 above scale in individual instances when a family violence center
2 shall demonstrate that exigent circumstances require such a waiver.

3 (b) The commission [department] may contract with family
4 violence special projects for services. The commission
5 [department] shall consider the plan for family violence services
6 under Section 51.0021 in contracting with family violence special
7 projects.

8 (c) The commission [department] shall contract statewide
9 for activities that support and advance the work of family violence
10 centers. Activities contracted for under this subsection must
11 include the provision of technical assistance and training for
12 family violence centers. The commission [department] may contract
13 for the provision of public education, consultation to the
14 commission [department], research, evaluation, and liaison and
15 training for other professionals who work with victims of family
16 violence, including professionals in the criminal justice,
17 medical, and social services fields, and for community or civic
18 groups.

19 (d) The commission [department] shall award all contracts
20 made under Subsection (c) through a competitive bidding process
21 unless that process would not be cost-effective.

22 SECTION 4.292. Section 51.004, Human Resources Code, is
23 amended to read as follows:

24 Sec. 51.004. CONTRACT BIDS. (a) To be eligible for a
25 contract under Section 51.003(a), a family violence shelter center
26 must:

27 (1) provide temporary lodging and direct delivery of

1 services for adults and their dependents;

2 (2) have been in actual operation offering shelter

3 services 24 hours a day with a capacity for not less than five

4 persons for at least one year before the date on which the contract

5 is awarded;

6 (3) demonstrate that the center, through the services

7 it provides, is addressing a need in the community consistent with

8 the plan for family violence services under Section 51.0021; and

9 (4) submit a contract application on forms prescribed

10 by the commission [department].

11 (b) To be eligible for a contract under Section 51.003(a), a

12 family violence nonresidential center must:

13 (1) provide, as its primary purpose, direct delivery

14 of services to adult victims of family violence;

15 (2) demonstrate a system of referring victims of

16 family violence to at least one family violence shelter center or

17 other safe temporary lodging;

18 (3) have been operating and providing comprehensive

19 services, including the services described by Section

20 51.005(b)(3), to victims of family violence for at least one year

21 before the date on which the contract is awarded;

22 (4) demonstrate that the center, through the services

23 it provides, is addressing a need in the community consistent with

24 the plan for family violence services under Section 51.0021; and

25 (5) submit a contract application on forms prescribed

26 by the commission [department].

27 (c) The commission [department] shall consider the

1 following factors in awarding contracts under Section 51.003(a):

2 (1) the family violence center's eligibility for and
3 use of funds from the federal government, philanthropic
4 organizations, and voluntary sources;

5 (2) community support for the family violence center,
6 as evidenced by financial contributions from civic organizations,
7 local governments, and individuals;

8 (3) evidence that the family violence center provides
9 services that encourage self-sufficiency and effectively uses
10 community resources;

11 (4) evidence of involvement with local law enforcement
12 officials; and

13 (5) support for the family violence center through
14 volunteer work, especially volunteer effort by persons who have
15 been victims of family violence.

16 (d) To be eligible for a contract under Section 51.003(b), a
17 family violence special project must:

18 (1) provide:

19 (A) community education relating to family
20 violence; or

21 (B) direct delivery of services for adult victims
22 of family violence or their children;

23 (2) demonstrate a system of referring victims of
24 family violence to at least one family violence shelter center or
25 other safe temporary lodging;

26 (3) demonstrate that the project, through the services
27 it provides, is addressing a need in the community consistent with

1 the plan for family violence services under Section 51.0021;

2 (4) demonstrate that the underserved or special
3 population to be served by the project is involved in the project's
4 design and implementation, if applicable; and

5 (5) submit a contract application on forms prescribed
6 by the commission [department].

7 (e) The commission [department] shall use a noncompetitive
8 procurement procedure if the commission [department] determines
9 that there is no competition between eligible family violence
10 centers for a service area. If the commission [department]
11 determines that there is competition between eligible family
12 violence centers for a service area, the commission [department]
13 shall award a contract through a competitive procurement procedure.

14 SECTION 4.293. Section 51.005, Human Resources Code, is
15 amended to read as follows:

16 Sec. 51.005. CONTRACT SPECIFICATIONS. (a) The commission
17 [department] shall contract only with public or private nonprofit
18 organizations that fulfill the requirements of this chapter.

19 (b) The contracts shall require the persons operating a
20 family violence center to:

21 (1) make a quarterly and an annual financial report on
22 a form prescribed by the commission [department];

23 (2) cooperate with inspections the commission
24 [department] makes to ensure services standards and fiscal
25 responsibility; and

26 (3) provide, as its primary purpose, services to
27 victims of family violence that include:

- 1 (A) 24-hour-a-day shelter, except that a family
2 violence nonresidential center may provide access to a
3 24-hour-a-day shelter;
- 4 (B) a 24-hour-a-day crisis hotline, except that a
5 family violence nonresidential center may provide access to a
6 24-hour-a-day crisis hotline operated by another organization
7 located in the nonresidential center's service area;
- 8 (C) access to emergency medical care;
- 9 (D) intervention services, including safety
10 planning, understanding and support, information, education,
11 referrals, and other resource assistance;
- 12 (E) access to emergency transportation;
- 13 (F) legal assistance in the civil and criminal
14 justice systems, including:
15 (i) identifying individual needs, legal
16 rights, and legal options; and
17 (ii) providing support and accompaniment in
18 pursuing those options;
- 19 (G) information about educational arrangements
20 for children;
- 21 (H) information about training for and seeking
22 employment;
- 23 (I) cooperation with criminal justice officials;
- 24 (J) community education;
- 25 (K) a referral system to existing community
26 services; and
- 27 (L) a volunteer recruitment and training

1 program.

2 (c) The contracts may require the persons operating a family
3 violence center to use intake and case study forms. Forms required
4 shall be developed by the commission [department] with consultation
5 as outlined in Section 51.008.

6 SECTION 4.294. Section 51.0051, Human Resources Code, is
7 amended to read as follows:

8 Sec. 51.0051. MAXIMIZING FEDERAL FUNDING FOR PROGRAMS TO
9 BENEFIT VICTIMS OF FAMILY VIOLENCE. To maximize the state's
10 receipt of federal matching funds for emergency assistance under
11 Part A, Title IV, Social Security Act (42 U.S.C. Section 601 et
12 seq.):

13 (1) [~~r~~] the commission [department] shall:

14 (A) [~~(1)~~] ensure that a contract made under
15 Section 51.003 includes provisions necessary to maximize federal
16 funding for services for victims of family violence; and

17 (B) [~~(2)~~] file amendments to the state's plan for
18 aid and services to needy families with children under Part A, Title
19 IV, Social Security Act (42 U.S.C. Section 601 et seq.), that are
20 necessary to maximize federal funding; and

21 (2) the executive commissioner shall [~~(3)~~] establish
22 by rule any reporting procedures that federal law requires as a
23 condition of receiving federal matching funds.

24 SECTION 4.295. Section 51.006, Human Resources Code, is
25 amended to read as follows:

26 Sec. 51.006. REPORT. (a) Not later than November 1 of each
27 even-numbered year, the commission [department] shall publish a

1 report that summarizes reports from family violence centers under
2 contract with the commission [department] and that analyzes the
3 effectiveness of the contracts authorized by this chapter. The
4 reports must include information on the expenditure of funds
5 authorized under this chapter, the services provided, the number of
6 persons for whom a service was provided, and any other information
7 relating to the provision of family violence services. [The report
8 ~~may be combined with the report required by Section 21.011.~~] Copies
9 of the report shall be submitted to the governor, the lieutenant
10 governor, the speaker of the house of representatives, the
11 Legislative Budget Board, and the standing committees of the senate
12 and house of representatives having primary jurisdiction over the
13 commission [department].

14 (b) The report required under Subsection (a) may be
15 published electronically on the commission's [department's]
16 Internet website. The commission [department] shall notify each
17 agency entitled to receive a copy of the report that the report is
18 available on the commission's [department's] Internet website on or
19 before the date the report is due.

20 SECTION 4.296. Section 51.007, Human Resources Code, is
21 amended to read as follows:

22 Sec. 51.007. CONFIDENTIALITY. The commission [department]
23 may not disclose any information that would identify:

- 24 (1) a particular family violence center location;
25 (2) a board member of a family violence center or
26 family violence special project; or
27 (3) a person working at or receiving services through

1 a family violence center or family violence special project.

2 SECTION 4.297. Section 51.008, Human Resources Code, is
3 amended to read as follows:

4 Sec. 51.008. CONSULTATIONS. In implementing this chapter,
5 the commission [department] shall consult with individuals and
6 groups having knowledge of and experience in the problems of family
7 violence.

8 SECTION 4.298. Section 51.009, Human Resources Code, is
9 amended to read as follows:

10 Sec. 51.009. GRANTS AND FUNDS. The commission [department]
11 may seek other funds that may be available for the contracts
12 authorized by this chapter.

13 SECTION 4.299. Section 51.010, Human Resources Code, is
14 amended to read as follows:

15 Sec. 51.010. RULES. The executive commissioner
16 [department] may adopt rules necessary to implement this chapter.

17 SECTION 4.300. Section 51.011, Human Resources Code, is
18 amended to read as follows:

19 Sec. 51.011. FUNDING. (a) In order to finance the program
20 created by this chapter, the commission [department] is authorized
21 to solicit and receive grants of money from either private or public
22 sources, including appropriation by the legislature from the
23 general revenue fund of the State of Texas, and in that regard it is
24 hereby declared that the need for and importance of this program
25 require priority and preferential consideration in appropriation.

26 (b) The commission [department] may use not more than six
27 percent of the annual legislative appropriation to the family

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1 violence program for administration of this chapter and not more
2 than six percent annually for the contracts described in Section
3 **51.003(c)**.

4 SECTION 4.301. Section **51.012**, Human Resources Code, is
5 amended to read as follows:

6 Sec. 51.012. COORDINATION OF SERVICES. The commission
7 [~~department~~] and the Department of Family and Protective [~~and~~
8 Regulatory] Services shall coordinate the provision of violence
9 prevention services for children.

10 SECTION 4.302. Chapter 54, Human Resources Code, is amended
11 to read as follows:

12 CHAPTER 54. PROTECTIVE ORDERS SOUGHT BY DEPARTMENT OF FAMILY AND
13 PROTECTIVE [~~AND REGULATORY~~] SERVICES

14 Sec. 54.001. PROTECTIVE ORDERS. The executive commissioner
15 [~~Department of Protective and Regulatory Services~~] shall adopt
16 rules to provide procedures for the filing of protective orders by
17 the Department of Family and Protective Services for the protection
18 of a member of a family or household as provided by Title 4 [Section
19 71.04], Family Code.

20 Sec. 54.002. NOTICE TO NONABUSIVE PARENT OR HOUSEHOLD
21 MEMBER. The Department of Family and Protective [~~and Regulatory~~]
22 Services shall provide prior notice to a nonabusive parent or adult
23 member of a household of the department's intent to file an
24 application for a protective order for a child or older person and
25 shall request the assistance of the person receiving the notice in
26 developing a safety plan for household members and the child or
27 older person for whom the order is sought. The department shall

1 exercise reasonable safety precautions to protect a nonabusive
2 parent or other member of a household while providing notice and
3 requesting assistance under this section.

4 SECTION 4.303. The heading to Chapter 73, Human Resources
5 Code, is amended to read as follows:

6 CHAPTER 73. [~~INTERAGENCY COUNCIL ON~~] EARLY CHILDHOOD INTERVENTION
7 SERVICES

8 SECTION 4.304. Section 73.001, Human Resources Code, is
9 amended by amending Subdivisions (1) and (2) and adding Subdivision
10 (4) to read as follows:

11 (1) "Commission" means the Health and Human Services
12 Commission [~~Board~~ means the board of the ~~Interagency Council on~~
13 ~~Early Childhood Intervention~~].

14 (2) "Department" means the Department of Assistive and
15 Rehabilitative Services [~~Council~~ means the ~~Interagency Council~~
16 ~~on Early Childhood Intervention~~].

17 (4) "Executive commissioner" means the executive
18 commissioner of the Health and Human Services Commission.

19 SECTION 4.305. Section 73.003, Human Resources Code, is
20 amended to read as follows:

21 Sec. 73.003. STRATEGIC PLAN. The department [~~council~~]
22 shall develop and implement a strategic plan for a statewide system
23 of early childhood intervention services, as required by Part C
24 [~~Subchapter VIII~~], Individuals with Disabilities Education Act
25 (IDEA) (20 U.S.C. Section 1431 [~~1471~~] et seq.), and its subsequent
26 amendments, to ensure that the provisions of this chapter are
27 properly implemented by the agencies affected.

1 SECTION 4.306. Section 73.004, Human Resources Code, is
2 amended to read as follows:

3 Sec. 73.004. ADVISORY COMMITTEE. (a) The governor shall
4 appoint an advisory committee to assist the department [~~council~~] in
5 the performance of its duties under this chapter. The executive
6 commissioner [~~council~~] shall establish the size and composition of
7 the committee by rule, consistent with federal regulations and
8 state rules. The commissioner of assistive and rehabilitative
9 services [~~governor or the council~~] may also appoint ex officio
10 members to serve for specific purposes to assist the department
11 [~~council~~] in the performance of its duties under this chapter.

12 (b) The committee shall meet and serve in accordance with
13 department [~~under the~~] rules [~~of the board~~], but the committee
14 shall elect its own presiding officer. The committee may be divided
15 into regional committees to assist the department [~~council~~] in
16 community-level program planning and implementation under this
17 chapter.

18 (c) The advisory committee is not subject to Chapter 2110,
19 Government Code [~~Article 6252-33, Revised Statutes~~].

20 SECTION 4.307. Section 73.0041, Human Resources Code, is
21 amended to read as follows:

22 Sec. 73.0041. ADVISORY COMMITTEE DUTIES. The advisory
23 committee established under Section 73.004 shall perform the duties
24 and responsibilities required of an advisory committee under 20
25 U.S.C. Section 1441 [~~Subchapter VIII, Individuals with~~
26 ~~Disabilities Education Act (IDEA) (20 U.S.C. Section 1471 et~~
27 ~~seq.),~~] and its subsequent amendments.

1 SECTION 4.308. Section 73.0045, Human Resources Code, is
2 amended to read as follows:

3 Sec. 73.0045. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF
4 CONFLICT WITH OTHER LAW [OF COMMISSIONER OF HEALTH AND HUMAN
5 SERVICES]. [~~The commissioner of health and human services has the~~
6 ~~powers and duties relating to the board and the executive director~~
7 ~~of the board as provided by Section 531.0055, Government Code.~~] To
8 the extent a power or duty given to the commissioner of assistive
9 and rehabilitative services [board or executive director] by this
10 chapter or another law conflicts with Section 531.0055, Government
11 Code, Section 531.0055 controls.

12 SECTION 4.309. Section 73.005, Human Resources Code, is
13 amended to read as follows:

14 Sec. 73.005. ISSUES RELATED TO INTERVENTION SERVICES;
15 LEGISLATIVE PROPOSALS [BOARD POWERS AND DUTIES]. (a) The
16 executive commissioner [board] with the advice of the advisory
17 committee shall address contemporary issues affecting intervention
18 services in the state including:

- 19 (1) successful intervention strategies;
20 (2) personnel preparation and continuing education;
21 (3) screening services;
22 (4) day or respite care services;
23 (5) public awareness; and
24 (6) contemporary research.

25 (b) The executive commissioner [board] with the advice of
26 the advisory committee shall advise the legislature on legislation
27 that is needed to maintain a statewide system of quality

1 intervention services for children with developmental delay who are
2 under three years of age and the families of those children. The
3 department [~~council~~] may develop and submit legislation to the
4 legislature or comment on pending legislation that affects this
5 population.

6 SECTION 4.310. Section 73.0051, Human Resources Code, is
7 amended to read as follows:

8 Sec. 73.0051. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER
9 AND DEPARTMENT UNDER CHAPTER [~~COUNCIL~~]. (a) The department
10 [~~council~~] is the lead agency designated by the governor under Part C
11 [~~Subchapter VIII~~], Individuals with Disabilities Education Act
12 (IDEA) (20 U.S.C. Section 1431 [~~1471~~] et seq.), and its subsequent
13 amendments, for the administration, supervision, and monitoring of
14 a statewide comprehensive system of early intervention services
15 that will ensure that all infants and toddlers in this state who are
16 below the age of three and have developmental needs or are at risk
17 of developmental delay receive services that are provided in
18 partnership with their families and in the context of their local
19 community.

20 (b) The executive commissioner [~~council~~] by rule shall:

21 (1) provide for compliance with the terms and
22 provisions of applicable federal and state laws in the
23 administration of programs and the delivery of services under this
24 chapter;

25 (2) establish a program to monitor fiscal and program
26 implementation under this chapter; and

27 (3) establish appropriate sanctions for providers who

1 fail to comply with statutory and regulatory fiscal and program
2 requirements under this chapter.

3 (c) The department [~~council~~] may enter into, administer,
4 and monitor contracts with providers for programs and projects
5 authorized under this chapter.

6 (d) The department [~~council~~] shall periodically monitor
7 program activities and fiscal performance of the entities funded
8 under this chapter to:

9 (1) determine compliance with federal and state
10 requirements;

11 (2) assess the performance of the entities in
12 identifying children under three years of age with developmental
13 delay in populations at risk of developmental delay; and

14 (3) issue reports regarding program monitoring.

15 (e) The department [~~council~~] may apply for and accept gifts,
16 grants, and donations from public and private sources for use in
17 programs authorized under this chapter. The department [~~council~~]
18 shall deposit money received under this section into the state
19 treasury.

20 (f) The department [~~council~~] shall:

21 (1) cooperate with the commission [~~Health and Human~~
22 ~~Services Commission~~] and other local, state, and federal agencies
23 in the strategic planning, funding, delivery, and monitoring of
24 services authorized under this chapter; and

25 (2) jointly with the Department of Family and
26 Protective [~~and Regulatory~~] Services develop and implement
27 policies applicable to providers of services authorized under this

1 chapter in situations involving service recipients who are
2 vulnerable to abuse or neglect.

3 (g) The department [~~council~~] shall make periodic reports
4 relating to the department's functions under this chapter as
5 required by law to other agencies, the legislature, appropriate
6 committees, the governor, and the [~~Secretary of the~~] United States
7 secretary of education [~~Department of Education~~].

8 (h) The department [~~council~~] shall ensure that all programs
9 and department [~~council~~] functions under this chapter are conducted
10 in a nondiscriminatory manner.

11 (i) The department [~~council~~] shall include parents when
12 deciding the appropriate treatment for the needs of their child or
13 children under this chapter. After establishing an initial and
14 ongoing treatment plan for a child, the department [~~council~~] shall
15 ensure that the child's parents continue to be included in all
16 decisions relating to the services provided to the child, including
17 the determination of the most appropriate setting for the child to
18 receive services. The department [~~council~~] shall ensure that a
19 child's parents receive written notification of the progress toward
20 meeting the child's treatment plan. The notification must include
21 details to assist parents in meeting the child's treatment goals.

22 (j) The department [~~council~~] shall provide [~~not limit~~]
23 services under this chapter in the child's [~~to solely~~] natural
24 environments but must [~~shall also~~] make alternatives available when
25 early intervention cannot be achieved satisfactorily in a natural
26 environment.

27 (k) The department [~~council~~] shall cooperate with the

1 commission [~~Health and Human Services Commission~~] to select an
2 appropriate automated system or systems currently used by a state
3 agency to plan, manage, and maintain records of client services
4 under this chapter. If cost-effective, the department [~~council5 may use the automated system or systems to carry out other
6 appropriate department [~~council~~] administrative functions under
7 this chapter.~~

8 (1) The executive commissioner [~~council~~] by rule may
9 establish a system of payments by families of children receiving
10 services under this chapter, including a schedule of sliding fees,
11 in a manner consistent with 34 C.F.R. Sections 303.13(a)(3)
12 [~~303.12(a)(3)(iv)~~], 303.520, and 303.521.

13 SECTION 4.311. Section 73.006(b), Human Resources Code, is
14 amended to read as follows:

15 (b) The [~~lay~~] members of the [~~board and~~] advisory committee
16 are entitled to reimbursement for reasonable and necessary expenses
17 incurred in the performance of [~~board or~~] advisory committee
18 duties, including reimbursement for child care.

19 SECTION 4.312. Section 73.007, Human Resources Code, is
20 amended to read as follows:

21 Sec. 73.007. PUBLIC AWARENESS AND TRAINING. The department
22 [~~council~~] shall develop and implement:

23 (1) a general public awareness strategy focusing on
24 the importance of prenatal care and early identification of infants
25 and toddlers with developmental delay and the availability of
26 resources to meet their needs; and

27 (2) a statewide plan for conducting training and

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1 technical assistance for service providers, primary referral
2 sources, and families with children under three years of age with
3 developmental delay.

4 SECTION 4.313. Section 73.008(a), Human Resources Code, is
5 amended to read as follows:

6 (a) The department [~~council~~] shall develop and implement a
7 statewide strategy for:

8 (1) the early identification of children under three
9 years of age with developmental delay;

10 (2) improving the early identification of children
11 under three years of age with developmental delay in populations at
12 risk of developmental delay, through measures such as:

13 (A) targeting at-risk populations and
14 appropriate geographical regions; and

15 (B) monitoring the performance of providers of
16 services authorized under this chapter in identifying those
17 children; and

18 (3) the coordination of programs with other agencies
19 serving children with developmental delay, including the
20 coordination of policy issues that affect children with
21 developmental delay who are three years of age or older.

22 SECTION 4.314. Sections 73.009(a) and (b), Human Resources
23 Code, are amended to read as follows:

24 (a) The department shall develop and the executive
25 commissioner [~~council~~] shall establish policies concerning
26 services described by this section. A child under three years of
27 age and the child's family may be referred for services described by

1 this section if the child is:

- 2 (1) identified as having a developmental delay
3 ~~[developmentally delayed]~~ ;
4 (2) suspected of having a developmental delay ~~[being~~
5 ~~developmentally delayed]~~ ; or
6 (3) considered at risk of developmental delay.

7 (b) For each child referred, the department ~~[council]~~ shall
8 ensure the performance of ~~[+~~

9 ~~(1) seek~~ appropriate medical or developmental
10 screening or evaluation, and if such screening services or
11 evaluation services are not available, the department ~~[council]~~
12 shall ensure that ~~[provide those services either directly or by~~
13 ~~contract; and~~

14 ~~(2) refer~~ the child is referred to a public or
15 private program that can meet the child's needs.

16 SECTION 4.315. Section 73.011, Human Resources Code, is
17 amended to read as follows:

18 Sec. 73.011. PROVIDER SELECTION. (a) The department
19 ~~[council]~~ shall select providers of services authorized under this
20 chapter on a best value basis in a manner that:

21 (1) maximizes federal, private, and local sources of
22 funding; and

23 (2) promotes competition when possible.

24 (b) The department ~~[council]~~ shall determine best value as
25 required by Subsection (a) when the department ~~[council]~~ initially
26 awards a contract to a provider and when the department ~~[council]~~
27 considers renewal of a provider's contract.

1 (c) In determining whether a provider will provide best
2 value to the department [council], the department [council] shall
3 consider:

- 4 (1) the past performance of the provider;
5 (2) the quality of the provider's services;
6 (3) the cost of the provider's services;
7 (4) the ability of the provider to maximize federal,
8 private, and local sources of funding;
9 (5) the ability of the provider to comply with state
10 and federal program requirements;
11 (6) the availability of the provider to deliver
12 required services; and
13 (7) any other relevant factor.

14 SECTION 4.316. Section 73.022, Human Resources Code, is
15 amended by amending Subsections (a) and (b) and adding Subsection
16 (a-1) to read as follows:

- 17 (a) The executive commissioner [council] shall:
18 (1) ensure compliance with requirements necessary to
19 obtain federal funds in the maximum amount and the most
20 advantageous proportions possible for programs funded under this
21 chapter; and
22 (2) seek funding in a manner that maximizes the total
23 amount of money available from federal, private, and local sources
24 for programs funded under this chapter. [+]

25 [\(a-1\) The department shall:](#)

26 (1) [+3+] apply for, receive, administer, and spend
27 federal and state funds for Part C [Subchapter III], Individuals

1 with Disabilities Education Act (IDEA) (20 U.S.C. Section 1431 et
2 seq.), and its subsequent amendments, dealing with infants and
3 toddlers from birth to age three with developmental delay and their
4 families; and

5 (2) [4] authorize and account for the
6 classification and spending of maintenance of effort and carryover
7 funds from all sources in carrying out the programs funded under
8 this chapter.

9 (b) All money paid to the department [council] under this
10 chapter shall be deposited in the state treasury and may be used
11 only for the administration of this chapter.

12 SECTION 4.317. Section 73.024, Human Resources Code, is
13 amended to read as follows:

14 Sec. 73.024. APPLICATION OF OPEN MEETINGS LAW, [+] OPEN
15 RECORDS LAW, AND [+] ADMINISTRATIVE PROCEDURE LAW TO ADVISORY
16 COMMITTEE. The [board, council, and] advisory committee is [are]
17 subject to the requirements of the open meetings law, Chapter 551,
18 Government Code, the open records law, Chapter 552, Government
19 Code, and Chapter 2001, Government Code.

20 SECTION 4.318. The heading to Title 4, Human Resources
21 Code, is amended to read as follows:

22 TITLE 4. SERVICES FOR PERSONS WHO ARE [THE] DEAF OR HARD OF HEARING

23 SECTION 4.319. The heading to Chapter 81, Human Resources
24 Code, is amended to read as follows:

25 CHAPTER 81. FUNCTIONS OF DEPARTMENT OF ASSISTIVE AND
26 REHABILITATIVE SERVICES RELATING TO PERSONS WHO ARE [TEXAS
27 COMMISSION FOR THE] DEAF OR [AND] HARD OF HEARING

1 SECTION 4.320. Section 81.001, Human Resources Code, is
2 amended by adding Subdivisions (2-a) and (5) to read as follows:

3 (2-a) "Department" means the Department of Assistive
4 and Rehabilitative Services.

5 (5) "Executive commissioner" means the executive
6 commissioner of the Health and Human Services Commission.

7 SECTION 4.321. Section 81.0055, Human Resources Code, is
8 amended to read as follows:

9 Sec. 81.0055. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF
10 CONFLICT WITH OTHER LAW [OF COMMISSIONER OF HEALTH AND HUMAN
11 SERVICES]. [~~The commissioner of health and human services has the~~
12 ~~powers and duties relating to the commission and the executive~~
13 ~~director of the commission as provided by Section 531.0055,~~
14 ~~Government Code.]~~] To the extent a power or duty given to the
15 commissioner of assistive and rehabilitative services [commission
16 ~~or executive director]~~ by this chapter, or another law relating to
17 services for persons who are deaf or hard of hearing, conflicts with
18 Section 531.0055, Government Code, Section 531.0055 controls.

19 SECTION 4.322. Section 81.006, Human Resources Code, is
20 amended to read as follows:

21 Sec. 81.006. DUTIES AND POWERS OF DEPARTMENT AND EXECUTIVE
22 COMMISSIONER UNDER CHAPTER. (a) The department [~~commission~~]
23 shall:

24 (1) develop and implement a statewide program of
25 advocacy and education to ensure continuity of services to persons
26 who are deaf, deaf-blind, or hard of hearing;

27 (2) provide direct services to persons who are deaf or

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1 hard of hearing, including communication access, information and
2 referral services, advocacy services, services to elderly persons
3 who are deaf or hard of hearing, and training in accessing basic
4 life skills;

16 (6) assist institutions of higher education that have
17 or are [in] initiating training programs for interpreters for
18 persons who are deaf or hard of hearing [and develop guidelines for
19 instruction to promote uniformity of signs taught within those
20 programs];

21 (6-a) develop guidelines for the curricula for the
22 programs described by Subdivision (6) to promote uniformity of the
23 skills taught within those programs;

27 (8) develop guidelines to clarify the circumstances

1 under which interpreters certified by the department [~~commission~~]
2 are qualified to interpret effectively, accurately, and
3 impartially, both receptively and expressively, using any
4 necessary specialized vocabulary.

5 (b) The department [~~commission~~] may:

6 (1) appoint one or more advisory committees to consult
7 with and advise the department under this chapter [~~commission~~];
8 (2) [~~establish and~~] collect training fees and accept
9 gifts, grants, and donations of money, personal property, or real
10 property for use in expanding and improving services to persons of
11 this state who are deaf or hard of hearing;

12 (3) [~~adopt rules necessary to implement this chapter,~~
13 [~~(4)~~] contract with or provide grants to agencies,
14 organizations, or individuals as necessary to implement this
15 chapter;

16 (4) collect [~~(5) establish~~] a reasonable fee from
17 [~~and charge~~] interpreters for training to defray the cost of
18 conducting the training;

19 (5) [~~(6)~~] develop guidelines for trilingual
20 interpreter services; and

21 (6) [~~(7)~~] provide training programs for persons who
22 provide trilingual interpreter services.

23 (c) The executive commissioner shall establish the fees
24 described by Subsections (b)(2) and (4).

25 (d) The executive commissioner may adopt rules necessary to
26 implement this chapter, including rules adopting standards and
27 guidelines under this section.

1 ~~[(e) The commission shall develop and implement policies~~
2 ~~that clearly define the respective responsibilities of the~~
3 ~~governing body of the commission and the staff of the commission.]~~

4 (f) The executive commissioner [commission] shall establish
5 and the department shall collect [~~charge~~] reasonable fees for some
6 or all department [~~commission~~] publications to cover the
7 department's [~~commission's~~] publication costs. However, the
8 department [~~commission~~] shall waive the fee if a person who is deaf
9 or hard of hearing is financially unable to pay for the publication,
10 and may waive the fees for publications provided to certain
11 entities. The executive commissioner [commission] shall adopt
12 rules to implement this subsection. The rules must specify the
13 standards used for determining ability to pay for a publication and
14 must specify the types of entities for which the fees will be
15 waived.

16 SECTION 4.323. Section 81.007, Human Resources Code, is
17 amended to read as follows:

18 Sec. 81.007. BOARD FOR EVALUATION OF INTERPRETERS. (a) The
19 department [~~commission~~] may establish a program in accordance with
20 this section for the certification of interpreters who have reached
21 varying levels of proficiency in communication skills necessary to
22 facilitate communication between persons who are deaf or hard of
23 hearing and persons who are not deaf or hard of hearing.

24 (b) The department [~~commission~~] shall appoint an advisory
25 board of seven persons to assist in administering the interpreter
26 certification program. A board member may not receive
27 compensation, but is entitled to reimbursement of the travel

1 expenses incurred by the member while conducting the business of
2 the board, as provided in the General Appropriations Act.

3 (c) ~~The [Subject to approval of the commission, the]~~ board
4 shall develop, subject to the department's approval, and the
5 executive commissioner shall adopt [prescribe] qualifications for
6 each of several levels of certification based on proficiency. The
7 board [and] shall evaluate and certify interpreters using these
8 qualifications.

9 (d) A qualified board member may serve as an evaluator under
10 Subsection (c), and the department [~~commission~~] shall compensate
11 the board member for services performed as an evaluator.

12 (e) The executive commissioner by rule shall set and the
13 department [~~commission~~] shall collect [~~charge~~] fees for written and
14 performance examinations, for annual certificate renewal, and for
15 recertification. The fees must be in an amount sufficient to
16 recover the costs of the certification program.

17 (f) The department [~~commission~~] may waive any prerequisite
18 to obtaining a certificate for an applicant after reviewing the
19 applicant's credentials and determining that the applicant holds a
20 certificate issued by another jurisdiction that has certification
21 requirements substantially equivalent to those of this state.

22 (g) The executive commissioner [~~commission~~] by rule may
23 adopt a system under which certificates are valid for a five-year
24 period, subject to the certificate holder's payment of an annual
25 certificate renewal fee. After expiration of the five-year period,
26 an interpreter must be recertified by the department [~~commission~~].
27 The department [~~commission~~] may recertify an interpreter who:

1 (1) receives specified continuing education credits;
2 or

3 (2) achieves an adequate score on a specified
4 examination.

5 (h) The executive commissioner [commission] shall adopt
6 rules specifying the grounds for denying, suspending, or revoking
7 an interpreter's certificate.

8 (i) The department [commission] shall determine the
9 frequency for conducting the interpreter examinations. The
10 department [commission] shall conduct the interpreter
11 examinations:

12 (1) in a space that can be obtained free of charge; or
13 (2) at a facility selected in compliance with Section
14 [2113.106](#), Government Code.

15 (k) The department [commission] shall compensate an
16 evaluator based on a fee schedule as determined by department
17 [commission] rule.

18 (l) The department [commission] shall recognize, prepare,
19 or administer continuing education programs for its certificate
20 holders. A certificate holder must participate in the programs to
21 the extent required by the department [commission] to keep the
22 person's certificate.

23 SECTION 4.324. Section [81.0071](#), Human Resources Code, is
24 amended to read as follows:

25 Sec. 81.0071. EXAMINATION RESULTS. (a) Not later than the
26 60th day after the date on which a certification examination is
27 administered under this chapter, the department [commission] shall

1 notify each examinee of the results of the examination. However, if
2 an examination is graded or reviewed by a national testing service,
3 the department [~~commission~~] shall notify examinees of the results
4 of the examination not later than the 14th day after the date on
5 which the department [~~commission~~] receives the results from the
6 testing service. If the notice of the examination results will be
7 delayed for longer than 90 days after the examination date, the
8 department [~~commission~~] shall notify each examinee of the reason
9 for the delay before the 90th day.

10 (c) The department [~~commission~~] may require a testing
11 service to notify a person of the results of the person's
12 examination.

13 SECTION 4.325. Section 81.0072, Human Resources Code, is
14 amended to read as follows:

15 Sec. 81.0072. REVOCATION OR SUSPENSION OF CERTIFICATE. (a)
16 The department [~~commission~~], based on the recommendation of the
17 Board for Evaluation of Interpreters, may revoke or suspend a
18 certificate or place a certificate holder on probation for a
19 violation of a statute, rule, or policy of the department
20 [~~commission~~]. If a certificate holder is placed on probation, the
21 department [~~commission~~] may require the practitioner:

22 (1) to report regularly to the department [~~commission~~]
23 on matters that are the basis of the probation;

24 (2) to limit practice to those areas prescribed by the
25 department [~~commission~~]; or

26 (3) to continue or renew professional education until
27 a satisfactory degree of skill has been attained in those areas that

1 are the basis of the probation.

2 (b) If the department [~~commission~~] proposes to suspend or
3 revoke a certificate or place a certificate holder on probation,
4 the certificate holder is entitled to a hearing before the
5 department [~~commission~~] or a hearings officer appointed by the
6 department [~~commission~~]. All final decisions to suspend or revoke
7 a certificate or place a certificate holder on probation shall be
8 made by the department [~~commission~~].

9 SECTION 4.326. Sections 81.0073(a), (b), (c), (e), and (f),
10 Human Resources Code, are amended to read as follows:

11 (a) A person who is otherwise eligible to renew a
12 certificate may renew an unexpired certificate by paying the
13 required renewal fee to the department [~~commission~~] before the
14 expiration date of the certificate. A person whose certificate has
15 expired may not engage in activities that require a certificate
16 until the certificate has been renewed.

17 (b) A person whose certificate has been expired for 90 days
18 or less may renew the certificate by paying to the department
19 [~~commission~~] a renewal fee that is equal to 1-1/2 times the normally
20 required renewal fee.

21 (c) A person whose certificate has been expired for more
22 than 90 days but less than one year may renew the certificate by
23 paying to the department [~~commission~~] a renewal fee that is equal to
24 two times the normally required renewal fee.

25 (e) A person who was certified in this state, moved to
26 another state, and is currently certified and has been in practice
27 in the other state for the two years preceding the date of

1 application may obtain a new certificate without reexamination.
2 The person must pay to the department [commission] a fee that is
3 equal to two times the normally required renewal fee for the
4 certificate.

5 (f) Not later than the 30th day before the date a person's
6 certificate is scheduled to expire, the department [commission]
7 shall send written notice of the impending expiration to the person
8 at the person's last known address according to the records of the
9 department [commission].

10 SECTION 4.327. Section 81.0074, Human Resources Code, is
11 amended to read as follows:

12 Sec. 81.0074. PROVISIONAL CERTIFICATE. (a) The department
13 [commission] may issue a provisional certificate to an applicant
14 currently certified in another jurisdiction who seeks a certificate
15 in this state and who:

16 (1) has been certified in good standing as an
17 interpreter for at least two years in another jurisdiction,
18 including a foreign country, that has certification requirements
19 substantially equivalent to the requirements of this chapter;

20 (2) has passed a national or other examination
21 recognized by the department [commission] relating to the practice
22 of interpretation for people who are deaf or hard of hearing; and

23 (3) is sponsored by a person certified by the
24 department [commission] under this chapter with whom the
25 provisional certificate holder will practice during the time the
26 person holds a provisional certificate.

27 (b) The department [commission] may waive the requirement

1 of Subsection (a)(3) for an applicant if the department
2 [~~commission~~] determines that compliance with that subdivision
3 [~~subsection~~] would be a hardship to the applicant.

4 (c) A provisional certificate is valid until the date the
5 department [~~commission~~] approves or denies the provisional
6 certificate holder's application for a certificate. The department
7 [~~commission~~] shall issue a certificate under this chapter to the
8 provisional certificate holder if:

9 (1) the provisional certificate holder is eligible to
10 be certified under Section 81.007(f); or

11 (2) the provisional certificate holder passes the part
12 of the examination under this chapter that relates to the
13 applicant's knowledge and understanding of the laws and rules
14 relating to the practice of interpretation for people who are deaf
15 or hard of hearing in this state, and:

16 (A) the department [~~commission~~] verifies that
17 the provisional certificate holder meets the academic and
18 experience requirements for a certificate under this chapter; and

19 (B) the provisional certificate holder satisfies
20 any other certification requirements under this chapter.

21 (d) The department [~~commission~~] must approve or deny a
22 provisional certificate holder's application for a certificate not
23 later than the 180th day after the date the provisional certificate
24 is issued. The department [~~commission~~] may extend the 180-day
25 period if the results of an examination have not been received by
26 the department [~~commission~~] before the end of that period.

27 (e) The executive commissioner by rule [~~commission~~] may

1 establish a fee for provisional certificates in an amount
2 reasonable and necessary to cover the cost of issuing the
3 certificate.

4 SECTION 4.328. Section 81.013, Human Resources Code, is
5 amended to read as follows:

6 Sec. 81.013. PRIVATE OUTDOOR TRAINING PROGRAMS FOR CHILDREN
7 WHO ARE DEAF OR HARD OF HEARING. (a) The department [~~commission~~]
8 may contract with private entities to provide for the participation
9 of children who are deaf or hard of hearing at outdoor recreational
10 programs operated for the purpose of providing skill training and
11 recreational experiences for children who are deaf or hard of
12 hearing. Outdoor training programs under this section may also
13 provide for participation by the parents of children who are deaf or
14 hard of hearing.

15 (b) In selecting children to attend programs under this
16 section, the department [~~commission~~] shall select qualified
17 children from across the state that [~~the commission thinks~~] will
18 benefit from the program.

19 (c) The department [~~commission~~] may request criminal
20 history record information on any person who applies for a staff
21 position in an outdoor training program from the Department of
22 Public Safety in accordance with Section 411.1131, Government Code.

23 SECTION 4.329. Section 81.015, Human Resources Code, is
24 amended to read as follows:

25 Sec. 81.015. ADVERTISEMENT. (a) The executive commissioner
26 [~~commission~~] may not adopt rules restricting competitive bidding or
27 advertising by a person regulated by the department under this

1 chapter [~~commission~~] except to prohibit false, misleading, or
2 deceptive practices by the person.

3 (b) The executive commissioner [~~commission~~] may not include
4 in department [~~its~~] rules to prohibit false, misleading, or
5 deceptive practices by a person regulated by the department under
6 this chapter [~~commission~~] a rule that:

7 (1) restricts the person's use of any medium for
8 advertising;

9 (2) restricts the person's personal appearance or use
10 of the person's [~~his~~] voice in an advertisement;

11 (3) relates to the size or duration of an
12 advertisement by the person; or

13 (4) restricts the person's advertisement under a trade
14 name.

15 (c) The department [~~commission~~] may advertise to promote
16 awareness and use of the programs, services, and activities
17 conducted by the department under this chapter [~~commission~~]. The
18 department [~~commission~~] may not use money derived from state tax
19 revenue to pay for advertisements under this subsection.

20 SECTION 4.330. Section 81.016, Human Resources Code, is
21 amended to read as follows:

22 Sec. 81.016. CONTRACTS FOR SERVICES. (a) Before the
23 department [~~commission~~] contracts with or provides grant funding to
24 an agency, organization, or individual to provide direct services
25 to persons who are deaf or hard of hearing, the department
26 [~~commission~~] shall make reasonable efforts to notify all potential
27 service providers of the availability and purpose of the contract

1 or grant.

2 (b) The notice shall include a request that all interested
3 service providers submit within a specified period a contract or
4 grant proposal for the department's [~~commission's~~] consideration.
5 The notice must also clearly state the criteria that the department
6 [~~commission~~] will consider in determining which applicant will be
7 awarded the contract or grant.

8 (c) The department [~~commission~~] shall review all proposals
9 submitted under this section and shall award the contract or grant
10 to the applicant that the department [~~commission~~] determines is
11 best able to provide the needed services. The department
12 [~~commission~~] may not award contracts or grants to a former employee
13 of the department's Office for Deaf and Hard of Hearing Services
14 [~~commission~~] within two years after the person's employment with
15 that office [~~the commission~~] ceased.

16 (d) To ensure an equitable distribution of contract or grant
17 funds, the department [~~commission~~] shall develop a formula, based
18 on population and region, to allocate those funds among the
19 agencies, organizations, or individuals that are awarded the
20 contracts or grants.

21 (e) The executive commissioner [~~commission~~] shall adopt
22 rules to implement this section.

23 SECTION 4.331. Sections 81.017(a) and (c), Human Resources
24 Code, are amended to read as follows:

25 (a) The department [~~commission~~] and each of the following
26 agencies shall adopt a memorandum of understanding to coordinate
27 the delivery of services to persons who are deaf or hard of hearing

1 and to reduce duplication of services:

- 2 (1) the Department of Aging and Disability Services;
- 3 (2) the Department of State Health Services;
- 4 (3) the Texas Workforce Commission;
- 5 (4) the Health and Human Services Commission;
- 6 (5) the Texas Higher Education Coordinating Board;
- 7 (6) the Texas Education Agency;
- 8 (7) ~~[the Department of Assistive and Rehabilitative~~
- 9 ~~Services,~~

10 ~~(8)~~ the Texas School for the Deaf;

11 ~~(8)~~ ~~(9)~~ the Texas Department of Criminal Justice;

12 and

13 ~~(9)~~ ~~(+10)~~ any other state agency that provides or is
14 required by law to provide services to persons who are deaf or hard
15 of hearing.

16 (c) Not later than the last month of each state fiscal year,
17 the department ~~[commission]~~ and the other agencies shall review
18 their respective memorandums.

19 SECTION 4.332. Section 81.019, Human Resources Code, is
20 amended to read as follows:

21 Sec. 81.019. SYMBOLS OR OTHER FORMS OF IDENTIFICATION FOR
22 PERSONS WITH HEARING IMPAIRMENTS ~~[IMPAIRED PERSONS]~~. (a) The
23 department ~~[commission]~~ shall design and provide for the issuance
24 of a symbol or other form of identification that may be attached to
25 a motor vehicle regularly operated by a person who is deaf or hard
26 of hearing.

27 (b) A person who is deaf or hard of hearing may apply to the

1 department [~~commission~~] for the symbol or other form of
2 identification. The department [~~commission~~] may require acceptable
3 medical proof that a person is deaf or hard of hearing and may
4 collect [~~set~~] a fee for each symbol or other form of identification
5 to defray the costs of administering this section. The executive
6 commissioner shall establish the fee.

7 (c) The department [~~commission~~] may contract with a state or
8 local agency for the distribution of the symbol or other form of
9 identification.

10 SECTION 4.333. Section 81.020, Human Resources Code, is
11 amended to read as follows:

12 Sec. 81.020. ASSISTANCE REGARDING TELECOMMUNICATIONS
13 DEVICES. The department [~~commission~~] may not advertise,
14 distribute, or publish the name or address or other related
15 information received by the department [~~commission~~] about an
16 individual who applies for assistance regarding telecommunications
17 devices.

18 SECTION 4.334. Section 81.021, Human Resources Code, is
19 amended to read as follows:

20 Sec. 81.021. SPECIALIZED LICENSE PLATE PROGRAM. The
21 department [~~commission~~] shall develop and the executive
22 commissioner shall adopt rules and guidelines for the use of funds
23 collected from the sale of specialized license plates under Section
24 504.619 [502.2722], Transportation Code, that are deposited in
25 accordance with Section 504.6012, Transportation Code, and
26 appropriated to the department [~~commission~~ in accordance with that
27 section] for direct services programs, training, and education.

1 SECTION 4.335. Section 82.001(1), Human Resources Code, is
2 amended to read as follows:

3 (1) "Qualified interpreter" means a person employed as
4 an interpreter who holds a current certification issued by the
5 Board for Evaluation of Interpreters, or another current
6 certificate that the Department of Assistive and Rehabilitative
7 Services [~~Texas Commission for the Deaf and Hard of Hearing~~]
8 determines is comparable or appropriate and approves.

9 SECTION 4.336. The heading to Title 5, Human Resources
10 Code, is amended to read as follows:

11 TITLE 5. SERVICES FOR THE BLIND AND PERSONS WITH VISUAL
12 DISABILITIES [~~VISUALLY HANDICAPPED~~]

13 SECTION 4.337. The heading to Chapter 91, Human Resources
14 Code, is amended to read as follows:

15 CHAPTER 91. FUNCTIONS OF DEPARTMENT OF ASSISTIVE AND REHABILITATIVE
16 SERVICES RELATING TO [~~TEXAS COMMISSION FOR~~] THE BLIND AND PERSONS
17 WITH VISUAL DISABILITIES

18 SECTION 4.338. Section 91.002, Human Resources Code, is
19 amended by amending Subdivisions (3) and (4) and adding
20 Subdivisions (3-a), (3-b), and (3-c) to read as follows:

21 (3) "Child with visual impairments" means a child who
22 is blind or visually impaired or who has a visual condition that
23 requires treatment, psychological assistance counseling, or other
24 assistance that the department [~~commission~~] can provide.

25 (3-a) "Commissioner" means the commissioner of
26 assistive and rehabilitative services.

27 (3-b) "Department" means the Department of Assistive

1 and Rehabilitative Services.

2 (3-c) "Executive commissioner" means the executive
3 commissioner of the Health and Human Services Commission.

4 (4) "Visual disability [handicap]" includes
5 blindness, an eye condition for which there is a medical prognosis
6 indicating that the condition is of a progressive nature and may
7 deteriorate either to blindness or to a substantial loss of vision,
8 and physical or psychological disabilities [handicaps] that
9 accompany or complement a disorder or imperfection of the eye.

10 SECTION 4.339. The heading to Section 91.012, Human
11 Resources Code, is amended to read as follows:

12 Sec. 91.012. AUTHORITY OF COMMISSIONER [~~EXECUTIVE~~
13 ~~DIRECTOR~~].

14 SECTION 4.340. Section 91.012(d), Human Resources Code, is
15 amended to read as follows:

16 (d) The commissioner may [~~executive director~~]:

17 (1) [~~shall appoint personnel necessary to efficiently~~
18 ~~accomplish commission purposes;~~,

19 [~~(2) may~~] delegate to an employee a power of the
20 commissioner under this chapter or Subchapter E, Chapter 117,
21 [~~executive director~~] except the power to [~~adopt rules or~~] appoint
22 personnel;

23 (2) [~~(3) shall establish appropriate administrative~~
24 ~~units within commission programs;~~,

25 [~~(4) may~~] accept and use gifts and grants to the
26 department [~~commission~~] to carry out the purposes of this title or
27 Subchapter E, Chapter 117, if the commissioner [~~commission~~]

1 determines that the conditions of the gift or grant are consistent
2 with this title or Subchapter E, Chapter 117; and

3 (3) ~~(5) may~~ take other actions that the
4 commissioner ~~executive director~~ considers necessary or
5 appropriate to carry out the department's ~~commission~~ purposes
6 under this chapter or Subchapter E, Chapter 117.

7 SECTION 4.341. Section 91.014(a), Human Resources Code, is
8 amended to read as follows:

9 (a) All sums of money paid to the department ~~commission~~
10 under this title or Subchapter E, Chapter 117, shall be deposited in
11 the state treasury ~~State Treasury and may be used only for the~~
12 ~~administration of this title~~.

13 SECTION 4.342. The heading to Section 91.016, Human
14 Resources Code, is amended to read as follows:

15 Sec. 91.016. COMPENSATION OF CERTAIN EMPLOYEES ~~PERSONNEL~~
16 ~~POLICIES~~.

17 SECTION 4.343. Section 91.016(e), Human Resources Code, is
18 amended to read as follows:

19 (e) The executive commissioner ~~commission~~ by rule may
20 develop and the department may implement policies allowing shift
21 differentials to be paid to employees in the vocational
22 rehabilitation program under Subchapter E, Chapter 117.

23 SECTION 4.344. The heading to Section 91.018, Human
24 Resources Code, is amended to read as follows:

25 Sec. 91.018. COMPLAINTS ~~RELATIONS WITH PUBLIC~~.

26 SECTION 4.345. Section 91.018(c), Human Resources Code, is
27 amended to read as follows:

1 (c) Except as required by federal regulations for resolving
2 complaints received from people who are receiving service from the
3 department, under this chapter or Subchapter E, Chapter 117
4 [~~commission~~], the department [~~commission~~] shall maintain a file in
5 the manner prescribed by Section 117.072(a) on each written
6 complaint filed with the department [~~commission~~]. [~~The file must~~
7 ~~include:~~

8 [~~(1) the name of the person who filed the complaint;~~
9 [~~(2) the date the complaint is received by the~~
10 ~~commission;~~
11 [~~(3) the subject matter of the complaint;~~
12 [~~(4) the name of each person contacted in relation to~~
13 ~~the complaint;~~
14 [~~(5) a summary of the results of the review or~~
15 ~~investigation of the complaint; and~~
16 [~~(6) an explanation of the reason the file was closed~~
17 ~~if the agency closed the file without taking action other than to~~
18 ~~investigate the complaint.~~]

19 SECTION 4.346. The heading to Subchapter C, Chapter 91,
20 Human Resources Code, is amended to read as follows:

21 SUBCHAPTER C. GENERAL POWERS AND DUTIES [~~OF THE COMMISSION~~]

22 SECTION 4.347. Section 91.0205, Human Resources Code, is
23 amended to read as follows:

24 Sec. 91.0205. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF
25 CONFLICT WITH OTHER LAW [~~OF COMMISSIONER OF HEALTH AND HUMAN~~
26 ~~SERVICES~~]. [~~The commissioner of health and human services has the~~
27 ~~powers and duties relating to the commission and executive director~~

1 ~~as provided by Section 531.0055, Government Code.] To the extent a~~
2 power or duty given to the commissioner [~~commission or executive~~
3 ~~director~~] by this chapter, or another law relating to services for
4 the blind or persons with visual disabilities, conflicts with
5 Section 531.0055, Government Code, Section 531.0055 controls.

6 SECTION 4.348. Section 91.021, Human Resources Code, is
7 amended to read as follows:

8 Sec. 91.021. RESPONSIBILITY FOR [~~VISUALLY HANDICAPPED~~]
9 PERSONS WITH VISUAL DISABILITIES. (a) The department [~~commission~~]
10 has primary responsibility for providing all services to [~~visually~~
11 ~~handicapped~~] persons with visual disabilities except welfare
12 services and services for children provided by regularly
13 established educational agencies and state authorities.

14 (b) The department [~~commission~~] shall negotiate interagency
15 agreements with other state agencies to provide services for
16 individuals who have both a visual disability [~~handicap~~] and
17 another disability [~~handicapping condition~~] so that those
18 [~~multiply handicapped~~] individuals with multiple disabilities may
19 be provided the most beneficial services with the greatest possible
20 economy.

21 (c) The department [~~commission~~] and other concerned state
22 agencies may not refuse to enter into an interagency agreement
23 developed to advance the state's policies regarding the
24 rehabilitation or education of the blind and persons with visual
25 disabilities [~~visually handicapped~~]. In negotiating the
26 agreements the agencies shall seek to extend and improve the
27 regular services provided by the agencies and to effectively use

1 all specialty and fiscal resources that are available. The
2 agencies shall give careful consideration to avoiding unnecessary
3 duplication or overlap of their respective efforts.

4 (d) The department [~~commission~~] shall enter into agreements
5 with the federal government to implement federal legislation
6 authorizing the provision of services to persons with visual
7 disabilities [~~the visually handicapped~~]. The department
8 [~~commission~~] shall use [~~adopt~~] methods of administration required
9 by the federal government for the proper and efficient
10 implementation of the agreements, and shall comply with other
11 federal requirements necessary to secure the full benefits of the
12 federal legislation.

13 (e) The department [~~commission~~] and other concerned state
14 agencies may not refuse to enter into interagency agreements
15 designed to secure the full benefits of federal legislation
16 authorizing services for persons with visual disabilities [~~the~~
17 ~~visually handicapped~~].

18 (f) The department [~~commission~~] shall:

19 (1) serve as an information center and referral
20 resource for persons with visual disabilities [~~the visually~~
21 ~~handicapped~~]; and

22 (2) develop mechanisms and procedures that tend to
23 assist [~~visually handicapped~~] individuals with visual disabilities
24 in bridging gaps between educational, institutional,
25 rehabilitative, vocational, and related types of services operated
26 by public and private nonprofit organizations throughout the state.

27 SECTION 4.349. Section 91.022, Human Resources Code, is

1 amended to read as follows:

2 Sec. 91.022. SERVICE DELIVERY. (a) The department
3 [~~commission~~] shall establish and maintain, in accordance with
4 department rules [by rule], guidelines for the delivery of services
5 by the department under this chapter and Subchapter E, Chapter 117
6 [~~commission~~]. The guidelines must be consistent with state and
7 federal law and regulations and must include guidelines [rules]
8 relating to:

9 (1) oversight and monitoring of the service delivery;
10 (2) guidance to counselors on the service delivery
11 procedures;
12 (3) case management benchmarks establishing
13 reasonable time frames for the service delivery; and
14 (4) financial planning information for the department
15 relating to the service delivery [~~commission~~].

16 (b) The department [~~commission~~] shall establish written
17 procedures relating to the evaluation of services delivered by the
18 department under this chapter and Subchapter E, Chapter 117,
19 [~~commission~~] to provide guidance to counselors and department
20 [~~commission~~] employees. These procedures must include methods to
21 evaluate:

22 (1) client progress;
23 (2) service delivery effectiveness; and
24 (3) counselor performance.

25 SECTION 4.350. Section 91.023, Human Resources Code, is
26 amended to read as follows:

27 Sec. 91.023. ASSISTANCE WITH REHABILITATION SERVICES. The

1 department [~~commission~~] may furnish materials, tools, books, and
2 other necessary apparatus and assistance for use in rehabilitating
3 the blind and [~~visually handicapped~~] persons with visual
4 disabilities.

5 SECTION 4.351. Sections [91.027](#)(a) and (c), Human Resources
6 Code, are amended to read as follows:

7 (a) To the extent that funds are available under Sections
8 [521.421](#)(j) and [521.422](#)(b), Transportation Code, the department
9 [~~commission~~] shall operate a Blindness Education, Screening, and
10 Treatment Program to provide:

11 (1) blindness prevention education and screening and
12 treatment to prevent blindness for residents who are not covered
13 under an adequate health benefit plan; and

14 (2) transition services to [~~blind disabled~~]
15 individuals with visual disabilities eligible for vocational
16 rehabilitation services under Section [117.102](#) [[91.052](#)].

17 (c) The executive commissioner [~~commission~~] by rule shall
18 prescribe eligibility requirements for the program.

19 SECTION 4.352. Sections [91.028](#)(a), (b), (c), (d), (e), and
20 (g), Human Resources Code, are amended to read as follows:

21 (a) The department [~~commission~~] may provide services to
22 children with visual impairments to supplement the services
23 provided by other state agencies if the department [~~commission~~]
24 determines that the provision of the services is appropriate and
25 that the services will assist the children in achieving financial
26 self-sufficiency and a fuller and richer life. It is the intention
27 of the legislature that all state agencies concerned with children

1 with visual impairments cooperate fully to achieve this purpose.

2 (b) The executive commissioner [commission] shall
3 establish, by rule, the income level at which the Medicaid
4 eligibility of a client applying for services under Subsection (a)
5 shall be verified.

6 (c) The department [commission] shall verify the Medicaid
7 eligibility of a client applying for services under Subsection (a)
8 whose income level is equal to or less than the income level
9 established by the executive commissioner [commission] under
10 Subsection (b).

11 (d) The department [commission] shall verify the Medicaid
12 eligibility of a client who is required by the department
13 [commission] to apply for Medicaid not later than the 90th day after
14 the date the application for services from the department under
15 Subsection (a) [commission] is made.

16 (e) In verifying Medicaid eligibility, an employee of the
17 department [commission] shall:

18 (1) examine appropriate state or private Medicaid
19 eligibility databases; and

20 (2) record on each client's case records [application
21 ~~for services~~] whether Medicaid eligibility was verified, the source
22 of the verification, and the date of the verification.

23 (g) A person may use the information provided under
24 Subsection (f) in accordance with department [commission] rules[~~r~~]
25 only for purposes directly connected with the administration of the
26 children's program and for the investigation of a complaint filed
27 against an agency, employee, or contracted provider of services.

1 SECTION 4.353. Section 91.0301, Human Resources Code, is
2 amended to read as follows:

3 Sec. 91.0301. LOANS FOR VISUAL AIDS. (a) The department
4 [~~commission~~] may establish a program to make loans to finance the
5 purchase of technological aids for [~~visually handicapped~~] persons
6 with visual disabilities. Interest on the loans may not exceed 10
7 percent a year.

8 (b) The executive commissioner [~~director~~] may promulgate
9 rules to administer the loan program[, ~~subject to approval of the~~
10 ~~commission~~].

11 SECTION 4.354. Section 91.031, Human Resources Code, is
12 amended to read as follows:

13 Sec. 91.031. CONTRACTS FOR SERVICE. (a) The department
14 [~~commission~~] shall include in its contracts with service providers
15 under this chapter or Subchapter E, Chapter 117, provisions
16 relating to:

17 (1) clearly defined and measurable program
18 performance standards that directly relate to the service provided;

19 (2) clearly defined penalties for nonperformance of a
20 contract term; and

21 (3) clearly specified accounting, reporting, and
22 auditing requirements applicable to money received under the
23 contract.

24 (b) The department [~~commission~~] shall monitor a service
25 provider's performance under a contract for service under this
26 chapter or Subchapter E, Chapter 117. In monitoring performance,
27 the department [~~commission~~] shall:

1 (1) use a risk-assessment methodology to institute
2 statewide monitoring of contract compliance of service providers;
3 and

4 (2) evaluate service providers based on clearly
5 defined and measurable program performance objectives.

6 SECTION 4.355. Section 91.032, Human Resources Code, is
7 amended to read as follows:

8 Sec. 91.032. CONTRACTS FOR ASSISTIVE [ADAPTIVE]
9 TECHNOLOGY. The department [~~commission~~] shall include in a
10 contract under this chapter or Subchapter E, Chapter 117, with a
11 supplier of assistive [adaptive] technology equipment provisions
12 that require the supplier to provide training for clients receiving
13 the assistive [adaptive] technology equipment.

14 SECTION 4.356. Subchapter D, Chapter 91, Human Resources
15 Code, is transferred to Chapter 117, Human Resources Code,
16 redesignated as Subchapter E, Chapter 117, Human Resources Code,
17 and amended to read as follows:

18 SUBCHAPTER E [D]. VOCATIONAL REHABILITATION OF INDIVIDUALS WITH
19 VISUAL IMPAIRMENTS [~~THE BLIND~~]

20 Sec. 117.101 [~~91.051~~]. DEFINITIONS. In this subchapter:

21 (1) "Program" means the vocational rehabilitation
22 program authorized in this subchapter.

23 (2) "Substantial impediment to employment"
24 [~~(3) "Employment handicap"~~] means a physical or mental condition
25 that obstructs or impairs, or if not corrected will probably
26 obstruct or impair, an individual's performance in an occupation.

27 [~~(4) "Disabled individual~~] means a person who has a

1 ~~substantial employment handicap.]~~

2 (3) "Individual with a visual impairment"
3 [+] "Blind disabled individual" means a person who is blind or
4 who has a visual condition for which medical prognosis indicates a
5 progressive deterioration that may result in a substantial
6 impediment to employment [~~vocational handicap~~].

7 (4) [+] "Vocational rehabilitation" or "vocational
8 rehabilitation services" means services that are provided directly
9 by the department [~~commission~~] or through a public or private
10 agency and that the department [~~director~~] determines are necessary
11 to compensate an [~~a blind disabled~~] individual with a visual
12 impairment for a substantial impediment to [~~an~~] employment
13 [~~handicap~~] so that the individual may engage in a remunerative
14 occupation. The terms include, but are not limited to, medical and
15 vocational diagnosis; vocational guidance, counseling, and
16 placement; rehabilitation training; physical restoration;
17 transportation; occupational licenses; customary occupational
18 tools and equipment; maintenance; training books and materials;
19 and other goods and services for which the department [~~commission~~]
20 receives financial support under federal law.

21 (5) [+] "Rehabilitation training" means all
22 necessary training provided to an [~~a blind disabled~~] individual
23 with a visual impairment to compensate for a substantial impediment
24 to [~~an~~] employment [~~handicap~~]. The term includes, but is not
25 limited to, manual, preconditioning, prevocational, vocational,
26 and supplementary training and training to achieve broader and more
27 lucrative skills and capacities.

1 (6) [48] "Physical restoration" means medical,
2 surgical, or therapeutic treatment necessary to correct or
3 substantially reduce a substantial impediment to [blind disabled
4 individual's] employment of an individual with a visual impairment
5 [handicap] within a reasonable period of time. The term includes,
6 but is not limited to, medical, surgical, dental, and psychiatric
7 treatment, nursing services, hospital care, convalescent home
8 care, drugs, medical and surgical supplies, and prosthetic
9 appliances. The term excludes treatment to cure acute or
10 transitory conditions.

11 (7) [49] "Prosthetic appliance" means an artificial
12 device necessary to support or replace a part of the body or to
13 increase the acuity of a sensory organ.

14 (8) [40] "Occupational license" means a license,
15 permit, or other written authorization required by a governmental
16 unit as a condition for engaging in an occupation.

17 (9) [41] "Maintenance" means money payments not
18 exceeding the estimated cost of subsistence during vocational
19 rehabilitation.

20 (10) "Blind" has the meaning assigned by Section
21 91.002.

22 Sec. 117.102 [91.052]. VOCATIONAL REHABILITATION PROGRAM
23 FOR INDIVIDUALS WITH VISUAL IMPAIRMENTS [THE BLIND]. (a) The
24 department [commission] shall conduct a program to provide
25 vocational rehabilitation services to eligible [blind disabled]
26 individuals with visual impairments.

27 (b) To achieve the purposes of the program, the department

1 [commission] may:

2 (1) cooperate with other public and private agencies
3 in studying the problems involved in providing vocational
4 rehabilitation and in establishing, developing, and providing
5 necessary or desirable facilities and services;

6 (2) enter into reciprocal agreements with other states
7 to provide vocational rehabilitation for the residents of the
8 states concerned; and

9 (3) conduct research and compile statistics relating
10 to the vocational rehabilitation of [~~blind disabled~~] individuals
11 with visual impairments.

12 Sec. 117.103 [~~91.053~~]. COOPERATION WITH FEDERAL
13 GOVERNMENT. (a) The department [commission] shall cooperate with
14 the federal government to accomplish the purposes of federal laws
15 relating to vocational rehabilitation and closely related
16 activities.

17 (b) The department [commission] shall negotiate agreements
18 or plans with the federal government and shall use [~~adopt~~]
19 efficient methods of administration and comply with other
20 conditions required to secure the full benefits of the federal
21 laws. If the department [commission] determines that a provision
22 of state law precludes conformity with a federal requirement and
23 limits federal financial support, the department [commission]:

24 [~~(1)~~] may waive or modify the state law to the extent
25 necessary to obtain the full benefits of the federal law[, and]

26 [~~(2)~~] shall include in the report required by Section
27 ~~91.019 a description of the manner in which state law conflicts with~~

1 ~~federal law~~].

2 Sec. 117.104 [~~91.055~~]. ELIGIBILITY FOR VOCATIONAL
3 REHABILITATION SERVICES. The department [~~commission~~] shall
4 provide vocational rehabilitation services to an [~~a blind disabled~~]
5 individual with a visual impairment eligible for those services
6 under federal law.

7 Sec. 117.105 [~~91.056~~]. RECEIPT AND DISBURSEMENT OF FUNDS.
8 (a) The comptroller is custodian of federal funds received by the
9 state to implement federal law relating to vocational
10 rehabilitation.

11 (b) The commissioner [~~executive director~~] shall certify for
12 disbursement funds available for the vocational rehabilitation
13 program in accordance with regulations.

14 (c) The comptroller shall disburse state and federal
15 vocational rehabilitation funds on certification by the
16 commissioner [~~executive director~~].

17 Sec. 117.106 [~~91.058~~]. HEARINGS. An applicant for or
18 recipient of vocational rehabilitation services who is aggrieved by
19 an action or inaction under the program is entitled to a hearing by
20 the department [~~commission~~] in accordance with law.

21 Sec. 117.107 [~~91.059~~]. MISUSE OF INFORMATION. Except for
22 purposes directly connected with the administration of the
23 vocational rehabilitation program and according to department
24 [~~commission~~] rules, no person may solicit, disclose, receive, use,
25 or knowingly permit the use of records or other information
26 concerning an applicant for or recipient of vocational
27 rehabilitation services that is directly or indirectly acquired by

1 an officer or employee of the state or its political subdivisions in
2 the course of his or her official duties.

3 SECTION 4.357. Section 91.081(a), Human Resources Code, is
4 amended to read as follows:

5 (a) The purpose of this subchapter is to establish a
6 comprehensive central state depository for braille, large print,
7 slow speed records and machines, tape recordings and tape players,
8 and related forms of media that will enable the Texas State Library
9 and Archives Commission, the Texas Education Agency, the department
10 [~~Texas Commission for the Blind~~], volunteer organizations involved
11 in the production of braille or recorded materials for the blind,
12 the Library of Congress, and related types of organizations to work
13 together more closely and effectively.

14 SECTION 4.358. Section 91.082, Human Resources Code, is
15 amended to read as follows:

16 Sec. 91.082. ESTABLISHMENT OF CENTRAL MEDIA DEPOSITORY.
17 (a) The Texas State Library and Archives Commission shall
18 generally supervise the establishment and operation of a central
19 media depository in Austin to house materials and devices required
20 by the blind and [~~visually handicapped~~] individuals with visual
21 disabilities or by other individuals who are unable to use ordinary
22 printed materials.

23 (b) With the approval of the Texas State Library and
24 Archives Commission [~~library and archives commission~~], the
25 agencies and organizations maintaining and operating the central
26 media depository shall develop and periodically evaluate and modify
27 specific arrangements for administrative support, sharing of staff

1 and equipment, and related matters involved in the operation of the
2 program.

3 SECTION 4.359. Section 91.083, Human Resources Code, is
4 amended to read as follows:

5 Sec. 91.083. ANCILLARY SERVICES. The Texas State Library
6 and Archives Commission [~~library and archives commission~~] shall
7 allow the central media depository to be used for the repair of
8 special media and equipment required by individuals who are unable
9 to use ordinary print and for research and demonstration, training,
10 and the production of materials in special media by volunteer
11 organizations.

12 SECTION 4.360. Chapter 94, Human Resources Code, is amended
13 to read as follows:

14 CHAPTER 94. VENDING FACILITIES OPERATED BY BLIND PERSONS

15 Sec. 94.001. DEFINITIONS. In this chapter:

16 (1) "Blind person" means a person having not more than
17 20/200 visual acuity in the better eye with correcting lenses or
18 visual acuity greater than 20/200 but with a limitation in the field
19 of vision such that the widest diameter of the visual field subtends
20 an angle no greater than 20 degrees.

21 (1-a) "Department" means the Department of Assistive
22 and Rehabilitative Services.

23 (1-b) "Executive commissioner" means the executive
24 commissioner of the Health and Human Services Commission.

25 (2) "Vending facility" means a facility in which food,
26 drinks, drugs, novelties, souvenirs, tobacco products, notions, or
27 related items are sold regularly. The term excludes facilities

1 consisting solely of vending machines that do not compete directly
2 or indirectly with a facility that is or could be operated by a
3 [vocationally handicapped] person with a disability.

4 (3) "State property" means land and buildings owned,
5 leased, or otherwise controlled by the state.

6 (4) "Agency" means the state agency in charge of state
7 property.

8 (5) "Disability" [Handicapped] means a physical or
9 mental condition that the department [commission or rehabilitation
10 commission] determines to constitute a substantial vocational
11 disadvantage.

12 [(6) "Commission" means the Texas Commission for the
13 blind.]

14 [(7) "Rehabilitation commission" means the Texas
15 Rehabilitation Commission.]

16 Sec. 94.002. LICENSE OR PERMIT REQUIRED. (a) No person may
17 operate a vending facility or a facility with vending machines or
18 other coin-operated devices on state property unless the person is
19 licensed to do so by the department [commission] or is authorized to
20 do so by an agency granted a permit to arrange for vending
21 facilities.

22 (b) Subsection (a) [of this section] does not apply to a
23 building in which the Texas Facilities [State Purchasing and
24 General Services] Commission leases space to a private tenant under
25 Subchapter E, Chapter 2165, Government Code.

26 Sec. 94.003. LICENSING PROCEDURE. (a) On its own
27 initiative or at the request of an agency that controls state

1 property, the department [~~commission~~] shall survey the property, or
2 blueprints and other available information concerning the
3 property, to determine whether the installation of a vending
4 facility is feasible and consonant with the department's
5 [~~commission's~~] vocational rehabilitation objectives.

6 (b) If the installation of the facility is feasible, the
7 department [~~commission~~] shall either license a blind person to
8 operate a facility to be installed by the department [~~commission~~]
9 or [~~allow the rehabilitation commission to~~] install a facility to
10 be operated by a [~~handicapped~~] person with a disability who is not
11 blind according to rules and procedures [~~comparable to those~~]
12 adopted by the executive commissioner [~~commission. The commission~~
13 ~~and the rehabilitation commission may enter into agreements~~
14 ~~relating to management services and related forms of necessary~~
15 ~~assistance~~].

16 Sec. 94.004. LOCATION OF VENDING FACILITIES. (a) With the
17 concurrence of the agency in charge of state property, the
18 department [~~commission~~] shall designate the location of vending
19 facilities that have been requested by the agency.

20 (b) The agency responsible for state property shall alter
21 the property to make it suitable for the proper operation of the
22 vending facilities. To this end, the agency in charge of
23 constructing new state property shall consult with the department
24 [~~commission~~] during the planning stage on the construction.

25 Sec. 94.005. ISSUANCE OF LICENSES; ELIGIBILITY. (a) The
26 department [~~commission~~] may issue a license to operate its vending
27 facilities on state property to blind citizens of the state who are

1 capable of operating the facilities in a manner that is reasonably
2 satisfactory to all parties concerned.

3 (b) Before issuing a license to a person, the department
4 [~~commission~~] shall determine whether the person has the physical,
5 psychological, and personal traits and abilities required to
6 operate a vending facility in a satisfactory manner.

7 (c) The department [~~commission~~] shall maintain a roster of
8 the names of each person who has been certified as suitable for
9 licensing. If two or more equally qualified persons are listed on
10 the roster and apply for a license to operate an available vending
11 facility, the department [~~commission~~] shall issue the license to
12 the person who is most in need of employment.

13 (d) The granting of a license does not vest the licensee
14 with property or other rights which may constitute the basis of a
15 cause of action, at law or in equity, against the state or its
16 officers or employees.

17 Sec. 94.006. EXPIRATION, RENEWAL, AND REVOCATION OF
18 LICENSES. (a) A license or general permit to operate a vending
19 facility on state property is valid for a period of three years from
20 the date it is issued.

21 (b) The department [~~commission~~] shall review each license
22 or permit prior to its expiration and shall issue a new or different
23 license or permit as the circumstances warrant.

24 (c) The department [~~commission~~] and the agency may consent
25 mutually to revoke a general permit prior to its expiration if
26 changed circumstances warrant that action.

27 (d) A blind person's wilful failure to comply with the

1 department's [~~commission's~~] rules or the provisions of this chapter
2 constitutes grounds for the automatic revocation of the person's
3 license.

4 (e) The executive commissioner [~~commission~~] shall adopt
5 substantive and procedural rules governing the revocation of
6 licenses.

7 Sec. 94.007. OPERATION OF VENDING FACILITIES BY CERTAIN
8 PERSONS WHO ARE NOT BLIND [~~UNDER THE REHABILITATION COMMISSION~~].

9 [(a)] If the department [~~commission~~] determines that a blind
10 person could not properly operate a vending facility at a
11 particular location, the department [~~rehabilitation commission~~]
12 may survey the property to determine whether a [~~handicapped~~] person
13 with a [~~whose~~] disability that is not of a visual nature could
14 operate the facility in a proper manner.

15 [~~(b) The commission and the rehabilitation commission may~~
16 ~~develop procedures and methods of exchanging information necessary~~
17 ~~to implement cooperative activities.~~

18 [~~(c) The installation and operation of a vending facility by~~
19 ~~the rehabilitation commission must conform to the provisions of~~
20 ~~this chapter applicable to vending facilities installed by the~~
21 ~~commission.~~]

22 Sec. 94.008. CLOSING CERTAIN FACILITIES PROHIBITED.
23 Neither a vending facility operated by an [~~a blind or otherwise~~
24 ~~vocationally handicapped~~] individual with a disability, nor a
25 vending facility location surveyed by the department, [~~commission~~]
26 may be closed as a result of the transfer of state property from one
27 agency to another, the alteration of a state building, or the

1 reorganization of a state agency unless the department [~~commission~~
2 ~~or the rehabilitation commission~~] agrees to the closing.

3 Sec. 94.009. EMPLOYMENT OF ASSISTANTS. (a) If an
4 individual licensed to operate a vending facility on state property
5 requires an assistant, a qualified [~~visually handicapped~~] person
6 with a disability of a visual nature must be given preference for
7 employment. If the department [~~commission~~] determines that a
8 [~~visually handicapped~~] person with a disability of a visual nature
9 could not perform the labor for which an assistant is required, or
10 if a [~~visually handicapped~~] person with a disability of a visual
11 nature is not available, a [~~handicapped~~] person with a [~~whose~~]
12 disability that is not of a visual nature must be given preference
13 for employment. If no [~~handicapped~~] person with a disability is
14 available for the job, preference must be given to a person who is
15 socially, culturally, economically, or educationally
16 disadvantaged.

17 (b) An assistant employed by a blind person licensed by the
18 department [~~commission~~] must be approved by the department
19 [~~commission~~], and the deliberate refusal of a blind licensee to
20 comply with this section constitutes grounds for the revocation of
21 his or her license.

22 Sec. 94.010. COMPETING VENDING MACHINES. (a) If the
23 department [~~commission~~] and an agency agree to the installation and
24 operation of an additional vending facility or vending machine on
25 property that already has a department-sponsored
26 [~~commission-sponsored~~] vending facility, no additional permit or
27 license is required. However, the installation of a competing

1 vending facility consisting of vending machines or other
2 coin-operated devices must be authorized by the department
3 [~~commission~~]. The department's [~~commission's~~] authorization must
4 be made with a view toward providing the greatest economic benefits
5 for blind persons consonant with supplying the additional services
6 required at the building.

7 (b) State agencies shall cooperate and negotiate in good
8 faith to accomplish the purposes of this chapter.

9 (c) Individuals with disabilities [~~vocationally~~
10 ~~handicapped individuals~~] who operate vending facilities on state
11 property are entitled to receive all commissions from vending
12 machines installed on the same property. If two or more vending
13 facilities are operated by individuals with disabilities
14 [~~vocationally handicapped persons~~] in a building in which vending
15 machines are installed, the department [~~commission~~] shall divide
16 the commissions from the vending machines among the [~~handicapped~~]
17 operators with disabilities in a manner that will achieve equity
18 and equality in the incomes of those [~~the handicapped~~] operators.
19 If the department has [~~commission and the rehabilitation commission~~
20 ~~have~~] decided not to locate a vending facility in a building, the
21 agency to whom a general permit has been issued shall determine the
22 assignment of the commissions from vending machines installed in
23 the building.

24 Sec. 94.011. VENDING FACILITY EQUIPMENT AND STOCK. (a) The
25 department [~~commission~~] may supply a blind vending facility
26 operator with equipment and initial stock necessary for the
27 operator to begin business.

1 (b) The department [~~commission~~] shall collect and set aside
2 from the proceeds of the operation of its vending facilities enough
3 money:

4 (1) to insure a sufficient amount of initial stock for
5 the facilities and for their proper maintenance;

6 (2) to pay the costs of supervision and other expenses
7 incidental to the operation of the facilities; and

8 (3) to pay other program costs to the extent necessary
9 to assure fair and equal treatment of the blind persons licensed to
10 operate the facilities and to the extent allowed under federal
11 programs that provide financial support to the department
12 [~~commission~~].

13 (c) Except for purchasing and installing original
14 equipment, the operation of department-sponsored
15 [~~commission-sponsored~~] vending facilities must be as
16 self-supporting and self-sustaining as possible. To achieve this
17 end, the department [~~commission~~] shall periodically review and,
18 when necessary, revise its schedules for collecting and setting
19 aside money from the proceeds of its vending facilities.

20 Sec. 94.012. DUTIES AND PRIVILEGES OF PARTIES. (a) The
21 executive commissioner [~~commission~~] may promulgate rules and the
22 department may initiate procedures necessary to implement this
23 chapter.

24 (b) A blind person licensed to operate a vending facility on
25 state property shall operate the facility in accordance with law
26 and the department's [~~commission's~~] rules and policies.

27 (c) The agency in charge of state property shall cooperate

1 with the department [~~commission~~] and its blind licensees to
2 accomplish the purposes of this chapter. The agency shall also
3 furnish all necessary utility service, including connections and
4 outlets required for the installation of the facility, janitorial
5 and garbage disposal services where feasible, and other related
6 assistance.

7 Sec. 94.013. TRAINING PROGRAMS. The department
8 [~~commission~~] may establish training or experimentation locations
9 necessary to train blind persons who desire to be licensed to
10 operate vending facilities and to develop techniques which will
11 allow blind persons to operate the facilities or related types of
12 small businesses more efficiently and productively.

13 Sec. 94.014. CONFORMITY WITH FEDERAL STATUTES. (a) This
14 chapter shall be construed in a manner consistent with the
15 requirements of federal programs that provide financial assistance
16 to the department [~~commission~~].

17 (b) If a provision of this chapter conflicts with a federal
18 program requirement, the department [~~commission~~] may waive or
19 modify the provision to the extent necessary to secure the full
20 benefits of the federal program.

21 Sec. 94.015. APPLICATION OF CHAPTER. (a) This chapter does
22 not apply to:

23 (1) property over which the federal government
24 maintains partial or complete control;

25 (2) property maintained and operated by
26 state-supported institutions of higher education; provided,
27 however, that the department [~~commission~~] may enter into agreements

1 with state institutions of higher education concerning the use of
2 blind labor in vending facilities at the institutions; or

3 (3) property purchased by the state or an agency of the
4 state, property to which title is transferred from one state agency
5 to another, or property control of which is transferred from one
6 state agency to another, if:

7 (A) at the time of purchase or transfer of title
8 or control, a vending facility is being operated on the property
9 under lease, license, or contract; and

10 (B) prior to the time of purchase or transfer of
11 title or control, the provisions of this chapter were rendered
12 inapplicable to such property by this section or other law.

13 (b) This chapter does not apply to vending facilities
14 operated by an institution for persons with mental illness or
15 intellectual disabilities that is under the control of the
16 Department of State Health Services, the Department of Aging and
17 Disability Services, or a successor to one of those departments
18 ~~[Texas Department of Mental Health and Mental Retardation, or its~~
19 ~~successor]~~, if the vending facilities are operated without profit
20 for the benefit of the patients at the institution.

21 (c) This chapter does not prohibit the department
22 ~~[commission]~~ from selecting blind persons to operate other suitable
23 types of vending facilities or business enterprises, and the
24 chapter does not prohibit the installation of automated vending
25 facilities serviced by blind persons.

26 Sec. 94.016. BUSINESS ENTERPRISES PROGRAM. (a) The
27 department ~~[commission]~~ is authorized to administer the Business

1 Enterprises Program in accordance with the provisions of the
2 Randolph-Sheppard Act (20 U.S.C. Section 107 et seq.).

3 (b) The department [~~commission~~] is authorized to administer
4 a retirement program for individuals licensed to operate vending
5 facilities in accordance with applicable state and federal laws.

6 (c) A trust fund for a retirement program for individuals
7 licensed to operate vending facilities under the Business
8 Enterprises Program is established with the comptroller [~~of public~~
9 ~~accounts~~]. This trust fund will be set up in the state treasury.

10 (d) All federal vending machine income shall be credited to
11 this Business Enterprises Program trust fund. Vending machine
12 income, as defined by 34 C.F.R. Section 395.1(z), means receipts
13 (other than those of a blind vendor) from vending machine
14 operations on federal property, after deducting the cost of goods
15 sold (including reasonable service and maintenance costs) in
16 accordance with customary business practices of commercial vending
17 concerns, where the machines are operated, serviced, or maintained
18 by, or with the approval of, a department, agency, or
19 instrumentality of the United States, or commissions paid (other
20 than to a blind vendor) by a commercial vending concern which
21 operates, services, and maintains vending machines on federal
22 property for, or with the approval of, a department, agency, or
23 instrumentality of the United States.

24 (e) All expenditures authorized by the Randolph-Sheppard
25 Act from federal vending revenue funds shall be paid from the
26 Business Enterprises Program trust fund.

27 (f) The department [~~commission~~] may contract with a

1 professional management service to administer the Business
2 Enterprises Program trust fund. In administering the trust fund,
3 the professional management service may acquire, exchange, sell, or
4 retain any kind of investment that a prudent investor, exercising
5 reasonable care, skill, and caution, would acquire, exchange, sell,
6 or retain under the circumstances, taking into consideration the
7 investment of all the assets of the trust fund.

8 (g) With the approval of the comptroller, the department
9 ~~[commission]~~ may select a commercial bank, depository trust
10 company, or other entity to serve as a custodian of the Business
11 Enterprises Program trust fund's securities, and money realized
12 from those securities, pending completion of an investment
13 transaction. Money realized from those securities must be:

14 (1) reinvested not later than one business day after
15 the date it is received; or

16 (2) deposited in the treasury not later than the fifth
17 business day after the date it is received.

18 SECTION 4.361. Title 6, Human Resources Code, is amended to
19 conform to Chapter 101, Human Resources Code, as it existed on
20 August 31, 2006, and to Section 1.20(a)(1), Chapter 198 (H.B.
21 2292), Acts of the 78th Legislature, Regular Session, 2003, by
22 adding Chapter 101A to read as follows:

23 CHAPTER 101A. STATE SERVICES FOR THE AGING

24 SUBCHAPTER A. GENERAL PROVISIONS

25 Sec. 101A.001. DEFINITIONS. In this chapter:

26 (1) "Commissioner" means the commissioner of aging and
27 disability services.

1 (2) "Department" means the Department of Aging and
2 Disability Services.

3 (3) "Executive commissioner" means the executive
4 commissioner of the Health and Human Services Commission.

5 Sec. 101A.002. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF
6 CONFLICT WITH OTHER LAW. To the extent a power or duty given to the
7 commissioner by this chapter or another law relating to state
8 services for the aging conflicts with Section 531.0055, Government
9 Code, Section 531.0055 controls.

10 Sec. 101A.003. COOPERATION WITH FEDERAL AND STATE AGENCIES.

11 (a) The department is the state agency designated to handle federal
12 programs relating to the aging that require action within the state
13 and that are not the specific responsibility of another state
14 agency under federal or state law.

15 (b) The department is not intended to supplant or to take
16 over from the counties and municipalities of this state or from
17 other state agencies or facilities any of the specific
18 responsibilities relating to services for the aging that they hold.
19 The department shall cooperate with federal and state agencies,
20 counties, and municipalities and private agencies or facilities in
21 the state in accomplishing the purposes of this chapter.

22 SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT AND EXECUTIVE
23 COMMISSIONER

24 Sec. 101A.051. RULES. The executive commissioner shall
25 adopt rules governing the functions of the department under this
26 chapter, including rules that prescribe the policies and procedures
27 followed by the department in the administration of any local

1 services programs, employment programs for the aged, volunteer
2 programs for the aged, or other programs.

3 Sec. 101A.052. GENERAL FUNCTIONS OF DEPARTMENT RELATED TO
4 AGING SERVICES. (a) The department shall provide expertise and
5 advice to state agencies and the legislature and other elected
6 officials on aging issues, including recommendations to meet the
7 needs of this state's elderly population.

8 (b) The department shall develop and strengthen the
9 services available for the aged in the state by coordinating
10 services provided by governmental and private agencies and
11 facilities.

12 (c) The department shall extend and expand services for the
13 aged by coordinating the interest and efforts of local communities
14 in studying the problems of the aged citizens of this state.

15 (d) The department shall encourage, promote, and aid in the
16 establishment of area agencies on aging for the development of
17 programs and services on a local level that improve the living
18 conditions of the aged by enabling them to more fully enjoy and
19 participate in family and community life.

20 (e) The department shall sponsor voluntary community
21 rehabilitation and recreational facilities to improve the general
22 welfare of the aged.

23 (f) The department shall cooperate with state and federal
24 agencies and other organizations in conducting studies and surveys
25 on the special problems of the aged in matters such as mental and
26 physical health, housing, family relationships, employment,
27 income, vocational rehabilitation, recreation, transportation,

1 insurance, legal rights, and education. The department shall make
2 appropriate reports and recommendations to the governor and to
3 state and federal agencies.

4 (g) The department shall conduct research and long-range
5 planning regarding long-term care, community care, and other issues
6 that affect elderly individuals.

7 (h) The department shall make recommendations to the
8 governor, the legislature, and state agencies regarding:

9 (1) opportunities to coordinate programs for elderly
10 individuals;

11 (2) unnecessary duplication in providing services to
12 elderly individuals; and

13 (3) gaps in services to elderly individuals.

14 (i) The department shall:

15 (1) cooperate with the Texas Department of Housing and
16 Community Affairs to provide affordable housing for elderly
17 individuals and for families in which an elderly individual is head
18 of the household;

19 (2) assess the need for housing for elderly
20 individuals and for families in which an elderly individual is head
21 of the household in different localities;

22 (3) set standards relating to the design and
23 construction of housing for elderly individuals;

24 (4) provide planning assistance to builders; and

25 (5) publicize the availability of the housing program
26 to potential developers and residents.

27 Sec. 101A.053. OLDER AMERICANS ACT; STATE PLAN. (a) The

1 department shall develop this state's plan on aging, as required by
2 the Older Americans Act of 1965 (42 U.S.C. Section 3001 et seq.).

3 **(b)** The department shall conduct a statewide needs
4 assessment for long-term care and other services for older
5 individuals and their caregivers. The assessment shall include
6 input from:

- 7 (1) area agencies on aging;
8 (2) regional and local state agency staff; and
9 (3) community-based organizations.

10 SUBCHAPTER C. PROGRAMS AND SERVICES

11 Sec. 101A.101. COMMUNITY SENIOR CITIZENS EMPLOYMENT
12 PROGRAMS. **(a)** In this section, "suitable employment" means
13 employment that is commensurate with the individual's skills and
14 ability and for which compensation is paid equal to the federal
15 minimum wage rate.

16 **(b)** The Texas Workforce Commission may administer a
17 community program for persons 55 years of age or older who lack
18 suitable employment and have family incomes under federal poverty
19 guidelines.

20 **(c)** The Texas Workforce Commission may contract with a
21 public agency or a private, nonprofit organization with experience
22 in managing similar programs to employ persons under this program
23 in providing recreation, beautification, conservation, or
24 restoration services, or public service employment positions for
25 state, county, city, or regional governments or school districts.
26 The Texas Workforce Commission may not contract with an
27 organization that is not a subscriber under the state workers'

1 compensation law or that does not pay the federal minimum wage rate
2 or the prevailing wage rate for the particular job, whichever is
3 greater.

4 (d) The state shall finance 80 percent of the cost of the
5 program, and the governments receiving the services shall finance
6 20 percent of the cost.

7 Sec. 101A.102. VOLUNTARY COMMUNITY SERVICES PROGRAMS. (a)
8 The department shall ensure that state funds appropriated to the
9 department for programs to recruit elderly persons to perform
10 voluntary community services or for programs under Senior Corps are
11 disbursed to local public agencies or private, nonprofit
12 corporations that operate those programs.

13 (b) A public agency or private, nonprofit corporation may
14 not receive state money under this section if it is not able to
15 qualify for federal matching money for the same purpose.

16 (c) The executive commissioner by rule shall establish
17 guidelines or formulas to determine the proportion of state money
18 distributed to each public agency or private, nonprofit corporation
19 under this section. The executive commissioner by rule may
20 establish additional qualifications to receive the state money.

21 (d) State funds disbursed under this section may not be used
22 to pay compensation to volunteer workers, except for participants
23 in the Foster Grandparent and Senior Companion Programs of Senior
24 Corps, or for purposes other than financing the operation or
25 administration of the volunteer programs, but it may be used to
26 defray expenses incurred by volunteers in the performance of
27 volunteer work. The executive commissioner by rule may further

1 limit the purposes for which the state money may be spent.

2 Sec. 101A.103. TEXAS CARES PROGRAM. (a) The executive
3 commissioner by rule may establish and the department may operate a
4 Texas Cares program to provide persons eligible for discount drug
5 price programs offered by pharmaceutical companies with:

6 (1) information regarding the availability of those
7 programs; and

8 (2) in appropriate circumstances, assistance in
9 enrolling in those programs.

10 (b) The department may solicit and accept gifts, grants, and
11 donations from any source to use in funding the Texas Cares program.

12 (c) The executive commissioner shall design the Texas Cares
13 program to meet the primary goal of increasing awareness in
14 appropriate populations of the availability of discount drug price
15 programs offered by pharmaceutical companies. To the extent that
16 adequate resources are available, the department shall:

17 (1) make information regarding discount drug price
18 programs readily available on the department's Internet site;

19 (2) Maintain a toll-free telephone number through
20 which a person may obtain information regarding discount drug price
21 programs; and

22 (3) make brochures or other written informational
23 materials regarding discount drug price programs available on
24 request by a pharmacist, physician, representative of an
25 organization serving senior citizens, or other interested person.

26 (d) The department may:

27 (1) conduct community outreach and education

1 activities to increase awareness of the availability of discount
2 drug price programs offered by pharmaceutical companies;
3 (2) solicit and train volunteers to perform functions
4 associated with the Texas Cares program, including:
5 (A) providing assistance to eligible persons in
6 enrolling in discount drug price programs offered by pharmaceutical
7 companies; and
8 (B) conducting community outreach and education
9 activities; and
10 (3) coordinate operation of the Texas Cares program
11 with the activities of area agencies on aging.

12 Sec. 101A.104. PUBLIC INFORMATION ON COST OF LONG-TERM
13 CARE. The department shall develop programs to provide information
14 to the public relating to:

15 (1) the cost of long-term care;
16 (2) the limits on Medicaid eligibility;
17 (3) the adequacy or inadequacy of other financing
18 options, including Medicare; and
19 (4) possible methods of financing long-term care,
20 including group insurance policies and other methods designed to
21 assist individuals.

22 Sec. 101A.105. SERVICES OF OTHER AGENCIES. The department
23 may accept services performed by other agencies to accomplish the
24 purposes of this chapter.

25 Sec. 101A.106. REVIEW OF ADMINISTRATIVE COSTS AND PROGRAMS.
26 (a) The executive commissioner by rule shall define
27 "administrative costs" as used in this section. However, if a

1 standard definition of administrative costs is required by law to
2 be used by state agencies, the executive commissioner shall use
3 that definition.

4 (b) To determine the administrative costs incurred by an
5 entity, including an area agency on aging and including an entity
6 that spends money distributed by the department under Section
7 101A.101 or 101A.102 in engaging in a program that is funded in any
8 part by money derived from the department under this chapter, the
9 department shall request appropriate information from the entity.

10 (c) The executive commissioner shall establish the maximum
11 amount of administrative costs that may be incurred by the entity in
12 engaging in the program.

13 (d) The department periodically shall review the actions of
14 entities receiving funds from the department under this chapter and
15 shall document its review. The review of an entity that spends
16 money distributed under Section 101A.102 must include on-site
17 evaluations of the entity and must include the review of
18 documentation, which shall be required by the department, of the
19 services performed by the aged in programs under Section 101A.102.

20 Sec. 101A.107. REPORT ON UNIT COSTS. The department shall
21 file with the Legislative Budget Board and the Governor's Office of
22 Budget, Planning, and Policy a report that clearly identifies the
23 unit cost of each service, other than services related to community
24 service volunteering and subsidized employment services, provided
25 by an area agency on aging. The report must be filed twice each year
26 on or before the date specified by the Legislative Budget Board.
27 The report must be in the form required by the Legislative Budget

1 Board.

2 SUBCHAPTER D. OPTIONS FOR INDEPENDENT LIVING PROGRAM

3 Sec. 101A.151. DEFINITIONS. In this subchapter:

4 (1) "Case management" means the process of assessing
5 service needs, developing a plan of care, and arranging for and
6 monitoring delivery of care to an elderly person under this
7 subchapter.

8 (2) "Case management unit" is an entity that
9 coordinates and administers case management.

10 (3) "Elderly person" means a person who is 60 years of
11 age or older.

12 (4) "Service area" means a geographical area of the
13 state designated for purposes of planning, development, and overall
14 administration of services provided under this subchapter.

15 Sec. 101A.152. OPTIONS FOR INDEPENDENT LIVING PROGRAM. (a)
16 The department shall establish a statewide Options for Independent
17 Living program to help elderly persons remain at home despite
18 limited self-care capacities and to prevent institutionalization.

19 (b) The Options for Independent Living program shall
20 provide short-term support services to elderly persons for the
21 purposes of:

22 (1) restoring functional capacities after illness or
23 hospitalization; and

24 (2) educating and preparing elderly persons and their
25 caregivers to provide self-care.

26 Sec. 101A.153. PERSONS TO BE SERVED. (a) The Options for
27 Independent Living program shall give priority to an elderly

1 person who:

- 2 (1) has recently suffered a major illness or health
3 care crisis or has recently been hospitalized;
4 (2) lives in a rural area;
5 (3) has insufficient caregiver support;
6 (4) has a mild to moderate impairment or a temporary
7 severe impairment; and
8 (5) is in great economic or social need, with
9 particular attention to low-income minority older persons.

10 (b) In awarding funding under this subchapter, the
11 department shall serve priority populations consistent with the
12 Older Americans Act of 1965 (42 U.S.C. Section 3001 et seq.).

13 Sec. 101A.154. PROVISION OF SERVICES. (a) Support services
14 shall include:

- 15 (1) case management;
16 (2) homemaking assistance, including personal care;
17 (3) residential repair and modification;
18 (4) benefits counseling;
19 (5) respite care;
20 (6) emergency response;
21 (7) education and training for caregivers;
22 (8) home-delivered meals;
23 (9) transportation; and
24 (10) other appropriate services identified by the case
25 manager and client through the assessment and care planning
26 process.

27 (b) A case manager shall conduct an individual assessment of

1 an elderly person's needs and shall, in consultation with the
2 elderly person and the elderly person's family, create a plan of
3 care that specifies the type, amount, frequency, and duration of
4 support services the elderly person needs.

5 (c) A plan of care must coordinate the available public and
6 private services and resources that are most appropriate to meet
7 the elderly person's needs.

8 (d) An area agency on aging may not directly provide
9 homemaker, home health, residential repair, respite, meal
10 delivery, or transportation service unless the area agency:

11 (1) receives no response to a request for proposals
12 that meets department standards; and

13 (2) has exhausted all other procurement options
14 available under department rules.

15 (e) An area agency on aging that wants to provide directly a
16 service not available through a local public or private entity must
17 obtain approval from the department in accordance with department
18 rules governing the granting of such approval.

19 Sec. 101A.155. CASE MANAGEMENT UNITS. (a) The department
20 shall designate one or more case management units for each service
21 area to provide case management services according to department
22 rules and standards.

23 (b) The department shall designate an area agency on aging
24 as a case management unit for a service area. The area agency on
25 aging may act as the case management unit, after obtaining approval
26 from the department in accordance with department rules governing
27 the granting of such approval, or the area agency on aging may

1 subcontract with a local service agency or hospital to act as the
2 case management unit.

3 (c) A case manager must be an employee of a case management
4 unit.

5 (d) The department shall periodically review a case
6 management unit.

7 Sec. 101A.156. ADMINISTRATION OF PROGRAM. (a) The
8 department shall administer the Options for Independent Living
9 program through grants to area agencies on aging.

10 (b) Area agencies on aging shall maintain their service
11 provision levels in effect on September 1, 1989, independent of the
12 Options for Independent Living program. Funds made available under
13 this program may not be used to supplant service funds for services
14 provided on September 1, 1989.

15 (c) An area agency on aging that receives funds under this
16 section shall ensure the availability of the services for which the
17 funds were granted.

18 Sec. 101A.157. FEES. (a) The executive commissioner by
19 rule shall establish a copayment system using a sliding scale that
20 is based on an elderly person's income.

21 (b) An elderly person whose income exceeds the basic income
22 and resources requirements for eligibility for the community care
23 for aged and disabled program of the department, but whose income is
24 less than 200 percent of that level, shall pay a portion of the cost
25 of support services provided to the person by a case management unit
26 according to the fee scale.

27 (c) An elderly person whose income exceeds 200 percent of

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1 the level established by the department for the community care for
2 aged and disabled program shall pay the full cost of support
3 services provided by a case management unit.

4 (d) A local case management unit shall collect and account
5 for all fees imposed for services provided by the case management
6 unit and shall submit reports to the department as prescribed by
7 department rules.

8 (e) Fees collected shall be used to defray program costs and
9 to expand the Options for Independent Living program.

10 Sec. 101A.158. ANNUAL REPORT. (a) The department shall
11 annually report on the Options for Independent Living program to
12 the governor and the presiding officer of each house of the
13 legislature.

14 (b) The report must include information concerning the
15 manner in which the department has provided services under the
16 Options for Independent Living program to elderly persons entitled
17 to priority under Section 101A.153(a).

18 (c) The report must be submitted not later than November 1
19 of each even-numbered year.

SUBCHAPTER E. FUNDING

Sec. 101A.201. AUTHORITY TO ACCEPT, EXPEND, AND TRANSFER FUNDS. The department may accept, expend, and transfer federal and state funds appropriated for programs authorized by federal and state law and administered by the department under this chapter. The department may accept, expend, and transfer funds received in relation to this chapter from any source, including a county, municipality, or public or private agency. The funds shall be

1 deposited in the state treasury and may be used for the purposes of
2 this chapter, subject to any conditions attached to the funds.

3 Sec. 101A.202. CONTRIBUTIONS TO LOCAL ORGANIZATIONS:
4 CERTAIN COUNTIES. (a) This section applies only to counties having
5 a population of not less than 22,140 and not more than 22,340 and to
6 cities and towns within those counties.

7 (b) Each county and each city or town to which this section
8 applies may cooperate with the department in carrying out the
9 department's purposes under this chapter on a local level by
10 contributing funds to any local organization the functions of which
11 are to cooperate with the department in carrying out those
12 purposes. The organization must operate with the approval and
13 sanction of the department.

14 (c) The operation of buildings, facilities, services, and
15 programs by an organization for other community services or
16 benefits does not prohibit the contribution of the funds under this
17 section for the part of the organization's program for the aging if
18 that part of the program is approved by the department.

19 Sec. 101A.203. FUNDING TO AREA AGENCIES ON AGING. (a) The
20 executive commissioner by rule shall adopt a formula that meets the
21 intent of the Older Americans Act of 1965 (42 U.S.C. Section 3001 et
22 seq.) for allocating among area agencies on aging funds that the
23 department receives under the Act.

24 (b) The formula must provide for the allocation of the funds
25 among the area agencies on aging according to the most recent
26 population estimates available from the Health and Human Services
27 Commission.

1 (c) The executive commissioner shall update the formula
2 biennially and the department shall include the formula and
3 population estimates in each state plan on aging.

4 (d) Unless otherwise provided for by department rules
5 regarding the carryover of unexpended funds allocated under this
6 section, at the end of a fiscal year excess unexpended funds of an
7 area agency on aging's allocations for that fiscal year shall be
8 deducted from the allocation for the new fiscal year and that same
9 amount of new fiscal year funds shall be reallocated. The executive
10 commissioner by rule shall adopt a reallocation formula that
11 includes performance as a criterion, in addition to other criteria
12 adopted by the executive commissioner.

13 (e) The funds that the department receives under the Older
14 Americans Act of 1965 (42 U.S.C. Section 3001 et seq.) shall be
15 allocated and reallocated to area agencies on aging under the
16 formulas adopted under this section.

17 Sec. 101A.204. TRUSTS FOR CERTAIN RECIPIENTS OF MEDICAL
18 ASSISTANCE. (a) An area agency on aging may contract with one or
19 more private attorneys to establish trusts described by 42 U.S.C.
20 Section 1396p(d)(4)(B) for the benefit of recipients of medical
21 assistance under Chapter 32 who, without the establishment of these
22 trusts, would become ineligible for medical assistance.

23 (b) The department shall allocate available state funds to
24 the area agencies on aging for use in contracting for the
25 establishment of trusts under Subsection (a).

26 SUBCHAPTER F. OFFICE OF STATE LONG-TERM CARE OMBUDSMAN
27 Sec. 101A.251. DEFINITIONS. In this subchapter:

1 (1) "Elderly resident" means a resident of a long-term
2 care facility who is 60 years of age or older.

3 (2) "Long-term care facility" means a facility that
4 serves persons who are 60 years of age or older and that is licensed
5 or regulated or that is required to be licensed or regulated by the
6 department under Chapter 242 or 247, Health and Safety Code.

7 (3) "Office" means the office of the state long-term
8 care ombudsman.

9 (4) "Representative" means an employee or volunteer
10 specifically designated by the office as a representative of the
11 office.

12 (5) "State ombudsman" means the chief administrator of
13 the office.

14 Sec. 101A.252. OPERATION OF OFFICE. (a) The department
15 shall operate the office of the state long-term care ombudsman.

16 (b) The department may operate the office directly or by
17 contract or memorandum of agreement with a public agency or other
18 appropriate private nonprofit organization. The department may not
19 use an agency or organization that is:

20 (1) responsible for licensing or certifying long-term
21 care services; or

22 (2) an association of long-term care facilities or of
23 any other residential facility that serves persons who are 60 years
24 of age or older, or an affiliate of such an association.

25 (c) The department shall consider the views of elderly
26 persons, provider organizations, advocacy groups, and area
27 agencies on aging in planning and operating the office.

1 (d) The department shall ensure that a person involved in
2 designating the state ombudsman or in designating an employee or
3 representative of the office does not have a conflict of interest.

4 Sec. 101A.253. ROLE OF OFFICE. The office and the ombudsman
5 program shall operate in cooperation with any regulatory agency
6 funded and mandated by the Older Americans Act of 1965 (42 U.S.C.
7 Section 3001 et seq.) and state statute.

8 Sec. 101A.254. POWERS AND DUTIES OF STATE OMBUDSMAN AND
9 OFFICE. (a) The state ombudsman and the office have the powers and
10 duties required by state and federal law.

11 (b) The office may use appropriate administrative, legal,
12 and other remedies to assist elderly residents as provided by
13 department rules.

14 Sec. 101A.255. OMBUDSMEN. (a) The office shall recruit
15 volunteers and citizen organizations to participate in the
16 ombudsman program. A paid staff member of an area agency on aging
17 network or a nonprofit social service agency may be an ombudsman.
18 An ombudsman is a representative of the office.

19 (b) The office shall provide training to ombudsmen as
20 required by this subchapter and federal law.

21 (c) The office shall coordinate ombudsman services with the
22 protection and advocacy systems that exist for persons with
23 developmental disabilities or mental illness.

24 Sec. 101A.256. LEGAL ASSISTANCE. The department shall
25 ensure that the office receives adequate legal advice and
26 representation. The attorney general shall represent the ombudsman
27 or a representative if a suit or other legal action is brought or

1 threatened to be brought against that person in connection with the
2 person's performance of the official duties of the office.

3 Sec. 101A.257. INVESTIGATIONS. (a) The office shall have
4 access to elderly residents and shall investigate and resolve
5 complaints made by or on behalf of elderly residents.

6 (b) The department shall ensure that each ombudsman who
7 investigates complaints has received proper training and has been
8 approved by the office as qualified to investigate complaints.

9 Sec. 101A.258. ACCESS TO RECORDS AND CONFIDENTIALITY. (a)
10 The state ombudsman or the state ombudsman's designee, specifically
11 identified by the commissioner, shall have access to patient care
12 records of elderly residents of long-term care facilities as
13 provided by Subsection (a-1). The executive commissioner by rule
14 shall establish procedures for obtaining access to the records.
15 All records and information to which the state ombudsman or the
16 state ombudsman's designee obtains access remain confidential.

17 (a-1) The state ombudsman or the state ombudsman's
18 designee, specifically identified by the commissioner, shall have
19 access to patient care records of elderly residents of long-term
20 care facilities if:

21 (1) the resident or the resident's legal
22 representative consents to the access;

23 (2) the resident is unable to consent to the access and
24 the resident has no legal representative; or

25 (3) access to the records is necessary to investigate
26 a complaint and:

27 (A) a legal guardian of the resident refuses to

1 consent to the access;

2 (B) the state ombudsman or the state ombudsman's
3 designee has reasonable cause to believe that the guardian is not
4 acting in the best interests of the resident; and

5 (C) the state ombudsman approves the access.

6 (b) The office shall ensure that the identity of a
7 complainant or any facility resident may be disclosed only with the
8 written consent of the person or the person's legal representative
9 or on court order.

10 (c) The information in files maintained by the office may be
11 disclosed only by the ombudsman who has authority over the
12 disposition of the files.

13 Sec. 101A.259. REPORTING SYSTEM. The office shall maintain
14 a statewide ombudsman uniform reporting system to collect and
15 analyze information relating to complaints and conditions in
16 long-term care facilities as long as such system does not duplicate
17 other state reporting systems. The office shall provide the
18 information to the department and the Health and Human Services
19 Commission.

20 Sec. 101A.260. ANALYSIS OF LAWS. The office shall analyze
21 and monitor the development and implementation of federal, state,
22 and local laws, rules, regulations, and policies relating to
23 long-term care facilities and services and shall recommend any
24 changes the office considers necessary.

25 Sec. 101A.261. PUBLIC INFORMATION. The office shall
26 provide information to public agencies, legislators, and others
27 that relates to the problems and concerns of elderly residents.

1 Sec. 101A.262. ANNUAL REPORT. (a) The office shall prepare
2 an annual report that contains:

3 (1) information and findings relating to the problems
4 and complaints of elderly residents; and
5 (2) policy, regulatory, and legislative
6 recommendations to solve the problems, resolve the complaints, and
7 improve the quality of the elderly residents' care and lives.

8 (b) The report must be submitted to the governor and the
9 presiding officer of each house of the legislature not later than
10 November 1 of each even-numbered year.

11 Sec. 101A.263. LIMITATION OF LIABILITY. An ombudsman or a
12 representative is not liable for civil damages or subject to
13 criminal prosecution for performing official duties unless the
14 ombudsman or representative acts in bad faith or with a malicious
15 purpose.

16 Sec. 101A.264. CRIMINAL PENALTY. (a) A person commits an
17 offense if the person:

18 (1) intentionally interferes with an ombudsman
19 attempting to perform official duties; or
20 (2) commits or attempts to commit an act of
21 retaliation or reprisal against any resident or employee of a
22 long-term care facility for filing a complaint or providing
23 information to an ombudsman.

24 (b) An offense under this section is a Class B misdemeanor.

25 (c) The department shall assure that criminal sanctions
26 will be initiated only after all administrative procedures are
27 exhausted.

1 SECTION 4.362. Section 102.001(1), Human Resources Code, is
2 amended to read as follows:

3 (1) "Convalescent and nursing home" means an
4 institution licensed by the [Texas] Department of Aging and
5 Disability [Human] Services under Chapter 242, Health and Safety
6 Code.

7 SECTION 4.363. Sections 102.003(d), (i), and (t), Human
8 Resources Code, are amended to read as follows:

9 (d) An [~~A mentally retarded~~] elderly individual with an
10 intellectual disability who has a court-appointed guardian of the
11 person may participate in a behavior modification program involving
12 use of restraints or adverse stimuli only with the informed consent
13 of the guardian.

14 (i) An elderly individual may manage the individual's
15 personal financial affairs. The elderly individual may authorize
16 in writing another person to manage the individual's financial
17 affairs [~~money~~]. The elderly individual may choose the manner of
18 financial management, which may include management through or under
19 [~~in which the individual's money is managed, including~~] a money
20 management program, a representative payee program, a financial
21 power of attorney, a trust, or a similar method, and the individual
22 may choose the least restrictive of these methods. A person
23 designated to manage an elderly individual's financial affairs
24 [~~money~~] shall do so in accordance with each applicable program
25 policy, law, or rule. On request of the elderly individual or the
26 individual's representative, the person designated to manage the
27 elderly individual's financial affairs [~~money~~] shall make

1 available the related financial records and provide an accounting
2 relating to the financial management [~~of the money~~]. An elderly
3 individual's designation of another person to manage the
4 individual's financial affairs [~~money~~] does not affect the
5 individual's ability to exercise another right described by this
6 chapter. If an elderly individual is unable to designate another
7 person to manage the individual's financial affairs and a guardian
8 is designated by a court, the guardian shall manage the
9 individual's financial affairs [~~money~~] in accordance with the
10 Estates [Probate] Code and other applicable laws.

11 (t) An elderly individual may:

12 (1) make a living will by executing a directive under
13 Subchapter B, Chapter 166 [~~the Natural Death Act (Chapter 672)~~,
14 Health and Safety Code~~(+)~~];

15 (2) execute a medical [~~durable~~] power of attorney [~~for~~
16 ~~health care~~] under Subchapter D, Chapter 166, Health and Safety
17 [~~135, Civil Practice and Remedies~~] Code; or

18 (3) designate a guardian in advance of need to make
19 decisions regarding the individual's health care should the
20 individual become incapacitated.

21 SECTION 4.364. Section 103.001, Human Resources Code, is
22 amended to read as follows:

23 Sec. 103.001. PURPOSE. It is the purpose of this chapter to
24 establish programs of quality adult day care and day health care
25 that will enable persons with disabilities who have medical or
26 functional impairments and elderly [and handicapped] persons [with
27 medical or functional impairments] to maintain maximum

1 independence and to prevent premature or inappropriate
2 institutionalization. It is the purpose of this chapter to provide
3 adequately regulated supervision for elderly persons and
4 [handicapped] persons with disabilities while enabling them to
5 remain in a family environment and affording the family a measure of
6 normality in its daily activities. The legislature intends to
7 provide for the development of policies and programs that will:

8 (1) provide alternatives to institutionalization;

9 (2) establish facilities for adult day care and day
10 health care throughout the state that offer services and are
11 accessible to economically disadvantaged persons; and

12 (3) prevent inappropriate institutionalization.

13 SECTION 4.365. Section 103.003, Human Resources Code, is
14 amended by amending Subdivisions (1), (3), and (5) and adding
15 Subdivision (4-a) to read as follows:

16 (1) "Adult day-care facility" means a facility that
17 provides services under an adult day-care program on a daily or
18 regular basis but not overnight to four or more elderly persons or
19 [handicapped] persons with disabilities who are not related by
20 blood, marriage, or adoption to the owner of the facility.

21 (3) "Department" means the [Texas] Department of Aging
22 and Disability [Human] Services.

23 (4-a) "Executive commissioner" means the executive
24 commissioner of the Health and Human Services Commission.

25 (5) "Person with a disability" [Handicapped person]
26 means a person whose functioning is sufficiently impaired to
27 require frequent medical attention, counseling, physical therapy,

1 therapeutic or corrective equipment, or another person's
2 attendance and supervision.

3 SECTION 4.366. The heading to Section [103.004](#), Human
4 Resources Code, is amended to read as follows:

5 Sec. 103.004. DEPARTMENT AND EXECUTIVE COMMISSIONER
6 DUTIES.

7 SECTION 4.367. Sections [103.004](#)(a) and (b), Human Resources
8 Code, are amended to read as follows:

9 (a) The executive commissioner ~~[department]~~ shall adopt
10 rules for implementing this chapter.

11 (b) The executive commissioner ~~[department]~~ shall set
12 standards for:

13 (1) the health and welfare of persons attending a
14 facility;

15 (2) the eligibility of persons to attend a facility;

16 (3) the scope of services provided by a facility;

17 (4) adequate supervision for persons attending a
18 facility;

19 (5) the professional staff and other personnel at a
20 facility;

21 (6) adequate and healthful food service, where it may
22 be offered;

23 (7) procedures for consultation with family members,
24 case workers, or other persons responsible for the welfare of a
25 person attending a facility; and

26 (8) prohibiting racial discrimination.

27 SECTION 4.368. Section [103.005](#), Human Resources Code, is

1 amended to read as follows:

2 Sec. 103.005. LICENSING DUTIES. The executive commissioner
3 [department] shall:

4 (1) adopt rules for the licensing procedures for a
5 licensed facility; and

6 (2) set standards for the safety and sanitation
7 requirements for a licensed facility.

8 SECTION 4.369. Section 103.006(b), Human Resources Code, is
9 amended to read as follows:

10 (b) The license expires two years from the date of its
11 issuance. The executive commissioner [of the Health and Human
12 Services Commission] by rule may adopt a system under which
13 licenses expire on various dates during the two-year period. For
14 the year in which a license expiration date is changed, the
15 department shall prorate the license fee on a monthly basis. Each
16 license holder shall pay only that portion of the license fee
17 allocable to the number of months for which the license is valid. A
18 license holder shall pay the total license renewal fee at the time
19 of renewal.

20 SECTION 4.370. Sections 103.0075(a) and (c), Human
21 Resources Code, are amended to read as follows:

22 (a) The executive commissioner [department] by rule shall
23 adopt a procedure under which a person proposing to construct or
24 modify an adult day-care facility may submit building plans to the
25 department for review for compliance with the department's
26 architectural requirements before beginning construction or
27 modification. In adopting the procedure, the executive

1 commissioner [department] shall set reasonable deadlines by which
2 the department must complete review of submitted plans.

3 (c) The department may charge a reasonable fee adopted by
4 the executive commissioner by rule for conducting a review under
5 this section.

6 SECTION 4.371. Section 103.012(d), Human Resources Code, is
7 amended to read as follows:

8 (d) The executive commissioner [department] shall establish
9 gradations of penalties in accordance with the relative seriousness
10 of the violation.

11 SECTION 4.372. Sections 103.014(g), (h), and (i), Human
12 Resources Code, are amended to read as follows:

13 (g) Not later than the 20th day after the date on which a
14 notice under Subsection (f)(2) is received, the person charged with
15 the violation may:

16 (1) give to the department written notice that the
17 person agrees with the department's report and consents to the
18 recommended penalty; or

19 (2) make a written request for a hearing as provided
20 under department rules.

21 (h) If the person charged with the violation consents to the
22 penalty recommended by the department or does not timely respond to
23 a notice sent under Subsection (c) or (f)(2), the department
24 [~~department's commissioner or the commissioner's designee~~] shall
25 assess the recommended penalty [~~recommended by the department~~].

26 (i) If the department [~~department's commissioner or the~~
27 ~~commissioner's designee~~] assesses the recommended penalty, the

1 department shall give written notice of the decision to the person
2 charged with the violation and the person shall pay the penalty.

3 SECTION 4.373. Section 103.015(d), Human Resources Code, is
4 amended to read as follows:

5 (d) Based on the findings of fact and conclusions of law,
6 and the recommendation of the administrative law judge, the
7 department [department's commissioner or the commissioner's
8 designee] by order shall find:

9 (1) a violation has occurred and assess an
10 administrative penalty; or

11 (2) a violation has not occurred.

12 SECTION 4.374. Sections 103.016(a), (b), (f), and (g),
13 Human Resources Code, are amended to read as follows:

14 (a) The department [department's commissioner or the
15 commissioner's designee] shall give notice of the findings made
16 under Section 103.015(d) to the person charged with a
17 violation. If the department [commissioner or the commissioner's
18 designee] finds that a violation has occurred, the department
19 [commissioner or the commissioner's designee] shall give to the
20 person charged written notice of:

21 (1) the findings;

22 (2) the amount of the administrative penalty;

23 (3) the rate of interest payable with respect to the
24 penalty and the date on which interest begins to accrue; and

25 (4) the person's right to judicial review of the
26 department's order [of the commissioner or the commissioner's
27 designee].

1 (b) Not later than the 30th day after the date on which the
2 ~~department's~~ order [~~of the department's commissioner or the~~
3 ~~commissioner's designee~~] is final, the person assessed the penalty
4 shall:

5 (1) pay the full amount of the penalty; or
6 (2) file a petition for judicial review contesting the
7 occurrence of the violation, the amount of the penalty, or both the
8 occurrence of the violation and the amount of the penalty.

9 (f) If the amount of the penalty is reduced or the
10 assessment of a penalty is not upheld on judicial review, the
11 ~~department~~ [~~department's commissioner or the commissioner's~~
12 ~~designee~~] shall:

13 (1) remit to the person charged the appropriate amount
14 of any penalty payment plus accrued interest; or
15 (2) execute a release of the supersedeas bond if one
16 has been posted.

17 (g) Accrued interest on the amount remitted by the
18 ~~department~~ [~~department's commissioner or the commissioner's~~
19 ~~designee~~] under Subsection (f)(1) shall be paid:

20 (1) at a rate equal to the rate charged on loans to
21 depository institutions by the New York Federal Reserve Bank; and
22 (2) for the period beginning on the date the penalty is
23 paid and ending on the date the penalty is remitted to the person
24 charged with the violation.

25 SECTION 4.375. The heading to Chapter 105, Human Resources
26 Code, is amended to read as follows:

27 CHAPTER 105. RESIDENTIAL FACILITIES FOR PERSONS WITH DISABILITIES

1 OR WHO ARE [THE] ELDERLY

2 SECTION 4.376. Section 105.001(1), Human Resources Code, is
3 amended to read as follows:

4 (1) "Establishment" means a facility providing
5 sleeping accommodations to two or more qualifying adult residents,
6 at least 80 percent of whom are 65 years of age or older or are
7 persons with disabilities [~~disabled~~], and offering, for a fee, one
8 or more supportive services through contract with an agency
9 licensed under Chapter 142, Health and Safety Code, or with another
10 entity.

11 SECTION 4.377. The heading to Chapter 111, Human Resources
12 Code, is amended to read as follows:

13 CHAPTER 111. REHABILITATION SERVICES FOR CERTAIN INDIVIDUALS WITH
14 DISABILITIES [~~TEXAS REHABILITATION COMMISSION~~]

15 SECTION 4.378. Section 111.002, Human Resources Code, is
16 amended by amending Subdivisions (2) and (5) and adding
17 Subdivisions (2-a) and (2-b) to read as follows:

18 (2) "Commissioner" means the commissioner of
19 assistive and rehabilitative services [~~chief administrative~~
20 ~~officer of the commission~~].

21 (2-a) "Department" means the Department of Assistive
22 and Rehabilitative Services.

23 (2-b) "Executive commissioner" means the executive
24 commissioner of the Health and Human Services Commission.

25 (5) "Rehabilitation services" means any equipment,
26 supplies, goods, or services necessary to enable an individual with
27 a disability to engage in a gainful occupation or to achieve maximum

1 personal independence. To enable an individual with a disability
2 to engage in a gainful occupation or achieve maximum personal
3 independence, the department [~~commission~~] may engage in or contract
4 for activities, including but not limited to:

5 (A) evaluation of rehabilitation potential,
6 including diagnostic and related services incidental to the
7 determination of eligibility for services and the nature and scope
8 of services to be provided;

9 (B) counseling and guidance;

10 (C) physical and mental restoration services
11 necessary to correct or substantially modify a physical or mental
12 condition that is stable or slowly progressive;

13 (D) training;

14 (E) maintenance for additional costs incurred
15 while participating in rehabilitation services;

16 (F) transportation;

17 (G) placement in suitable employment;

18 (H) postemployment services necessary to
19 maintain suitable employment;

20 (I) obtaining occupational licenses, including
21 any license, permit, or other written authority required by a
22 state, city, or other governmental unit to be obtained in order to
23 enter an occupation or small business, and providing tools,
24 equipment, initial stocks, goods, and supplies; and

25 (J) providing other equipment, supplies,
26 services, or goods that can reasonably be expected to benefit an
27 individual with a disability in terms of employment in a gainful

1 occupation or achievement of maximum personal independence.

2 SECTION 4.379. Section 111.016, Human Resources Code, is
3 amended to read as follows:

4 Sec. 111.016. REHABILITATION COUNCIL OF TEXAS. The
5 Rehabilitation Council of Texas operates [~~is created by this~~
6 ~~section~~] in accordance with the federal Rehabilitation Act
7 Amendments of 1992, Pub. L. 102-569, and the federal Rehabilitation
8 Act Amendments of 1998, Pub. L. 105-220. The executive
9 commissioner [~~board~~] shall adopt rules for the implementation of
10 regulations and the administration of the council.

11 SECTION 4.380. Section 111.0161, Human Resources Code, is
12 amended to read as follows:

13 Sec. 111.0161. ADVICE OF ADVISORY COMMITTEES [~~REPORT TO~~
14 ~~BOARD~~]. (a) Each advisory committee established by law or rule to
15 advise the department under this chapter or Subchapter F, Chapter
16 117, [commission] shall report to and advise the commissioner and
17 executive commissioner [~~board~~] on the committee's activities and
18 the results of the committee's work. For the purpose of performing
19 its advisory functions, each committee shall work with the
20 commissioner, the department's [~~commission's~~] staff, and the
21 executive commissioner [~~board~~].

22 (b) The executive commissioner [~~board~~] shall adopt rules to
23 implement this section.

24 SECTION 4.381. The heading to Section 111.018, Human
25 Resources Code, is amended to read as follows:

26 Sec. 111.018. GENERAL DUTIES OF EXECUTIVE COMMISSIONER AND
27 COMMISSIONER RELATING TO REHABILITATION SERVICES FOR CERTAIN

1 INDIVIDUALS WITH DISABILITIES [ADMINISTRATIVE REGULATIONS AND
2 POLICIES].

3 SECTION 4.382. Sections 111.018(a) and (b), Human Resources
4 Code, are amended to read as follows:

5 (a) The executive commissioner [~~board~~] shall:

6 (1) adopt policies and rules to effectively carry out
7 the purposes of this chapter and Subchapter F, Chapter 117; and

8 (2) supervise the commissioner's administration of
9 this chapter and Subchapter F, Chapter 117.

10 (b) In carrying out his or her duties under this chapter and
11 Subchapter F, Chapter 117, the commissioner shall, with the
12 approval of the executive commissioner [~~board~~], implement policies
13 addressing personnel standards, the protection of records and
14 confidential information, the manner and form of filing
15 applications, eligibility, investigation, and determination for
16 rehabilitation and other services, procedures for hearings, and
17 other regulations relating to this chapter or Subchapter F, Chapter
18 117, [subject to this section] as necessary to carry out the
19 purposes of this chapter and Subchapter F, Chapter 117.

20 SECTION 4.383. Section 111.019, Human Resources Code, is
21 amended to read as follows:

22 Sec. 111.019. PLANNING. The commissioner [~~commission~~]
23 shall make long-range and intermediate plans for the scope and
24 development of the program and make decisions regarding the
25 allocation of resources in carrying out the plans.

26 SECTION 4.384. Section 111.0205, Human Resources Code, is
27 amended to read as follows:

1 Sec. 111.0205. WORK INCENTIVES AND SUPPLEMENTAL SECURITY
2 INCOME (SSI). The department [~~commission~~] shall employ staff [~~a~~
3 ~~person~~] at the department's [~~commission's~~] central office to:

4 (1) train counselors to understand and use work
5 incentives in relation to services under this chapter or Subchapter
6 F, Chapter 117; and

7 (2) review cases to ensure that department
8 [~~commission~~] clients receiving services under this chapter or
9 Subchapter F, Chapter 117, are informed of the availability of and
10 assisted in obtaining work incentives and Supplemental Security
11 Income (SSI) (42 U.S.C. Section 1381 et seq.).

12 SECTION 4.385. Section 111.021, Human Resources Code, is
13 amended to read as follows:

14 Sec. 111.021. REPORTS. (a) The commissioner shall prepare
15 and submit to the executive commissioner [~~board~~] annual reports of
16 activities and expenditures under this chapter and Subchapter F,
17 Chapter 117, and, prior to each regular session of the legislature,
18 estimates of funds required for carrying out the purposes of this
19 chapter and Subchapter F, Chapter 117.

20 (c) The department [~~commission~~] shall post on the Internet
21 in an accessible format the reports required under this section and
22 any other agency performance data relating to this chapter or
23 Subchapter F, Chapter 117, required to be reported to this state or
24 the federal government. If a report or performance data contains
25 confidential information, the department [~~commission~~] shall remove
26 the confidential information before posting the report or
27 performance data.

1 SECTION 4.386. Section 111.022, Human Resources Code, is
2 amended to read as follows:

3 Sec. 111.022. DISBURSEMENT OF FUNDS. The department
4 [~~commission~~] shall make certification for disbursement, in
5 accordance with regulations, of funds available for carrying out
6 the purposes of this chapter or Subchapter F, Chapter 117.

7 SECTION 4.387. Section 111.023, Human Resources Code, is
8 amended to read as follows:

9 Sec. 111.023. OTHER DUTIES. The executive commissioner
10 [~~board~~] shall take other action as necessary or appropriate to
11 carry out the purposes of this chapter or Subchapter F, Chapter 117.

12 SECTION 4.388. The heading to Subchapter C, Chapter 111,
13 Human Resources Code, is amended to read as follows:

14 SUBCHAPTER C. POWERS AND DUTIES OF DEPARTMENT [~~COMMISSION~~]

15 SECTION 4.389. Section 111.0505, Human Resources Code, is
16 amended to read as follows:

17 Sec. 111.0505. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF
18 CONFLICT WITH OTHER LAW [~~OF COMMISSIONER OF HEALTH AND HUMAN~~
19 ~~SERVICES~~]. [~~The commissioner of health and human services has the~~
20 ~~powers and duties relating to the commission and commissioner as~~
21 ~~provided by Section 531.0055, Government Code.~~] To the extent a
22 power or duty given to the [~~commission or~~] commissioner by this
23 chapter, or another law relating to rehabilitation services for
24 individuals with disabilities, conflicts with Section 531.0055,
25 Government Code, Section 531.0055 controls.

26 SECTION 4.390. Section 111.051, Human Resources Code, is
27 amended to read as follows:

1 Sec. 111.051. DEPARTMENT [COMMISSION] AS PRINCIPAL
2 AUTHORITY. The department [~~Texas Rehabilitation Commission~~] is the
3 principal authority in the state on rehabilitation of individuals
4 with disabilities[, except for those matters relating to
5 individuals whose disabilities are of a visual nature]. All other
6 state agencies engaged in rehabilitation activities and related
7 services to individuals with [whose] disabilities [~~are not of a~~
8 ~~visual nature~~] shall coordinate those activities and services with
9 the department [~~commission~~].

10 SECTION 4.391. Section 111.052, Human Resources Code, is
11 amended to read as follows:

12 Sec. 111.052. GENERAL FUNCTIONS OF DEPARTMENT RELATING TO
13 REHABILITATION SERVICES FOR CERTAIN INDIVIDUALS WITH DISABILITIES.

14 (a) The department [~~commission~~] shall, to the extent of resources
15 available and priorities established by the executive commissioner
16 [~~board~~], provide rehabilitation services directly or through
17 public or private resources to individuals determined by the
18 department [~~commission~~] to be eligible for the services under a
19 vocational rehabilitation program or other program established to
20 provide rehabilitation [~~rehabilitative~~] services.

21 (b) In carrying out the purposes of this chapter and
22 Subchapter F, Chapter 117, the department [~~commission~~] may:

23 (1) cooperate with other departments, agencies,
24 political subdivisions, and institutions, both public and private,
25 in providing the services authorized by this chapter and Subchapter
26 F, Chapter 117, to eligible individuals, in studying the problems
27 involved, and in planning, establishing, developing, and providing

1 necessary or desirable programs, facilities, and services,
2 including those jointly administered with state agencies;

3 (2) enter into reciprocal agreements with other
4 states;

5 (3) establish or construct rehabilitation facilities
6 and workshops, contract with or provide grants to agencies,
7 organizations, or individuals as necessary to implement this
8 chapter and Subchapter F, Chapter 117, make contracts or other
9 arrangements with public and other nonprofit agencies,
10 organizations, or institutions for the establishment of workshops
11 and rehabilitation facilities, and operate facilities for carrying
12 out the purposes of this chapter and Subchapter F, Chapter 117;

13 (4) conduct research and compile statistics relating
14 to the provision of services to or the need for services by
15 [~~disabled~~] individuals with disabilities;

16 (5) provide for the establishment, supervision,
17 management, and control of small business enterprises to be
18 operated by individuals with significant disabilities where their
19 operation will be improved through the management and supervision
20 of the department [~~commission~~];

21 (6) contract with schools, hospitals, private
22 industrial firms, and other agencies and with doctors, nurses,
23 technicians, and other persons for training, physical restoration,
24 transportation, and other rehabilitation services; and

25 (7) assess the statewide need for services necessary
26 to prepare students with disabilities for a successful transition
27 to employment, establish collaborative relationships with each

1 school district with education service centers to the maximum
2 extent possible within available resources, and develop strategies
3 to assist vocational rehabilitation counselors in identifying and
4 reaching students in need of transition planning.

5 SECTION 4.392. Sections [111.0525\(b\)](#) and (c), Human
6 Resources Code, are amended to read as follows:

7 (b) The department [~~commission~~] shall enter into an
8 agreement with the Department of Aging and Disability Services and
9 the [Texas] Department of State Health Services [~~Mental Health and~~
10 ~~Mental Retardation~~] to reduce duplication and fragmentation of
11 employment services by defining each agency's role and
12 responsibilities for shared client populations.

13 (c) The department [~~commission~~] shall establish a formal
14 referral process with the Texas Workforce Commission to ensure that
15 appropriate vocational rehabilitation clients are referred to and
16 receive services provided by the Texas Workforce Commission or
17 local workforce development boards [~~agencies~~].

18 SECTION 4.393. Section [111.053](#), Human Resources Code, is
19 amended to read as follows:

20 Sec. 111.053. COOPERATION WITH THE FEDERAL GOVERNMENT. (a)
21 The department [~~commission~~] shall make agreements, arrangements,
22 or plans to cooperate with the federal government in carrying out
23 the purposes of this chapter and Subchapter F, Chapter 117, or of
24 any federal statutes pertaining to rehabilitation, and to this end
25 may adopt methods of administration that are found by the federal
26 government to be necessary, and that are not contrary to existing
27 state laws, for the proper and efficient operation of the

1 agreements, arrangements, or plans for rehabilitation.

2 (b) To the extent resources are made available by the
3 federal government, the department [~~commission~~] may make
4 agreements, arrangements, or plans to cooperate with the federal
5 government in carrying out the purposes of any federal statute
6 pertaining to the disability determination function under the
7 Social Security Act and to this end shall adopt methods of
8 administration that are found by the federal government to be
9 necessary to the disability determination function and that are not
10 contrary to existing state laws.

11 SECTION 4.394. Section 111.054, Human Resources Code, is
12 amended to read as follows:

13 Sec. 111.054. OBTAINING FEDERAL FUNDS. The department
14 [~~commission~~] may comply with any requirements necessary to obtain
15 federal funds relating to this chapter or Subchapter F, Chapter
16 117, in the maximum amount and most advantageous proportion
17 possible.

18 SECTION 4.395. Section 111.055(a), Human Resources Code, is
19 amended to read as follows:

20 (a) All money paid to the department [~~commission~~] under this
21 chapter or Subchapter F, Chapter 117, shall be deposited in the
22 state treasury [~~State Treasury and may be used only for the~~
23 ~~administration of this chapter~~].

24 SECTION 4.396. Section 111.0553, Human Resources Code, is
25 amended to read as follows:

26 Sec. 111.0553. PROCUREMENT METHODS. (a) The executive
27 commissioner [~~commission~~] shall adopt [~~develop~~] and the department

1 shall [~~, following review and approval by the board,~~] implement in
2 relation to this chapter and Subchapter F, Chapter 117, agency-wide
3 procurement procedures to:

4 (1) ensure compliance with the best-value purchasing
5 requirements of Section 2155.144(c), Government Code;

6 (2) document that a best-value review of vendors has
7 occurred;

8 (3) document the reasons for selecting a vendor;

9 (4) negotiate price discounts with high-volume
10 vendors;

11 (5) consolidate purchases with other agencies,
12 including the [Texas] Department of State Health Services and the
13 comptroller, to achieve best value; and

14 (6) provide effective public notification to
15 potential vendors of planned department [~~commission~~] purchases.

16 (b) Nothing in this section shall be construed to limit the
17 department's [~~commission's~~] ability to procure goods and services
18 from persons with disabilities.

19 SECTION 4.397. Section 111.056, Human Resources Code, is
20 amended to read as follows:

21 Sec. 111.056. GIFTS AND DONATIONS [~~TO THE COMMISSION~~]. The
22 department [~~commission~~] may receive and use gifts and donations for
23 carrying out the purposes of this chapter and Subchapter F, Chapter
24 117. No person may receive payment for solicitation of any funds.

25 SECTION 4.398. Sections 111.057(b) and (c), Human Resources
26 Code, are amended to read as follows:

27 (b) The department [~~commission~~] is authorized to provide

1 client and other information to and receive client and other
2 information from any state agency for the purpose of increasing and
3 enhancing services to clients and improving agency operations under
4 this chapter and Subchapter F, Chapter 117, except where federal
5 law or regulations preclude such sharing.

6 (c) The executive commissioner [~~commission~~] shall adopt
7 rules to carry out the purposes of this section.

8 SECTION 4.399. Section 111.059, Human Resources Code, is
9 amended to read as follows:

10 Sec. 111.059. SUBROGATION. (a) In furnishing a person
11 rehabilitation services, including medical care services, under
12 this chapter or Subchapter F, Chapter 117, the department
13 [~~commission~~] is subrogated to the person's right of recovery from:

14 (1) personal insurance;

15 (2) another person for personal injury caused by the
16 other person's negligence or wrongdoing; or

17 (3) any other source.

18 (b) The department's [~~commission's~~] right of subrogation is
19 limited to the cost of the services provided.

20 (c) The commissioner may totally or partially waive the
21 department's [~~commission's~~] right of subrogation when the
22 commissioner finds that enforcement would tend to defeat the
23 purpose of rehabilitation.

24 (d) The executive commissioner [~~commission~~] may adopt rules
25 for the enforcement of the department's [~~its~~] right of subrogation.

26 SECTION 4.400. Section 111.060, Human Resources Code, is
27 amended to read as follows:

1 Sec. 111.060. COMPREHENSIVE REHABILITATION ACCOUNT [~~FUND~~].

2 (a) The comprehensive rehabilitation account [~~fund~~] is an account
3 [~~created~~] in the general revenue fund [~~state treasury~~]. Money in
4 the account [~~fund~~] is derived from court costs collected under
5 Section 133.102, Local Government Code [~~Subchapter D, Chapter 102,~~
6 ~~Code of Criminal Procedure~~]. Money in the account [~~fund~~] may be
7 appropriated only to the department [~~commission~~] for the purposes
8 provided by Section 111.052.

9 (b) The comptroller, on requisition by the department
10 [~~commission~~], shall draw a warrant on the account [~~fund~~] for the
11 amount specified in that requisition for a use authorized in
12 Section 111.052, except that the total of warrants issued during a
13 state fiscal year may not exceed the amount appropriated for that
14 fiscal year. At the end of each state fiscal year, the comptroller
15 shall transfer to the general revenue fund [~~General Revenue Fund~~]
16 any unexpended balance in the comprehensive rehabilitation account
17 [~~fund~~] that exceeds \$1.5 million.

18 (c) The court costs remitted to the comptroller and
19 deposited in the general revenue fund [~~state treasury~~] pursuant to
20 this section are dedicated to the department [~~commission~~].

21 SECTION 4.401. Section 111.061, Human Resources Code, is
22 amended to read as follows:

23 Sec. 111.061. CONTRACT PAYMENT. The department
24 [~~commission~~] shall base payment under a contract for vocational
25 rehabilitation services on outcome-based performance standards
26 defined in the contract.

27 SECTION 4.402. Subchapter D, Chapter 111, Human Resources

1 Code, is transferred to Chapter 117, Human Resources Code,
2 redesignated as Subchapter F, Chapter 117, Human Resources Code,
3 and amended to read as follows:

4 SUBCHAPTER F [D]. VOCATIONAL REHABILITATION SERVICES FOR CERTAIN
5 INDIVIDUALS WITH DISABILITIES

6 Sec. 117.151. DEFINITIONS. In this subchapter,
7 "rehabilitation services" and "vocational rehabilitation program"
8 have the meanings assigned by Section 111.002.

9 Sec. 117.152 [111.070]. PROVISION OF SERVICES. (a) The
10 executive commissioner [~~board~~] by rule shall establish and maintain
11 guidelines for providing vocational rehabilitation services that
12 are consistent with state and federal laws and regulations and that
13 include:

14 (1) a system of organization for the delivery of
15 vocational rehabilitation services statewide;

16 (2) eligibility requirements for vocational
17 rehabilitation services;

18 (3) requirements for the rehabilitation planning
19 process;

20 (4) the types of services that may be provided to a
21 client through a vocational rehabilitation program; and

22 (5) requirements for client participation in the costs
23 of vocational rehabilitation services, including documentation
24 that a client has sought benefits for which the client is eligible
25 from sources other than the department [~~commission~~] and that may
26 assist the client in obtaining vocational rehabilitation goods or
27 services.

1 (b) The executive commissioner [board] shall annually
2 assess the effectiveness of the state's vocational rehabilitation
3 program.

4 Sec. 117.153 [111.071]. TRAINING AND SUPERVISION OF
5 COUNSELORS. (a) The department [commission] shall provide
6 specific guidance to vocational rehabilitation counselors under
7 this subchapter in:

8 (1) selecting vocational objectives according to a
9 client's skills, experience, and knowledge;

10 (2) documenting a client's impediment to employment;

11 (3) selecting rehabilitation services that are
12 reasonable and necessary to achieve a client's vocational
13 objective;

14 (4) measuring client progress toward the vocational
15 objective, including the documented, periodic evaluation of the
16 client's rehabilitation and participation; and

17 (5) determining eligibility of employed and
18 unemployed applicants for rehabilitation services using criteria
19 defined by department [board] rule to document whether a client is
20 substantially underemployed or at risk of losing employment.

21 (b) The executive commissioner [board] by rule shall
22 require monitoring and oversight of vocational rehabilitation
23 counselor performance and decision making in accordance with this
24 section.

25 Sec. 117.154 [111.072]. CLIENT ORIENTATION MATERIALS.
26 The department [commission] shall develop and distribute at intake
27 client orientation materials for the vocational rehabilitation

1 program that include information on the department's [~~commission's~~]
2 decision-making criteria.

3 SECTION 4.403. Section 112.001(4), Human Resources Code, is
4 amended to read as follows:

5 (4) "Applicable federal developmental disability
6 laws" refers to the various Acts of Congress [~~congress~~] providing
7 for assistance and services to persons with developmental
8 disabilities and codified as 42 U.S.C. Section 15001 [~~6000~~] et seq.

9 SECTION 4.404. Section 112.014(b), Human Resources Code, is
10 amended to read as follows:

11 (b) If a position on the council becomes vacant, the chair
12 shall provide written notice to the governor [~~, agency commissioner,~~
13 ~~or executive director, as appropriate,~~] requesting a new
14 appointment to fill the remainder of the member's term.

15 SECTION 4.405. Section 112.022(a), Human Resources Code, is
16 amended to read as follows:

17 (a) The council shall hire an executive director in
18 accordance with 42 U.S.C. Section 15025 [~~6024(c)~~] and its
19 subsequent amendments to carry out the policies and activities
20 established by the council.

21 SECTION 4.406. Section 112.0221(c), Human Resources Code,
22 is amended to read as follows:

23 (c) The policy statement must:

24 (1) be updated annually;

25 (2) be reviewed by the Texas Workforce [~~state~~]
26 Commission civil rights division [~~on Human Rights~~] for compliance
27 with Subsection (b)(1); and

(3) be filed with the governor's office.

2 SECTION 4.407. Section 112.043, Human Resources Code, is
3 amended to read as follows:

4 Sec. 112.043. OFFICE FOR THE PREVENTION OF DEVELOPMENTAL
5 DISABILITIES; ADMINISTRATIVE ATTACHMENT. (a) The Office for the
6 Prevention of Developmental Disabilities is administratively
7 attached to the Health and Human Services Commission [Texas
8 ~~Department of Mental Health and Mental Retardation~~].

9 (b) The Health and Human Services Commission [~~Texas~~
10 ~~Department of Mental Health and Mental Retardation~~] shall:

11 (1) provide administrative assistance, services, and
12 materials to the office;

1 (7) provide the office with adequate computer
2 equipment and support; and

3 (8) provide the office with adequate office space and
4 permit the executive committee to meet in facilities of the
5 commission [~~department~~].

6 (c) The executive director and staff of the office are
7 employees of the office and not employees of the Health and Human
8 Services Commission [~~Texas Department of Mental Health and Mental~~
9 ~~Retardation~~].

10 SECTION 4.408. Section 112.0472(c), Human Resources Code,
11 is amended to read as follows:

12 (c) The policy statement must:

13 (1) be updated annually;

14 (2) be reviewed by the Texas Workforce [~~state~~]
15 Commission civil rights division [~~on Human Rights~~] for compliance
16 with Subsection (b)(1); and

17 (3) be filed with the governor's office.

18 SECTION 4.409. Section 115.002(c), Human Resources Code, is
19 amended to read as follows:

20 (c) The ex officio members are:

21 (1) the executive director of the Texas Workforce
22 Commission;

23 (2) the commissioner of assistive and rehabilitative
24 services [~~the Texas Rehabilitation Commission;~~

25 [~~(3) the executive director of the Texas Commission~~
26 ~~for the Blind;~~

27 [~~(4) the executive director of the Texas Commission~~

1 ~~for the Deaf and Hard of Hearing~~]; and

2 (3) [~~(5)~~] other officials designated by the governor
3 who serve with other state agencies that provide services to
4 persons with disabilities.

5 SECTION 4.410. Section [115.009](#), Human Resources Code, is
6 amended to read as follows:

7 Sec. 115.009. FUNCTIONS. The committee shall:

8 (1) serve as a central source of information and
9 education on the abilities, rights, problems, and needs of persons
10 with disabilities and, as necessary, issue reports;

11 (2) provide information to and advise the governor and
12 the governor's staff on matters relating to the full participation
13 of persons with disabilities in all aspects of life;

14 (3) before the end of each even-numbered year, submit
15 to the governor and to the legislature a report that includes:

16 (A) the status of the state's compliance with
17 federal and state laws pertaining to rights and opportunities for
18 persons with disabilities and recommendations to achieve further
19 compliance, if necessary;

20 (B) a long-range state plan for persons with
21 disabilities and recommendations to implement that plan; and

22 (C) any recommended changes in state laws
23 relating to persons with disabilities;

24 (4) serve as the state's liaison agency in working with
25 the President's Committee on Employment of Persons with
26 Disabilities and other entities involved in activities or concerns
27 affecting persons with disabilities;

1 (5) develop and work with a statewide network of
2 volunteer community-level committees to promote dissemination of
3 information about and implementation of federal and state laws
4 addressing rights and opportunities for persons with disabilities;

5 (6) evaluate the state's compliance with the [~~federal6 Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et
7 seq.) [~~(Pub. L. No. 101-336)~~] and other federal and state statutes
8 relating to rights and opportunities for persons with disabilities;~~

9 (7) provide information and technical assistance to
10 public and private agencies and businesses to promote and
11 facilitate implementation of the [~~federal~~] Americans with
12 Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.) [~~(Pub.~~
13 ~~L. No. 101-336)~~] and other federal and state statutes relating to
14 rights and opportunities of persons with disabilities;

15 (8) collect and evaluate data on employment of persons
16 with disabilities by state agencies;

17 (9) work with legislative committees and with state
18 agencies on the development of laws and policies that affect
19 persons with disabilities;

20 (10) promote the compilation and publication of state
21 laws relating to persons with disabilities; and

22 (11) issue awards and other forms of recognition to
23 persons and organizations making outstanding contributions to the
24 employment of persons with disabilities and to public awareness of
25 issues impacting persons with disabilities.

26 SECTION 4.411. Section 117.021(b), Human Resources Code, is
27 amended to read as follows:

1 (b) The council is composed of nine members of the public
2 appointed by the governor with the advice and consent of the senate.
3 To be eligible for appointment to the council, a person must have
4 demonstrated an interest in and knowledge of problems and available
5 services related to early childhood intervention services or to
6 persons with disabilities, other than intellectual and
7 developmental disabilities, [delay and mental retardation] and
8 persons who are blind, deaf, or hard of hearing.

9 SECTION 4.412. Section 117.051(c), Human Resources Code, is
10 amended to read as follows:

11 (c) Subject to the control of the executive commissioner,
12 the commissioner shall:

13 (1) act as the department's chief administrative
14 officer;

15 (2) in accordance with the procedures prescribed by
16 Section 531.00551, Government Code, assist the executive
17 commissioner in the development and implementation of policies and
18 guidelines needed for the administration of the department's
19 functions;

20 (3) in accordance with the procedures adopted by the
21 executive commissioner under Section 531.00551, Government Code,
22 assist the executive commissioner in the development of rules
23 relating to the matters within the department's jurisdiction,
24 including the delivery of services to persons and the rights and
25 duties of persons who are served or regulated by the department; and

26 (4) serve as a liaison between the department and
27 commission.

1 SECTION 4.413. Section 117.056(c), Human Resources Code, is
2 amended to read as follows:

3 (c) The policy statement must be:

4 (1) updated annually;

5 (2) reviewed by the Texas Workforce [~~state~~] Commission
6 civil rights division [~~on Human Rights~~] for compliance with
7 Subsection (b)(1); and

8 (3) filed with the governor's office.

9 SECTION 4.414. Subchapter D, Chapter 117, Human Resources
10 Code, is amended by adding Sections 117.0711 and 117.0712 to read as
11 follows:

12 Sec. 117.0711. MANAGEMENT AND DIRECTION BY EXECUTIVE
13 COMMISSIONER. The department's powers and duties prescribed by
14 this chapter and other law, including enforcement activities and
15 functions, are subject to the executive commissioner's oversight
16 under Chapter 531, Government Code, to manage and direct the
17 operations of the department.

18 Sec. 117.0712. CONTRACTING AND AUDITING AUTHORITY;
19 DELEGATION. (a) The executive commissioner, as authorized by
20 Section 531.0055, Government Code, may delegate to the department
21 the executive commissioner's authority under that section for
22 contracting and auditing relating to the department's powers,
23 duties, functions, and activities.

24 (b) If the executive commissioner does not make a delegation
25 under Subsection (a), a reference in law to the department with
26 respect to the department's contracting or auditing authority means
27 the executive commissioner. If the executive commissioner makes a

1 delegation under Subsection (a), a reference in law to the
2 department's contracting or auditing authority means that
3 authority the executive commissioner has delegated to the
4 department.

5 (c) If the executive commissioner revokes all or part of a
6 delegation made under Subsection (a), a reference in law to the
7 department with respect to a function for which the delegation was
8 revoked means the executive commissioner or another entity to which
9 the executive commissioner delegates that authority.

10 (d) It is the legislature's intent that the executive
11 commissioner retain the authority over and responsibility for
12 contracting and auditing at each health and human services agency
13 as provided by Section 531.0055, Government Code. A statute
14 enacted on or after January 1, 2015, that references the
15 contracting or auditing authority of the department does not give
16 the department direct contracting or auditing authority unless the
17 statute expressly provides that the contracting or auditing
18 authority:

19 (1) is given directly to the department; and
20 (2) is an exception to the exclusive contracting and
21 auditing authority given to the executive commissioner under
22 Section 531.0055, Government Code.

23 SECTION 4.415. Section 121.0014(b), Human Resources Code,
24 is amended to read as follows:

25 (b) In this section, "health and human services agency"
26 means an agency listed by Section 531.001(4), Government Code
27 [~~Section 19, Article 4413(502), Revised Statutes~~].

1 SECTION 4.416. Section 121.003(a), Human Resources Code, is
2 amended to read as follows:

3 (a) Persons with disabilities have the same right as persons
4 without disabilities [~~the able-bodied~~] to the full use and
5 enjoyment of any public facility in the state.

6 SECTION 4.417. Section 122.003(i), Human Resources Code, is
7 amended to read as follows:

8 (i) If the comptroller [~~executive director of the~~
9 ~~commission~~] has knowledge that a potential ground for removal
10 exists, the comptroller [~~executive director~~] shall notify the
11 presiding officer of the council of the potential ground. If the
12 presiding officer is notified under this section, or if the
13 presiding officer has knowledge that a potential ground for removal
14 exists, the presiding officer shall notify the governor and the
15 attorney general that a potential ground for removal exists. If the
16 potential ground for removal involves the presiding officer, the
17 comptroller [~~executive director~~] shall notify the next highest
18 officer of the council, who shall notify the governor and the
19 attorney general that a potential ground for removal exists.

20 SECTION 4.418. Section 122.0057(d), Human Resources Code,
21 is amended to read as follows:

22 (d) The council shall make reasonable attempts to have
23 balanced representation on all advisory committees, including
24 attempting to seek representation from:

25 (1) the Lighthouse for the Blind and Visually Impaired
26 community rehabilitation programs;
27 (2) the Goodwill community rehabilitation programs;

1 (3) [the Texas Department of Mental Health and Mental
2 Retardation community rehabilitation program;
3 [4] other community rehabilitation programs;
4 (4) [5] representatives from central nonprofit
5 agencies;
6 (5) [6] representatives of disability advocacy
7 groups;
8 (6) [7] government purchasing agents with knowledge
9 of this chapter;
10 (7) [8] private industry representatives with
11 knowledge of this chapter; and
12 (8) [9] private citizens with disabilities who
13 [have a disability and] have knowledge of the sale of products and
14 services.

15 SECTION 4.419. Sections 122.007(d) and (e), Human Resources
16 Code, are amended to read as follows:

17 (d) Before offering for sale products and services
18 manufactured or provided by persons with disabilities to state
19 agencies and political subdivisions, the council shall test the
20 goods and services in accordance with Section 2155.069, Government
21 Code, to the extent necessary to ensure quality. The council may
22 enter into a contract with a private or public entity to assist with
23 testing. The comptroller [~~commission~~] shall make awards under this
24 section based on proposed goods and services meeting formal state
25 specifications developed by the comptroller [~~commission~~] or
26 meeting commercial specifications approved by the comptroller
27 [~~commission~~].

1 (e) Requisitions for products and services required by
2 state agencies are processed by the comptroller [~~commission~~]
3 according to rules established by the comptroller [~~commission~~].

4 SECTION 4.420. Section [122.009](#)(b), Human Resources Code, is
5 amended to read as follows:

6 (b) The comptroller [~~commission~~] is the depository for all
7 records concerning the council's operations.

8 SECTION 4.421. Sections [122.0095](#)(a), (d), and (e), Human
9 Resources Code, are amended to read as follows:

10 (a) Each state agency that purchases products or services
11 through a program under this chapter shall:

12 (1) designate an agency employee to ensure that the
13 agency complies with this chapter; and

14 (2) report to the comptroller [~~commission~~] and the
15 council the purchase of products or services available from a
16 central nonprofit agency or community rehabilitation program under
17 this chapter, but purchased from another business that is not a
18 central nonprofit agency or community rehabilitation program under
19 this chapter.

20 (d) The comptroller [~~commission~~] shall post the reports
21 required by Subsection (a)(2) on the comptroller's [~~commission's~~]
22 website.

23 (e) The council shall review the information contained in
24 the reports under this section and Sections [122.012](#) and [122.016](#).
25 The comptroller [~~commission~~] shall assist the council in reviewing
26 and analyzing the reports in order to improve state agency
27 compliance with this chapter.

1 SECTION 4.422. Section 122.012, Human Resources Code, is
2 amended to read as follows:

3 Sec. 122.012. DUTIES OF COMPTROLLER [~~COMMISSION~~];
4 INTERAGENCY COOPERATION. (a) The comptroller [~~commission~~] shall
5 provide legal and other necessary support to the council in
6 accordance with legislative appropriation. The comptroller
7 [~~commission~~] shall assign an upper-level management employee to
8 ensure that the comptroller [~~commission~~] meets the requirements of
9 this chapter.

10 (b) State agencies responsible for the provision of
11 rehabilitation and related services to persons with disabilities
12 shall cooperate with the council in the operation of the program.
13 The Department of Assistive and Rehabilitative Services [~~Texas~~
14 ~~Commission for the Blind, the Texas Rehabilitation Commission,~~] and
15 other state human services agencies responsible for assisting
16 persons with disabilities may, through written agreements or
17 interagency contracts, provide space, storage, logistical support,
18 consultation, expert services, communications services, or
19 financial assistance with respect to any function or responsibility
20 of the council.

21 (c) The comptroller [~~commission~~] or a state agency may not
22 assume the marketing or fiscal responsibility for the expense of
23 marketing the products and services of persons with disabilities
24 under the program.

25 (d) The comptroller [~~commission~~] shall include the programs
26 administered under this chapter in the comptroller's [~~commission's~~]
27 procurement policy manuals.

1 (e) After any audit or review the comptroller [~~commission~~]
2 conducts with regard to state agency compliance with purchasing
3 laws and procedures, the comptroller [~~commission~~] shall report to
4 the council a state agency that is not complying with this chapter.

5 SECTION 4.423. Section [122.013](#)(b), Human Resources Code, is
6 amended to read as follows:

7 (b) The comptroller [~~commission~~] shall provide legal
8 support to assist the council in adopting rules under this section.

9 SECTION 4.424. Section [122.014](#), Human Resources Code, is
10 amended to read as follows:

11 Sec. 122.014. PRODUCT SPECIFICATIONS. Except as otherwise
12 provided by this section, a product manufactured for sale through
13 the comptroller [~~commission~~] to any office, department,
14 institution, or agency of the state under this chapter shall be
15 manufactured or produced according to specifications developed by
16 the comptroller [~~commission~~]. If the comptroller [~~commission~~] has
17 not adopted specifications for a particular product, the production
18 shall be based on commercial or federal specifications in current
19 use by industry for the manufacture of the product for sale to the
20 state.

21 SECTION 4.425. Section [122.016](#), Human Resources Code, is
22 amended to read as follows:

23 Sec. 122.016. EXCEPTIONS. (a) Exceptions from the
24 operation of the mandatory provisions of Section [122.014](#) may be
25 made in any case where:

26 (1) under the rules of the comptroller [~~commission~~],
27 the product or service so produced or provided does not meet the

1 reasonable requirements of the office, department, institution, or
2 agency; or

3 (2) the requisitions made cannot be reasonably
4 complied with through provision of products or services produced by
5 persons with disabilities.

6 (b) Each month, the comptroller [~~commission~~] shall provide
7 the council with a list of all items purchased under the exception
8 provided by Subsection (a) [~~of this section~~]. The council shall
9 adopt the form in which the list is to be provided and may require
10 the list to include the date of requisition, the type of product or
11 service requested, the reason for purchase under the exception, and
12 any other information that the council considers relevant to a
13 determination of why the product or service was not purchased in
14 accordance with Section [122.014](#).

15 (c) No office, department, institution, or agency may evade
16 the intent of this section by slight variations from standards
17 adopted by the comptroller [~~commission~~], when the products or
18 services produced or provided by persons with disabilities, in
19 accordance with established standards, are reasonably adapted to
20 the actual needs of the office, department, institution, or agency.

21 SECTION 4.426. Section [122.018](#), Human Resources Code, is
22 amended to read as follows:

23 Sec. 122.018. POLITICAL SUBDIVISIONS EXCLUDED. There are
24 excluded from the mandatory application of this chapter the
25 political subdivisions of the state that are not covered by Title V
26 of the federal [~~Federal~~] Rehabilitation Act of 1973, as amended (29
27 U.S.C. [~~U.S. Code~~] Sections 791 through 794f [~~790 through 794~~]).

1 This chapter does not prohibit a political subdivision from acting
2 as a willing buyer outside a bid system.

3 SECTION 4.427. Section 122.019(f), Human Resources Code, is
4 amended to read as follows:

5 (f) A percentage of the management fee described by
6 Subsection (e) shall be paid to the council and is subject to
7 Section 122.023. The percentage shall be set by the council in the
8 amount necessary to reimburse the general revenue fund for direct
9 and reasonable costs incurred by the comptroller [~~commission~~], the
10 council, and the council staff in administering the council's
11 duties under this chapter.

12 SECTION 4.428. Section 122.022(b), Human Resources Code, is
13 amended to read as follows:

14 (b) As part of the report filed under Subsection (a), the
15 council shall provide:

16 (1) the number of persons with disabilities, according
17 to their type of disability, who are employed in community
18 rehabilitation programs participating in the programs established
19 by this chapter or who are employed by businesses or workshops that
20 receive supportive employment from community rehabilitation
21 programs;

22 (2) the amount of annual wages paid to a person
23 participating in the program;

24 (3) a summary of the sale of products offered by a
25 community rehabilitation program;

26 (4) a list of products and services offered by a
27 community rehabilitation program;

1 (5) the geographic distribution of the community
2 rehabilitation programs;

3 (6) the number of [~~nondisabled~~] workers without
4 disabilities who are employed in community rehabilitation programs
5 under this chapter; and

6 (7) the average and range of weekly earnings for
7 workers with disabilities [~~disabled~~] and [~~nondisabled~~] workers
8 without disabilities who are employed in community rehabilitation
9 programs under this chapter.

10 SECTION 4.429. The heading to Chapter 123, Human Resources
11 Code, is amended to read as follows:

12 CHAPTER 123. COMMUNITY HOMES FOR [~~DISABLED~~] PERSONS WITH
13 DISABILITIES [~~LOCATION ACT~~]

14 SECTION 4.430. Section [123.001](#), Human Resources Code, is
15 amended to read as follows:

16 Sec. 123.001. SHORT TITLE. This chapter may be cited as the
17 Community Homes for [~~Disabled~~] Persons With Disabilities
18 [~~Location~~] Act.

19 SECTION 4.431. Section [123.002](#), Human Resources Code, is
20 amended to read as follows:

21 Sec. 123.002. DEFINITION. In this chapter, "person with a
22 disability" means a person whose ability to care for himself or
23 herself, perform manual tasks, learn, work, walk, see, hear, speak,
24 or breathe is substantially limited because the person has:

25 (1) an orthopedic, visual, speech, or hearing
26 impairment;

27 (2) Alzheimer's disease;

12 SECTION 4.432. Section 123.004, Human Resources Code, is
13 amended to read as follows:

14 Sec. 123.004. QUALIFICATION AS COMMUNITY HOME. To qualify
15 as a community home, an entity must comply with Sections 123.005
16 through 123.008 and be:

1 of Aging and Disability [Human] Services as a provider under the
2 ICF-IID medical assistance program [~~serving persons in~~
3 ~~intermediate care facilities for persons with mental retardation~~];
4 or

5 (2) an assisted living facility licensed under Chapter
6 247, Health and Safety Code, provided that the exterior structure
7 retains compatibility with the surrounding residential dwellings.

8 SECTION 4.433. Section 123.010, Human Resources Code, is
9 amended to read as follows:

10 Sec. 123.010. ENSURING [THE] SAFETY OF RESIDENTS. The
11 [Texas] Department of Aging and Disability Services [~~Mental Health~~
12 ~~and Mental Retardation~~] shall make every reasonable effort to
13 ensure the safety of [~~community home~~] residents of a community home
14 operated by or under the regulatory jurisdiction of the department
15 and the residents of a neighborhood that is affected by the location
16 of the [~~a~~] community home.

17 SECTION 4.434. Chapter 132, Human Resources Code, is
18 amended to read as follows:

19 CHAPTER 132. FACILITATION OF DELIVERY OF HEALTH AND HUMAN SERVICES

20 Sec. 132.001. GOVERNOR'S AGENDA. (a) The governor shall
21 establish an agenda that addresses needed adjustments in federal
22 legislation, agency rules and regulations, programs, and policies
23 that affect:

- 24 (1) health and human services delivery;
25 (2) client and provider eligibility;
26 (3) administration; and
27 (4) funding.

1 (b) The governor shall develop and amend the agenda in
2 conjunction and cooperation with federal and state elected
3 officials, state agency staff, the executive commissioner of the
4 Health and Human Services Commission, and the executive director
5 [directors] of the Texas Workforce Commission [state agencies
6 providing health and human services programs].

7 (c) The agenda must include:

8 (1) a list of specific issues of federal law or policy
9 identified and ranked by health and human services agencies;

10 (2) impact statements concerning the needed
11 adjustments to federal law or policy;

12 (3) a discussion of fiscal matters concerning each
13 ranked issue; and

14 (4) specific recommendations for changes in federal
15 law or policy.

16 (d) The governor shall submit the agenda to the Texas
17 congressional delegation and to the Office of State-Federal
18 Relations and shall annually amend the agenda and rank agenda
19 items. The agenda must identify issues of federal law, rules and
20 regulations, or programs of common concern to different state
21 agencies and programs.

22 Sec. 132.002. EXPANSION OF CLIENT ELIGIBILITY SCREENING AND
23 DETERMINATION. (a) Based on a cost-benefit analysis, the Health
24 and Human Services Commission [Texas Department of Human Services],
25 where feasible, shall relocate an employee with the ability to
26 certify eligibility for financial and medical programs to an office
27 or facility that would enhance client access.

1 (b) Based on a cost-benefit analysis, the Health and Human
2 Services Commission shall coordinate the expansion and use of
3 integrated eligibility screening instruments and the relocation of
4 state employees on a timetable determined by the commission.

5 Sec. 132.003. LOCATION OF OFFICES AND FACILITIES. (a) As
6 leases on office space expire, the Health and Human Services
7 Commission shall determine the needs for space and the location of
8 offices of the health and human services agencies to enable the
9 commission to achieve a cost-effective, one-stop or service center
10 method of service delivery.

11 (b) In this section, "health and human services agencies"
12 includes the:

13 (1) Department of Aging and Disability Services
14 [~~Interagency Council on Early Childhood Intervention Services~~];
15 (2) Department of State Health Services [~~Texas~~
16 ~~Department on Aging~~];
17 (3) Department of Family and Protective Services
18 [~~Texas Commission on Alcohol and Drug Abuse~~];
19 (4) Department of Assistive and Rehabilitative
20 Services [~~Texas Commission for the Blind~~]; and
21 (5) Health and Human Services Commission [~~Texas~~
22 ~~Commission for the Deaf and Hard of Hearing~~,
23 [~~6) Texas Department of Health;~~
24 [~~7) Texas Department of Human Services;~~
25 [~~8) Texas Department of Mental Health and Mental~~
26 ~~Retardation~~,
27 [~~9) Texas Rehabilitation Commission; and~~

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1 [(10) Department of Protective and Regulatory
2 Services].

3 SECTION 4.435. The heading to Chapter 136, Human Resources
4 Code, is amended to read as follows:

5 CHAPTER 136. TEXAS COMMUNITY HEALTH CENTER REVOLVING LOAN

PROGRAM [~~FUND~~]

7 SECTION 4.436. Section 136.002, Human Resources Code, is
8 amended by adding Subdivision (3-a) to read as follows:

11 SECTION 4.437. Section 136.003, Human Resources Code, is
12 amended to read as follows:

13 Sec. 136.003. GIFTS AND GRANTS [~~TRUST FUND~~]. [(a) The
14 ~~community health center revolving loan fund is a trust fund outside~~
15 ~~the state treasury held by a financial institution and administered~~
16 ~~by the commission as trustee on behalf of community health centers~~
17 ~~in this state.~~

18 [(b) The fund is composed of:

19 [(1) money appropriated to the fund by the
20 legislature;

21 [(2) gifts or grants received from public or private
22 sources; and

[(3)] ~~income from other money in the fund.~~

24 [(-c)] The commission may accept [on behalf of the fund]
25 gifts and grants for the use and benefit of the program.

26 SECTION 4.438. Section 136.007, Human Resources Code, is
27 amended to read as follows:

1 Sec. 136.007. SELF-FUNDING. The commission shall develop
2 the [fund] program as a revolving loan program [fund] that will
3 become self-funding over the life of the program.

4 SECTION 4.439. Section 136.009, Human Resources Code, is
5 amended to read as follows:

6 Sec. 136.009. RULES. (a) The executive commissioner
7 [~~commission~~] shall adopt rules to administer this chapter,
8 including rules that require:

9 (1) the commission to review the lending and servicing
10 practices of a development corporation to ensure the practices
11 conform to generally accepted accounting principles;

12 (2) an eligible community health center to enter into
13 an agreement with the development corporation that states the terms
14 of the loan made to the center;

15 (3) the development corporation to provide to the
16 commission semiannual reports giving details of the status of each
17 loan made under the program;

18 (4) the development corporation to require annual
19 audits of community health centers receiving loans under the
20 program; and

21 (5) the commission to provide oversight of the
22 development corporation as necessary to qualify the development
23 corporation for loan guarantees from federal and state programs.

24 (b) Under rules adopted by the executive commissioner
25 [~~commission~~], the development corporation may:

26 (1) make grants to eligible community health centers
27 from money other than money [~~that is received from the fund and~~]

1 that was derived from a legislative appropriation; or
2 (2) seek money [~~funds~~] from state or federal agencies
3 or private sources to supplement and complement the money [~~funds~~]
4 received under the program.

5 (c) The executive commissioner [~~commission~~] may adopt other
6 rules as necessary to accomplish the purposes of this chapter.

7 SECTION 4.440. Section 161.003, Human Resources Code, is
8 amended to read as follows:

9 Sec. 161.003. SUNSET PROVISION. The department
10 [Department of Aging and Disability Services] is subject to Chapter
11 325, Government Code (Texas Sunset Act). Unless continued in
12 existence as provided by that chapter, the department is abolished
13 and this chapter expires September 1, 2015.

14 SECTION 4.441. Section 161.021(b), Human Resources Code, is
15 amended to read as follows:

16 (b) The council is composed of nine members of the public
17 appointed by the governor with the advice and consent of the senate.
18 To be eligible for appointment to the council, a person must have
19 demonstrated an interest in and knowledge of issues and available
20 services related to the aging and persons with developmental
21 disabilities or an intellectual disability [~~mental retardation~~].

22 SECTION 4.442. Section 161.030, Human Resources Code, is
23 amended to read as follows:

24 Sec. 161.030. POLICYMAKING AND MANAGEMENT
25 RESPONSIBILITIES. The [~~executive~~] commissioner, with the advice of
26 the council and subject to the approval of the executive
27 commissioner, shall develop and the department shall implement

1 policies that clearly delineate the policymaking responsibilities
2 of the executive commissioner from the management responsibilities
3 of the commission, the commissioner, and the staff of the
4 department.

5 SECTION 4.443. Section 161.051(c), Human Resources Code, is
6 amended to read as follows:

7 (c) Subject to the control of the executive commissioner,
8 the commissioner shall:

9 (1) act as the department's chief administrative
10 officer;

11 (2) in accordance with the procedures prescribed by
12 Section 531.00551, Government Code, assist the executive
13 commissioner in the development and implementation of policies and
14 guidelines needed for the administration of the department's
15 functions;

16 (3) in accordance with the procedures adopted by the
17 executive commissioner under Section 531.00551, Government Code,
18 assist the executive commissioner in the development of rules
19 relating to the matters within the department's jurisdiction,
20 including the delivery of services to persons and the rights and
21 duties of persons who are served or regulated by the department; and

22 (4) serve as a liaison between the department and
23 commission.

24 SECTION 4.444. The heading to Section 161.0515, Human
25 Resources Code, is amended to read as follows:

26 Sec. 161.0515. ASSISTANT COMMISSIONER FOR [OF] STATE
27 SUPPORTED LIVING CENTERS.

1 SECTION 4.445. Sections [161.0515\(a\), \(d\), and \(e\)](#), Human
2 Resources Code, are amended to read as follows:

3 (a) The commissioner shall employ an assistant commissioner
4 for [~~of~~] state supported living centers. The assistant
5 commissioner must be selected based on education, training,
6 experience, and demonstrated ability.

7 (d) The assistant commissioner shall coordinate with the
8 appropriate staff of the Department of State Health Services to
9 ensure that the ICF-IID [~~ICF-MR~~] component of the Rio Grande State
10 Center implements and enforces state law and rules that apply to the
11 operation of state supported living centers.

12 (e) The assistant commissioner shall consult with the
13 appropriate staff at the Department of State Health Services to
14 ensure that an individual with a dual diagnosis of mental illness
15 and an intellectual disability [~~mental retardation~~] who is a
16 resident of a state supported living center or the ICF-IID [~~ICF-MR~~]
17 component of the Rio Grande State Center is provided with
18 appropriate care and treatment.

19 SECTION 4.446. Section [161.056\(c\)](#), Human Resources Code, is
20 amended to read as follows:

21 (c) The policy statement must be:

22 (1) updated annually;

23 (2) reviewed by the Texas Workforce [~~state~~] Commission
24 civil rights division [~~on Human Rights~~] for compliance with
25 Subsection (b)(1); and

26 (3) filed with the governor's office.

27 SECTION 4.447. Section [161.071](#), Human Resources Code, is

1 amended to read as follows:

2 Sec. 161.071. GENERAL POWERS AND DUTIES OF DEPARTMENT. The
3 department is responsible for administering human services
4 programs for the aging and persons with disabilities [disabled],
5 including:

6 (1) administering and coordinating programs to
7 provide community-based care and support services to promote
8 independent living for populations that would otherwise be
9 institutionalized;

10 (2) providing institutional care services, including
11 services through convalescent and nursing homes and related
12 institutions under Chapter 242, Health and Safety Code;

13 (3) providing and coordinating programs and services
14 for persons with disabilities, including programs for the
15 treatment, rehabilitation, or benefit of persons with
16 developmental disabilities or an intellectual disability [mental
17 retardation];

18 (4) operating state facilities for the housing,
19 treatment, rehabilitation, or benefit of persons with
20 disabilities, including state supported living centers [state
21 schools] for persons with an intellectual disability [mental
22 retardation];

23 (5) serving as the state unit on aging required by the
24 federal Older Americans Act of 1965 (42 U.S.C. Section 3001 et seq.)
25 and its subsequent amendments, including performing the general
26 functions under Section 101A.052 [101.022] to ensure:

27 (A) implementation of the federal Older

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1 Americans Act of 1965 (42 U.S.C. Section 3001 et seq.) and its
2 subsequent amendments, including implementation of services and
3 volunteer opportunities under that Act for older residents of this
4 state through area agencies on aging;

7 (C) fostering of the state and community
8 infrastructure and capacity to serve older residents of this state;
9 and

10 (D) availability of a comprehensive resource for
11 state government and the public on trends related to and services
12 and programs for an aging population;

(10) serving as guardian of the person or estate, or both, for an incapacitated individual as provided by Subchapter E of this chapter and Title 3, Estates [~~Chapter XIII, Texas Probate~~] Code.

5 SECTION 4.448. Subchapter D, Chapter 161, Human Resources
6 Code, is amended by adding Sections 161.0711 and 161.0712 to read as
7 follows:

8 Sec. 161.0711. CONTRACTING AND AUDITING AUTHORITY;
9 DELEGATION. (a) The executive commissioner, as authorized by
10 Section 531.0055, Government Code, may delegate to the department
11 the executive commissioner's authority under that section for
12 contracting and auditing relating to the department's powers,
13 duties, functions, and activities.

14 (b) If the executive commissioner does not make a delegation
15 under Subsection (a), a reference in law to the department with
16 respect to the department's contracting or auditing authority means
17 the executive commissioner. If the executive commissioner makes a
18 delegation under Subsection (a), a reference in law to the
19 department's contracting or auditing authority means that
20 authority the executive commissioner has delegated to the
21 department.

22 (c) If the executive commissioner revokes all or part of a
23 delegation made under Subsection (a), a reference in law to the
24 department with respect to a function for which the delegation was
25 revoked means the executive commissioner or another entity to which
26 the executive commissioner delegates that authority.

27 (d) It is the legislature's intent that the executive

1 commissioner retain the authority over and responsibility for
2 contracting and auditing at each health and human services agency
3 as provided by Section 531.0055, Government Code. A statute
4 enacted on or after January 1, 2015, that references the
5 contracting or auditing authority of the department does not give
6 the department direct contracting or auditing authority unless the
7 statute expressly provides that the contracting or auditing
8 authority:

9 (1) is given directly to the department; and
10 (2) is an exception to the exclusive contracting and
11 auditing authority given to the executive commissioner under
12 Section 531.0055, Government Code.

13 Sec. 161.0712. MANAGEMENT AND DIRECTION BY EXECUTIVE
14 COMMISSIONER. The department's powers and duties prescribed by
15 this chapter and other law, including enforcement activities and
16 functions, are subject to the executive commissioner's oversight
17 under Chapter 531, Government Code, to manage and direct the
18 operations of the department.

19 SECTION 4.449. Sections 161.075(a)(1) and (2), Human
20 Resources Code, are amended to read as follows:

21 (1) "Area agency on aging" means an agency described
22 by 42 U.S.C. Section 3002(6) [3002(17)] and through which the
23 department ensures the implementation of services and volunteer
24 opportunities for older persons in this state as provided by
25 Section 161.071(5)(A).

26 (2) "Texas nonprofit organization" means a nonprofit
27 corporation:

9 SECTION 4.450. Section 161.077(a), Human Resources Code, is
10 amended to read as follows:

11 (a) The department, in consultation with the Department of
12 Family and Protective Services, shall develop and maintain an
13 electronic database to collect and analyze information regarding
14 the investigation and prevention of abuse, neglect, and
15 exploitation of individuals with an intellectual disability
16 [~~mental retardation~~] who reside in a publicly or privately operated
17 intermediate care facility for persons with an intellectual
18 disability [~~mental retardation~~] or in a group home, other than a
19 foster home, at which a Home and Community-based Services (HCS)
20 provider provides services and the results of regulatory
21 investigations or surveys performed by the department regarding
22 those facilities or providers.

23 SECTION 4.451. Section 161.078(b), Human Resources Code, is
24 amended to read as follows:

25 (b) Subsection (a) does not prevent the department from
26 establishing an age requirement with respect to other programs or
27 services offered to persons who are deaf-blind with [and have]

1 multiple disabilities, including the summer outdoor training
2 program for [deaf-blind multihandicapped] individuals who are
3 deaf-blind with multiple disabilities established under Section
4 22.036(c).

5 SECTION 4.452. Section 161.079(a)(2), Human Resources
6 Code, is amended to read as follows:

7 (2) "Local entity" means an area agency on aging or
8 other entity that provides services and support for older persons
9 or [disabled] persons with disabilities and their caregivers.

10 SECTION 4.453. Section 161.080(b), Human Resources Code, is
11 amended to read as follows:

12 (b) Notwithstanding any other law, a state supported living
13 center may provide nonresidential services to support an individual
14 if:

15 (1) the individual:

16 (A) is receiving services in a program funded by
17 the department;

18 (B) meets the eligibility criteria for the
19 intermediate care facility for persons with an intellectual
20 disability [disabilities] program; and

21 (C) resides in the area in which the
22 state supported living center is located; and

23 (2) the provision of services to the individual does
24 not interfere with the provision of services to a resident of the
25 state supported living center.

26 SECTION 4.454. Section 161.087(a), Human Resources Code, is
27 amended to read as follows:

1 (a) The department may accept gifts and grants of money,
2 personal property, and real property from public or private sources
3 to expand and improve the human services programs for the aging and
4 persons with disabilities [disabled] available in this state.

5 SECTION 4.455. Section 161.092, Human Resources Code, is
6 amended to read as follows:

7 Sec. 161.092. APPLICABILITY. This subchapter applies only
8 to administration of medication provided to certain persons with
9 intellectual and developmental disabilities who are served:

10 (1) in a small facility with not less than one and not
11 more than eight beds that is licensed or certified under Chapter
12 252, Health and Safety Code;

13 (2) in a medium facility with not less than 9 [~~nine~~]
14 and not more than 13 beds that is licensed or certified under
15 Chapter 252, Health and Safety Code; or

16 (3) by one of the following Section 1915(c) waiver
17 programs administered by the department [~~Department of Aging and~~
18 ~~Disability Services~~] to serve persons with intellectual and
19 developmental disabilities:

20 (A) the Home and Community-Based Services waiver
21 program; or

22 (B) the Texas Home Living waiver program.

23 SECTION 4.456. Sections 161.101(a), (b), (c), (c-1), (c-2),
24 (d), and (f), Human Resources Code, are amended to read as follows:

25 (a) The department shall file an application under Section
26 1101.001 or 1251.003, Estates [~~682 or 875, Texas Probate~~] Code, to
27 be appointed guardian of the person or estate, or both, of a minor

1 referred to the department under Section [48.209\(a\)\(1\)](#) for
2 guardianship services if the department determines:

3 (1) that the minor, because of a mental or physical
4 condition, will be substantially unable to provide for the minor's
5 own food, clothing, or shelter, to care for the minor's own physical
6 health, or to manage the individual's own financial affairs when
7 the minor becomes an adult; and

8 (2) that a less restrictive alternative to
9 guardianship is not available for the minor.

10 (b) The department shall conduct a thorough assessment of
11 the conditions and circumstances of an elderly person or [disabled]
12 person with a disability referred to the department under Section
13 [48.209\(a\)\(2\)](#) for guardianship services to determine whether a
14 guardianship is appropriate for the individual or whether a less
15 restrictive alternative is available for the individual. In
16 determining whether a guardianship is appropriate, the department
17 may consider the resources and funds available to meet the needs of
18 the elderly person or [disabled] person with a disability. The
19 executive commissioner shall adopt rules for the administration of
20 this subsection.

21 (c) Subject to Subsection (c-1), if after conducting an
22 assessment of an elderly person or [disabled] person with a
23 disability under Subsection (b) the department determines that:

24 (1) guardianship is appropriate for the elderly person
25 or [disabled] person with a disability, the department shall:

26 (A) file an application under Section 1101.001 or
27 1251.003, Estates [682 or 875, Texas Probate] Code, to be appointed

1 guardian of the person or estate, or both, of the individual; or
2 (B) if the department determines that an
3 alternative person or program described by Section [161.102](#) is
4 available to serve as guardian, refer the individual to that person
5 or program as provided by that section; or

26 (c-2) With the approval of the Department of Family and
27 Protective Services, the department may extend, by not more than 30

1 days, a period prescribed by Subsection (c-1) if the extension is:

2 (1) made in good faith, including any extension for a
3 person or program described by Section 161.102 that intends to file
4 an application to be appointed guardian; and

5 (2) in the best interest of the elderly person or
6 [disabled] person with a disability.

7 (d) The department may not be required by a court to file an
8 application for guardianship, and except as provided by Subsection
9 (f) and Section 1203.108(b), Estates [~~695(c), Texas Probate~~] Code,
10 the department may not be appointed as permanent guardian for any
11 individual unless the department files an application to serve or
12 otherwise agrees to serve as the individual's guardian of the
13 person or estate, or both.

14 (f) On appointment by a probate court under Section
15 1203.108(b), Estates [~~695(c), Texas Probate~~] Code, the department
16 shall serve as the successor guardian of the person or estate, or
17 both, of a ward described by that section.

18 SECTION 4.457. Section 161.102(b), Human Resources Code, is
19 amended to read as follows:

20 (b) If requested by a court, the department shall notify the
21 court of any referral made to the department by the Department of
22 Family and Protective Services relating to any individual who is
23 domiciled or found in a county where the requesting court has
24 probate jurisdiction and who may be appropriate for a
25 court-initiated guardianship proceeding under Chapter 1102,
26 Estates [~~Section 683, Texas Probate~~] Code. In making a referral
27 under this subsection and if requested by the court, the department

1 shall, to the extent allowed by law, provide the court with all
2 relevant information in the department's records relating to the
3 individual. The court, as part of this process, may not require
4 the department to:

5 (1) perform the duties of a guardian ad litem or court
6 investigator as prescribed by Chapter 1102, Estates [Section 683,
7 ~~Texas Probate~~] Code; or

8 (2) gather additional information not contained in the
9 department's records.

10 SECTION 4.458. Section 161.103, Human Resources Code, is
11 amended to read as follows:

12 Sec. 161.103. CONTRACT FOR GUARDIANSHIP SERVICES. If
13 appropriate, the department may contract with a political
14 subdivision of this state, a guardianship program as defined by
15 Section 1002.016, Estates [Section 601, Texas Probate] Code, a
16 private agency, or another state agency for the provision of
17 guardianship services under this section.

18 SECTION 4.459. Section 161.105, Human Resources Code, is
19 amended to read as follows:

20 Sec. 161.105. OATH. A representative of the department
21 shall take the oath required by the Estates [Texas Probate] Code on
22 behalf of the department if the department is appointed guardian of
23 the person or estate, or both, of a ward under Title 3 [Chapter
24 ~~XIII~~] of that code.

25 SECTION 4.460. Section 161.106, Human Resources Code, is
26 amended to read as follows:

27 Sec. 161.106. GUARDIANSHIP POWERS AND DUTIES. In serving

1 as guardian of the person or estate, or both, for an incapacitated
2 individual, the department has all the powers granted and duties
3 prescribed to a guardian under Title 3, Estates [~~Chapter XIII,~~
4 ~~Texas Probate~~] Code, or any other applicable law.

5 SECTION 4.461. Sections 161.107(a), (b), and (d), Human
6 Resources Code, are amended to read as follows:

7 (a) The department or a political subdivision of this state
8 or state agency with which the department contracts under Section
9 161.103 is not required to post a bond or pay any cost or fee
10 associated with a bond otherwise required by the Estates [~~Texas~~
11 ~~Probate~~] Code in guardianship matters.

12 (b) The department is not required to pay any cost or fee
13 otherwise imposed for court proceedings or other services,
14 including:

15 (1) a filing fee or fee for issuance of service of
16 process imposed by Section 51.317, 51.318(b)(2), or 51.319,
17 Government Code;

18 (2) a court reporter service fee imposed by Section
19 51.601, Government Code;

20 (3) a judicial fund fee imposed by Section 51.702,
21 Government Code;

22 (4) a judge's fee imposed by Section 25.0008 or
23 25.0029, Government Code;

24 (5) a cost or security fee imposed by Section 53.051,
25 53.052, 1053.051, or 1053.052, Estates [~~12 or 622, Texas Probate~~]
26 Code; or

27 (6) a fee imposed by a county officer under Section

1 118.011 or 118.052, Local Government Code.

2 (d) A political subdivision of this state or state agency
3 with which the department contracts under Section 161.103 is not
4 required to pay any cost or fee otherwise required by the Estates
5 [~~Texas Probate~~] Code.

6 SECTION 4.462. Section 161.108, Human Resources Code, is
7 amended to read as follows:

8 Sec. 161.108. SUCCESSOR GUARDIAN. The department shall
9 review each of the department's pending guardianship cases at least
10 annually to determine whether a more suitable person, including a
11 guardianship program or private professional guardian, is willing
12 and able to serve as successor guardian for a ward of the
13 department. If the department becomes aware of any person's
14 willingness and ability to serve as successor guardian, the
15 department shall notify the court in which the guardianship is
16 pending as required by Section 1203.151, Estates [Section 695A,
17 ~~Texas Probate~~] Code.

18 SECTION 4.463. Section 161.111(d), Human Resources Code, is
19 amended to read as follows:

20 (d) The executive commissioner [~~department~~] shall establish
21 a policy and procedures for the exchange of information with
22 another state agency or governmental entity, including a court,
23 with a local guardianship program to which an individual is
24 referred for services, or with any other entity who provides
25 services to a ward of the department, as necessary for the
26 department, state agency, governmental entity, or other entity to
27 properly execute its respective duties and responsibilities to

1 provide guardianship services or other needed services to meet the
2 needs of the ward under this subchapter or other law. An exchange
3 of information under this subsection does not constitute a release
4 for purposes of waiving the confidentiality of the information
5 exchanged.

6 SECTION 4.464. Section [161.351](#), Human Resources Code, is
7 amended to read as follows:

8 Sec. 161.351. LEGISLATIVE FINDINGS. The legislature finds
9 that:

10 (1) in 2008, 1.14 million older Texans were expected
11 to sustain falls;

12 (2) the risk factors associated with falling increase
13 with age;

14 (3) approximately 20 to 30 percent of older adults who
15 fall suffer moderate to severe injuries, resulting in almost 80,000
16 hospitalizations annually and constituting 40 percent of all
17 nursing facility [home] placements;

18 (4) according to the Centers for Disease Control and
19 Prevention of the United States Public Health Service, the total
20 direct cost of all fall-related injuries in 2000 for people 65 years
21 of age and older exceeded \$19 billion nationwide; and

22 (5) research shows that a well-designed fall
23 prevention program that includes risk factor assessments, a focused
24 physical activity program, and improvement of the home environment
25 can reduce the incidence of falls by 30 to 50 percent.

26 SECTION 4.465. (a) The following provisions of the Human
27 Resources Code are repealed:

- 1 (1) Section 21.001;
- 2 (2) Section 21.002;
- 3 (3) Section 21.003;
- 4 (4) Section 21.0031;
- 5 (5) Section 21.0032;
- 6 (6) Section 21.004;
- 7 (7) Section 21.005;
- 8 (8) Section 21.0051;
- 9 (9) Section 21.0052;
- 10 (10) Section 21.006;
- 11 (11) Section 21.00605;
- 12 (12) Section 21.0061;
- 13 (13) Section 21.008;
- 14 (14) Section 21.009;
- 15 (15) Section 21.010;
- 16 (16) Section 21.014;
- 17 (17) Section 21.015;
- 18 (18) Section 21.016;
- 19 (19) Section 21.018;
- 20 (20) Section 21.019;
- 21 (21) Sections 22.005(a), (b), (c), and (e);
- 22 (22) Section 22.010;
- 23 (23) Section 22.018(e);
- 24 (24) Section 22.0291;
- 25 (25) Section 22.034;
- 26 (26) Section 22.037;
- 27 (27) Section 22.038;

- 1 (28) Section 31.0037;
- 2 (29) Section 31.005(c);
- 3 (30) Section 31.009;
- 4 (31) Section 31.0125;
- 5 (32) Section 31.014;
- 6 (33) Section 31.031(g);
- 7 (34) Sections 31.0355(d), (e), and (f);
- 8 (35) Sections 32.003(2) and (3);
- 9 (36) Sections 32.024(j), (k), and (m);
- 10 (37) Section 32.0246;
- 11 (38) Section 32.027(b);
- 12 (39) Section 32.030;
- 13 (40) Section 32.041;
- 14 (41) Sections 32.052(e) and (f);
- 15 (42) Section 32.060;
- 16 (43) Section 32.101(1);
- 17 (44) Section 32.201(2);
- 18 (45) Section 32.251(5);
- 19 (46) Section 33.007;
- 20 (47) Section 33.010;
- 21 (48) Section 33.026(a);
- 22 (49) Section 33.051;
- 23 (50) Sections 40.001(2) and (4-a);
- 24 (51) Section 40.0562;
- 25 (52) Section 40.0563;
- 26 (53) Section 40.058(b-1);
- 27 (54) Section 42.0221;

- 1 (55) Section 48.002(a)(7);
- 2 (56) Section 73.002;
- 3 (57) Section 73.0021;
- 4 (58) Section 73.0022;
- 5 (59) Section 73.0023;
- 6 (60) Section 73.0024;
- 7 (61) Section 73.0025;
- 8 (62) Section 73.0052;
- 9 (63) Sections 73.006(a), (c), and (d);
- 10 (64) Sections 73.022(c), (d), and (e);
- 11 (65) Section 73.023;
- 12 (66) Section 74.006(c);
- 13 (67) Section 81.001(1);
- 14 (68) Section 81.002;
- 15 (69) Section 81.0021;
- 16 (70) Section 81.0022;
- 17 (71) Section 81.003;
- 18 (72) Section 81.004;
- 19 (73) Section 81.005;
- 20 (74) Section 81.0051;
- 21 (75) Section 81.008;
- 22 (76) Section 81.009;
- 23 (77) Section 81.014;
- 24 (78) Section 91.001;
- 25 (79) Section 91.002(1);
- 26 (80) Section 91.011;
- 27 (81) Sections 91.012(a), (b), and (c);

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1 (b) Section 22.005(d), Human Resources Code, as amended by
2 Chapters 1050 (S.B. 71) and 1083 (S.B. 1179), Acts of the 82nd
3 Legislature, Regular Session, 2011, is repealed.

ARTICLE 5. OCCUPATIONS CODE

5 SECTION 5.001. Section 110.001(3), Occupations Code, is
6 amended to read as follows:

9 SECTION 5.002. Section 110.101, Occupations Code, is
10 amended to read as follows:

11 Sec. 110.101. EXECUTIVE DIRECTOR. The commissioner of
12 state [public] health services shall employ an executive director,
13 chosen with the advice and consent of the council, who is the
14 executive head of the council and performs its administrative
15 duties.

16 SECTION 5.003. Section 110.158(a), Occupations Code, is
17 amended to read as follows:

(a) The council may adopt rules consistent with this chapter. In adopting rules, the council shall:

20 (1) consider the rules and procedures of the [board
21 ~~and the~~] department; and

22 (2) adopt procedural rules consistent with similar
23 existing rules and procedures of the [board or the] department.

24 SECTION 5.004. The heading to Section 110.159, Occupations
25 Code, is amended to read as follows:

26 Sec. 110.159. [COLLECTION OF] FEES.

27 SECTION 5.005. Section 110.159, Occupations Code, is

1 amended by adding Subsection (a-1) to read as follows:

2 (a-1) Notwithstanding Subsection (a), the council shall set
3 fees for issuing or renewing a license in amounts designed to allow
4 the department and the council to recover from the license holders
5 all of the direct and indirect costs to the department and to the
6 council in administering and enforcing this chapter.

7 SECTION 5.006. Section 110.202(a), Occupations Code, is
8 amended to read as follows:

9 (a) The executive head of each of the following agencies or
10 that person's designated representative shall serve as a member of
11 the interagency advisory committee:

12 (1) Texas Department of Criminal Justice;

13 (2) Texas Juvenile Justice Department [Probation
14 Commission];

15 (3) the department [Texas Department of Mental Health
16 and Mental Retardation];

17 (4) [Texas Youth Commission,

18 [+] Sam Houston State University;

19 (5) [+] Department of Family and Protective [and
20 Regulatory] Services; and

21 (6) [+] Texas Council of Community [Mental Health
22 and Mental Retardation] Centers.

23 SECTION 5.007. Section 110.255(a), Occupations Code, is
24 amended to read as follows:

25 (a) In an investigation of a complaint filed with the
26 council, the council may request that the commissioner of state
27 [public] health services or the commissioner's designee approve the

1 issuance of a subpoena. If the request is approved, the council may
2 issue a subpoena to compel the attendance of a relevant witness or
3 the production, for inspection or copying, of relevant evidence in
4 this state. The council may delegate the authority granted under
5 this subsection to the executive director of the council.

6 SECTION 5.008. Section 110.256(b), Occupations Code, is
7 amended to read as follows:

8 (b) The information described by Subsection (a) may be
9 disclosed to:

10 (1) persons involved with the council in a complaint
11 and investigation;

12 (2) professional sex offender treatment provider
13 licensing or disciplinary boards in other jurisdictions;

14 (3) an approved peer assistance program, as defined by
15 Section 467.001 [programs approved by the board under Chapter 467],
16 Health and Safety Code;

17 (4) law enforcement agencies; and

18 (5) persons engaged in bona fide research, if all
19 individual-identifying information is deleted.

20 SECTION 5.009. Section 110.302(b), Occupations Code, is
21 amended to read as follows:

22 (b) In developing the rules, the council shall coordinate
23 with the Texas Department of Criminal Justice [~~, the Texas Youth~~
24 ~~Commission,~~] and the Texas Juvenile Justice Department [~~Probation~~
25 ~~Commission~~].

26 SECTION 5.010. Subchapter G, Chapter 110, Occupations Code,
27 is amended by adding Section 110.3045 to read as follows:

1 Sec. 110.3045. LICENSE TERM. A license issued under this
2 chapter is valid for two years.

3 SECTION 5.011. Section 203.104(b), Occupations Code, is
4 amended to read as follows:

5 (b) A policy statement prepared under Subsection (a) must:
6 (1) cover an annual period;
7 (2) be updated annually;
8 (3) be reviewed by the Texas Workforce Commission
9 civil rights division [~~on Human Rights~~] for compliance with
10 Subsection (a)(1); and
11 (4) be filed with the governor.

12 SECTION 5.012. Section 203.152(a), Occupations Code, is
13 amended to read as follows:

14 (a) Subject to the approval of the executive commissioner,
15 the midwifery board by rule shall establish reasonable and
16 necessary fees that, in the aggregate, produce sufficient revenue
17 to cover the costs of administering this chapter. Fees for the
18 issuance or renewal of a license under this chapter shall be set in
19 amounts designed to allow the department and the midwifery board to
20 recover from the license holders all of the direct and indirect
21 costs to the department and to the midwifery board in administering
22 and enforcing this chapter.

23 SECTION 5.013. Section 203.252(c), Occupations Code, is
24 amended to read as follows:

25 (c) The term of the initial license begins on the date the
26 requirements are met and extends through March 1 [~~December 31~~] of
27 the second year after the year in which the initial license is

1 issued.

2 SECTION 5.014. Section 203.455, Occupations Code, is
3 amended to read as follows:

4 Sec. 203.455. HEARING. (a) If the person timely requests a
5 hearing, the midwifery board or its designee shall set a hearing and
6 give written notice of the hearing to the person. An administrative
7 law judge of the State Office of Administrative Hearings shall hold
8 the hearing. [~~The midwifery board or its designee may employ a~~
9 ~~hearings examiner for this purpose.~~]

10 (b) The administrative law judge [~~hearings examiner~~] shall
11 make findings of fact and conclusions of law and promptly issue to
12 the midwifery board a proposal for decision as to the occurrence of
13 the violation and the amount of the proposed administrative
14 penalty.

15 SECTION 5.015. Sections 203.502(b) and (c), Occupations
16 Code, are amended to read as follows:

17 (b) If the department [~~commissioner~~] or a health authority
18 determines that a person has violated this chapter and that the
19 violation creates an immediate threat to the health and safety of
20 the public, the department, [~~commissioner~~] or the health
21 authority[~~r~~] with the concurrence of the department
22 [~~commissioner~~], may request the attorney general or a district,
23 county, or city attorney to bring an action in a district court for
24 a restraining order to restrain the violation.

25 (c) If a person has violated this chapter, the department,
26 [~~commissioner~~] or a health authority[~~r~~] with the concurrence of the
27 department [~~commissioner~~], may bring an action in a district court

1 for an injunction to prohibit the person from continuing the
2 violation.

3 SECTION 5.016. Section 352.002, Occupations Code, is
4 amended by amending Subdivisions (3) and (4) and adding Subdivision
5 (5-a) to read as follows:

6 (3) "Contact lens prescription" means a written
7 specification from a physician, optometrist, or therapeutic
8 optometrist for therapeutic, corrective, or cosmetic contact
9 lenses that states the refractive power of the product and other
10 information required to be in the specification by the physician,
11 optometrist, therapeutic optometrist, Texas [State Board of]
12 Medical Board [Examiners], or Texas Optometry Board.

13 (4) "Department" means the [Texas] Department of State
14 Health Services.

15 (5-a) "Executive commissioner" means the executive
16 commissioner of the Health and Human Services Commission.

17 SECTION 5.017. Section 352.003(a), Occupations Code, is
18 amended to read as follows:

19 (a) This chapter does not:

20 (1) authorize a dispensing optician to perform an act
21 on the optician's own authority that the optician is not otherwise
22 authorized to perform, including an act that constitutes the
23 practice of medicine, therapeutic optometry, or optometry;

24 (2) prevent or restrict a person licensed in this
25 state under another law from engaging in the profession or
26 occupation for which the person is licensed without being
27 registered under this chapter;

1 (3) prevent or restrict an employee of a person
2 licensed in this state from performing an employment duty required
3 by the licensed person without being registered under this chapter;

4 (4) prevent or restrict an individual, firm, or
5 corporation from employing a person registered under this chapter
6 or from engaging in spectacle or contact lens dispensing through a
7 person registered under this chapter who is employed at the
8 location at which the dispensing occurs;

9 (5) prevent or restrict an individual, firm, or
10 corporation from employing a person as an assistant, trainee, or
11 apprentice to:

12 (A) engage in spectacle or contact lens
13 dispensing; or

14 (B) provide instruction in the care and handling
15 of contact lenses;

16 (6) prohibit the Texas ~~State Board of~~ Medical Board
17 [~~Examiners~~], the Texas Optometry Board, the attorney general, or
18 another person authorized by law from bringing an appropriate
19 action to enforce a state statute relating to the practice of
20 medicine, therapeutic optometry, or optometry without a license; or

21 (7) require that a person be registered:

22 (A) under this chapter to sell or dispense
23 contact lenses; or

24 (B) as a contact lens dispenser to work in a
25 contact lens manufacturing facility that does not sell its finished
26 product directly to the public.

27 SECTION 5.018. The heading to Subchapter B, Chapter 352,

1 Occupations Code, is amended to read as follows:

2 SUBCHAPTER B. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER AND

3 DEPARTMENT [~~AND BOARD~~]

4 SECTION 5.019. Section 352.053, Occupations Code, is
5 amended to read as follows:

6 Sec. 352.053. RULEMAKING. (a) The executive commissioner
7 [~~board~~] shall adopt procedural rules to implement the registration
8 procedures under this chapter.

9 (b) The executive commissioner [~~board~~] may adopt
10 substantive and procedural rules relating to:

11 (1) establishing minimum requirements for the
12 registration of a dispensing optician;

13 (2) suspending, denying, or revoking a certificate of
14 registration or placing a certificate holder on probation;

15 (3) prescribing fees under this chapter; and

16 (4) adopting forms required by this chapter.

17 (c) The executive commissioner [~~board~~] may not adopt
18 substantive rules relating to this chapter other than substantive
19 rules described by Subsection (b) of this section, Section 352.055,
20 and Section 352.153.

21 SECTION 5.020. Section 352.054, Occupations Code, is
22 amended to read as follows:

23 Sec. 352.054. FEES. (a) The executive commissioner
24 [~~board~~] by rule shall prescribe fees in reasonable amounts
25 sufficient to cover the costs of administering this chapter,
26 including fees for:

27 (1) an initial application for a certificate of

1 registration;

2 (2) issuance of a certificate of registration;

3 (3) issuance of a renewal certificate of registration;

4 and

5 (4) issuance of a duplicate certificate of

6 registration or duplicate renewal certificate of registration.

7 **(b) The executive commissioner shall set fees for issuing or**

8 **renewing a certificate of registration in amounts designed to allow**

9 **the department to recover from the certificate of registration**

10 **holders all of the department's direct and indirect costs in**

11 **administering and enforcing this chapter.**

12 SECTION 5.021. Section 352.055, Occupations Code, is
13 amended to read as follows:

14 Sec. 352.055. RULES REGARDING ADVERTISING OR COMPETITIVE
15 BIDDING. (a) The executive commissioner [board] may not adopt
16 rules restricting advertising or competitive bidding by a
17 registrant except to prohibit false, misleading, or deceptive
18 practices.

19 (b) In the executive commissioner's [its] rules to prohibit
20 false, misleading, or deceptive practices, the executive
21 commissioner [board] may not include a rule that:

22 (1) restricts the use of any medium for advertising;

23 (2) restricts the use of a registrant's personal
24 appearance or voice in an advertisement;

25 (3) relates to the size or duration of an
26 advertisement by the registrant; or

27 (4) restricts the registrant's advertisement under a

1 trade name.

2 SECTION 5.022. Sections [352.102](#)(a) and (b), Occupations
3 Code, are amended to read as follows:

4 (a) The department shall issue a certificate of
5 registration to an applicant who:

6 (1) applies and pays a registration fee;

7 (2) presents evidence satisfactory to the department
8 that the applicant has successfully completed the number of
9 classroom hours of training required by the executive commissioner
10 [~~board~~]; and

11 (3) passes the appropriate examination required under
12 Section [352.103](#).

13 (b) The executive commissioner [~~board~~] may not require more
14 than 30 classroom hours of training as a prerequisite to
15 registration.

16 SECTION 5.023. Section [352.104](#)(a), Occupations Code, is
17 amended to read as follows:

18 (a) A person issued a certificate of registration shall
19 publicly display the certificate in an appropriate manner specified
20 by department [~~board~~] rule.

21 SECTION 5.024. Sections [352.151](#)(a) and (b), Occupations
22 Code, are amended to read as follows:

23 (a) A certificate of registration is valid for two years
24 [~~one year~~] after the date of issuance.

25 (b) The executive commissioner [~~department~~] shall adopt a
26 system under which certificates of registration expire and are
27 renewed on various dates.

1 SECTION 5.025. Sections 352.152(a) and (b), Occupations
2 Code, are amended to read as follows:

3 (a) To renew a certificate of registration, a person must
4 submit an application for renewal in the manner prescribed by the
5 executive commissioner [board].

6 (b) The application must be accompanied by evidence that the
7 applicant has successfully completed the continuing education
8 courses required by department [board] rule.

9 SECTION 5.026. Section 352.153, Occupations Code, is
10 amended to read as follows:

11 Sec. 352.153. CONTINUING EDUCATION. (a) The executive
12 commissioner [board] shall provide for the recognition,
13 preparation, or administration of [~~recognize, prepare, or~~
14 ~~administer~~] continuing education programs for [~~its~~] registrants. A
15 person registered under this chapter must participate in the
16 programs to the extent required by the executive commissioner
17 [board] to keep the person's certificate of registration.

18 (b) The executive commissioner [board] may not require more
19 than 10 classroom hours of continuing education courses each year.

20 SECTION 5.027. Section 352.251, Occupations Code, is
21 amended to read as follows:

22 Sec. 352.251. DENIAL OF CERTIFICATE; DISCIPLINARY ACTION.
23 The department shall deny an application for a certificate of
24 registration, suspend or revoke a certificate of registration, or
25 reprimand a person who is registered under this chapter if the
26 person:

27 (1) obtains a certificate of registration by means of

1 fraud, misrepresentation, or concealment of a material fact;
2 (2) sells, barters, or offers to sell or barter a
3 certificate of registration;
4 (3) violates a department rule [~~adopted by the board~~];
5 (4) violates Section 352.101; or
6 (5) practices medicine, therapeutic optometry, or
7 optometry without a license.

8 SECTION 5.028. Section 352.2525, Occupations Code, is
9 amended to read as follows:

10 Sec. 352.2525. PROBATION. The department [~~board~~] may place
11 on probation a person whose certificate of registration is
12 suspended. If the suspension is probated, the department [~~board~~]
13 may require the person to:

14 (1) report regularly to the department on matters that
15 are the basis of the probation;

16 (2) limit practice to the areas prescribed by the
17 department [~~board~~]; or

18 (3) continue or review professional education until
19 the person attains a degree of skill satisfactory to the department
20 [~~board~~] in those areas that are the basis of the probation.

21 SECTION 5.029. Section 352.304(b), Occupations Code, is
22 amended to read as follows:

23 (b) If the person accepts the department's determination,
24 the department [~~commissioner of public health or the commissioner's~~
25 ~~designee~~] by order shall approve the determination and assess the
26 proposed penalty.

27 SECTION 5.030. Section 352.305(b), Occupations Code, is

1 amended to read as follows:

2 (b) The hearings examiner shall:

3 (1) make findings of fact and conclusions of law; and

4 (2) promptly issue to the department [~~commissioner of~~
5 ~~public health or the commissioner's designee~~] a proposal for
6 decision as to the occurrence of the violation and the amount of any
7 proposed administrative penalty.

8 SECTION 5.031. The heading to Section 352.306, Occupations
9 Code, is amended to read as follows:

10 Sec. 352.306. DECISION BY DEPARTMENT [~~BOARD~~].

11 SECTION 5.032. Section 352.306(a), Occupations Code, is
12 amended to read as follows:

13 (a) Based on the findings of fact, conclusions of law, and
14 proposal for decision, the department [~~commissioner of public~~
15 ~~health or the commissioner's designee~~] by order may determine that:

16 (1) a violation occurred and assess an administrative
17 penalty; or

18 (2) a violation did not occur.

19 SECTION 5.033. Section 352.310(c), Occupations Code, is
20 amended to read as follows:

21 (c) The department may assess reasonable expenses and costs
22 against a person in an administrative hearing if, as a result of the
23 hearing, an administrative penalty is assessed against the person.
24 The person shall pay expenses and costs assessed under this
25 subsection not later than the 30th day after the date the order of
26 the department [~~commissioner of public health or the commissioner's~~
27 ~~designee~~] requiring the payment of expenses and costs is final. The

1 department may refer the matter to the attorney general for
2 collection of expenses and costs.

3 SECTION 5.034. Section 352.351(a), Occupations Code, is
4 amended to read as follows:

5 (a) The department [board], the attorney general, or the
6 district or county attorney for the county in which an alleged
7 violation of this chapter occurs shall, on receipt of a verified
8 complaint, bring an appropriate administrative or judicial
9 proceeding to enforce this chapter or a rule adopted under this
10 chapter.

11 SECTION 5.035. Section 353.002, Occupations Code, is
12 amended by amending Subdivisions (2) and (7) and adding Subdivision
13 (3-a) to read as follows:

14 (2) "Department" means the Department of State Health
15 Services [~~or the Health and Human Services Commission, as
16 consistent with the respective duties of those agencies under the
17 laws of this state~~].

18 (3-a) "Executive commissioner" means the executive
commissioner of the Health and Human Services Commission.

20 (7) "Physician" means a person licensed to practice
21 medicine by the Texas [~~State Board of~~] Medical Board [~~Examiners~~].

22 SECTION 5.036. Section 353.004, Occupations Code, is
23 amended to read as follows:

24 Sec. 353.004. PUBLIC INFORMATION ON PRESCRIPTION RELEASE.
25 (a) The department [board] and the Texas Optometry Board shall
26 prepare and provide to the public and appropriate state agencies
27 information regarding the release and verification of contact lens

1 prescriptions.

2 (b) The executive commissioner [board] may adopt rules
3 necessary to implement this section.

4 SECTION 5.037. Section 353.005, Occupations Code, is
5 amended to read as follows:

6 Sec. 353.005. RULES. (a) The executive commissioner [~~of~~
7 ~~the Health and Human Services Commission~~] shall adopt rules,
8 including rules that require a person dispensing contact lenses to
9 maintain certain information when verifying a prescription under
10 Section 353.1015, as necessary to:

11 (1) govern and implement verification procedures
12 under Section 353.1015; and

13 (2) enter into interagency and other agreements to
14 implement and enforce this chapter.

15 (b) The executive commissioner [~~of the Health and Human~~
16 ~~Services Commission~~] and the Texas Optometry Board shall each adopt
17 rules relating to contact lens prescriptions and the dispensing of
18 contact lenses, including rules that allow for interagency
19 agreements, as necessary to implement and enforce this chapter.

20 (c) In implementing rules under Subsection (b), the
21 executive commissioner [~~of the Health and Human Services~~
22 ~~Commission~~] and the Texas Optometry Board:

23 (1) shall cooperate with one another as necessary to
24 adopt rules that are consistent with the rules adopted by the other
25 agency; and

26 (2) may consult with the Texas [State Board of]
27 Medical Board [Examiners] and the Texas State Board of Pharmacy.

1 SECTION 5.038. Section 353.053, Occupations Code, is
2 amended to read as follows:

3 Sec. 353.053. REQUIREMENTS FOR PERMIT ISSUANCE. The
4 department [board] shall issue a contact lens dispensing permit to
5 an applicant who:

6 (1) agrees in writing to comply with state and federal
7 laws and regulations regarding selling, delivering, or dispensing
8 contact lenses;

9 (2) has not had a contact lens dispensing permit
10 revoked or canceled for cause during the two-year period preceding
11 the application date;

12 (3) provides the department [board] with the trade
13 name and address of each location where the applicant intends to
14 conduct business;

15 (4) provides the department [board] with other
16 information the department [board] reasonably requires; and

17 (5) pays the required permit fee.

18 SECTION 5.039. Section 353.054, Occupations Code, is
19 amended to read as follows:

20 Sec. 353.054. TERM OF PERMIT. (a) A contact lens
21 dispensing permit issued under this subchapter is valid for two
22 years [one year].

23 (b) The department [board] may temporarily extend or
24 shorten the term of a permit to provide for the staggered renewal of
25 permits or for the [annual] renewal of all permits on the same date.
26 The department [board] shall prorate the permit fee to accomplish
27 that purpose.

1 SECTION 5.040. Section 353.055, Occupations Code, is
2 amended to read as follows:

3 Sec. 353.055. PERMIT RENEWAL. (a) To renew a contact lens
4 dispensing permit, a permit holder must apply in the manner
5 prescribed by department [board] rule and pay the permit fee.

6 (b) The department [board] may not require an applicant for
7 renewal of a permit to provide more information than is required for
8 issuance of an original permit.

9 SECTION 5.041. Section 353.056, Occupations Code, is
10 amended to read as follows:

11 Sec. 353.056. [ANNUAL] PERMIT FEE. (a) The executive
12 commissioner by rule shall set fees for the issuance or renewal of
13 permits under this chapter in amounts designed to allow the
14 department to recover from permit holders all of the direct and
15 indirect costs to the department in [board may adopt annual permit
16 fees in amounts reflecting the cost of] administering and enforcing
17 [the provisions of] this chapter [relating to regulating permit
18 holders].

19 (b) The executive commissioner may set different fees
20 [Until changed by the board, the annual permit fee] for a contact
21 lens dispensing permit issued to [is]:

22 (1) [~~\$10 for~~] an optician who has registered with the
23 department;

24 (2) [~~\$25 for~~] an optician who has not registered with
25 the department; and

26 (3) [~~\$100 for~~] a business entity.

27 SECTION 5.042. Section 353.152, Occupations Code, is

1 amended to read as follows:

2 Sec. 353.152. REQUIREMENTS FOR CONTACT LENS PRESCRIPTION.

3 (a) A contact lens prescription must contain, at a minimum:

4 (1) the patient's name;

5 (2) the date the prescription was issued;

6 (3) the manufacturer of the contact lens to be
7 dispensed, if needed;

8 (4) the expiration date of the prescription;

9 (5) the signature of the physician, optometrist, or
10 therapeutic optometrist or a verification of the prescription
11 described by Section 353.1015;

12 (6) if the prescription is issued by an optometrist,
13 specification information required by Texas Optometry Board rule;
14 and

15 (7) if the prescription is issued by a physician,
16 specification information required by Texas [State Board of]
17 Medical Board [Examiners] rule.

18 (b) The Texas Optometry Board and the Texas [State Board of]
19 Medical Board [Examiners] may adopt rules regarding the contents of
20 a prescription for contact lenses.

21 SECTION 5.043. Section 353.202, Occupations Code, is
22 amended to read as follows:

23 Sec. 353.202. DISCIPLINARY ACTION. The department [~~board~~]
24 may suspend or revoke a person's contact lens dispensing permit or
25 place the permit holder on probation for a violation of this
26 chapter.

27 SECTION 5.044. Sections 353.204(b) and (c), Occupations

1 Code, are amended to read as follows:

2 (b) Except as otherwise provided by this section, the
3 department [~~board~~] is responsible for enforcing this chapter.

4 (c) The Texas [~~State Board of~~] Medical Board [~~Examiners~~] is
5 responsible for enforcing this chapter with regard to a violation
6 of this chapter by a physician. A violation of this chapter by a
7 physician is considered to be a violation of Subtitle B.

8 SECTION 5.045. Section 353.205, Occupations Code, is
9 amended to read as follows:

10 Sec. 353.205. ADMINISTRATIVE PENALTY. The department
11 [~~board~~] may impose an administrative penalty of not more than
12 \$1,000 for a violation of this chapter.

13 SECTION 5.046. Section 401.204(a), Occupations Code, is
14 amended to read as follows:

15 (a) The board by rule shall establish fees in amounts that
16 are reasonable and necessary. The board shall set the fees for
17 issuing or renewing a license in amounts designed to allow the
18 department and the board to recover from the license holders all of
19 the direct and indirect costs to the department and to the board in
20 [so that the fees in the aggregate are sufficient to cover the costs
21 of] administering and enforcing this chapter.

22 SECTION 5.047. Section 401.2535(a), Occupations Code, is
23 amended to read as follows:

24 (a) In an investigation of a complaint filed with the board,
25 the board may request that the department [~~commissioner of public~~
26 ~~health or the commissioner's designee~~] approve the issuance of a
27 subpoena. If the request is approved, the board may issue a

1 subpoena to compel the attendance of a relevant witness or the
2 production, for inspection or copying, of relevant evidence that is
3 in this state.

4 SECTION 5.048. Section 401.351(a), Occupations Code, is
5 amended to read as follows:

6 (a) A license issued under this chapter is valid for two
7 years. The board by rule may adopt a system under which licenses
8 expire on various dates during the year.

9 SECTION 5.049. Section 401.352(a), Occupations Code, is
10 amended to read as follows:

11 (a) Each licensed speech-language pathologist or
12 audiologist must [annually] pay the nonrefundable fee for license
13 renewal. The board shall allow a 60-day grace period. After
14 expiration of the grace period, the board may renew a license on
15 payment of a penalty set by board rule.

16 SECTION 5.050. Section 401.553, Occupations Code, is
17 amended to read as follows:

18 Sec. 401.553. [REPORT AND] NOTICE OF VIOLATION AND PENALTY.
19 [(a)] If the department [commissioner of public health or the
20 commissioner's designee] determines that a violation occurred, the
21 department [commissioner or the designee may issue to the board a
22 report stating.]

23 [(1) the facts on which the determination is based;
24 and

25 [(2) the commissioner's or the designee's
26 recommendation on the imposition of an administrative penalty,
27 including a recommendation on the amount of the penalty.]

1 [(b) Within 14 days after the date the report is issued, the
2 ~~commissioner of public health or the commissioner's designee~~] shall
3 give written notice of the violation [~~report~~] to the person. The
4 notice must:

- 5 (1) include a brief summary of the alleged violation;
6 (2) state the amount of the [~~recommended~~]
7 administrative penalty recommended by the department; and
8 (3) inform the person of the person's right to a
9 hearing on the occurrence of the violation, the amount of the
10 penalty, or both.

11 SECTION 5.051. Section 401.554, Occupations Code, is
12 amended to read as follows:

13 Sec. 401.554. PENALTY TO BE PAID OR HEARING REQUESTED. (a)
14 Within 10 days after the date the person receives the notice, the
15 person in writing may:

- 16 (1) accept the determination and recommended
17 administrative penalty of the department [~~commissioner of public~~
18 ~~health or the commissioner's designee~~]; or
19 (2) make a request for a hearing on the occurrence of
20 the violation, the amount of the penalty, or both.

21 (b) If the person accepts the determination and recommended
22 penalty of the department [~~commissioner of public health or the~~
23 ~~commissioner's designee~~], the board by order shall approve the
24 determination and impose the recommended penalty.

25 SECTION 5.052. Section 401.555(a), Occupations Code, is
26 amended to read as follows:

- 27 (a) If the person requests a hearing or fails to respond in a

1 timely manner to the notice, the department [~~commissioner of public~~
2 ~~health or the commissioner's designee~~] shall set a hearing and give
3 written notice of the hearing to the person.

4 SECTION 5.053. Sections [401.557](#)(b) and (c), Occupations
5 Code, are amended to read as follows:

6 (b) Within the 30-day period prescribed by Subsection (a), a
7 person who files a petition for judicial review may:

8 (1) stay enforcement of the penalty by:

9 (A) paying the penalty to the court for placement
10 in an escrow account; or

11 (B) giving the court a supersedeas bond approved
12 by the court that:

13 (i) is for the amount of the penalty; and

14 (ii) is effective until all judicial review
15 of the board's order is final; or

16 (2) request the court to stay enforcement of the
17 penalty by:

18 (A) filing with the court a sworn affidavit of
19 the person stating that the person is financially unable to pay the
20 penalty and is financially unable to give the supersedeas bond; and

21 (B) giving a copy of the affidavit to the
22 department [~~commissioner of public health or the commissioner's~~
23 ~~designee~~] by certified mail.

24 (c) If the department [~~commissioner of public health or the~~
25 ~~commissioner's designee~~] receives a copy of an affidavit under
26 Subsection (b)(2), the department [~~commissioner or the designee~~]
27 may file with the court, within five days after the date the copy is

1 received, a contest to the affidavit.

2 SECTION 5.054. Section [402.001](#), Occupations Code, is
3 amended by adding Subdivision (3-a) to read as follows:

4 (3-a) "Executive commissioner" means the executive
5 commissioner of the Health and Human Services Commission.

6 SECTION 5.055. Section [402.051\(a\)](#), Occupations Code, is
7 amended to read as follows:

8 (a) The State Committee of Examiners in the Fitting and
9 Dispensing of Hearing Instruments is part of the department and
10 consists of nine members appointed by the governor with the advice
11 and consent of the senate as follows:

12 (1) six members licensed under this chapter who have
13 been residents of this state actually engaged in fitting and
14 dispensing hearing instruments for at least five years preceding
15 appointment, not more than one of whom may be licensed under Chapter
16 401;

17 (2) one member who is actively practicing as a
18 physician licensed by the Texas ~~[State Board of]~~ Medical Board
19 ~~[Examiners]~~ and who:

20 (A) has been a resident of this state for at least
21 two years preceding appointment;

22 (B) is a citizen of the United States; and

23 (C) specializes in the practice of
24 otolaryngology; and

25 (3) two members of the public.

26 SECTION 5.056. Section [402.056\(c\)](#), Occupations Code, is
27 amended to read as follows:

1 (c) If the commissioner of state health services [~~the~~
2 ~~department~~] has knowledge that a potential ground for removal
3 exists, the commissioner shall notify the presiding officer of the
4 committee of the potential ground. The presiding officer shall
5 then notify the governor and the attorney general that a potential
6 ground for removal exists. If the potential ground for removal
7 involves the presiding officer, the commissioner shall notify the
8 next highest ranking officer of the committee, who shall then
9 notify the governor and the attorney general that a potential
10 ground for removal exists.

11 SECTION 5.057. Section 402.102, Occupations Code, is
12 amended to read as follows:

13 Sec. 402.102. RULES. (a) Subject to the approval of the
14 executive commissioner [~~board~~], the committee may adopt procedural
15 rules as necessary for the performance of the committee's duties.

16 (b) A license holder under this chapter is subject to the
17 rules adopted by the committee and approved by the executive
18 commissioner [~~board~~] under this chapter.

19 SECTION 5.058. Section 402.106(a), Occupations Code, is
20 amended to read as follows:

21 (a) The committee by rule shall adopt fees in amounts that
22 are reasonable and necessary. The committee shall set the fees for
23 issuing or renewing a license in amounts designed to allow the
24 department and the committee to recover from the license holders
25 all of the direct and indirect costs to the department and to the
26 committee in [so that the fees, in the aggregate, produce
27 sufficient revenue to cover the costs of] administering and

1 enforcing this chapter.

2 SECTION 5.059. Sections [402.154](#)(a) and (h), Occupations
3 Code, are amended to read as follows:

4 (a) In an investigation of a complaint filed with the
5 committee, the committee may request that the department
6 [~~commissioner of public health or the commissioner's designee~~]
7 approve the issuance of a subpoena. If the request is approved, the
8 committee may issue a subpoena to compel the attendance of a
9 relevant witness or the production, for inspection or copying, of
10 relevant evidence that is in this state.

11 (h) All information and materials subpoenaed or compiled by
12 the committee in connection with a complaint and investigation are
13 confidential and not subject to disclosure under Chapter 552,
14 Government Code, and not subject to disclosure, discovery,
15 subpoena, or other means of legal compulsion for their release to
16 anyone other than the committee or its agents or employees who are
17 involved in discipline of the holder of a license, except that this
18 information may be disclosed to:

19 (1) persons involved with the committee in a
20 disciplinary action against the holder of a license;

21 (2) professional licensing or disciplinary boards for
22 the fitting and dispensing of hearing instruments in other
23 jurisdictions;

24 (3) peer assistance programs approved by the executive
25 commissioner [~~board~~] under Chapter 467, Health and Safety Code;

26 (4) law enforcement agencies; and

27 (5) persons engaged in bona fide research, if all

1 individual-identifying information has been deleted.

2 SECTION 5.060. Section 402.451(b), Occupations Code, is
3 amended to read as follows:

4 (b) A license or permit holder may not:

5 (1) solicit a potential customer by telephone unless
6 the license or permit holder clearly discloses the holder's name
7 and business address and the purpose of the communication;

8 (2) use or purchase for use a list of names of
9 potential customers compiled by telephone by a person other than
10 the license or permit holder, the license or permit holder's
11 authorized agent, or another license or permit holder; or

12 (3) perform any act that requires a license from the
13 Texas Optometry Board or the Texas [State Board of] Medical Board
14 [Examiners].

15 SECTION 5.061. Section 402.452, Occupations Code, is
16 amended to read as follows:

17 Sec. 402.452. INVESTIGATION BY DEPARTMENT [BOARD]. The
18 [~~board, with the aid of the~~] department[~~T~~] shall investigate a
19 person who violates this chapter.

20 SECTION 5.062. Section 402.453(a), Occupations Code, is
21 amended to read as follows:

22 (a) A license holder may not treat the ear in any manner for
23 any defect or administer any drug or physical treatment unless the
24 license holder is a physician licensed to practice by the Texas
25 [State Board of] Medical Board [Examiners].

26 SECTION 5.063. Section 402.501, Occupations Code, is
27 amended to read as follows:

1 Sec. 402.501. GROUNDS FOR LICENSE DENIAL AND DISCIPLINARY
2 ACTION. The committee may refuse to issue or renew a license,
3 revoke or suspend a license or permit, place on probation a person
4 whose license or permit has been suspended, or reprimand a license
5 or permit holder who:

6 (1) makes a material misstatement in furnishing
7 information to the committee or to another state or federal agency;

8 (2) violates this chapter or a rule adopted under this
9 chapter;

10 (3) is convicted of a felony or misdemeanor that
11 includes dishonesty as an essential element or of a crime directly
12 related to the practice of fitting and dispensing hearing
13 instruments;

14 (4) makes a misrepresentation for the purpose of
15 obtaining or renewing a license, including falsifying the
16 educational requirements under this chapter;

17 (5) is professionally incompetent or engages in
18 malpractice or dishonorable, unethical, or unprofessional conduct
19 that is likely to deceive, defraud, or harm the public;

20 (6) aids or assists another person in violating this
21 chapter or a rule adopted under this chapter;

22 (7) does not provide information in response to a
23 written request made by the department [board] within 60 days;

24 (8) directly or indirectly knowingly employs, hires,
25 procures, or induces a person not licensed under this chapter to fit
26 and dispense hearing instruments unless the person is exempt under
27 this chapter;

- 1 (9) aids a person not licensed under this chapter in
2 the fitting or dispensing of hearing instruments unless the person
3 is exempt under this chapter;
- 4 (10) is habitually intoxicated or addicted to a
5 controlled substance;
- 6 (11) directly or indirectly gives to or receives from
7 a person a fee, commission, rebate, or other form of compensation
8 for a service not actually provided;
- 9 (12) violates a term of probation;
- 10 (13) wilfully makes or files a false record or report;
- 11 (14) has a physical illness that results in the
12 inability to practice the profession with reasonable judgment,
13 skill, or safety, including the deterioration or loss of motor
14 skills through aging;
- 15 (15) solicits a service by advertising that is false
16 or misleading;
- 17 (16) participates in subterfuge or misrepresentation
18 in the fitting or dispensing of a hearing instrument;
- 19 (17) knowingly advertises for sale a model or type of
20 hearing instrument that cannot be purchased;
- 21 (18) falsely represents that the service of a licensed
22 physician or other health professional will be used or made
23 available in the fitting, adjustment, maintenance, or repair of a
24 hearing instrument;
- 25 (19) falsely uses the term "doctor," "audiologist,"
26 "clinic," "clinical audiologist," "state licensed," "state
27 certified," "licensed hearing instrument dispenser," "board

1 certified hearing instrument specialist," "hearing instrument
2 specialist," or "certified hearing aid audiologist," or uses any
3 other term, abbreviation, or symbol that falsely gives the
4 impression that:

9 (20) advertises a manufacturer's product or uses a
10 manufacturer's name or trademark in a way that implies a
11 relationship between a license or permit holder and a manufacturer
12 that does not exist;

17 (A) purchase or contract to purchase products
18 sold or offered for sale by the license or permit holder; or

19 (B) refrain from purchasing or contracting to
20 purchase products sold or offered for sale by another license or
21 permit holder under this chapter;

(22) with fraudulent intent fits and dispenses a hearing instrument under any name, including a false name or alias;

27 (24) violates a regulation of the federal Food and

1 Drug Administration or the Federal Trade Commission relating to
2 hearing instruments.

3 SECTION 5.064. Section 402.551(a), Occupations Code, is
4 amended to read as follows:

5 (a) The committee, with the department's [board's]
6 approval, may impose an administrative penalty on a person
7 described in this chapter for a violation of this chapter or a rule
8 adopted under this chapter.

9 SECTION 5.065. Subchapter B, Chapter 403, Occupations Code,
10 is amended by adding Section 403.053 to read as follows:

11 Sec. 403.053. FEES. The executive commissioner shall set
12 fees for the issuance or renewal of a license under this chapter in
13 amounts designed to allow the department to recover from the
14 license holders all of the direct and indirect costs to the
15 department in administering and enforcing this chapter.

16 SECTION 5.066. Subchapter C, Chapter 403, Occupations Code,
17 is amended by adding Section 403.1025 to read as follows:

18 Sec. 403.1025. TERM OF LICENSE. A license issued under this
19 chapter is valid for two years.

20 SECTION 5.067. Section 403.107(a), Occupations Code, is
21 amended to read as follows:

22 (a) To obtain a license, an applicant must:

23 (1) pass a written examination approved by the
24 department under Subsection (b); and

25 (2) pay fees set by the executive commissioner by
26 rule.

27 SECTION 5.068. Section 403.202, Occupations Code, is

1 amended to read as follows:

2 Sec. 403.202. PROHIBITED ACTIONS. A license holder may
3 not:

4 (1) obtain a license by means of fraud,
5 misrepresentation, or concealment of a material fact;

6 (2) sell, barter, or offer to sell or barter a license;
7 or

8 (3) engage in unprofessional conduct that endangers or
9 is likely to endanger the health, welfare, or safety of the public
10 as defined by department [~~executive commissioner~~] rule.

11 SECTION 5.069. Section 403.205(b), Occupations Code, is
12 amended to read as follows:

13 (b) The executive commissioner shall prescribe procedures
14 for appealing to the department [~~commissioner~~] a decision to
15 revoke, suspend, or refuse to renew a license.

16 SECTION 5.070. Section 403.251(a), Occupations Code, is
17 amended to read as follows:

18 (a) A person who violates this chapter, a rule adopted by
19 the executive commissioner under this chapter, or an order adopted
20 by the department [~~commissioner~~] under this chapter is liable for a
21 civil penalty not to exceed \$500 for each occurrence.

22 SECTION 5.071. Section 403.252(a), Occupations Code, is
23 amended to read as follows:

24 (a) If it appears to the department [~~commissioner~~] that a
25 person who is not licensed under this chapter is violating this
26 chapter or a rule adopted under this chapter, the department
27 [~~commissioner~~] after notice and an opportunity for a hearing may

1 issue a cease and desist order prohibiting the person from engaging
2 in the activity.

3 SECTION 5.072. Sections 451.001(5) and (6), Occupations
4 Code, are amended to read as follows:

5 (5) "Commissioner" means the commissioner of state
6 [~~public~~] health services.

7 (6) "Department" means the [~~Texas~~] Department of State
8 Health Services.

9 SECTION 5.073. Section 451.002, Occupations Code, is
10 amended to read as follows:

11 Sec. 451.002. INTERPRETATION; PRACTICE OF MEDICINE. This
12 chapter does not authorize the practice of medicine by a person not
13 licensed by the Texas Medical [State] Board [~~of Medical Examiners~~].

14 SECTION 5.074. Section 451.003, Occupations Code, is
15 amended to read as follows:

16 Sec. 451.003. APPLICABILITY. This chapter does not apply
17 to:

18 (1) a physician licensed by the Texas Medical [~~State~~]
19 Board [~~of Medical Examiners~~];

20 (2) a dentist, licensed under the laws of this state,
21 engaged in the practice of dentistry;

22 (3) a licensed optometrist or therapeutic optometrist
23 engaged in the practice of optometry or therapeutic optometry as
24 defined by statute;

25 (4) an occupational therapist engaged in the practice
26 of occupational therapy;

27 (5) a nurse engaged in the practice of nursing;

1 (6) a licensed podiatrist engaged in the practice of
2 podiatry as defined by statute;

3 (7) a physical therapist engaged in the practice of
4 physical therapy;

5 (8) a registered massage therapist engaged in the
6 practice of massage therapy;

7 (9) a commissioned or contract physician, physical
8 therapist, or physical therapist assistant in the United States
9 Army, Navy, Air Force, or Public Health Service; or

10 (10) an athletic trainer who does not live in this
11 state, who is licensed, registered, or certified by an authority
12 recognized by the board, and who provides athletic training in this
13 state for a period determined by the board.

14 SECTION 5.075. Section [451.106](#), Occupations Code, is
15 amended to read as follows:

16 Sec. 451.106. FEES. After consultation with the
17 ~~[commissioner of public health or the]~~ department, the board by
18 rule shall set fees under this chapter in amounts reasonable and
19 necessary to cover the cost of administering this chapter. The fees
20 for issuing or renewing a license must be in amounts designed to
21 allow the department and the board to recover from the license
22 holders all of the direct and indirect costs to the department and
23 to the board in administering and enforcing this chapter.

24 SECTION 5.076. Section [451.201\(a\)](#), Occupations Code, is
25 amended to read as follows:

26 (a) A license issued under Section [451.156](#) expires on the
27 second [first] anniversary of the date of issuance.

1 SECTION 5.077. Section 455.057, Occupations Code, is
2 amended to read as follows:

3 Sec. 455.057. CONTINUING EDUCATION. The executive
4 commissioner shall provide for the recognition, preparation, or
5 administration of [recognize, prepare, or administer] continuing
6 education programs for persons licensed under this chapter. A
7 licensed person must participate in the programs to the extent
8 required by the executive commissioner to keep the person's
9 license.

10 SECTION 5.078. Subchapter B, Chapter 455, Occupations Code,
11 is amended by adding Section 455.058 to read as follows:

12 Sec. 455.058. FEES. The executive commissioner shall set
13 fees for the issuance or renewal of a license under this chapter in
14 amounts designed to allow the department to recover from the
15 license holders all of the direct and indirect costs to the
16 department in administering and enforcing this chapter.

17 SECTION 5.079. Section 455.103(b), Occupations Code, is
18 amended to read as follows:

19 (b) A memorandum must:

20 (1) be adopted by the executive commissioner by rule;
21 and

22 (2) limit the total amount of the fees charged by the
23 department and the Texas Education Agency for licensing a massage
24 school to an amount equal to the amount of the fees the department
25 would charge for licensing the massage school in the absence of the
26 memorandum.

27 SECTION 5.080. Section 455.151(d), Occupations Code, is

1 amended to read as follows:

2 (d) The department may issue one or more types of licenses
3 not otherwise provided for by this chapter that authorize the
4 license holder to perform a service described by Subsection (c).
5 The executive commissioner [department] may adopt rules governing a
6 license issued under this subsection.

7 SECTION 5.081. Section 455.153, Occupations Code, is
8 amended to read as follows:

9 Sec. 455.153. APPLICATION FOR LICENSE. An applicant for a
10 license under this chapter must:

11 (1) submit an application on a form provided by the
12 department; and

13 (2) include with the application the application fee
14 set by the executive commissioner by rule [department].

15 SECTION 5.082. Section 455.1572(e), Occupations Code, is
16 amended to read as follows:

17 (e) The executive commissioner by rule [department] may
18 establish a fee for a provisional license [~~in an amount reasonable~~
19 ~~and necessary to cover the cost of issuing the license~~].

20 SECTION 5.083. Section 455.158, Occupations Code, is
21 amended to read as follows:

22 Sec. 455.158. STUDENT EXEMPTION FROM LICENSING
23 REQUIREMENTS. A student who provides massage therapy as part of an
24 internship program or without compensation is exempt from licensing
25 under this chapter if the student is enrolled in a state-approved
26 course of instruction that consists of at least 500 [~~300~~] hours.

27 SECTION 5.084. Sections 455.160(a) and (b), Occupations

1 Code, are amended to read as follows:

2 (a) A license issued under this chapter is valid for two
3 years [~~A person licensed under this chapter must periodically renew~~
4 ~~the person's license~~]. The license expires unless the license
5 holder submits an application for renewal accompanied by the
6 renewal fee prescribed by the executive commissioner by rule
7 [~~department~~] or by the late fee prescribed by this section.

8 (b) The executive commissioner [~~department~~] shall adopt a
9 system under which licenses expire on various dates during the
10 year. Fees must be prorated so that a licensed person pays only for
11 that part of the renewal period for which the license is issued
12 until the expiration date of the license.

13 SECTION 5.085. Sections [455.203](#)(a) and (b), Occupations
14 Code, are amended to read as follows:

15 (a) A massage school must meet the minimum standards of
16 operation established by department [~~executive commissioner~~] rule.

17 (b) An instructor must meet the minimum requirements
18 established by department [~~executive commissioner~~] rule.

19 SECTION 5.086. Section [455.251](#)(a), Occupations Code, is
20 amended to read as follows:

21 (a) The department may refuse to issue a license to a person
22 and shall suspend, revoke, or refuse to renew the license of a
23 person or shall reprimand a person licensed under this chapter if
24 the person:

25 (1) obtains a license by fraud, misrepresentation, or
26 concealment of material facts;

27 (2) sells, barters, or offers to sell or barter a

1 license;

2 (3) violates a rule adopted by the executive
3 commissioner under this chapter;

4 (4) engages in unprofessional conduct as defined by
5 department [~~executive commissioner~~] rule that endangers or is
6 likely to endanger the health, welfare, or safety of the public;

7 (5) violates an order or ordinance adopted by a
8 political subdivision under Chapter 243, Local Government Code; or

9 (6) violates this chapter.

10 SECTION 5.087. Section 455.304(b), Occupations Code, is
11 amended to read as follows:

12 (b) If the person accepts the department's determination,
13 the department [~~executive commissioner or the commissioner's~~
14 ~~designee~~] by order shall approve the determination and require the
15 person to pay the recommended penalty.

16 SECTION 5.088. Section 455.305(b), Occupations Code, is
17 amended to read as follows:

18 (b) The hearings examiner shall:

19 (1) make findings of fact and conclusions of law; and

20 (2) promptly issue to the department [~~executive~~
21 ~~commissioner or the commissioner's designee~~] a proposal for
22 decision as to the occurrence of the violation, and, if the examiner
23 determines a penalty is warranted, the amount of the proposed
24 administrative penalty.

25 SECTION 5.089. The heading to Section 455.306, Occupations
26 Code, is amended to read as follows:

27 Sec. 455.306. DECISION BY DEPARTMENT [~~EXECUTIVE~~

1 ~~COMMISSIONER~~].

2 SECTION 5.090. Section 455.306(a), Occupations Code, is
3 amended to read as follows:

4 (a) Based on the findings of fact, conclusions of law, and
5 recommendations of the hearings examiner, the department
6 [~~executive commissioner or the commissioner's designee~~] by order
7 may determine that:

8 (1) a violation occurred and may impose an
9 administrative penalty; or

10 (2) a violation did not occur.

11 SECTION 5.091. Section 455.310(b), Occupations Code, is
12 amended to read as follows:

13 (b) The department may assess reasonable expenses and costs
14 against a person in an administrative hearing if, as a result of the
15 hearing, an administrative penalty is assessed against the person.
16 The person shall pay expenses and costs assessed under this
17 subsection not later than the 30th day after the date the order of
18 the department [~~executive commissioner or the commissioner's~~
19 ~~designee~~] requiring the payment of expenses and costs is final. The
20 department may refer the matter to the attorney general for
21 collection of expenses and costs.

22 SECTION 5.092. Section 502.153(a), Occupations Code, is
23 amended to read as follows:

24 (a) The board by rule shall set fees in amounts reasonable
25 and necessary to cover the costs of administering this chapter. The
26 board shall set fees for the issuance or renewal of a license under
27 this chapter in amounts designed to allow the department and the

1 board to recover from the license holders all of the direct and
2 indirect costs to the department and to the board in administering
3 and enforcing this chapter.

4 SECTION 5.093. Section 502.2045(a), Occupations Code, is
5 amended to read as follows:

6 (a) In an investigation of a complaint filed with the board,
7 the board may request that the department [commissioner or the
8 commissioner's designee] approve the issuance of a subpoena. If
9 the request is approved, the board may issue a subpoena to compel
10 the attendance of a relevant witness or the production, for
11 inspection or copying, of relevant evidence that is in this state.

12 SECTION 5.094. Section 502.254(b), Occupations Code, is
13 amended to read as follows:

14 (b) An applicant for a license as a licensed marriage and
15 family therapist associate under Section 502.252(b) must:

16 (1) file an application on a form prescribed by the
17 board not later than the 90th day before the date of the
18 examination; and

19 (2) pay the examination fee set by the executive
20 commissioner of the Health and Human Services Commission by rule
21 [~~Texas Board of Health~~].

22 SECTION 5.095. Section 502.260(c), Occupations Code, is
23 amended to read as follows:

24 (c) A license holder whose license is on inactive status:

25 (1) is not required to pay a [~~an annual~~] renewal fee;
26 and

27 (2) may not perform an activity regulated under this

1 chapter.

2 SECTION 5.096. Section 502.401, Occupations Code, is
3 amended to read as follows:

4 Sec. 502.401. IMPOSITION OF PENALTY. The board
5 [~~commissioner~~] may impose an administrative penalty on a person
6 licensed or regulated under this chapter who violates this chapter
7 or a rule or order adopted under this chapter.

8 SECTION 5.097. Section 502.403, Occupations Code, is
9 amended to read as follows:

10 Sec. 502.403. [~~REPORT AND~~] NOTICE OF VIOLATION AND PENALTY.
11 [(a)] If the department [~~commissioner~~] determines that a violation
12 has occurred, the department [~~commissioner may issue to the board a~~
13 ~~report stating:~~

14 [(1) ~~the facts on which the determination is based;~~,
15 and

16 [(2) ~~the commissioner's recommendation on the~~
17 ~~imposition of the administrative penalty, including a~~
18 ~~recommendation on the amount of the penalty.~~

19 [(b)] ~~Not later than the 14th day after the date the report is~~
20 ~~issued, the commissioner]~~ shall give written notice of the
21 violation [~~report~~] to the person on whom the penalty may be imposed.

22 The notice may be given by certified mail. The notice must:

23 (1) include a brief summary of the alleged violation;
24 (2) state the amount of the administrative
25 [~~recommended~~] penalty recommended by the department; and
26 (3) inform the person of the person's right to a
27 hearing on the occurrence of the violation, the amount of the

1 penalty, or both.

2 SECTION 5.098. Section [502.404](#), Occupations Code, is
3 amended to read as follows:

4 Sec. 502.404. PENALTY TO BE PAID OR HEARING REQUESTED. (a)
5 Not later than the 20th day after the date the person receives the
6 notice under Section [502.403](#), the person, in writing, may:

7 (1) accept the department's [~~commissioner's~~]
8 determination and recommended administrative penalty; or
9 (2) request a hearing on the occurrence of the
10 violation, the amount of the penalty, or both.

11 (b) If the person accepts the department's [~~commissioner's~~]
12 determination and recommended administrative penalty, the board by
13 order shall approve the determination and impose the recommended
14 penalty.

15 SECTION 5.099. Sections [502.407](#)(b) and (c), Occupations
16 Code, are amended to read as follows:

17 (b) Within the 30-day period, a person who acts under
18 Subsection (a)(3) may:

19 (1) stay enforcement of the penalty by:
20 (A) paying the penalty to the court for placement
21 in an escrow account; or
22 (B) giving to the court a supersedeas bond
23 approved by the court for the amount of the penalty that is
24 effective until all judicial review of the board's order is final;
25 or
26 (2) request the court to stay enforcement of the
27 penalty by:

1 (A) filing with the court a sworn affidavit of
2 the person stating that the person is financially unable to pay the
3 penalty and is financially unable to give the supersedeas bond; and
4 (B) giving a copy of the affidavit to the
5 department [~~commissioner~~] by certified mail.

6 (c) If the department [~~commissioner~~] receives a copy of an
7 affidavit under Subsection (b)(2), the department [~~commissioner~~]
8 may file with the court a contest to the affidavit not later than
9 the fifth day after the date the copy is received.

10 SECTION 5.100. Section 502.408, Occupations Code, is
11 amended to read as follows:

12 Sec. 502.408. COLLECTION OF PENALTY. If the person does not
13 pay the administrative penalty and the enforcement of the penalty
14 is not stayed, the department [~~commissioner~~] may refer the matter
15 to the attorney general for collection.

16 SECTION 5.101. Section 503.151, Occupations Code, is
17 amended to read as follows:

18 Sec. 503.151. EXECUTIVE DIRECTOR. The commissioner of
19 state [~~public~~] health services, with the advice and consent of the
20 board, shall appoint an executive director for the board. The
21 executive director must be an employee of the department.

22 SECTION 5.102. Section 503.202(a), Occupations Code, is
23 amended to read as follows:

24 (a) The board by rule shall establish fees for the board's
25 services in amounts reasonable and necessary to cover the costs of
26 administering this chapter without accumulating an unnecessary
27 surplus. The board shall set fees for the issuance or renewal of a

1 license under this chapter in amounts designed to allow the
2 department and the board to recover from the license holders all of
3 the direct and indirect costs to the department and to the board in
4 administering and enforcing this chapter.

5 SECTION 5.103. Section 503.2545(a), Occupations Code, is
6 amended to read as follows:

7 (a) In an investigation of a complaint filed with the board,
8 the board may request that the department [~~commissioner of public~~
~~health or the commissioner's designee~~] approve the issuance of a
10 subpoena. If the request is approved, the board may issue a subpoena
11 to compel the attendance of a relevant witness or the production,
12 for inspection or copying, of relevant evidence that is in this
13 state.

14 SECTION 5.104. Section 503.503, Occupations Code, is
15 amended to read as follows:

16 Sec. 503.503. [REPORT AND] NOTICE OF VIOLATION AND PENALTY.
17 [(a)] If the department [~~commissioner of public health or the~~
~~commissioner's designee~~] determines that a violation occurred, the
19 department [~~commissioner or the designee may issue to the board a~~
20 ~~report stating:~~

21 [(1) ~~the facts on which the determination is based,~~
22 ~~and~~

23 [(2) ~~the commissioner's or the designee's~~
24 ~~recommendation on the imposition of an administrative penalty,~~
25 ~~including a recommendation on the amount of the penalty.~~

26 [(b) ~~Within 14 days after the date the report is issued, the~~
27 ~~commissioner of public health or the commissioner's designee~~ shall

1 give written notice of the violation [~~report~~] to the person. The
2 notice must:

- 3 (1) include a brief summary of the alleged violation;
4 (2) state the amount of the [~~recommended~~]
5 administrative penalty recommended by the department; and
6 (3) inform the person of the person's right to a
7 hearing on the occurrence of the violation, the amount of the
8 penalty, or both.

9 SECTION 5.105. Section 503.504, Occupations Code, is
10 amended to read as follows:

11 Sec. 503.504. PENALTY TO BE PAID OR HEARING REQUESTED. (a)
12 Within 10 days after the date the person receives the notice, the
13 person in writing may:

- 14 (1) accept the determination and recommended
15 administrative penalty of the department [~~commissioner of public~~
16 ~~health or the commissioner's designee~~]; or
17 (2) make a request for a hearing on the occurrence of
18 the violation, the amount of the penalty, or both.

19 (b) If the person accepts the determination and recommended
20 penalty of the department [~~commissioner of public health or the~~
21 ~~commissioner's designee~~], the board by order shall approve the
22 determination and impose the recommended penalty.

23 SECTION 5.106. Section 503.505(a), Occupations Code, is
24 amended to read as follows:

- 25 (a) If the person requests a hearing or fails to respond in a
26 timely manner to the notice, the department [~~commissioner of public~~
27 ~~health or the commissioner's designee~~] shall set a hearing and give

1 written notice of the hearing to the person.

2 SECTION 5.107. Sections 503.507(b) and (c), Occupations
3 Code, are amended to read as follows:

4 (b) Within the 30-day period prescribed by Subsection (a), a
5 person who files a petition for judicial review may:

6 (1) stay enforcement of the penalty by:

7 (A) paying the penalty to the court for placement
8 in an escrow account; or

9 (B) giving the court a supersedeas bond approved
10 by the court that:

11 (i) is for the amount of the penalty; and

12 (ii) is effective until all judicial review
13 of the board's order is final; or

14 (2) request the court to stay enforcement of the
15 penalty by:

16 (A) filing with the court a sworn affidavit of
17 the person stating that the person is financially unable to pay the
18 penalty and is financially unable to give the supersedeas bond; and

19 (B) giving a copy of the affidavit to the
20 department [~~commissioner of public health or the commissioner's~~
21 ~~designee~~] by certified mail.

22 (c) If the department [~~commissioner of public health or the~~
23 ~~commissioner's designee~~] receives a copy of an affidavit under
24 Subsection (b)(2), the department [~~commissioner or the designee~~]
25 may file with the court, within five days after the date the copy is
26 received, a contest to the affidavit.

27 SECTION 5.108. Section 504.053(a), Occupations Code, is

1 amended to read as follows:

2 (a) The executive commissioner by rule shall set
3 application, examination, license renewal, and other fees in
4 amounts sufficient to cover the costs of administering this
5 chapter. The fees for the issuance or renewal of a license under
6 this chapter shall be set in amounts designed to allow the
7 department to recover from the license holders all of the direct and
8 indirect costs to the department in administering and enforcing
9 this chapter. [The amount of the license renewal fee may not exceed
10 \$200.]

11 SECTION 5.109. Section 504.055(d), Occupations Code, is
12 amended to read as follows:

13 (d) The department may charge a fee in an amount set by the
14 executive commissioner by rule for the roster published under this
15 section.

16 SECTION 5.110. Section 504.1521(b), Occupations Code, is
17 amended to read as follows:

18 (b) The executive commissioner shall adopt rules necessary
19 to:

20 (1) register clinical training institutions that meet
21 the criteria established by the executive commissioner[~~, or department~~] to protect the safety and welfare of
22 the people of this state; and

23 (2) certify clinical supervisors who hold
24 certification credentials approved by the department or by a person
25 designated by the department, such as the International
26 Certification and Reciprocity Consortium or another person that

1 meets the criteria established by the executive commissioner[~~or
2 commissioner, or department~~] to protect the safety and welfare of
3 the people of this state.

4 SECTION 5.111. Section 504.1525(a), Occupations Code, is
5 amended to read as follows:

6 (a) Except as provided by Subsection (b), the department may
7 not issue a license, registration, or certification under this
8 chapter to an applicant who has been:

9 (1) convicted or placed on community supervision
10 during the three years preceding the date of application in any
11 jurisdiction for an offense equal to a Class B misdemeanor
12 specified by department [~~executive commissioner~~] rule;

13 (2) convicted or placed on community supervision in
14 any jurisdiction for an offense equal to or greater than a Class A
15 misdemeanor specified by department [~~executive commissioner~~] rule;
16 or

17 (3) found to be incapacitated by a court on the basis
18 of a mental defect or disease.

19 SECTION 5.112. Section 504.158(c), Occupations Code, is
20 amended to read as follows:

21 (c) The executive commissioner by rule [~~department~~] may
22 establish a fee for a provisional license [~~in an amount reasonable
23 and necessary to cover the cost of issuing the license~~].

24 SECTION 5.113. Section 504.161(b), Occupations Code, is
25 amended to read as follows:

26 (b) The department may charge a person on whom criminal
27 history record information is sought a fee in an amount set by the

1 executive commissioner by rule [department] as reasonably
2 necessary to cover the costs of administering this section. A fee
3 collected under this subsection may be appropriated only to the
4 department to administer this section.

5 SECTION 5.114. Section 504.255(a), Occupations Code, is
6 amended to read as follows:

7 (a) A person whose license, registration, or certification
8 application is denied under Section 504.1525, whose license,
9 registration, or certification renewal is refused under Section
10 504.2025, or whose license, registration, or certification is
11 suspended under Section 504.2525 may appeal the denial, refusal to
12 renew, or suspension on the grounds that:

13 (1) the sole basis for the department's determination
14 is a conviction or placement on community supervision for an
15 offense described by Section 504.1525; and

16 (2) sufficient time, as determined by department
17 [executive commissioner] rule, has expired since the date of the
18 conviction or placement.

19 SECTION 5.115. Section 504.304(b), Occupations Code, is
20 amended to read as follows:

21 (b) If the person accepts the department's determination,
22 the department [commissioner or the commissioner's designee] by
23 order shall approve the determination and assess the proposed
24 penalty.

25 SECTION 5.116. Section 504.305(c), Occupations Code, is
26 amended to read as follows:

27 (c) The hearings examiner shall:

1 (1) make findings of fact and conclusions of law; and
2 (2) promptly issue to the department [~~commissioner or~~
3 ~~the commissioner's designee~~] a proposal for decision as to the
4 occurrence of the violation and the amount of any proposed
5 administrative penalty.

6 SECTION 5.117. Section 504.306(a), Occupations Code, is
7 amended to read as follows:

8 (a) Based on the findings of fact, conclusions of law, and
9 recommendations of the hearings examiner, the department
10 [~~commissioner or the commissioner's designee~~] by order may
11 determine that:

12 (1) a violation occurred and assess an administrative
13 penalty; or

14 (2) a violation did not occur.

15 SECTION 5.118. Section 504.310(c), Occupations Code, is
16 amended to read as follows:

17 (c) The department may assess reasonable expenses and costs
18 against a person in an administrative hearing if, as a result of the
19 hearing, an administrative penalty is assessed against the person.
20 The person shall pay expenses and costs assessed under this
21 subsection not later than the 30th day after the date the order of
22 the department [~~commissioner or the commissioner's designee~~]
23 requiring the payment of expenses and costs is final. The
24 department may refer the matter to the attorney general for
25 collection of expenses and costs.

26 SECTION 5.119. Section 505.201(b), Occupations Code, is
27 amended to read as follows:

1 (b) In adopting rules under this section, the board shall
2 consider the rules and procedures of the [Texas Board of Health and
3 ~~the~~] department. The board shall adopt procedural rules, which may
4 not be inconsistent with similar rules and procedures of the [Texas
5 ~~Board of Health or the~~] department.

6 SECTION 5.120. Sections 505.203(a) and (c), Occupations
7 Code, are amended to read as follows:

8 (a) The board by rule shall set fees in amounts reasonable
9 and necessary to cover the costs of administering this chapter. The
10 board shall set fees for the issuance or renewal of a license under
11 this chapter in amounts designed to allow the department and the
12 board to recover from the license holders all of the direct and
13 indirect costs to the department and to the board in administering
14 and enforcing this chapter.

15 (c) The [~~Unless the board determines that the fees would not~~
16 ~~cover the costs associated with administering the renewal of~~
17 ~~licenses and orders of recognition of specialty under this chapter,~~
18 ~~the~~] board shall set:

19 (1) the renewal fee for a license or order of
20 recognition of specialty expired for 90 days or less in an amount
21 that is 1-1/4 times the amount of the renewal fee for an unexpired
22 license or order; and

23 (2) the renewal fee for a license or order of
24 recognition of specialty expired for more than 90 days but less than
25 one year in an amount that is 1-1/2 times the amount of the renewal
26 fee for an unexpired license or order.

27 SECTION 5.121. Section 505.2545(a), Occupations Code, is

1 amended to read as follows:

2 (a) In an investigation of a complaint filed with the
3 department and referred to the board, the board may request that the
4 department [commissioner or the commissioner's designee] approve
5 the issuance of a subpoena. If the request is approved, the board
6 may issue a subpoena to compel the attendance of a relevant witness
7 or the production, for inspection or copying, of relevant evidence
8 that is in this state.

9 SECTION 5.122. Section 505.401, Occupations Code, is
10 amended to read as follows:

11 Sec. 505.401. TERM OF LICENSE; STAGGERED EXPIRATION DATES.

12 (a) A license issued under this chapter is valid for two years.

13 (a-1) The board by rule shall adopt a system under which
14 licenses and orders of recognition of specialty expire on various
15 dates during the year.

16 (b) In the year in which the expiration date of an order of
17 recognition of specialty is changed, the total renewal fee is
18 payable.

19 SECTION 5.123. Section 505.553, Occupations Code, is
20 amended to read as follows:

21 Sec. 505.553. [REPORT AND] NOTICE OF VIOLATION AND PENALTY.

22 [(a)] If the department [executive director] determines that a
23 violation occurred, the department [director may issue to the board
24 a report stating:

25 [(1) the facts on which the determination is based,
26 and

27 [(2) the director's recommendation on the imposition

1 ~~of an administrative penalty, including a recommendation on the~~
2 ~~amount of the penalty.~~

3 ~~[(b) Within 14 days after the date the report is issued, the~~
4 ~~executive director]~~ shall give written notice of the violation
5 ~~[report]~~ to the person. The notice must:

6 (1) include a brief summary of the alleged violation;
7 (2) state the amount of the ~~[recommended]~~
8 administrative penalty recommended by the department; and
9 (3) inform the person of the person's right to a
10 hearing on the occurrence of the violation, the amount of the
11 penalty, or both.

12 SECTION 5.124. Section 505.554, Occupations Code, is
13 amended to read as follows:

14 Sec. 505.554. PENALTY TO BE PAID OR HEARING REQUESTED. (a)
15 Within 10 days after the date the person receives the notice, the
16 person in writing may:

17 (1) accept the determination and recommended
18 administrative penalty of the department ~~[executive director]~~; or
19 (2) make a request for a hearing on the occurrence of
20 the violation, the amount of the penalty, or both.

21 (b) If the person accepts the determination and recommended
22 penalty of the department ~~[executive director]~~, the board by order
23 shall approve the determination and impose the recommended penalty.

24 SECTION 5.125. Section 505.555(a), Occupations Code, is
25 amended to read as follows:

26 (a) If the person requests a hearing or fails to respond in a
27 timely manner to the notice, the department ~~[executive director]~~

1 shall set a hearing and give written notice of the hearing to the
2 person.

3 SECTION 5.126. Sections 505.557(b) and (c), Occupations
4 Code, are amended to read as follows:

5 (b) Within the 30-day period prescribed by Subsection (a), a
6 person who files a petition for judicial review may:

7 (1) stay enforcement of the penalty by:

8 (A) paying the penalty to the court for placement
9 in an escrow account; or

10 (B) giving the court a supersedeas bond approved
11 by the court that:

12 (i) is for the amount of the penalty; and

13 (ii) is effective until all judicial review
14 of the board's order is final; or

15 (2) request the court to stay enforcement of the
16 penalty by:

17 (A) filing with the court a sworn affidavit of
18 the person stating that the person is financially unable to pay the
19 penalty and is financially unable to give the supersedeas bond; and

20 (B) giving a copy of the affidavit to the
21 department [executive director] by certified mail.

22 (c) If the department [executive director] receives a copy
23 of an affidavit under Subsection (b)(2), the department [director]
24 may file with the court, within five days after the date the copy is
25 received, a contest to the affidavit.

26 SECTION 5.127. Section 601.002, Occupations Code, is
27 amended to read as follows:

1 Sec. 601.002. DEFINITIONS. In this chapter:

2 (1) "Authorized person" means a person who meets or
3 exceeds the minimum educational standards of the department [~~board~~]
4 under Section [601.201](#).

5 (2) ~~["Board" means the Texas Board of Health.]~~

6 [←3] "Department" means the [~~Texas~~] Department of
7 State Health Services.

8 (3) [(+4)] "Direct supervision" means supervision and
9 control by a medical radiologic technologist or a practitioner who:

10 (A) assumes legal liability for a student
11 employed to perform a radiologic procedure and enrolled in a
12 program that meets the requirements adopted under Section [601.053](#);
13 and

14 (B) is physically present during the performance
15 of the radiologic procedure to provide consultation or direct the
16 action of the student.

17 (4) [(+5)] "Education program" means clinical training
18 or any other program offered by an organization approved by the
19 department [~~board~~] that:

20 (A) has a specified objective;

21 (B) includes planned activities for
22 participants; and

23 (C) uses an approved method for measuring the
24 progress of participants.

25 (5) "Executive commissioner" means the executive
26 commissioner of the Health and Human Services Commission.

27 (6) "Medical radiologic technologist" means a person

1 certified under this chapter who, under the direction of a
2 practitioner, intentionally administers radiation to another for a
3 medical purpose. The term does not include a practitioner.

4 (7) "Practitioner" means a person who:

5 (A) is licensed in this state as a doctor of:

6 (i) medicine;

7 (ii) osteopathy;

8 (iii) podiatry;

9 (iv) dentistry; or

10 (v) chiropractic; and

11 (B) prescribes radiologic procedures for other
12 persons.

13 (8) "Radiation" means ionizing radiation:

14 (A) in amounts beyond normal background levels;

15 and

16 (B) from a source such as a medical or dental
17 radiologic procedure.

18 (9) "Radiologic procedure" means a procedure or
19 article, including a diagnostic X-ray or a nuclear medicine
20 procedure, that:

21 (A) is intended for use in:

22 (i) the diagnosis of disease or other
23 medical or dental conditions in humans; or

24 (ii) the cure, mitigation, treatment, or
25 prevention of disease in humans; and

26 (B) achieves its intended purpose through the
27 emission of radiation.

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(10) "Radiologic technology" means the administration of radiation to a person for a medical purpose.

(11) "Registered nurse" means a person licensed by the Texas Board of Nursing to practice professional nursing.

5 SECTION 5.128. Subchapter B, Chapter 601, Occupations Code,
6 is amended to read as follows:

7 SUBCHAPTER B. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER [BOARD]

8 AND DEPARTMENT

9 Sec. 601.051. CERTIFICATION PROGRAM. The [bureau of
10 ~~licensing and compliance of the~~ department shall administer the
11 certification program required by this chapter.

12 Sec. 601.052. RULES. The executive commissioner [board]
13 may adopt rules necessary to implement this chapter.

14 Sec. 601.053. MINIMUM STANDARDS. The executive
15 commissioner [board] by rule shall establish minimum standards for:

26 Sec. 601.054. APPROVAL AND REVIEW OF CURRICULA AND TRAINING
27 PROGRAMS. (a) An applicant for approval of a curriculum or

1 training program must apply to the department on a form prescribed
2 by the department and under rules adopted by the executive
3 commissioner [board].

4 (b) The department shall approve a curriculum or training
5 program that meets the minimum standards adopted under Section
6 **601.053**. The department may review the approval annually.

7 (c) The executive commissioner [board] may set a fee for
8 approval of a curriculum or training program not to exceed the
9 estimated amount that the department projects to be required for
10 the evaluation of the curriculum or training program.

11 Sec. 601.055. APPROVAL AND REVIEW OF INSTRUCTOR APPROVAL.

12 (a) An applicant for approval of an instructor must apply to the
13 department on a form prescribed by the department and under rules
14 adopted by the executive commissioner [board].

15 (b) The department shall approve an instructor who meets the
16 minimum standards adopted under Section **601.053**. The department
17 may review the approval annually.

18 Sec. 601.056. DANGEROUS OR HAZARDOUS PROCEDURES. (a) The
19 executive commissioner [board] with the assistance of [other]
20 appropriate state agencies shall identify by rule radiologic
21 procedures, other than radiologic procedures described by
22 Subsection (c), that are dangerous or hazardous and that may be
23 performed only by a practitioner or a medical radiologic
24 technologist certified under this chapter.

25 (b) In adopting rules under Subsection (a), the executive
26 commissioner [board] may consider whether the radiologic procedure
27 will be performed by a registered nurse or a licensed physician

1 assistant.

2 (c) Subsection (a) does not apply to a radiologic procedure
3 involving a dental X-ray machine, including a panarex or other
4 equipment designed and manufactured only for use in dental
5 radiography.

6 Sec. 601.057. FEES. The executive commissioner [board] may
7 set fees for examination, certificate issuance, registration of a
8 person under Section 601.202, and application processing under
9 Section 601.203 in amounts that are reasonable to cover the costs of
10 administering this chapter without the use of additional general
11 revenue. The fees for issuing or renewing a certificate must be in
amounts designed to allow the department to recover from the
certificate holders all of the department's direct and indirect
costs in administering and enforcing this chapter.

15 Sec. 601.058. RULES RESTRICTING ADVERTISING OR COMPETITIVE
16 BIDDING. (a) The executive commissioner [board] may not adopt
17 rules restricting advertising or competitive bidding by a medical
18 radiologic technologist except to prohibit false, misleading, or
19 deceptive practices.

20 (b) In adopting [~~its~~] rules to prohibit false, misleading,
21 or deceptive practices, the executive commissioner [board] may not
22 include a rule that:

23 (1) restricts the use of any medium for advertising;
24 (2) restricts the use of a medical radiologic
25 technologist's personal appearance or voice in an advertisement;
26 (3) relates to the size or duration of an
27 advertisement by the medical radiologic technologist; or

1 (4) restricts the medical radiologic technologist's
2 advertisement under a trade name.

3 SECTION 5.129. Sections **601.102(a), (b), and (c)**,
4 Occupations Code, are amended to read as follows:

5 (a) The executive commissioner ~~[board]~~ shall establish
6 classes of certificates to include all radiologic procedures used
7 in the course and scope of the practice of practitioners licensed in
8 this state.

9 (b) The department ~~[board]~~ may issue to a person:

10 (1) a general certificate to perform radiologic
11 procedures; or

12 (2) a limited certificate that authorizes the person
13 to perform radiologic procedures only on specific parts of the
14 human body.

15 (c) The department ~~[board]~~ may issue to a person a temporary
16 general certificate or a temporary limited certificate that
17 authorizes the person to perform radiologic procedures for a period
18 not to exceed one year.

19 SECTION 5.130. Section **601.103**, Occupations Code, is
20 amended to read as follows:

21 Sec. 601.103. APPLICATION; APPLICATION FEE. An applicant
22 for a certificate under this chapter must:

23 (1) apply to the department on a form prescribed by the
24 department and under rules adopted by the executive commissioner
25 ~~[board]~~; and

26 (2) submit with the application a nonrefundable
27 application fee in an amount determined by the executive

1 commissioner [board].

2 SECTION 5.131. Section 601.104, Occupations Code, is
3 amended to read as follows:

4 Sec. 601.104. EXAMINATION. The executive commissioner
5 [board] may adopt rules providing for the preparation and
6 administration of [prepare and conduct] an examination for
7 applicants for a certificate.

8 SECTION 5.132. The heading to Section 601.105, Occupations
9 Code, is amended to read as follows:

10 Sec. 601.105. ISSUANCE OF CERTIFICATE; TERM.

11 SECTION 5.133. Section 601.105(b), Occupations Code, is
12 amended to read as follows:

13 (b) A certificate is valid for two years from the date of
14 issuance [a period established by the board].

15 SECTION 5.134. Section 601.107, Occupations Code, is
16 amended to read as follows:

17 Sec. 601.107. CERTIFICATION BY ENDORSEMENT. In adopting
18 minimum standards for certifying medical radiologic technologists,
19 the executive commissioner [board] may establish criteria for
20 issuing a certificate to a person licensed or otherwise registered
21 as a medical radiologic technologist by the American Registry of
22 Radiologic Technologists, the American Registry of Clinical
23 Radiography Technologists, or another state whose requirements for
24 licensure or registration were on the date of licensing or
25 registration substantially equal to the requirements of this
26 chapter.

27 SECTION 5.135. Section 601.108, Occupations Code, is

1 amended to read as follows:

2 Sec. 601.108. CONTINUING EDUCATION AND OTHER GUIDELINES.

3 (a) The executive commissioner [board] may establish guidelines.

4 (b) The executive commissioner [board] shall provide for
5 the preparation, recognition, or administration of [prepare,
6 ~~recognize, or administer~~] continuing education programs for
7 medical radiologic technologists in which participation is
8 required, to the extent required by the department [board], to keep
9 the person's certificate.

10 SECTION 5.136. Section 601.109, Occupations Code, is

11 amended to read as follows:

12 Sec. 601.109. PROVISIONAL CERTIFICATE. (a) The department
13 [board] may issue a provisional certificate to an applicant
14 currently licensed or certified in another jurisdiction who seeks
15 certification in this state and who:

16 (1) has been licensed or certified in good standing as
17 a medical radiologic technologist for at least two years in another
18 jurisdiction, including a foreign country, that has licensing or
19 certification requirements substantially equivalent to the
20 requirements of this chapter;

21 (2) has passed a national or other examination
22 recognized by the department [board] relating to the practice of
23 radiologic technology; and

24 (3) is sponsored by a medical radiologic technologist
25 certified by the department [board] under this chapter with whom
26 the provisional certificate holder will practice during the time
27 the person holds a provisional certificate.

1 (b) The department [board] may waive the requirement of
2 Subsection (a)(3) for an applicant if the department [board]
3 determines that compliance with that subsection would be a hardship
4 to the applicant.

5 (c) A provisional certificate is valid until the date the
6 department [board] approves or denies the provisional certificate
7 holder's application for a certificate. The department [board]
8 shall issue a certificate under this chapter to the provisional
9 certificate holder if:

10 (1) the provisional certificate holder is eligible to
11 be certified under Section [601.107](#); or

12 (2) the provisional certificate holder passes the part
13 of the examination under Section [601.104](#) that relates to the
14 applicant's knowledge and understanding of the laws and rules
15 relating to the practice of radiologic technology in this state
16 and:

17 (A) the department [board] verifies that the
18 provisional certificate holder meets the academic and experience
19 requirements for a certificate under this chapter; and

20 (B) the provisional certificate holder satisfies
21 any other licensing requirements under this chapter.

22 (d) The department [board] must approve or deny a
23 provisional certificate holder's application for a certificate not
24 later than the 180th day after the date the provisional certificate
25 is issued. The department [board] may extend the 180-day period if
26 the results of an examination have not been received by the
27 department [board] before the end of that period.

1 (e) The executive commissioner by rule [board] may
2 establish a fee for a provisional certificate in an amount designed
3 to allow the department to recover from the certificate holders all
4 of the department's direct and indirect costs in administering and
5 enforcing this chapter [~~reasonable and necessary to cover the cost~~
6 ~~of issuing the certificate~~].

7 SECTION 5.137. Section 601.110(b), Occupations Code, is
8 amended to read as follows:

9 (b) The executive commissioner [board] by rule may adopt a
10 system under which certificates expire on various dates during the
11 year. For the year in which the certificate expiration date is
12 changed, the department shall prorate certificate fees on a monthly
13 basis so that each certificate holder pays only that portion of the
14 certificate fee that is allocable to the number of months during
15 which the certificate is valid. On renewal of the certificate on
16 the new expiration date, the total certificate renewal fee is
17 payable.

18 SECTION 5.138. Section 601.154, Occupations Code, is
19 amended to read as follows:

20 Sec. 601.154. HOSPITAL PROCEDURES. A person is not
21 required to hold a certificate issued under this chapter to perform
22 a radiologic procedure in a hospital if:

23 (1) the hospital participates in the federal Medicare
24 program or is accredited by the Joint Commission on Accreditation
25 of Hospitals; and

26 (2) the person has completed a training program
27 approved by the department [board] under Section 601.201.

1 SECTION 5.139. Section 601.156, Occupations Code, is
2 amended to read as follows:

3 Sec. 601.156. PROCEDURE PERFORMED AS PART OF CONTINUING
4 EDUCATION PROGRAM. A person is not required to hold a certificate
5 issued under this chapter or to comply with the registration
6 requirements adopted under Section 601.252 if the person is:

7 (1) licensed or otherwise registered as a medical
8 radiologic technologist by another state, the American Registry of
9 Radiologic Technologists, the American Registry of Clinical
10 Radiography Technologists, or a professional organization or
11 association recognized by the department [board];

12 (2) enrolled in a continuing education program that
13 meets the requirements adopted under Section 601.108; and

14 (3) performing a radiologic procedure as part of the
15 continuing education program for not more than 10 days.

16 SECTION 5.140. Section 601.201, Occupations Code, is
17 amended to read as follows:

18 Sec. 601.201. MANDATORY TRAINING. (a) The minimum
19 standards of the department [board] for approval of a curriculum or
20 an education program under Section 601.053 must include mandatory
21 training guidelines for a person, other than a practitioner or a
22 medical radiologic technologist, who intentionally uses radiologic
23 technology, including a person who does not hold a certificate
24 issued under this chapter and who is performing a radiologic
25 procedure at a hospital or under the direction of a practitioner,
26 other than a dentist.

27 (b) The training program approved by the department [board]

1 must contain an appropriate number of hours of education that must
2 be completed before the person may perform a radiologic procedure.

3 SECTION 5.141. Section 601.202, Occupations Code, is
4 amended to read as follows:

5 Sec. 601.202. REGISTRY. The executive commissioner [board]
6 by rule shall establish a registry of persons required to comply
7 with this subchapter.

8 SECTION 5.142. Section 601.302, Occupations Code, is
9 amended to read as follows:

10 Sec. 601.302. GROUNDS FOR CERTIFICATE DENIAL OR
11 DISCIPLINARY ACTION. The department may take action under Section
12 601.301 against a person subject to this chapter for:

13 (1) obtaining or attempting to obtain a certificate
14 issued under this chapter by bribery or fraud;

15 (2) making or filing a false report or record made in
16 the person's capacity as a medical radiologic technologist;

17 (3) intentionally or negligently failing to file a
18 report or record required by law;

19 (4) intentionally obstructing or inducing another to
20 intentionally obstruct the filing of a report or record required by
21 law;

22 (5) engaging in unprofessional conduct, including the
23 violation of the standards of practice of radiologic technology
24 established by the department [board];

25 (6) developing an incapacity that prevents the
26 practice of radiologic technology with reasonable skill,
27 competence, and safety to the public as the result of:

(8) employing, for the purpose of applying ionizing radiation to a person, a person who is not certified under or in compliance with this chapter;

20 SECTION 5.143. Section 601.305(b), Occupations Code, is
21 amended to read as follows:

22 (b) The department [board] may not reinstate a certificate
23 to a holder or issue a certificate to an applicant previously denied
24 a certificate unless the department [board] is satisfied that the
25 holder or applicant has complied with requirements set by the
26 department [board] and is capable of engaging in the practice of
27 radiologic technology.

1 SECTION 5.144. Section 601.354(b), Occupations Code, is
2 amended to read as follows:

3 (b) If the person accepts the department's determination,
4 the department [~~commissioner of public health or that~~
5 ~~commissioner's designee~~] by order shall approve the determination
6 and impose the proposed penalty.

7 SECTION 5.145. Section 601.355(b), Occupations Code, is
8 amended to read as follows:

9 (b) The hearings examiner shall make findings of fact and
10 conclusions of law and promptly issue to the department
11 [~~commissioner of public health or that commissioner's designee~~] a
12 proposal for decision as to the occurrence of the violation and the
13 amount of any proposed administrative penalty.

14 SECTION 5.146. The heading to Section 601.356, Occupations
15 Code, is amended to read as follows:

16 Sec. 601.356. DECISION BY DEPARTMENT [~~COMMISSIONER~~].

17 SECTION 5.147. Section 601.356(a), Occupations Code, is
18 amended to read as follows:

19 (a) Based on the findings of fact and conclusions of law and
20 the recommendations of the hearings examiner, the department
21 [~~commissioner of public health or the commissioner's designee~~] by
22 order may determine that:

23 (1) a violation has occurred and may impose an
24 administrative penalty; or

25 (2) a violation did not occur.

26 SECTION 5.148. Section 601.361(b), Occupations Code, is
27 amended to read as follows:

1 (b) The department may assess reasonable expenses and costs
2 against a person in an administrative hearing if, as a result of the
3 hearing, an administrative penalty is assessed against the person.
4 The person shall pay expenses and costs assessed under this
5 subsection not later than the 30th day after the date the order of
6 the department [~~commissioner of public health or that~~
7 ~~commissioner's designee~~] requiring the payment of expenses and
8 costs is final. The department may refer the matter to the attorney
9 general for collection of the expenses and costs.

10 SECTION 5.149. Sections 601.401(a) and (c), Occupations
11 Code, are amended to read as follows:

12 (a) If it appears that a person has violated, is violating,
13 or is threatening to violate this chapter or a rule adopted under
14 this chapter, the [~~board or the~~] department may bring an action to
15 enjoin the continued or threatened violation.

16 (c) At the request of the [~~board or the~~] department, the
17 attorney general shall bring an action in the name of the state for
18 the injunctive relief, to recover the civil penalty, or both.

19 SECTION 5.150. Section 602.002, Occupations Code, is
20 amended by amending Subdivisions (1) and (2) and adding Subdivision
21 (1-a) to read as follows:

22 (1) "Board" means the Texas Board of Licensure for
23 Professional Medical Physicists [~~in the Texas Department of~~
24 ~~Health~~].

25 (1-a) "Commissioner" means the commissioner of state
26 health services.

27 (2) "Department" means the [~~Texas~~] Department of State

1 Health Services.

2 SECTION 5.151. Section 602.056(c), Occupations Code, is
3 amended to read as follows:

4 (c) If the commissioner [~~of public health~~] has knowledge
5 that a potential ground for removal exists, the commissioner shall
6 notify the presiding officer of the board of the potential ground.
7 The presiding officer shall then notify the governor and the
8 attorney general that a potential ground for removal exists. If the
9 potential ground for removal involves the presiding officer, the
10 commissioner shall notify the next highest ranking officer of the
11 board, who shall then notify the governor and the attorney general
12 that a potential ground for removal exists.

13 SECTION 5.152. Section 602.101, Occupations Code, is
14 amended to read as follows:

15 Sec. 602.101. EXECUTIVE SECRETARY. The department
16 [~~commissioner of health~~], after consulting with the board, shall
17 designate an employee of the department to serve as the board's
18 executive secretary.

19 SECTION 5.153. Section 602.104, Occupations Code, is
20 amended to read as follows:

21 Sec. 602.104. DIVISION OF RESPONSIBILITIES. The board
22 shall develop and implement policies that clearly separate the
23 policy-making responsibilities of the board and the management
24 responsibilities of the commissioner [~~of public health~~], the
25 executive secretary, and the staff of the department.

26 SECTION 5.154. Section 602.105, Occupations Code, is
27 amended to read as follows:

1 Sec. 602.105. QUALIFICATIONS AND STANDARDS OF CONDUCT
2 INFORMATION. The commissioner [~~of public health~~] or the
3 commissioner's designee shall provide to members of the board, as
4 often as necessary, information regarding the requirements for
5 office under this chapter, including information regarding a
6 person's responsibilities under applicable laws relating to
7 standards of conduct for state officers.

8 SECTION 5.155. Section 602.151, Occupations Code, is
9 amended to read as follows:

10 Sec. 602.151. GENERAL POWERS AND DUTIES. The board shall:

11 (1) adopt and revise, with the [~~department's~~] approval
12 of the executive commissioner of the Health and Human Services
13 Commission, rules reasonably necessary to properly perform its
14 duties under this chapter;

15 (2) adopt an official seal;

16 (3) determine the qualifications and fitness of each
17 applicant for a license or license renewal;

18 (4) charge a fee[~~, in an amount necessary to cover the~~
19 ~~costs incurred by the board in administering this chapter,~~] for
20 processing and issuing or renewing a license;

21 (5) conduct examinations for licensure;

22 (6) issue, deny, renew, revoke, and suspend licenses;

23 (7) adopt and publish a code of ethics; and

24 (8) conduct hearings on complaints concerning
25 violations of this chapter or rules adopted under this chapter.

26 SECTION 5.156. Section 602.1525(a), Occupations Code, is
27 amended to read as follows:

1 (a) In an investigation of a complaint filed with the board,
2 the board may request that the commissioner [of public health] or
3 the commissioner's designee approve the issuance of a subpoena. If
4 the request is approved, the board may issue a subpoena to compel
5 the attendance of a relevant witness or the production, for
6 inspection or copying, of relevant evidence that is in this state.

7 SECTION 5.157. Subchapter D, Chapter 602, Occupations Code,
8 is amended by adding Section 602.155 to read as follows:

9 Sec. 602.155. FEES. The board shall set fees for the
10 issuance or renewal of a license under this chapter in amounts
11 designed to allow the department and the board to recover from the
12 license holders all of the direct and indirect costs to the
13 department and to the board in administering and enforcing this
14 chapter.

15 SECTION 5.158. Section 602.205, Occupations Code, is
16 amended to read as follows:

17 Sec. 602.205. TEMPORARY LICENSE. The board may issue a
18 temporary license to an applicant who has satisfied the educational
19 requirements for a license but who has not yet completed the
20 experience and examination requirements of Section 602.207. A
21 temporary license is valid for one year from the date of issuance.

22 SECTION 5.159. Section 602.210(a), Occupations Code, is
23 amended to read as follows:

24 (a) A license is valid for two years [~~one year~~] from the date
25 of issuance [~~granted~~] and may be renewed [~~annually~~].

26 SECTION 5.160. Section 602.213(e), Occupations Code, is
27 amended to read as follows:

1 (e) The board may establish a fee for provisional licenses
2 [in an amount reasonable and necessary to cover the cost of issuing
3 the license].

4 SECTION 5.161. Section 603.051(a), Occupations Code, is
5 amended to read as follows:

6 (a) The Texas State Perfusionist Advisory Committee
7 consists of five members appointed by the commissioner as follows:

8 (1) two licensed perfusionist members who have been
9 licensed under this chapter for at least three years before the date
10 of appointment;

11 (2) one physician member licensed by the Texas [State
12 Board of] Medical Board [Examiners] who is certified by that board
13 in cardiovascular surgery; and

14 (3) two members who represent the public.

15 SECTION 5.162. Section 603.102, Occupations Code, is
16 amended to read as follows:

17 Sec. 603.102. EXECUTIVE SECRETARY POWERS AND DUTIES. In
18 addition to performing other duties prescribed by this chapter and
19 by the department, the executive secretary shall:

20 (1) administer licensing activity under this chapter
21 for the department;

22 (2) keep full and accurate minutes of the committee's
23 transactions and proceedings;

24 (3) serve as custodian of the committee's files and
25 other records;

26 (4) prepare and recommend to the department plans and
27 procedures necessary to implement the objectives of this chapter,

1 including rules and proposals on administrative procedure;

2 (5) exercise general supervision over persons

3 employed by the department in the administration of this chapter;

4 (6) investigate complaints and present formal

5 complaints made under this chapter;

6 (7) attend all committee meetings as a nonvoting

7 participant;

8 (8) handle the committee's correspondence; and

9 (9) obtain, assemble, or prepare reports and other

10 information as directed or authorized by the committee.

11 SECTION 5.163. Section 603.106, Occupations Code, is

12 amended to read as follows:

13 Sec. 603.106. CAREER LADDER PROGRAM; PERFORMANCE

14 EVALUATIONS. (a) The department [~~commissioner~~] shall develop an

15 intra-agency career ladder program. The program must require

16 intra-agency posting of all nonentry level positions concurrently

17 with any public posting.

18 (b) The department [~~commissioner~~] shall develop a system of

19 annual performance evaluations based on measurable job tasks. All

20 merit pay for department employees under this chapter must be based

21 on the system established under this subsection.

22 SECTION 5.164. Section 603.107, Occupations Code, is

23 amended to read as follows:

24 Sec. 603.107. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT.

25 (a) The department [~~commissioner~~] shall prepare and maintain a

26 written policy statement to ensure implementation of an equal

27 employment opportunity program under which all personnel

1 transactions are made without regard to race, color, disability,
2 sex, religion, age, or national origin. The policy statement must
3 include:

4 (1) personnel policies, including policies relating
5 to recruitment, evaluation, selection, application, training, and
6 promotion, that are in compliance with Chapter 21, Labor Code;

7 (2) a comprehensive analysis of the committee
8 workforce that meets federal and state guidelines;

9 (3) procedures by which a determination can be made of
10 significant underuse in the committee workforce of all persons for
11 whom federal or state guidelines encourage a more equitable
12 balance; and

13 (4) reasonable methods to appropriately address those
14 areas of underuse.

15 (b) A policy statement prepared under Subsection (a) must:

16 (1) cover an annual period;

17 (2) be updated annually;

18 (3) be reviewed by the Texas Workforce Commission
19 civil rights division [~~on Human Rights~~] for compliance with
20 Subsection (a)(1); and

21 (4) be filed with the governor.

22 SECTION 5.165. Section 603.151, Occupations Code, is
23 amended to read as follows:

24 Sec. 603.151. GENERAL POWERS AND DUTIES OF DEPARTMENT
25 [~~COMMISSIONER~~]. The department [~~commissioner~~] shall:

26 (1) establish the qualifications and fitness of
27 applicants for licenses, including renewed and reciprocal

1 licenses;

2 (2) revoke, suspend, or deny a license, probate a
3 license suspension, or reprimand a license holder for a violation
4 of this chapter, a rule adopted by the executive commissioner under
5 this chapter, or the code of ethics adopted by the executive
6 commissioner;

7 (3) spend money necessary to administer the
8 department's duties;

9 (4) request and receive necessary assistance from
10 another state agency, including a state educational institution;

11 (5) adopt an official seal; and

12 (6) [adopt and] publish the [~~a~~] code of ethics adopted
13 by the executive commissioner.

14 SECTION 5.166. Section 603.153, Occupations Code, is
15 amended to read as follows:

16 Sec. 603.153. RULES RESTRICTING ADVERTISING OR COMPETITIVE
17 BIDDING. (a) The executive commissioner may not adopt a rule
18 restricting advertising or competitive bidding by a person
19 regulated by the department under this chapter except to prohibit a
20 false, misleading, or deceptive practice.

21 (b) The executive commissioner may not include in rules to
22 prohibit a false, misleading, or deceptive practice by a person
23 regulated by the department under this chapter a rule that:

24 (1) restricts the person's use of any medium for
25 advertising;

26 (2) restricts the person's personal appearance or use
27 of the person's voice in an advertisement;

1 (3) relates to the size or duration of any
2 advertisement by the person; or

3 (4) restricts the use by the person of a trade name in
4 advertising.

5 SECTION 5.167. Section 603.1535(b), Occupations Code, is
6 amended to read as follows:

7 (b) In rules under this section, the executive commissioner
8 shall list the specific offenses for which a conviction would
9 constitute grounds for the department [commissioner] to take action
10 under Section 53.021.

11 SECTION 5.168. Section 603.154, Occupations Code, is
12 amended to read as follows:

13 Sec. 603.154. FEES. (a) After consulting the commissioner
14 or the department, the executive commissioner shall set fees in
15 amounts reasonable and necessary to cover the costs of
16 administering this chapter.

17 (b) The executive commissioner shall set fees for the
18 issuance or renewal of a license under this chapter in amounts
19 designed to allow the department to recover from the license
20 holders all of the direct and indirect costs to the department in
21 administering and enforcing this chapter.

22 SECTION 5.169. Sections 603.159(a) and (c), Occupations
23 Code, are amended to read as follows:

24 (a) The executive commissioner shall develop and implement
25 a policy under this chapter to encourage the use of:

26 (1) negotiated rulemaking procedures under Chapter
27 2008, Government Code, for the adoption of rules; and

5 (c) The department [~~commissioner~~] shall designate a trained
6 person to:

14 SECTION 5.170. Section 603.202(a), Occupations Code, is
15 amended to read as follows:

16 (a) The executive commissioner by rule shall establish
17 methods by which consumers and service recipients are notified of
18 the name, mailing address, and telephone number of the department
19 for the purpose of directing complaints under this chapter to the
20 department. The department may provide for that notice:

27 SECTION 5.171. Section 603.203(a), Occupations Code, is

1 amended to read as follows:

2 (a) The department shall maintain a system to promptly and
3 efficiently act on complaints filed with the department under this
4 chapter. The department shall maintain:

5 (1) information about the parties to the complaint and
6 the subject matter of the complaint;

7 (2) a summary of the results of the review or
8 investigation of the complaint; and

9 (3) information about the disposition of the
10 complaint.

11 SECTION 5.172. Sections 603.204(a) and (d), Occupations
12 Code, are amended to read as follows:

13 (a) The executive commissioner shall adopt rules concerning
14 the investigation of a complaint filed with the department under
15 this chapter. The rules shall:

16 (1) distinguish among categories of complaints;

17 (2) ensure that a complaint is not dismissed without
18 appropriate consideration;

19 (3) require that the department [~~commissioner~~] be
20 advised of a complaint that is dismissed and that a letter be sent
21 to the person who filed the complaint explaining the action taken on
22 the dismissed complaint;

23 (4) ensure that the person who filed the complaint has
24 an opportunity to explain the allegations made in the complaint;
25 and

26 (5) prescribe guidelines concerning the categories of
27 complaints that require the use of a private investigator and the

1 procedures for the department to obtain the services of a private
2 investigator.

3 (d) The executive secretary shall notify the department
4 [commissioner] of a complaint that is not resolved within the time
5 prescribed by the department [commissioner] for resolving the
6 complaint so that the department [commissioner] may take necessary
7 action on the complaint.

8 SECTION 5.173. Sections 603.2041(a), (h), and (i),
9 Occupations Code, are amended to read as follows:

10 (a) In an investigation of a complaint filed with the
11 department, the department may [request that the commissioner or
12 the commissioner's designee approve the issuance of a subpoena. If
13 the request is approved, the department may] issue a subpoena to
14 compel the attendance of a relevant witness or the production, for
15 inspection or copying, of relevant evidence that is in this state.

16 (h) All information and materials subpoenaed or compiled by
17 the department in connection with a complaint and investigation
18 under this chapter are confidential and not subject to disclosure
19 under Chapter 552, Government Code, and not subject to disclosure,
20 discovery, subpoena, or other means of legal compulsion for their
21 release to anyone other than the department or its agents or
22 employees involved in discipline of the holder of a license, except
23 that this information may be disclosed to:

24 (1) persons involved with the department in a
25 disciplinary action against the holder of a license under this
26 chapter;

27 (2) professional perfusionist licensing or

1 disciplinary boards in other jurisdictions;

2 (3) peer assistance programs approved by the
3 department under Chapter 467, Health and Safety Code;

4 (4) law enforcement agencies; and

5 (5) persons engaged in bona fide research, if all
6 individual-identifying information has been deleted.

7 (i) The filing of formal charges by the department against a
8 holder of a license under this chapter, the nature of those charges,
9 disciplinary proceedings of the department, and final disciplinary
10 actions, including warnings and reprimands, by the department are
11 not confidential and are subject to disclosure in accordance with
12 Chapter 552, Government Code.

13 SECTION 5.174. Section 603.205, Occupations Code, is
14 amended to read as follows:

15 Sec. 603.205. PUBLIC PARTICIPATION. (a) The department
16 [~~State Health Services Council~~] shall develop and implement
17 policies that provide the public with a reasonable opportunity to
18 appear before the department [~~State Health Services Council~~] and to
19 speak on any issue related to the practice of perfusion.

20 (b) The department [~~commissioner~~] shall prepare and
21 maintain a written plan that describes how a person who does not
22 speak English or who has a physical, mental, or developmental
23 disability may be provided reasonable access to the department's
24 programs under this chapter.

25 SECTION 5.175. Section 603.252(b), Occupations Code, is
26 amended to read as follows:

27 (b) The department [~~executive commissioner~~] shall prescribe

1 the application form and the executive commissioner by rule may
2 establish dates by which applications and fees must be received.

3 SECTION 5.176. Section 603.255(a), Occupations Code, is
4 amended to read as follows:

5 (a) The department shall notify an applicant in writing of
6 the receipt and investigation of the applicant's application and
7 any other relevant evidence relating to qualifications established
8 by department [~~an executive commissioner~~] rule not later than:

9 (1) the 45th day after the date a properly submitted
10 and timely application is received; and

11 (2) the 30th day before the next examination date.

12 SECTION 5.177. Section 603.259(c), Occupations Code, is
13 amended to read as follows:

14 (c) A provisionally licensed perfusionist must practice
15 under the supervision and direction of a licensed perfusionist
16 while performing perfusion. If the department finds that a
17 licensed perfusionist is not reasonably available to provide
18 supervision and direction and if the department approves an
19 application submitted to the department by the provisionally
20 licensed perfusionist, supervision and direction may be provided by
21 a physician who is licensed by the Texas [~~State Board of~~] Medical
22 Board [~~Examiners~~] and certified by the American Board of Thoracic
23 Surgery [~~Surgeons, Inc.,~~] or certified in cardiovascular surgery by
24 the American Osteopathic Board of Surgery.

25 SECTION 5.178. Section 603.304(a), Occupations Code, is
26 amended to read as follows:

27 (a) To renew a license under this chapter, a person must

1 submit proof satisfactory to the department that the person has
2 complied with the continuing education requirements prescribed by
3 the executive commissioner [department].

4 SECTION 5.179. Section 603.402(b), Occupations Code, is
5 amended to read as follows:

6 (b) The executive commissioner shall prescribe procedures
7 for appealing to the department [~~commissioner~~] a decision to
8 revoke, suspend, or refuse to renew a license.

9 SECTION 5.180. Section 603.4515(a), Occupations Code, is
10 amended to read as follows:

11 (a) A person who violates this chapter, a rule adopted by
12 the executive commissioner under this chapter, or an order adopted
13 by the department [~~commissioner~~] under this chapter is liable for a
14 civil penalty not to exceed \$5,000 a day.

15 SECTION 5.181. Section 603.453(a), Occupations Code, is
16 amended to read as follows:

17 (a) If it appears to the department [~~commissioner~~] that a
18 person who is not licensed under this chapter is violating this
19 chapter, a rule adopted under this chapter, or another state
20 statute or rule relating to the practice of perfusion, the
21 department [~~commissioner~~] after notice and an opportunity for a
22 hearing may issue a cease and desist order prohibiting the person
23 from engaging in the activity.

24 SECTION 5.182. Section 603.502(c), Occupations Code, is
25 amended to read as follows:

26 (c) The executive commissioner by rule shall adopt an
27 administrative penalty schedule based on the criteria listed in

1 Subsection (b) for violations of this chapter or applicable rules
2 to ensure that the amounts of penalties imposed are appropriate to
3 the violation. The department [~~executive commissioner~~] shall
4 provide the administrative penalty schedule to the public on
5 request.

6 SECTION 5.183. Section 603.503, Occupations Code, is
7 amended to read as follows:

8 Sec. 603.503. [REPORT AND] NOTICE OF VIOLATION AND PENALTY.
9 [(a)] If the department [~~commissioner or the commissioner's~~
10 ~~designee~~] determines that a violation occurred, the department
11 [~~commissioner or the designee may issue to the department a report~~
12 ~~stating:~~

13 [+(1) ~~the facts on which the determination is based,~~
14 ~~and~~

15 [+(2) ~~the commissioner's or the designee's~~
16 ~~recommendation on the imposition of an administrative penalty,~~
17 ~~including a recommendation on the amount of the penalty.~~

18 [(b) Within 14 days after the date the report is issued, the
19 ~~commissioner or the commissioner's designee~~] shall give written
20 notice of the violation [~~report~~] to the person. The notice must:

21 (1) include a brief summary of the alleged violation;

22 (2) state the amount of the [~~recommended~~]
23 administrative penalty recommended by the department; and

24 (3) inform the person of the person's right to a
25 hearing on the occurrence of the violation, the amount of the
26 penalty, or both.

27 SECTION 5.184. Section 603.504, Occupations Code, is

1 amended to read as follows:

2 Sec. 603.504. PENALTY TO BE PAID OR HEARING REQUESTED. (a)
3 Within 10 days after the date the person receives the notice, the
4 person in writing may:

5 (1) accept the determination and recommended
6 administrative penalty of the department [~~commissioner or the~~
7 ~~commissioner's designee~~]; or

8 (2) make a request for a hearing on the occurrence of
9 the violation, the amount of the penalty, or both.

10 (b) If the person accepts the determination and recommended
11 penalty of the department [~~commissioner or the commissioner's~~
12 ~~designee~~], the department [~~commissioner~~] by order shall approve the
13 determination and impose the recommended penalty.

14 SECTION 5.185. Sections 603.505(a) and (c), Occupations
15 Code, are amended to read as follows:

16 (a) If the person requests a hearing or fails to respond in a
17 timely manner to the notice, the department [~~commissioner or the~~
18 ~~commissioner's designee~~] shall set a hearing and give written
19 notice of the hearing to the person.

20 (c) The administrative law judge shall make findings of fact
21 and conclusions of law and promptly issue to the department
22 [~~commissioner~~] a proposal for a decision about the occurrence of
23 the violation and the amount of a proposed administrative penalty.

24 SECTION 5.186. Section 603.506, Occupations Code, is
25 amended to read as follows:

26 Sec. 603.506. DECISION BY DEPARTMENT [~~COMMISSIONER~~]. (a)
27 Based on the findings of fact, conclusions of law, and proposal for

1 decision, the department [~~commissioner~~] by order may determine
2 that:

- 3 (1) a violation occurred and impose an administrative
4 penalty; or
5 (2) a violation did not occur.

6 (b) The notice of the department's [~~commissioner's~~] order
7 given to the person must include a statement of the right of the
8 person to judicial review of the order.

9 SECTION 5.187. Sections 603.507(a) through (c),
10 Occupations Code, are amended to read as follows:

11 (a) Within 30 days after the date the department's
12 [~~commissioner's~~] order becomes final, the person shall:

- 13 (1) pay the administrative penalty; or
14 (2) file a petition for judicial review contesting the
15 occurrence of the violation, the amount of the penalty, or both.

16 (b) Within the 30-day period prescribed by Subsection (a), a
17 person who files a petition for judicial review may:

- 18 (1) stay enforcement of the penalty by:
19 (A) paying the penalty to the court for placement
20 in an escrow account; or
21 (B) giving the court a supersedeas bond approved
22 by the court that:

23 (i) is for the amount of the penalty; and
24 (ii) is effective until all judicial review
25 of the department's [~~commissioner's~~] order is final; or

- 26 (2) request the court to stay enforcement of the
27 penalty by:

7 (c) If the department [~~commissioner or the commissioner's~~
8 ~~designee~~] receives a copy of an affidavit under Subsection (b)(2),
9 the department [~~commissioner or the designee~~] may file with the
10 court, within five days after the date the copy is received, a
11 contest to the affidavit.

12 SECTION 5.188. Sections 604.001(1) and (2), Occupations
13 Code, are amended to read as follows:

(1) ~~"Board" means the Texas Board of Health.~~

15 [(-2)] "Department" means the [Texas] Department of
16 State Health Services.

19 SECTION 5.189. The heading to Subchapter B, Chapter 604,
20 Occupations Code, is amended to read as follows:

21 SUBCHAPTER B. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER [BOARD]
22 AND DEPARTMENT

23 SECTION 5.190. Section 604.051(a), Occupations Code, is
24 amended to read as follows:

25 (a) The department [department's bureau of licensing and
26 ~~compliance~~] shall administer the certification and permitting
27 program under this chapter.

1 SECTION 5.191. Section 604.052, Occupations Code, is
2 amended to read as follows:

3 Sec. 604.052. RULES. (a) The executive commissioner
4 [board] by rule shall establish minimum standards for issuing,
5 denying, renewing, suspending, suspending on an emergency basis, or
6 revoking a certificate or temporary permit under this chapter.

7 (b) The executive commissioner [board] may adopt rules
8 necessary to implement this chapter.

9 (c) The executive commissioner [board] may adopt rules
10 relating to certifying, examining, or disciplining a person under
11 this chapter only if necessary to protect the public health by
12 ensuring that only a qualified person practices respiratory care.

13 SECTION 5.192. Section 604.053, Occupations Code, is
14 amended to read as follows:

15 Sec. 604.053. FEES. (a) The executive commissioner by rule
16 [board] shall set fees for an application, examination,
17 certificate, temporary permit, permit and certificate renewal, and
18 certificate reinstatement.

19 (b) The executive commissioner by rule [board] shall set
20 fees in reasonable amounts that are sufficient to cover the costs of
21 administering this chapter. The executive commissioner shall set
fees for issuing or renewing a certificate or permit in amounts
designed to allow the department to recover from the certificate
and permit holders all of the department's direct and indirect
costs in administering and enforcing this chapter.

26 SECTION 5.193. Section 604.055, Occupations Code, is
27 amended to read as follows:

1 Sec. 604.055. PEER ASSISTANCE PROGRAM. The department may
2 establish, approve, and fund a peer assistance program in
3 accordance with Section 467.003, Health and Safety Code, and
4 department [board] rules.

5 SECTION 5.194. Section 604.057, Occupations Code, is
6 amended to read as follows:

7 Sec. 604.057. RULES REGARDING ADVERTISING OR COMPETITIVE
8 BIDDING. (a) The executive commissioner [board] may not adopt
9 rules restricting advertising or competitive bidding by a temporary
10 permit or certificate holder except to prohibit false, misleading,
11 or deceptive practices.

12 (b) In adopting [~~its~~] rules to prohibit false, misleading,
13 or deceptive practices, the executive commissioner [board] may not
14 include a rule that:

15 (1) restricts the use of any medium for advertising;
16 (2) restricts the use of a temporary permit or
17 certificate holder's personal appearance or voice in an
18 advertisement;

19 (3) relates to the size or duration of an
20 advertisement by the temporary permit or certificate holder; or

21 (4) restricts the temporary permit or certificate
22 holder's advertisement under a trade name.

23 SECTION 5.195. Section 604.101(b), Occupations Code, is
24 amended to read as follows:

25 (b) A person may not practice respiratory care other than
26 under the direction of a qualified medical director or other
27 physician licensed by the Texas [~~State Board of~~] Medical Board

1 [Examiners].

2 SECTION 5.196. Section 604.103, Occupations Code, is
3 amended to read as follows:

4 Sec. 604.103. APPLICATION; APPLICATION FEE. An applicant
5 for a certificate or temporary permit must:

6 (1) apply to the department on a form prescribed by the
7 department and under rules adopted [prescribed] by the executive
8 commissioner [board]; and

9 (2) submit a nonrefundable application fee with the
10 application.

11 SECTION 5.197. Section 604.1041, Occupations Code, is
12 amended to read as follows:

13 Sec. 604.1041. EXAMINATION. The executive commissioner
14 [board] by rule shall establish examination requirements for a
15 certificate under this chapter. The executive commissioner [board]
16 may use the entry level examination prepared by the National Board
17 for Respiratory Care or an equivalent examination.

18 SECTION 5.198. Section 604.108(b), Occupations Code, is
19 amended to read as follows:

20 (b) A temporary permit is valid for the period set by
21 department [board] rule. The period may not be less than six months
22 or more than 12 months.

23 SECTION 5.199. Section 604.151(b), Occupations Code, is
24 amended to read as follows:

25 (b) The executive commissioner [board] by rule may adopt a
26 system under which certificates expire on various dates during the
27 year. For the year in which the certificate expiration date is

1 changed, the department shall prorate certificate fees on a monthly
2 basis so that each certificate holder pays only that portion of the
3 certificate fee that is allocable to the number of months during
4 which the certificate is valid. On renewal of the certificate on
5 the new expiration date, the total certificate renewal fee is
6 payable.

7 SECTION 5.200. Section 604.154, Occupations Code, is
8 amended to read as follows:

9 Sec. 604.154. CONTINUING EDUCATION REQUIREMENTS. (a) The
10 executive commissioner [board] shall establish for the renewal of a
11 certificate uniform continuing education requirements of not less
12 than 12 or more than 24 continuing education hours for each renewal
13 period.

14 (b) The executive commissioner [board] may adopt rules
15 relating to meeting the continuing education requirements in a
16 hardship situation.

17 SECTION 5.201. Section 604.156(b), Occupations Code, is
18 amended to read as follows:

19 (b) To resume the practice of respiratory care, the
20 practitioner must:

21 (1) notify the department;
22 (2) satisfy requirements adopted by the executive
23 commissioner [board]; and

24 (3) pay the reinstatement fee and the renewal fee for
25 the renewal period in which the practitioner will resume practice.

26 SECTION 5.202. Section 604.157(b), Occupations Code, is
27 amended to read as follows:

1 (b) The department may renew a temporary permit for not more
2 than one additional period, pending compliance with this chapter
3 and department [board] rules. The additional period may not be less
4 than six months or more than 12 months.

5 SECTION 5.203. Section 604.203, Occupations Code, is
6 amended to read as follows:

7 Sec. 604.203. DISCIPLINARY PROCEDURE. The procedure by
8 which the department takes a disciplinary action and the procedure
9 by which a disciplinary action is appealed are governed by:

10 (1) department [board] rules for a contested case
11 hearing; and

12 (2) Chapter 2001, Government Code.

13 SECTION 5.204. Section 604.304(b), Occupations Code, is
14 amended to read as follows:

15 (b) If the person accepts the department's determination,
16 the department [commissioner of public health or the commissioner's
17 designee] by order shall approve the determination and assess the
18 proposed penalty.

19 SECTION 5.205. Section 604.305, Occupations Code, is
20 amended to read as follows:

21 Sec. 604.305. HEARING. (a) If the person requests a
22 hearing in a timely manner, the department shall:

23 (1) set a hearing; and

24 (2) give written notice of the hearing to the person [+
25 and

26 [+3) designate a hearings examiner to conduct the
27 hearing].

1 (b) The hearings examiner shall:
2 (1) make findings of fact and conclusions of law; and
3 (2) promptly issue to the department [~~commissioner of~~
4 ~~public health or the commissioner's designee~~] a proposal for
5 decision as to the occurrence of the violation and the amount of any
6 proposed administrative penalty.

7 SECTION 5.206. The heading to Section **604.306**, Occupations
8 Code, is amended to read as follows:

9 Sec. 604.306. DECISION BY DEPARTMENT [~~COMMISSIONER OR~~
10 ~~DESIGNEE~~].

11 SECTION 5.207. Section **604.306(a)**, Occupations Code, is
12 amended to read as follows:

13 (a) Based on the findings of fact, conclusions of law, and
14 proposal for decision, the department [~~commissioner of public~~
15 ~~health or the commissioner's designee~~] by order may determine that:

16 (1) a violation occurred and impose an administrative
17 penalty; or

18 (2) a violation did not occur.

19 SECTION 5.208. Section **604.311(b)**, Occupations Code, is
20 amended to read as follows:

21 (b) The department may assess reasonable expenses and costs
22 against a person in an administrative hearing if, as a result of the
23 hearing, an administrative penalty is assessed against the person.
24 The person shall pay expenses and costs assessed under this
25 subsection not later than the 30th day after the date the order of
26 the department [~~commissioner of public health or the commissioner's~~
27 ~~designee~~] requiring the payment of expenses and costs is final. The

1 department may refer the matter to the attorney general for
2 collection of the expenses and costs.

3 SECTION 5.209. Section 605.002(5), Occupations Code, is
4 amended to read as follows:

5 (5) "Department" means the [Texas] Department of State
6 Health Services.

7 SECTION 5.210. Section 605.101, Occupations Code, is
8 amended to read as follows:

9 Sec. 605.101. EXECUTIVE DIRECTOR. With the advice of the
10 board, the department [~~commissioner~~] shall appoint an executive
11 director to administer this chapter.

12 SECTION 5.211. Section 605.105(b), Occupations Code, is
13 amended to read as follows:

14 (b) A policy statement prepared under Subsection (a) must:

15 (1) cover an annual period;

16 (2) be updated annually;

17 (3) be reviewed by the Texas Workforce Commission
18 civil rights division [~~on Human Rights~~] for compliance with
19 Subsection (a)(1); and

20 (4) be filed with the governor.

21 SECTION 5.212. Section 605.152(b), Occupations Code, is
22 amended to read as follows:

23 (b) If the General Appropriations Act does not set the
24 amount of the fees, the board shall set the fees in amounts
25 reasonable and necessary for the administration of this chapter.

26 The fees for issuing or renewing a license must be in amounts
27 designed to allow the department and the board to recover from the

1 license holders all of the direct and indirect costs to the
2 department and to the board in administering and enforcing this
3 chapter.

4 SECTION 5.213. Section 605.2021(a), Occupations Code, is
5 amended to read as follows:

6 (a) In an investigation of a complaint filed with the board,
7 the board may request that the department [commissioner or the
8 commissioner's designee] approve the issuance of a subpoena. If
9 the request is approved, the board may issue a subpoena to compel
10 the attendance of a relevant witness or the production, for
11 inspection or copying, of relevant evidence that is in this state.

12 SECTION 5.214. Section 605.403, Occupations Code, is
13 amended to read as follows:

14 Sec. 605.403. [REPORT AND] NOTICE OF VIOLATION AND PENALTY.
15 [(a)] If the department [commissioner or the commissioner's
16 designee] determines that a violation occurred, the department
17 [commissioner or the designee may issue to the board a report
18 stating:

19 [(1) the facts on which the determination is based;
20 and

21 [(2) the commissioner's or the designee's
22 recommendation on the imposition of an administrative penalty,
23 including a recommendation on the amount of the penalty.

24 [(b)] Within 14 days after the date the report is issued, the
25 commissioner or the commissioner's designee] shall give written
26 notice of the violation [report] to the person. The notice must:

27 (1) include a brief summary of the alleged violation;

1 (2) state the amount of the [recommended]
2 administrative penalty recommended by the department; and
3 (3) inform the person of the person's right to a
4 hearing on the occurrence of the violation, the amount of the
5 penalty, or both.

6 SECTION 5.215. Section 605.404, Occupations Code, is
7 amended to read as follows:

8 Sec. 605.404. PENALTY TO BE PAID OR HEARING REQUESTED. (a)
9 Within 10 days after the date the person receives the notice, the
10 person in writing may:

11 (1) accept the determination and recommended
12 administrative penalty of the department [commissioner or the
13 commissioner's designee]; or

14 (2) make a request for a hearing on the occurrence of
15 the violation, the amount of the penalty, or both.

16 (b) If the person accepts the determination and recommended
17 penalty of the department [commissioner or the commissioner's
18 designee], the board by order shall approve the determination and
19 impose the recommended penalty.

20 SECTION 5.216. Section 605.405(a), Occupations Code, is
21 amended to read as follows:

22 (a) If the person requests a hearing or fails to respond in a
23 timely manner to the notice, the department [commissioner or the
24 commissioner's designee] shall set a hearing and give written
25 notice of the hearing to the person.

26 SECTION 5.217. Sections 605.407(b) and (c), Occupations
27 Code, are amended to read as follows:

1 (b) Within the 30-day period prescribed by Subsection (a), a
2 person who files a petition for judicial review may:

3 (1) stay enforcement of the penalty by:

4 (A) paying the penalty to the court for placement
5 in an escrow account; or

6 (B) giving the court a supersedeas bond approved
7 by the court that:

8 (i) is for the amount of the penalty; and

9 (ii) is effective until all judicial review
10 of the board's order is final; or

11 (2) request the court to stay enforcement of the
12 penalty by:

13 (A) filing with the court a sworn affidavit of
14 the person stating that the person is financially unable to pay the
15 penalty and is financially unable to give the supersedeas bond; and

16 (B) giving a copy of the affidavit to the
17 department [commissioner or the commissioner's designee] by
18 certified mail.

19 (c) If the department [commissioner or the commissioner's
20 designee] receives a copy of an affidavit under Subsection (b)(2),
21 the department [commissioner or the designee] may file with the
22 court, within five days after the date the copy is received, a
23 contest to the affidavit.

24 SECTION 5.218. Section 701.106(b), Occupations Code, is
25 amended to read as follows:

26 (b) A policy statement prepared under Subsection (a) must:

27 (1) cover an annual period;

- (2) be updated annually;
- (3) be reviewed by the Texas Workforce Commission
rights division [on Human Rights] for compliance with
Section (a)(1); and
- (4) be filed with the governor.

SECTION 5.219. Section 701.152(b), Occupations Code, is
ed to read as follows:

8 (b) In adopting rules, the dietitians board shall consider
9 the rules and procedures of the [Texas Board of Health and the]
10 department and shall adopt procedural rules not inconsistent with
11 similar rules and procedures of the department [those entities].

12 SECTION 5.220. Section 701.154(a), Occupations Code, is
13 amended to read as follows:

14 (a) After consulting the [commissioner or the] department,
15 the dietitians board by rule shall set fees in amounts reasonable
16 and necessary to cover the cost of administering this chapter. The
17 fees for issuing or renewing a license must be in amounts designed
18 to allow the department and the dietitians board to recover from the
19 license holders all of the direct and indirect costs to the
20 department and to the dietitians board in administering and
21 enforcing this chapter.

22 SECTION 5.221. Section 701.157, Occupations Code, is
23 amended to read as follows:

24 Sec. 701.157. POWERS AND DUTIES OF DEPARTMENT [~~TEXAS BOARD~~
25 ~~OF HEALTH~~]. To implement this chapter, the department [~~Texas Board~~
26 ~~of Health~~]:

27 (1) shall request and receive any necessary assistance

1 from state educational institutions or other state agencies;

2 (2) shall prepare information of consumer interest
3 describing the regulatory functions of the dietitians board, the
4 procedures by which consumer complaints are filed and resolved, and
5 the profession of dietetics;

6 (3) shall prepare a registry of licensed dietitians
7 and provisional licensed dietitians and make the registry available
8 to the public, license holders, and appropriate state agencies; and

9 (4) may request the attorney general or the
10 appropriate county or district attorney to institute a suit to
11 enjoin a violation of this chapter in addition to any other action,
12 proceeding, or remedy authorized by law.

13 SECTION 5.222. Section 701.301(b), Occupations Code, is
14 amended to read as follows:

15 (b) The dietitians board [~~Texas Board of Health~~] by rule may
16 adopt a system under which licenses expire on various dates during
17 the year. For the year in which the license expiration date is
18 changed, a license fee payable on the original expiration date
19 shall be prorated on a monthly basis so that the license holder pays
20 only that portion of the fee allocable to the number of months the
21 license is valid. The license holder shall pay the total license
22 renewal fee on renewal of the license on the new expiration date.

23 SECTION 5.223. Section 701.503, Occupations Code, is
24 amended to read as follows:

25 Sec. 701.503. REPORT AND NOTICE OF VIOLATION AND PENALTY.
26 (a) If the department [~~commissioner or the commissioner's~~
27 ~~designee~~] determines that a violation occurred, the department

1 [commissioner or the designee] may issue to the dietitians board a
2 report stating:

3 (1) the facts on which the determination is based; and
4 (2) the department's [commissioner's or the
5 ~~designee's~~] recommendation on the imposition of an administrative
6 penalty, including a recommendation on the amount of the penalty.

7 (b) Within 14 days after the date the report is issued, the
8 department [commissioner or the commissioner's designee] shall
9 give written notice of the report to the person. The notice must:

10 (1) include a brief summary of the alleged violation;
11 (2) state the amount of the recommended administrative
12 penalty; and

13 (3) inform the person of the person's right to a
14 hearing on the occurrence of the violation, the amount of the
15 penalty, or both.

16 SECTION 5.224. Section 701.504, Occupations Code, is
17 amended to read as follows:

18 Sec. 701.504. PENALTY TO BE PAID OR HEARING REQUESTED. (a)
19 Within 10 days after the date the person receives the notice, the
20 person in writing may:

21 (1) accept the determination and recommended
22 administrative penalty of the department [commissioner or the
23 commissioner's designee]; or

24 (2) make a request for a hearing on the occurrence of
25 the violation, the amount of the penalty, or both.

26 (b) If the person accepts the determination and recommended
27 penalty of the department [commissioner or the commissioner's

1 designee], the dietitians board by order shall approve the
2 determination and impose the recommended penalty.

3 SECTION 5.225. Section 701.505(a), Occupations Code, is
4 amended to read as follows:

5 (a) If the person requests a hearing or fails to respond in a
6 timely manner to the notice, the department [~~commissioner or the~~
7 ~~commissioner's designee~~] shall set a hearing and give written
8 notice of the hearing to the person.

9 SECTION 5.226. Sections 701.507(b) and (c), Occupations
10 Code, are amended to read as follows:

11 (b) Within the 30-day period prescribed by Subsection (a), a
12 person who files a petition for judicial review may:

13 (1) stay enforcement of the penalty by:

14 (A) paying the penalty to the court for placement
15 in an escrow account; or

16 (B) giving the court a supersedeas bond approved
17 by the court that:

18 (i) is for the amount of the penalty; and

19 (ii) is effective until all judicial review
20 of the dietitians board's order is final; or

21 (2) request the court to stay enforcement of the
22 penalty by:

23 (A) filing with the court a sworn affidavit of
24 the person stating that the person is financially unable to pay the
25 penalty and is financially unable to give the supersedeas bond; and

26 (B) giving a copy of the affidavit to the
27 department [~~commissioner or the commissioner's designee~~] by

1 certified mail.

2 (c) If the department [~~commissioner or the commissioner's~~
3 ~~designee~~] receives a copy of an affidavit under Subsection (b)(2),
4 the department [~~commissioner or the designee~~] may file with the
5 court, within five days after the date the copy is received, a
6 contest to the affidavit.

7 SECTION 5.227. Section 1952.001, Occupations Code, is
8 amended to read as follows:

9 Sec. 1952.001. DEFINITIONS. In this chapter:

10 (1) [~~"Board"~~ means the Texas Board of Health.]

11 [~~(2)~~] "Code enforcement" means the inspection of
12 public or private premises for the purpose of:

13 (A) identifying environmental hazards,
14 including:

15 (i) fire or health hazards;

16 (ii) nuisance violations;

17 (iii) unsafe building conditions; and

18 (iv) violations of any fire, health, or
19 building regulation, statute, or ordinance; and

20 (B) improving and rehabilitating those premises
21 with regard to those hazards.

22 (2) [~~(3)~~] "Code enforcement officer" means an agent of
23 this state or a political subdivision of this state who engages in
24 code enforcement.

25 (3) [~~(4)~~] "Department" means the [~~Texas~~] Department
26 of State Health Services.

27 (4) "Executive commissioner" means the executive

1 commissioner of the Health and Human Services Commission.

2 SECTION 5.228. The heading to Subchapter B, Chapter 1952,
3 Occupations Code, is amended to read as follows:

4 SUBCHAPTER B. [BOARD] POWERS AND DUTIES OF EXECUTIVE COMMISSIONER
5 AND DEPARTMENT

6 SECTION 5.229. Section 1952.051, Occupations Code, is
7 amended to read as follows:

8 Sec. 1952.051. RULES. The executive commissioner [board]
9 by rule shall:

10 (1) adopt standards and education requirements
11 consistent with those established under Chapter 654, Government
12 Code, for the registration of:

13 (A) code enforcement officers; and

14 (B) code enforcement officers in training; and

15 (2) prescribe application forms for original and
16 renewal certificates of registration.

17 SECTION 5.230. Section 1952.052, Occupations Code, is
18 amended to read as follows:

19 Sec. 1952.052. FEES. (a) The executive commissioner
20 [board] shall set fees in amounts that are reasonable and necessary
21 to cover the cost of administering this chapter.

22 (b) The executive commissioner shall set fees for issuing or
23 renewing a certificate of registration in amounts designed to allow
24 the department to recover from the certificate of registration
25 holders all of the department's direct and indirect costs in
26 administering and enforcing this chapter.

27 SECTION 5.231. Section 1952.053(b), Occupations Code, is

1 amended to read as follows:

2 (b) The register must include:

3 (1) the name, residence, date of birth, and social
4 security number of the applicant;

5 (2) the name and address of the employer or business of
6 the applicant;

7 (3) the date of the application;

8 (4) the education and experience qualifications of the
9 applicant;

10 (5) the action taken by the department regarding the
11 application and the date of the action;

12 (6) the serial number of any certificate of
13 registration issued to the applicant; and

14 (7) any other information required by department
15 [~~board~~] rule.

16 SECTION 5.232. Section 1952.102, Occupations Code, is
17 amended to read as follows:

18 Sec. 1952.102. ELIGIBILITY TO REGISTER AS CODE ENFORCEMENT
19 OFFICER. To be eligible to receive a certificate of registration as
20 a code enforcement officer, a person must:

21 (1) have at least one year of full-time experience in
22 the field of code enforcement;

23 (2) pass the examination conducted by the department
24 or the department's designee;

25 (3) pay the application, examination, and
26 registration fees; and

27 (4) meet any other requirements prescribed by this

1 chapter or by department [~~board~~] rule.

2 SECTION 5.233. Section 1952.105, Occupations Code, is
3 amended to read as follows:

4 Sec. 1952.105. RENEWAL OR REINSTATEMENT OF CERTIFICATE.

5 (a) A certificate of registration issued under this chapter
6 expires on the second [~~first~~] anniversary of the date of issuance
7 and may be renewed biennially [~~annually~~] on payment of the required
8 renewal fee and on completion of the [~~annual~~] continuing education
9 requirements prescribed by department rule [~~the board~~].

10 (b) The department may reinstate as provided by department
11 [~~board~~] rule a certificate of registration that was revoked for
12 failure to pay the renewal fee.

13 SECTION 5.234. Section 1952.1051, Occupations Code, is
14 amended to read as follows:

15 Sec. 1952.1051. CONTINUING EDUCATION. The executive
16 commissioner [~~board~~] by rule shall prescribe [~~annual~~] continuing
17 education requirements for code enforcement officers and code
18 enforcement officers in training that:

19 (1) establish the number of hours of continuing
20 education required for renewal of a certificate of registration;

21 (2) establish an approved curriculum that includes
22 material regarding changes in applicable law; and

23 (3) provide that the approved curriculum may be taught
24 by suitable public agencies and by private entities approved by the
25 department.

26 SECTION 5.235. Section 1952.152, Occupations Code, is
27 amended to read as follows:

1 Sec. 1952.152. PROCEDURE. The denial, suspension, or
2 revocation of a certificate of registration under this chapter is
3 governed by:

4 (1) department [~~the board's~~] rules for a contested
5 case hearing; and

6 (2) Chapter 2001, Government Code.

7 SECTION 5.236. Section 1952.253, Occupations Code, is
8 amended to read as follows:

9 Sec. 1952.253. [~~REPORT AND~~] NOTICE OF VIOLATION AND
10 PENALTY. [(a)] If the department [~~commissioner of public health or~~
11 ~~the commissioner's designee~~] determines that a violation occurred,
12 the department [~~commissioner or the designee may issue to the~~
13 ~~department a report stating:~~

14 [~~(1) the facts on which the determination is based;~~
15 ~~and~~

16 [~~(2) the commissioner's or the designee's~~
17 ~~recommendation on the imposition of an administrative penalty,~~
18 ~~including a recommendation on the amount of the penalty.~~

19 [(b) Within 14 days after the date the report is issued, the
20 ~~commissioner of public health or the commissioner's designee~~] shall
21 give written notice of the violation [~~report~~] to the person. The
22 notice must:

23 (1) include a brief summary of the alleged violation;

24 (2) state the amount of the [~~recommended~~
25 administrative penalty recommended by the department; and

26 (3) inform the person of the person's right to a
27 hearing on the occurrence of the violation, the amount of the

1 penalty, or both.

2 SECTION 5.237. Section [1952.254](#), Occupations Code, is
3 amended to read as follows:

4 Sec. 1952.254. PENALTY TO BE PAID OR HEARING REQUESTED. (a)
5 Within 10 days after the date the person receives the notice, the
6 person in writing may:

7 (1) accept the determination and recommended
8 administrative penalty of the department [~~commissioner of public~~
9 ~~health or the commissioner's designee~~]; or

10 (2) make a request for a hearing on the occurrence of
11 the violation, the amount of the penalty, or both.

12 (b) If the person accepts the determination and recommended
13 penalty of the department [~~commissioner of public health or the~~
14 ~~commissioner's designee~~], the department by order shall approve the
15 determination and impose the recommended penalty.

16 SECTION 5.238. Section [1952.255\(a\)](#), Occupations Code, is
17 amended to read as follows:

18 (a) If the person requests a hearing or fails to respond in a
19 timely manner to the notice, the department [~~commissioner of public~~
20 ~~health or the commissioner's designee~~] shall set a hearing and give
21 written notice of the hearing to the person.

22 SECTION 5.239. Sections [1952.257\(b\)](#) and [\(c\)](#), Occupations
23 Code, are amended to read as follows:

24 (b) Within the 30-day period prescribed by Subsection (a), a
25 person who files a petition for judicial review may:

26 (1) stay enforcement of the penalty by:

27 (A) paying the penalty to the court for placement

1 in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

4 (i) is for the amount of the penalty; and

5 (ii) is effective until all judicial review
6 of the department's order is final; or

6 of the department's order is final; or

(A) filing with the court a sworn affidavit of
the person stating that the person is financially unable to pay the

11 penalty and is financially unable to give the supersedeas bond; and
12 (B) giving a copy of the affidavit to the

13 department [commissioner of public health or the commissioner's
14 designee] by certified mail.

15 (c) If the department [~~commissioner of public health or the~~
16 ~~commissioner's designee~~] receives a copy of an affidavit under
17 Subsection (b)(2), the department [~~commissioner or the designee~~]
18 may file with the court, within five days after the date the copy is
19 received, a contest to the affidavit.

20 SECTION 5.240. Section 1953.001, Occupations Code, is
21 amended to read as follows:

22 Sec. 1953.001. DEFINITIONS. In this chapter:

23 (1) "Department" ["Board"] means the Department
24 [Texas Board] of State Health Services.

27 (3) "Sanitarian" means a person trained in sanitary

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1 science to perform duties relating to education and inspections in
2 environmental sanitation.

3 (4) [43] "Sanitation" means the study, art, and
4 technique of applying scientific knowledge to improve the human
5 environment for the purpose of promoting public health and welfare.

6 SECTION 5.241. Section 1953.003, Occupations Code, is
7 amended to read as follows:

Sec. 1953.003. EXEMPTIONS. This chapter does not apply to a person, including a physician, dentist, engineer, or veterinarian, who is licensed by an agency of this state other than the department [board] and who, by nature of the person's employment or duties, might be construed as being subject to this chapter.

13 SECTION 5.242. Subchapter B, Chapter 1953, Occupations
14 Code, is amended to read as follows:

15 SUBCHAPTER B. [BOARD] POWERS AND DUTIES OF EXECUTIVE COMMISSIONER
16 AND DEPARTMENT

17 Sec. 1953.051. GENERAL DUTIES OF DEPARTMENT [BOARD]. The
18 department [board] shall:

21 [(2)] administer continuing education requirements;
22 and

(2) [~~(3)~~] prescribe necessary forms.

24 Sec. 1953.0511. RULES. The executive commissioner shall
25 adopt rules to administer and enforce this chapter.

26 Sec. 1953.052. FEES; PAYMENT OF ADMINISTRATIVE COSTS. (a)
27 The executive commissioner by rule [board] shall prescribe fees

1 under this chapter.

2 (b) General revenue of the state may not be used to pay the
3 costs of administering this chapter in an amount that exceeds the
4 amount of fees received under this chapter.

5 (c) If the fees are inadequate to pay the costs of
6 administering this chapter, the executive commissioner [board] may
7 increase the fees to an amount sufficient to pay those costs.

8 (d) The executive commissioner shall set fees for issuing or
9 renewing a certificate of registration in amounts designed to allow
10 the department to recover from the certificate of registration
11 holders all of the department's direct and indirect costs in
12 administering and enforcing this chapter.

13 Sec. 1953.053. REGISTER OF APPLICATIONS. (a) The
14 department [board] shall keep a register of each application for a
15 certificate of registration under this chapter.

16 (b) The register must include:

17 (1) the name, age, and place of residence of the
18 applicant;

19 (2) the name and address of the employer or business
20 connection of the applicant;

21 (3) the date of the application;

22 (4) complete information regarding the applicant's
23 education and experience qualifications;

24 (5) the date the department [board] reviewed and acted
25 on the application;

26 (6) a description of the department's [board's] action
27 on the application;

1 (7) the serial number of any certificate of
2 registration issued to the applicant; and

3 (8) any other information the department [board]
4 determines necessary.

5 Sec. 1953.054. RECORD OF PROCEEDINGS. The department
6 [board] shall keep a record of proceedings under this chapter.

7 Sec. 1953.055. REPORTS. The department [board] shall
8 maintain a copy of each annual report and each report prepared by
9 the state auditor issued in connection with this chapter.

10 SECTION 5.243. Sections [1953.102](#), [1953.103](#), and [1953.104](#),
11 Occupations Code, are amended to read as follows:

12 Sec. 1953.102. ELIGIBILITY REQUIREMENTS. (a) To be
13 eligible to receive a certificate of registration as a professional
14 sanitarian, a person must:

15 (1) hold at least a bachelor's degree from an
16 accredited college or university that includes at least 30 semester
17 hours in basic or applied science;

18 (2) complete any additional training in the basic
19 sciences or public health the executive commissioner [board]
20 determines necessary to effectively serve as a professional
21 sanitarian; and

22 (3) have at least two years of full-time experience in
23 sanitation.

24 (b) The executive commissioner [board] by rule may
25 establish other qualifications for registration.

26 Sec. 1953.103. RECIPROCAL REGISTRATION. The department
27 [board] under rules adopted by the executive commissioner [board]

1 may enter into an agreement with another state to provide for
2 reciprocal registration if the other state provides by statute for
3 the registration of sanitarians.

4 Sec. 1953.104. ISSUANCE OF CERTIFICATE: PROFESSIONAL
5 SANITARIAN; TERM. (a) The department [board] shall issue a
6 certificate of registration as a professional sanitarian to a
7 person who:

8 (1) applies on the form prescribed by the department
9 [board];

10 (2) pays the registration fee set by the executive
11 commissioner by rule [board];

12 (3) meets the eligibility requirements prescribed by
13 Section 1953.102; and

14 (4) passes an examination under Subchapter D.

15 (b) A certificate of registration is valid for two years.

16 SECTION 5.244. Section 1953.105(a), Occupations Code, is
17 amended to read as follows:

18 (a) The department [~~on approval by the board, the board~~] shall issue a certificate of registration as a sanitarian in
19 training to a person who:

21 (1) is employed in sanitation;

22 (2) meets the eligibility requirements prescribed by
23 Section 1953.102, other than the requirements relating to
24 experience;

25 (3) pays a registration fee prescribed by the
26 executive commissioner by rule [board] for a sanitarian in
27 training; and

1 (4) passes an examination under Subchapter D.

2 SECTION 5.245. Section 1953.106, Occupations Code, is
3 amended to read as follows:

4 Sec. 1953.106. RENEWAL OR REINSTATEMENT OF CERTIFICATE.

5 (a) To renew a certificate of registration under this chapter, a
6 professional sanitarian must:

7 (1) pay to the department [board] a renewal fee
8 prescribed by the executive commissioner by rule [board]; and

9 (2) provide proof of completion of continuing
10 education contact hours as prescribed by the executive commissioner
11 [board].

12 (b) The department [board] may reinstate a certificate of
13 registration as provided by department [board] rules that was
14 revoked for failure to pay the renewal fee.

15 SECTION 5.246. Subchapters D and E, Chapter 1953,
16 Occupations Code, are amended to read as follows:

17 SUBCHAPTER D. EXAMINATION

18 Sec. 1953.151. EXAMINATION. (a) To obtain a certificate of
19 registration under this chapter, an applicant must pass a written
20 examination prescribed by the department [board] that provides
21 evidence satisfactory to the department [board] that the applicant
22 is qualified for registration under this chapter.

23 (b) An applicant for a certificate of registration may not
24 take the examination unless the applicant pays the examination fee
25 prescribed by the executive commissioner by rule [board].

26 (c) In evaluating an applicant's performance on the
27 examination, the department [board] shall carefully consider the

1 applicant's knowledge and understanding of the principles of
2 sanitation and the physical, biological, and social sciences.

3 Sec. 1953.152. EXAMINATION RESULTS. (a) Not later than the
4 30th day after the examination date, the department [board] shall
5 notify each examinee of the results of the examination. If an
6 examination is graded or reviewed by a national testing service,
7 the department [board] shall notify each examinee of the results of
8 the examination not later than the 14th day after the date the
9 department [board] receives the results from the testing service.

10 (b) If the notice of the results of an examination graded or
11 reviewed by a national testing service will not be given before the
12 91st day after the examination date, the department [board] shall
13 notify each examinee of the reason for the delay before the 90th
14 day.

15 (c) If requested in writing by a person who fails the
16 examination, the department [board] shall provide to the person an
17 analysis of the person's performance on the examination.

18 SUBCHAPTER E. CERTIFICATE DENIAL AND DISCIPLINARY PROCEDURES

19 Sec. 1953.201. DENIAL OF CERTIFICATE; DISCIPLINARY ACTION.

20 (a) The department [board] may deny a person's application for a
21 certificate of registration if:

22 (1) the person's certificate or license to engage in a
23 profession in this state or elsewhere has been revoked for
24 unprofessional conduct, fraud, deceit, negligence, or misconduct
25 in the practice of the profession; or

26 (2) satisfactory proof is presented to the department
27 [board] establishing that the person has been found guilty of

1 unprofessional conduct, fraud, deceit, negligence, or misconduct
2 in the practice of a profession.

3 (b) The department [board] may suspend or revoke a
4 certificate of registration if the certificate holder:

5 (1) practiced fraud or deceit in obtaining the
6 certificate; or

7 (2) acted in a manner constituting gross negligence,
8 incompetency, or misconduct in the practice of sanitation.

9 Sec. 1953.202. HEARING. The department [board] may not
10 deny an application for a certificate of registration or suspend or
11 revoke a person's certificate until a hearing is held and the person
12 is given the opportunity to answer any charges filed with the
13 department [board].

14 SECTION 5.247. Section 1953.301, Occupations Code, is
15 amended to read as follows:

16 Sec. 1953.301. IMPOSITION OF ADMINISTRATIVE PENALTY. The
17 department [board] may impose an administrative penalty on a person
18 registered under this chapter who violates this chapter or a rule or
19 order adopted under this chapter.

20 SECTION 5.248. Sections 1953.303 and 1953.304, Occupations
21 Code, are amended to read as follows:

22 Sec. 1953.303. [REPORT AND] NOTICE OF VIOLATION AND
23 PENALTY. [(a)] If the department [commissioner of public health or
24 the commissioner's designee] determines that a violation occurred,
25 the department [commissioner or the designee may issue to the board
26 a report stating:

27 [(1) the facts on which the determination is based;

1 and

2 [(2) the commissioner's or the designee's
3 recommendation on the imposition of an administrative penalty,
4 including a recommendation on the amount of the penalty.

5 [(b) Within 14 days after the date the report is issued, the
6 commissioner of public health or the commissioner's designee] shall
7 give written notice of the violation [report] to the person. The
8 notice must:

9 (1) include a brief summary of the alleged violation;
10 (2) state the amount of the [recommended]
11 administrative penalty recommended by the department; and
12 (3) inform the person of the person's right to a
13 hearing on the occurrence of the violation, the amount of the
14 penalty, or both.

15 Sec. 1953.304. PENALTY TO BE PAID OR HEARING REQUESTED. (a)
16 Within 10 days after the date the person receives the notice, the
17 person in writing may:

18 (1) accept the determination and recommended
19 administrative penalty [of the commissioner of public health or the
20 commissioner's designee]; or
21 (2) make a request for a hearing on the occurrence of
22 the violation, the amount of the penalty, or both.

23 (b) If the person accepts the determination and recommended
24 penalty [of the commissioner of public health or the commissioner's
25 designee], the department [board] by order shall approve the
26 determination and impose the recommended penalty.

27 SECTION 5.249. Sections 1953.305(a) and (c), Occupations

1 Code, are amended to read as follows:

2 (a) If the person requests a hearing or fails to respond in a
3 timely manner to the notice, the department [~~commissioner of public~~
4 ~~health or the commissioner's designee~~] shall set a hearing and give
5 written notice of the hearing to the person.

6 (c) The administrative law judge shall make findings of fact
7 and conclusions of law and promptly issue to the department [~~board~~]
8 a proposal for a decision about the occurrence of the violation and
9 the amount of a proposed administrative penalty.

10 SECTION 5.250. Section 1953.306, Occupations Code, is
11 amended to read as follows:

12 Sec. 1953.306. DECISION BY DEPARTMENT [~~BOARD~~]. (a) Based
13 on the findings of fact, conclusions of law, and proposal for
14 decision, the department [~~board~~] by order may determine that:

15 (1) a violation occurred and impose an administrative
16 penalty; or

17 (2) a violation did not occur.

18 (b) The notice of the department's [~~board's~~] order given to
19 the person must include a statement of the right of the person to
20 judicial review of the order.

21 SECTION 5.251. Sections 1953.307(a), (b), and (c),
22 Occupations Code, are amended to read as follows:

23 (a) Within 30 days after the date the department's [~~board's~~]
24 order becomes final, the person shall:

25 (1) pay the administrative penalty; or

26 (2) file a petition for judicial review contesting the
27 occurrence of the violation, the amount of the penalty, or both.

1 (b) Within the 30-day period prescribed by Subsection (a), a
2 person who files a petition for judicial review may:

3 (1) stay enforcement of the penalty by:

4 (A) paying the penalty to the court for placement
5 in an escrow account; or

6 (B) giving the court a supersedeas bond approved
7 by the court that:

8 (i) is for the amount of the penalty; and

9 (ii) is effective until all judicial review
10 of the department's [board's] order is final; or

11 (2) request the court to stay enforcement of the
12 penalty by:

13 (A) filing with the court a sworn affidavit of
14 the person stating that the person is financially unable to pay the
15 penalty and is financially unable to give the supersedeas bond; and

16 (B) giving a copy of the affidavit to the
17 department [commissioner of public health or the commissioner's
18 designee] by certified mail.

19 (c) If the department [commissioner of public health or the
20 commissioner's designee] receives a copy of an affidavit under
21 Subsection (b)(2), the department [commissioner or the designee]
22 may file with the court, within five days after the date the copy is
23 received, a contest to the affidavit.

24 SECTION 5.252. Section 1954.002, Occupations Code, is
25 amended by amending Subdivisions (7) and (8) and adding Subdivision
26 (10-a) to read as follows:

27 (7) "Commissioner" means the commissioner of state

1 [public] health services.

2 (8) "Department" means the [Texas] Department of State
3 Health Services.

4 (10-a) "Executive commissioner" means the executive
5 commissioner of the Health and Human Services Commission.

6 SECTION 5.253. The heading to Subchapter B, Chapter 1954,
7 Occupations Code, is amended to read as follows:

8 SUBCHAPTER B. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER [~~BOARD~~]
9 AND DEPARTMENT

10 SECTION 5.254. Section 1954.051, Occupations Code, is
11 amended to read as follows:

12 Sec. 1954.051. GENERAL RULEMAKING AUTHORITY. The executive
13 commissioner [~~board~~] shall adopt substantive and procedural rules
14 as necessary or desirable for the executive commissioner [~~board~~],
15 the department, and the commissioner to discharge their powers and
16 duties under this chapter.

17 SECTION 5.255. Section 1954.052, Occupations Code, is
18 amended to read as follows:

19 Sec. 1954.052. RULES REGARDING ASBESTOS CONCENTRATION
20 LEVELS. (a) The executive commissioner [~~board~~] may adopt rules
21 defining the maximum airborne asbestos concentrations that are:

22 (1) permissible outside of a regulated containment
23 area during an abatement activity; and

24 (2) acceptable for final clearance.

25 (b) The executive commissioner [~~board~~] may not by rule
26 identify any level of asbestos concentration as a safe exposure
27 level because any exposure to airborne asbestos is considered to

1 involve some risk.

2 SECTION 5.256. Section 1954.053, Occupations Code, is
3 amended to read as follows:

4 Sec. 1954.053. RULES REGARDING PERFORMANCE STANDARDS AND
5 WORK PRACTICES. The executive commissioner [board] may adopt rules
6 specifying:

7 (1) performance standards at least as stringent as
8 applicable federal standards; and

9 (2) work practices that affect asbestos removal or
10 encapsulation in a public building.

11 SECTION 5.257. Section 1954.054, Occupations Code, is
12 amended to read as follows:

13 Sec. 1954.054. RULES RESTRICTING ADVERTISING OR
14 COMPETITIVE BIDDING. (a) The executive commissioner [board] may
15 not adopt a rule restricting advertising or competitive bidding by
16 a person licensed or registered under this chapter except to
17 prohibit a false, misleading, or deceptive practice.

18 (b) In adopting [its] rules to prohibit a false, misleading,
19 or deceptive practice, the executive commissioner [board] may not
20 include a rule that:

21 (1) restricts the use of any medium for advertising;

22 (2) restricts the use of the personal appearance or
23 voice of the person in an advertisement;

24 (3) relates to the size or duration of an
25 advertisement by the person; or

26 (4) restricts the person's advertisement under a trade
27 name.

1 SECTION 5.258. Section 1954.055, Occupations Code, is
2 amended to read as follows:

3 Sec. 1954.055. RECIPROCITY AGREEMENT. The executive
4 commissioner [department] may adopt rules under this chapter to
5 effect reciprocity agreements with other states.

6 SECTION 5.259. Section 1954.056(a), Occupations Code, is
7 amended to read as follows:

8 (a) The executive commissioner [board] shall set [~~adopt a~~
9 ~~schedule of the~~] fees under [~~that are provided by~~] this chapter in
10 amounts that are [~~and any other fee that is~~] reasonable and
11 necessary. The executive commissioner shall set fees for issuing
12 or renewing a license in amounts designed to allow the department to
13 recover from the license holders all of the department's direct and
14 indirect costs in administering and enforcing this chapter.

15 SECTION 5.260. Section 1954.059(a), Occupations Code, is
16 amended to read as follows:

17 (a) The department shall inspect:
18 (1) an asbestos abatement contractor during an
19 abatement project at least annually; and
20 (2) other licensed organizations in accordance with
21 department [board] rules.

22 SECTION 5.261. Sections 1954.060(a) and (c), Occupations
23 Code, are amended to read as follows:

24 (a) The executive commissioner [board] may adopt and the
25 department may enforce rules regarding demolition and renovation
26 activities to protect the public from asbestos emissions. At a
27 minimum, the rules must be sufficient to permit the department to

1 obtain authority from the United States Environmental Protection
2 Agency to implement and enforce in this state the provisions of 40
3 C.F.R. Part 61, Subpart M, that establish the requirements
4 applicable to the demolition and renovation of a facility,
5 including the disposal of asbestos-containing waste materials.

6 (c) The department [board] may exempt a demolition or
7 renovation project from the rules relating to demolition and
8 renovation activities adopted under Subsection (a) if:

9 (1) the project has received an exemption from the
10 United States Environmental Protection Agency exempting the
11 project from federal regulations; or

12 (2) the department [board] determines that:

13 (A) the project will use methods for the
14 abatement or removal of asbestos that provide protection for the
15 public health and safety at least equivalent to the protection
16 provided by the procedures required under department [board] rule
17 for the abatement or removal of asbestos; and

18 (B) the project does not violate federal law.

19 SECTION 5.262. Section 1954.061, Occupations Code, is
20 amended to read as follows:

21 Sec. 1954.061. MEMORANDUM OF UNDERSTANDING REGARDING
22 CERTAIN SOLID WASTE FACILITIES. The executive commissioner [board]
23 and the Texas [~~Natural Resource Conservation~~] Commission on
24 Environmental Quality by rule shall adopt a joint memorandum of
25 understanding regarding the inspection of solid waste facilities
26 that receive asbestos.

27 SECTION 5.263. Section 1954.101(b), Occupations Code, is

1 amended to read as follows:

2 (b) In accordance with a schedule established by department
3 [board] rules, a person may not sponsor or certify an asbestos
4 training course required for licensing or registration under this
5 chapter unless the person is licensed as a training sponsor.

6 SECTION 5.264. Sections 1954.102(a) and (c), Occupations
7 Code, are amended to read as follows:

8 (a) The executive commissioner [board] shall determine and
9 specify the scope, purpose, eligibility, qualifications, and
10 compliance requirements for each class of license and any other
11 license necessary for the executive commissioner and department
12 [board] to carry out their [its] duties under this chapter.

13 (c) A laboratory may be licensed as an asbestos laboratory
14 only if the laboratory:

15 (1) is accredited by the National Voluntary Laboratory
16 and Analytical Proficiency Accreditation or is enrolled in the EPA
17 Proficiency Analytical Testing rounds, as appropriate; or

18 (2) has similar qualifications as required by the
19 executive commissioner [board].

20 SECTION 5.265. Section 1954.105(a), Occupations Code, is
21 amended to read as follows:

22 (a) An applicant for a license to engage in asbestos
23 abatement or in another asbestos-related activity for which a
24 license is required under this chapter must:

25 (1) submit an application to the department on a form
26 prescribed by the department; and

27 (2) pay to the department a nonrefundable application

1 fee in the amount set by the executive commissioner by rule [board].

2 SECTION 5.266. Section 1954.106(a), Occupations Code, is
3 amended to read as follows:

4 (a) To qualify for a license under this chapter, an
5 applicant must meet the requirements of this section and any other
6 requirements established by the executive commissioner [board],
7 including asbestos-related education or experience requirements.

8 SECTION 5.267. Section 1954.107(a), Occupations Code, is
9 amended to read as follows:

10 (a) An individual may apply for a restricted license as an
11 asbestos abatement supervisor without the experience the executive
12 commissioner [board] by rule may require to be licensed as an
13 asbestos abatement supervisor if the individual:

14 (1) is an employee of a building owner or manager; and
15 (2) meets all other qualifications or requirements for
16 a license.

17 SECTION 5.268. Sections 1954.108(a) and (b), Occupations
18 Code, are amended to read as follows:

19 (a) An application for registration or the renewal of
20 registration as an asbestos abatement worker must be made on a form
21 provided by the department. An application for registration must
22 be accompanied by a nonrefundable fee set by the executive
23 commissioner by rule [board in an amount not to exceed \$50].

24 (b) The executive commissioner [board] shall determine the
25 criteria for registration or the renewal of registration as an
26 asbestos abatement worker.

27 SECTION 5.269. Section 1954.109, Occupations Code, is

1 amended to read as follows:

2 Sec. 1954.109. EXAMINATIONS. The executive commissioner

3 [board] may:

4 (1) require or authorize the use of standardized
5 examinations for licensing or registration under this chapter; and

6 (2) set fees [~~in amounts not to exceed \$200~~] for the
7 administration of the examinations.

8 SECTION 5.270. Section 1954.151(a), Occupations Code, is
9 amended to read as follows:

10 (a) The department may grant a provisional license or
11 registration to an applicant for a license or registration in this
12 state who:

13 (1) has been licensed or registered in good standing
14 to perform the relevant asbestos-related activity for at least two
15 years in another jurisdiction, including a foreign country, that
16 has licensing or registration requirements substantially
17 equivalent to the requirements of this chapter;

18 (2) is currently licensed or registered in that
19 jurisdiction;

20 (3) has passed a national or other examination
21 recognized by the executive commissioner [board] relating to the
22 relevant asbestos-related activity, if the executive commissioner
23 [board] requires an examination under Section 1954.109 to obtain
24 the license or registration required to perform that activity; and

25 (4) is sponsored by a person licensed under this
26 chapter with whom the provisional license or registration holder
27 will practice during the time the person holds the provisional

1 license or registration.

2 SECTION 5.271. Section 1954.153, Occupations Code, is
3 amended to read as follows:

4 Sec. 1954.153. ELIGIBILITY FOR LICENSE OR REGISTRATION.

5 The department shall issue a license or registration under
6 Subchapter C to a provisional license or registration holder who is
7 eligible to be licensed or registered under rules adopted under
8 Section 1954.055 or who:

9 (1) passes the part of the examination under Section
10 1954.109 that relates to the applicant's knowledge and
11 understanding of the laws and rules relating to the performance of
12 the relevant asbestos-related activity in this state, if the
13 executive commissioner [board] requires an examination under
14 Section 1954.109 to obtain the license or registration required to
15 perform that activity;

16 (2) meets the relevant academic and experience
17 requirements for the license or registration, as verified by the
18 department; and

19 (3) satisfies any other applicable license or
20 registration requirement under this chapter.

21 SECTION 5.272. Section 1954.201, Occupations Code, is
22 amended to read as follows:

23 Sec. 1954.201. [ANNUAL] LICENSE EXPIRATION AND RENEWAL
24 [REQUIRED]. (a) A license issued under this chapter expires on the
25 second [~~first~~] anniversary of its effective date and may be [~~or~~
26 ~~unless the license is~~] renewed [~~for a one-year term~~] as provided by
27 this subchapter. A person whose license has expired may not engage

1 in an activity for which a license is required until the license is
2 renewed.

3 (b) The executive commissioner [board] by rule may adopt a
4 system under which licenses expire on various dates during the
5 year. For a year in which the license expiration date is changed,
6 the department shall prorate license fees on a monthly basis so that
7 each license holder pays only that portion of the license fee that
8 is allocable to the number of months during which the license is
9 valid. On renewal of the license on the new expiration date, the
10 total renewal fee is payable.

11 SECTION 5.273. Section 1954.203(a), Occupations Code, is
12 amended to read as follows:

13 (a) A person may renew an unexpired license for an
14 additional two-year [~~one-year~~] term if the person:

15 (1) is otherwise entitled to be licensed;

16 (2) submits to the department a renewal application on
17 the form required by the department;

18 (3) pays to the department a nonrefundable renewal fee
19 [~~in an amount not to exceed the amount of the application fee~~
20 ~~required under Section 1954.105(a)~~];

21 (4) has successfully completed:

22 (A) the requirements for renewal; and

23 (B) a current physical examination; and

24 (5) has complied with any final order resulting from a
25 violation of this chapter.

26 SECTION 5.274. Section 1954.205(a), Occupations Code, is
27 amended to read as follows:

1 (a) The executive commissioner [board] shall set the term of
2 registration of an asbestos abatement worker.

3 SECTION 5.275. Sections 1954.256(a), (b), and (d),
4 Occupations Code, are amended to read as follows:

5 (a) The executive commissioner [board] shall adopt an
6 asbestos training approval plan to approve the training required
7 for a person to be licensed or registered under this chapter. In
8 adopting the plan, the executive commissioner [board] shall adopt
9 by reference the Model Accreditation Plan developed by the United
10 States Environmental Protection Agency.

11 (b) The executive commissioner [board] may establish other
12 requirements or change the number, design, or content of the plan
13 adopted under Subsection (a) as the executive commissioner [board]
14 determines desirable, provided that the plan is at least as
15 comprehensive and stringent as the Model Accreditation Plan.

16 (d) A licensed training sponsor shall provide to the
17 department in accordance with department [board] rules a record of
18 the persons who attend an asbestos training course for licensing or
19 registration under this chapter.

20 SECTION 5.276. Section 1954.258, Occupations Code, is
21 amended to read as follows:

22 Sec. 1954.258. COMPLIANCE WITH [BOARD] STANDARDS NOT A
23 DEFENSE TO CIVIL LIABILITY. Compliance with any minimum standards
24 adopted by the executive commissioner [board] under this chapter
25 does not constitute a defense to a civil action for damages arising
26 from a work activity affecting asbestos.

27 SECTION 5.277. Section 1954.301(d), Occupations Code, is

1 amended to read as follows:

2 (d) The department may place on probation a person whose
3 license or registration is suspended. If a suspension is probated,
4 the department may require the person to:

5 (1) report regularly to the department on matters that
6 are the basis of the probation;

7 (2) limit practice to the areas prescribed by the
8 department [board]; or

9 (3) continue or review professional education until
10 the person attains a degree of skill satisfactory to the department
11 [board] in those areas that are the basis of the probation.

12 SECTION 5.278. Section 1954.302, Occupations Code, is
13 amended to read as follows:

14 Sec. 1954.302. GROUNDS FOR DISCIPLINE OF LICENSE HOLDER.

15 The executive commissioner [board] by rule shall adopt the criteria
16 for the department to take disciplinary action against a license
17 holder under Section 1954.301. At a minimum, the criteria must
18 require disciplinary action against a license holder who:

19 (1) commits fraud or deception in obtaining or
20 attempting to obtain a license or a contract to perform an
21 asbestos-related activity;

22 (2) fails at any time to meet the qualifications for a
23 license;

24 (3) violates a rule adopted under this chapter;

25 (4) violates an applicable federal or state standard
26 for asbestos-related activities; or

27 (5) falsifies or fails to maintain a record of an

1 asbestos-related activity required by a federal agency or by the
2 department.

3 SECTION 5.279. Section 1954.303, Occupations Code, is
4 amended to read as follows:

5 Sec. 1954.303. GROUNDS FOR DISCIPLINE OF REGISTERED PERSON.
6 The department shall take disciplinary action under Section
7 1954.301 against a person registered under this chapter who:

8 (1) fraudulently or deceptively assigns, obtains, or
9 attempts to assign or obtain a registration or the renewal of a
10 registration; or

11 (2) violates:

12 (A) a federal, state, or local asbestos law or
13 rule; or

14 (B) an order issued by the executive commissioner
15 [~~board~~] or department.

16 SECTION 5.280. Section 1954.306, Occupations Code, is
17 amended to read as follows:

18 Sec. 1954.306. ADMINISTRATIVE PROCEDURE. A notice and
19 hearing required under this subchapter and judicial review of a
20 final administrative decision issued under this subchapter are
21 governed by Chapter 2001, Government Code, and the department
22 [~~board~~] rules for contested case hearings.

23 SECTION 5.281. Section 1954.307, Occupations Code, is
24 amended to read as follows:

25 Sec. 1954.307. REAPPLICATION FOLLOWING LICENSE REVOCATION
26 OR SUSPENSION. A person whose license is revoked or suspended may
27 not reapply for a license until after the period stated in a

1 schedule established by department [board] rule.

2 SECTION 5.282. Subchapter H, Chapter 1954, Occupations
3 Code, is amended to read as follows:

4 SUBCHAPTER H. ADMINISTRATIVE PENALTY

5 Sec. 1954.351. IMPOSITION OF ADMINISTRATIVE PENALTY. The
6 department [~~commissioner~~] may impose an administrative penalty on a
7 person who violates this chapter or a rule adopted or order issued
8 under this chapter.

9 Sec. 1954.352. AMOUNT OF PENALTY. (a) The amount of an
10 administrative penalty may not exceed \$10,000 a day for each
11 violation. Each day a violation continues may be considered a
12 separate violation for purposes of imposing a penalty.

13 (b) In determining the amount of the penalty, the department
14 [~~commissioner~~] shall consider:

- 15 (1) the seriousness of the violation;
16 (2) any hazard created to the health and safety of the
17 public;
18 (3) the person's history of previous violations; and
19 (4) any other matter that justice may require.

20 Sec. 1954.353. OPPORTUNITY FOR HEARING; ORDER. (a) The
21 department [~~commissioner~~] may impose an administrative penalty
22 under this subchapter only after the person charged with a
23 violation is given the opportunity for a hearing.

24 (b) If a hearing is held, the department [~~commissioner~~]
25 shall make findings of fact and issue a written decision as to:
26 (1) the occurrence of the violation; and
27 (2) the amount of any penalty that is warranted.

1 (c) If the person charged with a violation fails to exercise
2 the opportunity for a hearing, the department [~~commissioner~~], after
3 determining that a violation occurred and the amount of the penalty
4 that is warranted, may impose a penalty and shall issue an order
5 requiring the person to pay any penalty imposed.

6 (d) Not later than the 30th day after the date an order is
7 issued after determining that a violation occurred, the department
8 [~~commissioner~~] shall inform the person charged with the violation
9 of the amount of any penalty imposed.

10 (e) The department [~~commissioner~~] may consolidate a hearing
11 under this section with another proceeding.

12 Sec. 1954.354. OPTIONS FOLLOWING DECISION[~~+~~ PAY OR
13 APPEAL]. (a) Not later than the 30th day after the date the
14 department's [~~commissioner's~~] decision or order becomes final as
15 provided by Section 2001.144, Government Code, the person shall:

16 (1) pay the administrative penalty; or
17 (2) file a petition for judicial review contesting the
18 fact of the violation, the amount of the penalty, or both.

19 (b) Within the 30-day period, a person who acts under
20 Subsection (a)(2) may:

21 (1) stay enforcement of the penalty by:
22 (A) [~~(1)~~] paying the penalty to the court
23 [~~commissioner~~] for placement in an escrow account; or
24 (B) posting with the court [~~(2)~~ giving the
25 ~~commissioner~~] a supersedeas bond in a form approved by the court
26 [~~commissioner~~] that[~~+~~]

27 [~~(A)~~] is for the amount of the penalty[~~+~~] and

1 [(B)] is effective until judicial review of the
2 department's [commissioner's] decision or order is final; or

3 (2) request that the department stay enforcement of
4 the penalty by:

5 (A) filing with the court a sworn affidavit of
6 the person stating that the person is financially unable to pay the
7 penalty and is financially unable to give the supersedeas bond; and

8 (B) sending a copy of the affidavit to the
9 department.

10 (c) If the department receives a copy of an affidavit under
11 Subsection (b)(2), the department may file with the court, within
12 five days after the date the copy is received, a contest to the
13 affidavit. The court shall hold a hearing on the facts alleged in
14 the affidavit as soon as practicable and shall stay the enforcement
15 of the penalty on finding that the alleged facts are true. The
16 person who files an affidavit has the burden of proving that the
17 person is financially unable to pay the penalty or to give a
18 supersedeas bond.

19 Sec. 1954.355. COLLECTION OF PENALTY. At the request of the
20 department [commissioner], the attorney general may bring a civil
21 action to recover an administrative penalty imposed under this
22 subchapter.

23 Sec. 1954.356. JUDICIAL REVIEW. Judicial review of a
24 decision or order of the department [commissioner] imposing a
25 penalty under this subchapter is instituted by filing a petition
26 with a district court in Travis County and is under the substantial
27 evidence rule as provided by Subchapter G, Chapter 2001, Government

1 Code.

2 Sec. 1954.357. REMITTANCE OF PENALTY AND INTEREST OR
3 RELEASE OF BOND. If after judicial review the administrative
4 penalty is reduced or is not upheld by the court, the department
5 [~~commissioner~~] shall:

6 (1) remit the appropriate amount, plus accrued
7 interest, to the person not later than the 30th day after the date
8 of the determination, if the person paid the penalty; or

9 (2) execute a release of the bond, if the person gave a
10 bond.

11 SECTION 5.283. Sections 1955.001(1), (2), and (3),
12 Occupations Code, are amended to read as follows:

13 (1) ~~"Board"~~ means the ~~Texas Board of Health~~.

14 ~~(2)~~ "Child-occupied facility" means a building or
15 part of a building constructed before 1978, including a day-care
16 center, preschool, or kindergarten classroom, that is visited
17 regularly by the same child, six years of age or younger, at least
18 two days in any calendar week if the visits are for at least:

19 (A) three hours each day; and

20 (B) 60 hours each year.

21 (2) ~~(3)~~ "Department" means the ~~Texas~~ Department
22 of State Health Services.

23 (3) "Executive commissioner" means the executive
24 commissioner of the Health and Human Services Commission.

25 SECTION 5.284. Section 1955.002, Occupations Code, is
26 amended to read as follows:

27 Sec. 1955.002. RULES RESTRICTING ADVERTISING OR

1 COMPETITIVE BIDDING. (a) The executive commissioner [board] may
2 not adopt rules restricting advertising or competitive bidding by a
3 certified or accredited person except to prohibit false,
4 misleading, or deceptive practices.

5 (b) The executive commissioner [board] may not include in
6 the [its] rules to prohibit false, misleading, or deceptive
7 practices a rule that:

- 8 (1) restricts the use of any advertising medium;
- 9 (2) restricts the use of a certified or accredited
10 person's personal appearance or voice in an advertisement;
- 11 (3) relates to the size or duration of an
12 advertisement by the certified or accredited person; or
- 13 (4) restricts the certified or accredited person's
14 advertisement under a trade name.

15 SECTION 5.285. Section 1955.051(d), Occupations Code, is
16 amended to read as follows:

17 (d) Rules adopted by the executive commissioner under this
18 section must:

- 19 (1) set minimum training requirements for use by
20 accredited training providers;
- 21 (2) set standards for the reliability, effectiveness,
22 and safety of lead-based paint activities in target housing;
- 23 (3) set standards for accrediting training providers;
- 24 (4) require the use of certified and accredited
25 personnel in a lead-based paint activity in target housing or in a
26 child-occupied facility;
- 27 (5) be revised as necessary to:

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10 SECTION 5.286. Section 1955.052(a), Occupations Code, is
11 amended to read as follows:

12 (a) The executive commissioner [board] by rule may require a
13 person involved in a lead-based paint activity in target housing or
14 a public area that the department determines creates a public
15 health hazard to be certified. The department shall delay
16 implementation of the certification requirement for six months
17 after the date the rule is adopted.

18 SECTION 5.287. Section 1955.053, Occupations Code, is
19 amended to read as follows:

20 Sec. 1955.053. FEES. The executive commissioner by rule
21 [department] may impose a fee to cover the cost of administering the
22 program. The executive commissioner shall set fees for issuing or
23 renewing a certification or accreditation in amounts designed to
24 allow the department to recover from the certification and
25 accreditation holders all of the department's direct and indirect
26 costs in administering and enforcing this chapter.

27 SECTION 5.288. Section 1955.055, Occupations Code, is

1 amended to read as follows:

2 Sec. 1955.055. TERM OF CERTIFICATION OR ACCREDITATION;
3 EXPIRATION. (a) A certification or accreditation is valid for two
4 years.

5 (b) The executive commissioner [board] by rule may adopt a
6 system under which certifications or accreditations expire on
7 various dates during the year. For the year in which the expiration
8 date is changed, the department shall prorate certification or
9 accreditation fees on a monthly basis so that each certified or
10 accredited person pays only that portion of the certification or
11 accreditation fee that is allocable to the number of months during
12 which the certification or accreditation is valid. On renewal of
13 the certification or accreditation on the new expiration date, the
14 total certification or accreditation renewal fee is payable.

15 (c) [~~b~~] A person whose certification or accreditation has
16 expired may not engage in activities that require certification or
17 accreditation until the certification or accreditation has been
18 renewed.

19 SECTION 5.289. Section 1955.101, Occupations Code, is
20 amended to read as follows:

21 Sec. 1955.101. DISCIPLINARY ACTION BY DEPARTMENT. The
22 department shall revoke, suspend, or refuse to renew a
23 certification or accreditation or shall reprimand a certified or
24 accredited person for a violation of this chapter or a department
25 [board] rule.

26 SECTION 5.290. Section 1955.102, Occupations Code, is
27 amended to read as follows:

1 Sec. 1955.102. PROBATION. (a) The department [board] may
2 place on probation a person whose certification or accreditation is
3 suspended.

4 (b) The department [board] may require a person whose
5 certification or accreditation suspension is probated to:

6 (1) report regularly to the department on matters that
7 are the basis of the probation;

8 (2) limit practice to the areas prescribed by the
9 department [board]; or

10 (3) continue or review professional education until
11 the person attains a degree of skill satisfactory to the department
12 [board] in those areas that are the basis of the probation.

13 SECTION 5.291. Section 1955.103(b), Occupations Code, is
14 amended to read as follows:

15 (b) The executive commissioner [board] shall adopt rules
16 relating to the imposition and collection of an administrative
17 penalty.

18 SECTION 5.292. Section 1958.001, Occupations Code, is
19 amended to read as follows:

20 Sec. 1958.001. DEFINITIONS. In this chapter:

21 (1) ["Board" means the Texas Board of Health.]

22 [~~(2)~~] "Commissioner" means the commissioner of public
23 health.

24 [~~(3)~~] "Department" means the [~~Texas~~] Department of
25 State Health Services.

26 (2) "Executive commissioner" means the executive
27 commissioner of the Health and Human Services Commission.

1 (3) [4] "License" means a license issued under this
2 chapter.

3 (4) [5] "Mold" means any living or dead fungi or
4 related products or parts, including spores, hyphae, and
5 mycotoxins.

6 (5) [6] "Mold assessment" means:

7 (A) an inspection, investigation, or survey of a
8 dwelling or other structure to provide the owner or occupant with
9 information regarding the presence, identification, or evaluation
10 of mold;

11 (B) the development of a mold management plan or
12 remediation protocol; or

13 (C) the collection or analysis of a mold sample.

14 (6) [7] "Mold remediation" means the removal,
15 cleaning, sanitizing, demolition, or other treatment, including
16 preventive activities, of mold or mold-contaminated matter that was
17 not purposely grown at that location.

18 SECTION 5.293. Section 1958.053, Occupations Code, is
19 amended to read as follows:

20 Sec. 1958.053. GENERAL RULEMAKING AUTHORITY. The executive
21 commissioner [board] shall adopt substantive and procedural rules
22 as necessary or desirable for the [board] department[~~, and~~
23 commissioner] to discharge its [~~their~~] powers and duties under this
24 chapter.

25 SECTION 5.294. Section 1958.054, Occupations Code, is
26 amended to read as follows:

27 Sec. 1958.054. RULES REGARDING PERFORMANCE STANDARDS AND

1 WORK PRACTICES. The executive commissioner [board] by rule shall
2 establish minimum performance standards and work practices for
3 conducting a mold assessment or mold remediation in this state.

4 SECTION 5.295. Section 1958.055(a), Occupations Code, is
5 amended to read as follows:

6 (a) The executive commissioner [board] shall establish
7 reasonable and necessary fees to administer this chapter, including
8 fees for licenses, registrations, and examinations, [~~The board~~
9 ~~shall set the fees~~] in amounts [~~an amount~~] sufficient to recover the
10 costs of administering this chapter [~~, not to exceed the caps~~
11 ~~established under Subsection (b)~~]. The executive commissioner
12 shall set fees for issuing or renewing a license in amounts designed
13 to allow the department to recover from the license holders all of
14 the department's direct and indirect costs in administering and
15 enforcing this chapter.

16 SECTION 5.296. Section 1958.056(b), Occupations Code, is
17 amended to read as follows:

18 (b) The executive commissioner [board] shall adopt rules
19 regarding compliance investigations.

20 SECTION 5.297. Section 1958.058, Occupations Code, is
21 amended to read as follows:

22 Sec. 1958.058. SAFETY STANDARDS. The executive
23 commissioner by rule [board] may develop and establish mold safety
24 standards for license holders if appropriate scientific
25 information exists regarding the effect of mold.

26 SECTION 5.298. Section 1958.059, Occupations Code, is
27 amended to read as follows:

1 Sec. 1958.059. CODE OF ETHICS. The executive commissioner
2 [board] by rule shall adopt a code of ethics for license holders
3 that promotes the education of mold assessors and mold remediatros
4 concerning the ethical, legal, and business principles that should
5 govern their conduct.

6 SECTION 5.299. Section 1958.101(b), Occupations Code, is
7 amended to read as follows:

8 (b) The executive commissioner [board] shall adopt rules
9 regarding:

10 (1) the scope of mold-related work for which a license
11 is required, including the supervision of employees or other
12 persons by license holders; and

13 (2) renewal requirements for a license issued under
14 this chapter.

15 SECTION 5.300. Subchapter C, Chapter 1958, Occupations
16 Code, is amended by adding Section 1958.1011 to read as follows:

17 Sec. 1958.1011. TERM OF LICENSE. A license issued under
18 this chapter is valid for two years.

19 SECTION 5.301. Section 1958.103, Occupations Code, is
20 amended to read as follows:

21 Sec. 1958.103. REGISTRATION REQUIREMENTS FOR EMPLOYEES.
22 The executive commissioner [board] may adopt rules to require the
23 registration of employees supervised by license holders.

24 SECTION 5.302. Section 1958.104, Occupations Code, is
25 amended to read as follows:

26 Sec. 1958.104. RULES REGARDING LICENSE APPLICATION. The
27 executive commissioner [board] shall adopt rules regarding a

1 license application. The executive commissioner [board] shall
2 adopt rules that establish minimum requirements for a license,
3 including:

4 (1) the type of license;

5 (2) [~~the term of the license,~~

6 [←3] the qualifications for the license, including
7 any previous training required under Section 1958.106;

8 (3) [+4] renewal requirements for the license,
9 including ongoing continuing education required under Section
10 1958.106; and

11 (4) [+5] liability insurance requirements for the
12 license.

13 SECTION 5.303. Section 1958.106(a), Occupations Code, is
14 amended to read as follows:

15 (a) The executive commissioner [board] shall adopt rules
16 regarding training required under this chapter and continuing
17 education required for a license holder under this chapter.

18 SECTION 5.304. Section 1958.107, Occupations Code, is
19 amended to read as follows:

20 Sec. 1958.107. RECIPROCITY. The executive commissioner
21 [board] may adopt rules that facilitate reciprocity and
22 communication with other states that have a similar licensing
23 program.

24 SECTION 5.305. Section 1958.153(c), Occupations Code, is
25 amended to read as follows:

26 (c) The executive commissioner [board] shall adopt rules to
27 implement this section, including rules:

1 (1) describing the information that must be provided
2 in the notice; and

3 (2) authorizing verbal notification to the department
4 in an emergency.

5 SECTION 5.306. Section 1958.154(c), Occupations Code, is
6 amended to read as follows:

7 (c) The executive commissioner [board] shall adopt rules to
8 implement this section, other than rules described by Subsection
9 (d).

10 SECTION 5.307. Section 1958.155(c), Occupations Code, is
11 amended to read as follows:

12 (c) A license holder who is not an individual shall disclose
13 to the department the name, address, and occupation of each person
14 that has an ownership interest in the license holder. The license
15 holder shall report any changes in ownership to the department. The
16 executive commissioner [board] shall adopt rules to implement this
17 section, including rules regarding the form of the disclosure and
18 the time required to make disclosures or to report a change in
19 ownership.

20 SECTION 5.308. Section 1958.251, Occupations Code, is
21 amended to read as follows:

22 Sec. 1958.251. IMPOSITION OF ADMINISTRATIVE PENALTY. The
23 department [commissioner] may impose an administrative penalty on a
24 person who violates this chapter or a rule adopted or order issued
25 under this chapter.

26 SECTION 5.309. Section 1958.252(b), Occupations Code, is
27 amended to read as follows:

1 (b) In determining the amount of the penalty, the department
2 [commissioner] shall consider:

3 (1) whether the violation was committed knowingly,
4 intentionally, or fraudulently;

5 (2) the seriousness of the violation;
6 (3) any hazard created to the health and safety of the
7 public;

8 (4) the person's history of previous violations; and
9 (5) any other matter that justice may require.

10 SECTION 5.310. Section 1958.253(a), Occupations Code, is
11 amended to read as follows:

12 (a) The department [commissioner] may choose not to impose
13 an administrative penalty under this subchapter if, not later than
14 the 10th day after the date of written notice of the violation under
15 Section 1958.254, the person provides conclusive evidence that the
16 circumstances giving rise to the violation have been corrected and
17 all actual damages are paid.

18 SECTION 5.311. Sections 1958.254(a), (c), (d), (e), and
19 (f), Occupations Code, are amended to read as follows:

20 (a) The department [commissioner] may impose an
21 administrative penalty under this subchapter only after the person
22 charged with a violation is given a written notice and the
23 opportunity for a hearing.

24 (c) If a hearing is held, the department [commissioner]
25 shall make findings of fact and issue a written decision as to:

26 (1) the occurrence of the violation; and
27 (2) the amount of any penalty that is warranted.

1 (d) If the person charged with a violation fails to exercise
2 the opportunity for a hearing, the department [~~commissioner~~], after
3 determining that a violation occurred and the amount of the penalty
4 that is warranted, may impose a penalty and shall issue an order
5 requiring the person to pay any penalty imposed.

6 (e) Not later than the 30th day after the date the
7 department [~~commissioner~~] issues an order after determining that a
8 violation occurred, the department [~~commissioner~~] shall inform the
9 person charged with the violation of the amount of any penalty
10 imposed.

11 (f) The department [~~commissioner~~] may consolidate a hearing
12 under this section with another proceeding.

13 SECTION 5.312. Section 1958.255, Occupations Code, is
14 amended to read as follows:

15 Sec. 1958.255. OPTIONS FOLLOWING DECISION [~~PAY OR APPEAL~~].
16 (a) Not later than the 30th day after the date the department's
17 [~~commissioner's~~] decision or order becomes final as provided by
18 Section 2001.144, Government Code, the person shall:

19 (1) pay the administrative penalty; or
20 (2) file a petition for judicial review contesting the
21 fact of the violation, the amount of the penalty, or both.

22 (b) Within the 30-day period, a person who acts under
23 Subsection (a)(2) may:

24 (1) stay enforcement of the penalty by:
25 (A) [~~(1)~~] paying the penalty to the court
26 [~~commissioner~~] for placement in an escrow account; or
27 (B) posting with the court [~~(2)~~ giving the

1 ~~commissioner~~] a supersedeas bond in a form approved by the court
2 [~~commissioner~~] that [+] ~~is~~

3 [A] is for the amount of the penalty[+] and
4 [B] is effective until judicial review of the
5 department's [~~commissioner's~~] decision or order is final; or

6 (2) request that the department stay enforcement of
7 the penalty by:

8 (A) filing with the court a sworn affidavit of
9 the person stating that the person is financially unable to pay the
10 penalty and is financially unable to give the supersedeas bond; and
11 (B) sending a copy of the affidavit to the
12 department.

13 (c) If the department receives a copy of an affidavit under
14 Subsection (b)(2), the department may file with the court, within
15 five days after the date the copy is received, a contest to the
16 affidavit. The court shall hold a hearing on the facts alleged in
17 the affidavit as soon as practicable and shall stay the enforcement
18 of the penalty on finding that the alleged facts are true. The
19 person who files an affidavit has the burden of proving that the
20 person is financially unable to pay the penalty or to give a
21 supersedeas bond.

22 SECTION 5.313. Section 1958.256, Occupations Code, is
23 amended to read as follows:

24 Sec. 1958.256. COLLECTION OF PENALTY. At the request of the
25 department [~~commissioner~~], the attorney general may bring a civil
26 action to recover an administrative penalty imposed under this
27 subchapter.

1 SECTION 5.314. Section 1958.257, Occupations Code, is
2 amended to read as follows:

3 Sec. 1958.257. JUDICIAL REVIEW. Judicial review of a
4 decision or order of the department [~~commissioner~~] imposing a
5 penalty under this subchapter is instituted by filing a petition
6 with a district court in Travis County and is under the substantial
7 evidence rule as provided by Subchapter G, Chapter 2001, Government
8 Code.

9 SECTION 5.315. Section 1958.258, Occupations Code, is
10 amended to read as follows:

11 Sec. 1958.258. REMITTANCE OF PENALTY AND INTEREST OR
12 RELEASE OF BOND. If after judicial review the administrative
13 penalty is reduced or is not upheld by the court, the department
14 [~~commissioner~~] shall:

15 (1) remit the appropriate amount, plus accrued
16 interest, to the person not later than the 30th day after the date
17 of the determination, if the person paid the penalty; or

18 (2) execute a release of the bond, if the person gave a
19 bond.

20 SECTION 5.316. Section 1958.301(b), Occupations Code, is
21 amended to read as follows:

22 (b) The department [~~commissioner~~] may request the attorney
23 general or the district, county, or city attorney having
24 jurisdiction to bring an action to collect a civil penalty under
25 this section.

26 SECTION 5.317. Section 1958.302, Occupations Code, is
27 amended to read as follows:

1 Sec. 1958.302. INJUNCTIVE RELIEF. The department
2 [commissioner] may request the attorney general or the district,
3 county, or city attorney having jurisdiction to bring an action for
4 a restraining order, injunction, or other relief the court
5 determines is appropriate if it appears to the department that a
6 person is violating or has violated this chapter or a rule adopted
7 under this chapter.

8 SECTION 5.318. The following provisions of the Occupations
9 Code are repealed:

- 10 (1) Section 110.001(1);
- 11 (2) Section 352.002(1);
- 12 (3) Section 353.002(1);
- 13 (4) Section 402.001(1);
- 14 (5) Section 403.001(1);
- 15 (6) Section 503.002(1-a);
- 16 (7) Section 503.206;
- 17 (8) Section 505.002(2-a);
- 18 (9) Section 603.2041(e);
- 19 (10) Section 605.002(2);
- 20 (11) Section 1954.002(6);
- 21 (12) Sections 1954.056(b), (c), and (d);
- 22 (13) Section 1958.055(b); and
- 23 (14) Chapter 2152.

24 ARTICLE 6. CHANGES AFFECTING OTHER CODES

25 SECTION 6.001. Section 15.001, Agriculture Code, is amended
26 to read as follows:

27 Sec. 15.001. DEFINITIONS. In this chapter [subchapter]:

1 (1) "Farmers market" means a location at which a group
2 of two or more farmers that are certified under the department's
3 farmers market certification program offer produce for retail sale.

4 (2) "Food coupon" means any redemptive coupon issued
5 by the [Texas] Department of State Health Services under this
6 chapter [subchapter] that is exchangeable only for produce at a
7 farmers market.

8 (3) "Produce" means fresh fruits or vegetables.

9 (4) "W.I.C. program" means the federal special
10 supplemental food program for women, infants, and children
11 administered by the [Texas] Department of State Health Services.

12 SECTION 6.002. Section 15.002, Agriculture Code, is amended
13 to read as follows:

14 Sec. 15.002. ESTABLISHMENT OF SPECIAL NUTRITION PROGRAM.

15 The [Texas] Department of State Health Services may establish a
16 special nutrition program to distribute to certain participants of
17 the W.I.C. program food coupons that are redeemable only at farmers
18 markets located in areas in which the program is implemented.

19 SECTION 6.003. Section 15.003, Agriculture Code, is amended
20 to read as follows:

21 Sec. 15.003. ELIGIBILITY; AMOUNT OF ALLOTMENT. (a) A
22 person is eligible to participate in the special nutrition program
23 if the person is enrolled in the W.I.C. program and resides in an
24 area in which the special nutrition program is implemented. The
25 [Texas] Department of State Health Services shall determine the
26 eligibility of potential participants.

27 (b) Only the [Texas] Department of State Health Services may

1 determine the dollar amount of each participant's monthly allotment
2 of food coupons.

3 SECTION 6.004. Section 15.005, Agriculture Code, is amended
4 to read as follows:

5 Sec. 15.005. RULES. The executive commissioner of the
6 Health and Human Services Commission [~~Texas Board of Health~~] shall
7 adopt rules under this chapter [~~subchapter~~] that provide for:

8 (1) the design, printing, and denominations of the
9 food coupons;

10 (2) the procedure for the delivery of the food coupons
11 to participants;

12 (3) the procedure for the redemption of food coupons
13 by the sellers of the produce; and

14 (4) other rules necessary for carrying out the
15 purposes of this chapter [~~subchapter~~].

16 SECTION 6.005. Section 15.007, Agriculture Code, is amended
17 to read as follows:

18 Sec. 15.007. PROGRAM FUNDS. The [~~Texas~~] Department of
19 State Health Services may accept gifts and grants from the federal
20 government, the state, and private sources as well as legislative
21 appropriations for the program authorized by this chapter
22 [~~subchapter~~]. The use of gifts and grants other than legislative
23 appropriations is subject, after their appropriation, only to
24 limitations contained in the gift or grant.

25 SECTION 6.006. Article 46B.001, Code of Criminal Procedure,
26 is amended to read as follows:

27 Art. 46B.001. DEFINITIONS. In this chapter:

1 (1) ~~"Department"~~ means the Department of State Health
2 Services.

3 ~~(2)~~ "Inpatient mental health facility" has the meaning
4 assigned by Section 571.003, Health and Safety Code.

5 (2) "Intellectual disability" has the meaning
6 assigned by Section 591.003, Health and Safety Code.

7 (3) "Local mental health authority" has the meaning assigned
8 by Section 571.003, Health and Safety Code.

9 (4) "Local intellectual and developmental disability
10 ~~mental retardation~~ authority" has the meaning assigned by Section
11 531.002, Health and Safety Code.

12 (5) "Mental health facility" has the meaning assigned
13 by Section 571.003, Health and Safety Code.

14 (6) "Mental illness" has the meaning assigned by
15 Section 571.003, Health and Safety Code.

16 (7) ~~"Mental retardation" has the meaning assigned by~~
17 ~~Section 591.003, Health and Safety Code.~~

18 ~~(8)~~ "Residential care facility" has the meaning
19 assigned by Section 591.003, Health and Safety Code.

20 (8) ~~(9)~~ "Electronic broadcast system" means a
21 two-way electronic communication of image and sound between the
22 defendant and the court and includes secure Internet
23 videoconferencing.

24 SECTION 6.007. Article 46B.021(e), Code of Criminal
25 Procedure, is amended to read as follows:

26 (e) The court may appoint as experts under this chapter
27 qualified psychiatrists or psychologists employed by the local

1 mental health authority or local intellectual and developmental
2 disability [~~mental retardation~~] authority. The local mental health
3 authority or local intellectual and developmental disability
4 [~~mental retardation~~] authority is entitled to compensation and
5 reimbursement as provided by Article [46B.027](#).

6 SECTION 6.008. Article [46B.024](#), Code of Criminal Procedure,
7 is amended to read as follows:

8 Art. 46B.024. FACTORS CONSIDERED IN EXAMINATION. During an
9 examination under this subchapter and in any report based on that
10 examination, an expert shall consider, in addition to other issues
11 determined relevant by the expert, the following:

12 (1) the capacity of the defendant during criminal
13 proceedings to:

14 (A) rationally understand the charges against
15 the defendant and the potential consequences of the pending
16 criminal proceedings;

17 (B) disclose to counsel pertinent facts, events,
18 and states of mind;

19 (C) engage in a reasoned choice of legal
20 strategies and options;

21 (D) understand the adversarial nature of
22 criminal proceedings;

23 (E) exhibit appropriate courtroom behavior; and

24 (F) testify;

25 (2) as supported by current indications and the
26 defendant's personal history, whether the defendant:

27 (A) is a person with [~~has a~~] mental illness; or

1 (B) is a person with an intellectual disability
2 [~~mental retardation~~];

3 (3) whether the identified condition has lasted or is
4 expected to last continuously for at least one year;

5 (4) the degree of impairment resulting from the mental
6 illness or intellectual disability [~~mental retardation~~], if
7 existent, and the specific impact on the defendant's capacity to
8 engage with counsel in a reasonable and rational manner; and

9 (5) if the defendant is taking psychoactive or other
10 medication:

11 (A) whether the medication is necessary to
12 maintain the defendant's competency; and

13 (B) the effect, if any, of the medication on the
14 defendant's appearance, demeanor, or ability to participate in the
15 proceedings.

16 SECTION 6.009. Article [46B.025](#)(b), Code of Criminal
17 Procedure, is amended to read as follows:

18 (b) If in the opinion of an expert appointed under Article
19 [46B.021](#) the defendant is incompetent to proceed, the expert shall
20 state in the report:

21 (1) the symptoms, exact nature, severity, and expected
22 duration of the deficits resulting from the defendant's mental
23 illness or intellectual disability [~~mental retardation~~], if any,
24 and the impact of the identified condition on the factors listed in
25 Article [46B.024](#);

26 (2) an estimate of the period needed to restore the
27 defendant's competency, including whether the defendant is likely

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1 to be restored to competency in the foreseeable future; and
2 (3) prospective treatment options, if any,
3 appropriate for the defendant.

4 SECTION 6.010. Article 46B.027, Code of Criminal Procedure,
5 is amended to read as follows:

6 Art. 46B.027. COMPENSATION OF EXPERTS; REIMBURSEMENT OF
7 FACILITIES. (a) For any appointment under this chapter, the county
8 in which the indictment was returned or information was filed shall
9 pay for services described by Articles 46B.021(a)(1) and (2). If
10 those services are provided by an expert who is an employee of the
11 local mental health authority or local intellectual and
12 developmental disability [~~mental retardation~~] authority, the
13 county shall pay the authority for the services.

14 (b) The county in which the indictment was returned or
15 information was filed shall reimburse a facility that accepts a
16 defendant for examination under this chapter for expenses incurred
17 that are [determined by the department to be] reasonably necessary
18 and incidental to the proper examination of the defendant.

19 SECTION 6.011. Articles 46B.073(c), (d), and (e), Code of
20 Criminal Procedure, are amended to read as follows:

21 (c) If the defendant is charged with an offense listed in
22 Article 17.032(a), other than an offense listed in Article
23 17.032(a)(6), or the indictment alleges an affirmative finding
24 under Section 3g(a)(2), Article 42.12, the court shall enter an
25 order committing the defendant to the maximum security unit of any
26 facility designated by the Department of State Health Services
27 [redacted], to an agency of the United States operating a mental

1 hospital, or to a Department of Veterans Affairs hospital.

2 (d) If the defendant is not charged with an offense
3 described by Subsection (c) and the indictment does not allege an
4 affirmative finding under Section 3g(a)(2), Article [42.12](#), the
5 court shall enter an order committing the defendant to a mental
6 health facility or residential care facility determined to be
7 appropriate by the local mental health authority or local
8 intellectual and developmental disability [~~mental retardation~~]
9 authority.

10 (e) Notwithstanding Subsections (b), (c), and (d) and
11 notwithstanding the contents of the applicable order of commitment,
12 in a county in which the Department of State Health Services
13 [~~department~~] operates a jail-based restoration of competency pilot
14 program under Article [46B.090](#), a defendant for whom an order is
15 issued under this article committing the defendant to a mental
16 health facility or residential care facility shall be provided
17 competency restoration services at the jail under the pilot program
18 if the service provider at the jail determines the defendant will
19 immediately begin to receive services. If the service provider at
20 the jail determines the defendant will not immediately begin to
21 receive competency restoration services, the defendant shall be
22 transferred to the appropriate mental health facility or
23 residential care facility as provided by the court order. This
24 subsection expires September 1, 2017.

25 SECTION 6.012. Article [46B.076](#)(a), Code of Criminal
26 Procedure, is amended to read as follows:

27 (a) If the defendant is found incompetent to stand trial,

1 not later than the date of the order of commitment or of release on
2 bail, as applicable, the court shall send a copy of the order to the
3 facility [~~of the department~~] to which the defendant is committed or
4 the outpatient treatment program to which the defendant is
5 released. The court shall also provide to the facility or
6 outpatient treatment program copies of the following made available
7 to the court during the incompetency trial:

8 (1) reports of each expert;
9 (2) psychiatric, psychological, or social work
10 reports that relate to the mental condition of the defendant;
11 (3) documents provided by the attorney representing
12 the state or the attorney representing the defendant that relate to
13 the defendant's current or past mental condition;
14 (4) copies of the indictment or information and any
15 supporting documents used to establish probable cause in the case;
16 (5) the defendant's criminal history record; and
17 (6) the addresses of the attorney representing the
18 state and the attorney representing the defendant.

19 SECTION 6.013. Article **46B.077**(a), Code of Criminal
20 Procedure, is amended to read as follows:

21 (a) The facility to which the defendant is committed or the
22 outpatient treatment program to which the defendant is released on
23 bail shall:

24 (1) develop an individual program of treatment;
25 (2) assess and evaluate whether the defendant is
26 likely to be restored to competency in the foreseeable future; and
27 (3) report to the court and to the local mental health

1 authority or to the local intellectual and developmental disability
2 [mental retardation] authority on the defendant's progress toward
3 achieving competency.

4 SECTION 6.014. Article 46B.082(b), Code of Criminal
5 Procedure, is amended to read as follows:

6 (b) If before the 15th day after the date on which the court
7 received notification under Article 46B.079 a defendant committed
8 to a facility [~~of the department~~] or ordered to participate in an
9 outpatient treatment program has not been transported to the court
10 that issued the order under Article 46B.072 or 46B.073, as
11 applicable, the head of the facility to which the defendant is
12 committed or the provider of the outpatient treatment program in
13 which the defendant is participating shall cause the defendant to
14 be promptly transported to the court and placed in the custody of
15 the sheriff of the county in which the court is located. The county
16 in which the court is located shall reimburse the Department of
17 State Health Services or the Department of Aging and Disability
18 Services, as appropriate, [department] for the mileage and per diem
19 expenses of the personnel required to transport the defendant,
20 calculated in accordance with rates provided in the General
21 Appropriations Act for state employees.

22 SECTION 6.015. Article 46B.083(b), Code of Criminal
23 Procedure, is amended to read as follows:

24 (b) If the head of the facility or the outpatient treatment
25 program provider believes that the defendant is a person with an
26 intellectual disability [mental retardation], the head of the
27 facility or the outpatient treatment program provider shall have

1 submitted to the court an affidavit stating the conclusions reached
2 as a result of the examination.

3 SECTION 6.016. Article 46B.090, Code of Criminal Procedure,
4 is amended by amending Subsection (a) and adding Subsection (a-1)
5 to read as follows:

6 (a) In this article, "department" means the Department of
7 State Health Services.

8 (a-1) If the legislature appropriates to the department the
9 funding necessary for the department to operate a jail-based
10 restoration of competency pilot program as described by this
11 article, the department shall develop and implement the pilot
12 program in one or two counties in this state that choose to
13 participate in the pilot program. In developing the pilot program,
14 the department shall coordinate and allow for input from each
15 participating county.

16 SECTION 6.017. The heading to Article 46B.103, Code of
17 Criminal Procedure, is amended to read as follows:

18 Art. 46B.103. CIVIL COMMITMENT HEARING: INTELLECTUAL
19 DISABILITY [~~MENTAL RETARDATION~~].

20 SECTION 6.018. Articles 46B.103(a) and (d), Code of
21 Criminal Procedure, are amended to read as follows:

22 (a) If it appears to the court that the defendant may be a
23 person with an intellectual disability [~~mental retardation~~], the
24 court shall hold a hearing to determine whether the defendant is a
25 person with an intellectual disability [~~mental retardation~~].

26 (d) In the proceedings conducted under this subchapter for a
27 defendant described by Subsection (a):

1 (1) an application to have the defendant declared a
2 person with an intellectual disability [~~mental retardation~~] may not
3 be required;

4 (2) the provisions of Subtitle D, Title 7, Health and
5 Safety Code, relating to notice of hearing do not apply; and

6 (3) appeals from the criminal court proceedings are to
7 the court of appeals as in the proceedings for commitment to a
8 residential care facility under Subtitle D, Title 7, Health and
9 Safety Code.

10 SECTION 6.019. Article 46B.104, Code of Criminal Procedure,
11 is amended to read as follows:

12 Art. 46B.104. CIVIL COMMITMENT PLACEMENT: FINDING OF
13 VIOLENCE. A defendant committed to a facility as a result of
14 proceedings initiated under this chapter shall be committed to the
15 maximum security unit of any facility designated by the Department
16 of State Health Services [~~department~~] if:

17 (1) the defendant is charged with an offense listed in
18 Article 17.032(a), other than an offense listed in Article
19 17.032(a)(6); or

20 (2) the indictment charging the offense alleges an
21 affirmative finding under Section 3g(a)(2), Article 42.12.

22 SECTION 6.020. Articles 46B.105(a), (b), and (e), Code of
23 Criminal Procedure, are amended to read as follows:

24 (a) Unless a defendant is determined to be manifestly
25 dangerous by a [~~department~~] review board established under
26 Subsection (b), not later than the 60th day after the date the
27 defendant arrives at the maximum security unit, the defendant shall

1 be transferred to:

2 (1) a unit of an inpatient mental health facility
3 other than a maximum security unit;
4 (2) a residential care facility; or
5 (3) a program designated by a local mental health
6 authority or a local intellectual and developmental disability
7 [~~mental retardation~~] authority.

8 (b) The commissioner of state health services [~~mental~~
9 ~~health and mental retardation~~] shall appoint a review board of five
10 members, including one psychiatrist licensed to practice medicine
11 in this state and two persons who work directly with persons with
12 mental illness or an intellectual disability [~~mental retardation~~],
13 to determine whether the defendant is manifestly dangerous and, as
14 a result of the danger the defendant presents, requires continued
15 placement in a maximum security unit.

16 (e) If the superintendent of the facility at which the
17 maximum security unit is located disagrees with the determination,
18 the matter shall be referred to the commissioner of state health
19 services [~~mental health and mental retardation~~]. The commissioner
20 shall decide whether the defendant is manifestly dangerous.

21 SECTION 6.021. Article 46B.106(a), Code of Criminal
22 Procedure, is amended to read as follows:

23 (a) A defendant committed to a facility as a result of the
24 proceedings initiated under this chapter, other than a defendant
25 described by Article 46B.104, shall be committed to:

26 (1) a facility designated by the Department of State
27 Health Services or the Department of Aging and Disability Services,

1 as appropriate [department]; or
2 (2) an outpatient treatment program.

3 SECTION 6.022. Article 46B.107(a), Code of Criminal
4 Procedure, is amended to read as follows:

5 (a) The release of a defendant committed under this chapter
6 from the Department of State Health Services, the Department of
7 Aging and Disability Services [department], an outpatient
8 treatment program, or another [a] facility [of a defendant
9 committed under this chapter] is subject to disapproval by the
10 committing court if the court or the attorney representing the
11 state has notified the head of the facility or outpatient treatment
12 provider, as applicable, to which the defendant has been committed
13 that a criminal charge remains pending against the defendant.

14 SECTION 6.023. Articles 46B.151(a), (b), and (c), Code of
15 Criminal Procedure, are amended to read as follows:

16 (a) If a court is required by Article 46B.084(f) or by its
17 appropriate determination under Article 46B.071 to proceed under
18 this subchapter, or if the court is permitted by Article 46B.004(e)
19 to proceed under this subchapter, the court shall determine whether
20 there is evidence to support a finding that the defendant is either
21 a person with mental illness or a person with an intellectual
22 disability [mental retardation].

23 (b) If it appears to the court that there is evidence to
24 support a finding of mental illness or an intellectual disability
25 [mental retardation], the court shall enter an order transferring
26 the defendant to the appropriate court for civil commitment
27 proceedings and stating that all charges pending against the

1 defendant in that court have been dismissed. The court may order
2 the defendant:

3 (1) detained in jail or any other suitable place
4 pending the prompt initiation and prosecution by the attorney for
5 the state or other person designated by the court of appropriate
6 civil proceedings to determine whether the defendant will be
7 committed to a mental health facility or residential care facility;
8 or

9 (2) placed in the care of a responsible person on
10 satisfactory security being given for the defendant's proper care
11 and protection.

12 (c) Notwithstanding Subsection (b), a defendant placed in a
13 facility of the Department of State Health Services or the
14 Department of Aging and Disability Services [department] pending
15 civil hearing under this article may be detained in that facility
16 only with the consent of the head of the facility and pursuant to an
17 order of protective custody issued under Subtitle C, Title 7,
18 Health and Safety Code.

19 SECTION 6.024. Sections 51.933(b), (c), and (e), Education
20 Code, are amended to read as follows:

21 (b) The executive commissioner of the Health and Human
22 Services Commission [~~Texas Board of Health~~] may require
23 immunizations against the diseases listed in Subsection (a) and
24 additional diseases for students at any institution of higher
25 education who are pursuing a course of study in a human or animal
26 health profession, and the executive commissioner [~~board~~] may
27 require those immunizations for any students in times of an

1 emergency or epidemic in a county where the commissioner of state
2 [~~public~~] health services has declared such an emergency or
3 epidemic.

4 (c) An institution of higher education, in conjunction with
5 the [~~Texas~~] Department of State Health Services, should provide
6 individual notice to each student applying for admission regarding:

7 (1) the consequences of not being current on
8 immunization for certain diseases;

9 (2) the age groups most vulnerable to these vaccine
10 preventable diseases; and

11 (3) local providers of immunization services.

12 (e) The exception provided by Subsection (d)(1)(B) does not
13 apply in a time of emergency or epidemic declared by the
14 commissioner of state [~~public~~] health services.

15 SECTION 6.025. Sections [1104.406\(a\)](#) and (c), Estates Code,
16 are amended to read as follows:

17 (a) The department shall obtain criminal history record
18 information that is maintained by the Department of Public Safety
19 or the Federal Bureau of Investigation identification division
20 relating to each individual who is or will be providing
21 guardianship services to a ward of or referred by the department,
22 including:

23 (1) an employee of or an applicant selected for an
24 employment position with the department;

25 (2) a volunteer or an applicant selected to volunteer
26 with the department;

27 (3) an employee of or an applicant selected for an

1 employment position with a business entity or other person who
2 contracts with the department to provide guardianship services to a
3 ward referred by the department; [and]

4 (4) a volunteer or an applicant selected to volunteer
5 with a business entity or other person described by Subdivision
6 (3); and

7 (5) a contractor or an employee of a contractor who
8 provides services to a ward of the Department of Aging and
9 Disability Services under a contract with the estate of the ward.

10 (c) The department must annually obtain the information in
11 Subsection (a) regarding employees, contractors, or volunteers
12 providing guardianship services.

13 SECTION 6.026. The following provisions are repealed:

14 (1) the heading to Subchapter A, Chapter 15,
15 Agriculture Code; and

16 (2) Section 1, Chapter 112 (H.B. 434), Acts of the 55th
17 Legislature, Regular Session, 1957 (Article 12691-2, Vernon's
18 Texas Civil Statutes).

19 ARTICLE 7. EFFECTIVE DATE

20 SECTION 7.001. This Act takes effect immediately if it
21 receives a vote of two-thirds of all the members elected to each
22 house, as provided by Section 39, Article III, Texas Constitution.
23 If this Act does not receive the vote necessary for immediate
24 effect, this Act takes effect September 1, 2015.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 219 passed the Senate on March 19, 2015, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 219 passed the House on March 26, 2015, by the following vote: Yeas 143, Nays 0, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor